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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 September 30, 2020

OR

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

For the transition period from to

Commission file number: 001-35403

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)
117 Kendrick Street, Suite 500	
Needham, MA	**02494**
(Address of principal executive offices)	(Zip Code)

(781) 292-4200
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value per share	VSTM	The Nasdaq Global Market

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

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

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

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

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

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

As of November 6, 2020, there were 169,774,432 shares of Common Stock 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 related to present facts or current conditions or 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. Such statements relate to, among other things, the development and activity of our programs and product candidates, VS-6766 (rapidly accelerated fibrosarcoma (RAF)/ mitogen-activated protein kinase kinase (MEK) program) and defactinib (focal adhesion kinase (FAK) program), the structure of our planned and pending clinical trials, and the timeline and indications for clinical development, regulatory submissions and commercialization of activities. 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 we make. Applicable risks and uncertainties include the risks and uncertainties, among other things, regarding: the uncertainties inherent in research and development of VS-6766 and defactinib, such as negative or unexpected results of clinical trials; whether and when any applications for VS-6766 and defactinib may be filed with regulatory authorities in any other jurisdictions; whether and when regulatory authorities in any other jurisdictions may approve any such other applications that may be filed for VS-6766 and defactinib, which will depend on the assessment by such regulatory authorities of the benefit-risk profile suggested by the totality of the efficacy and safety information submitted and, if approved, whether VS-6766 or defactinib will be commercially successful in such jurisdictions; our ability to obtain, maintain and enforce patent and other intellectual property protection for VS-6766 and defactinib; the scope, timing, and outcome of any legal proceedings; decisions by regulatory authorities regarding labeling and other matters that could affect the availability or commercial potential of VS-6766 and defactinib; whether preclinical testing of our product candidates and preliminary or interim data from clinical trials will be predictive of the results or success of ongoing or later clinical trials; that the timing, scope and rate of reimbursement for our product candidates is uncertain; that there may be competitive developments affecting our product candidates; that data may not be available when expected; that enrollment of clinical trials may take longer than expected; that VS-6766 or defactinib will cause unexpected safety events, experience manufacturing or supply interruptions or failures, or result in unmanageable safety profiles as compared to their levels of efficacy; that we face substantial competition, which may result in others developing or commercializing products before or more successfully than we do which could result in reduced market share or market potential for VS-6766 or defactinib; that we will be unable to successfully initiate or complete the clinical development and eventual commercialization of our product candidates; that the development and commercialization of our product candidates will take longer or cost more than planned; that we may not have sufficient cash to fund our contemplated operations; that we may not realize the operational efficiencies and cost savings from restructuring, that we or Chugai Pharmaceutical, Co. Ltd., will fail to fully perform under the license agreement; that we or Secura Bio, Inc. will fail to fully perform under the asset purchase agreement; that we may be unable to make additional draws under our debt facility or obtain adequate financing in the future through product licensing, co-promotional arrangements, public or private equity, debt financing or otherwise; that we will not pursue or submit regulatory filings for our product candidates, that our product candidates will not receive regulatory approval, become commercially successful products, or result in new treatment options being offered to patients; and that the duration and impact of COVID-19 may affect, precipitate or exacerbate one or more of the foregoing risks and uncertainties. Other risks and uncertainties include those identified in this Quarterly Report on Form 10-Q, and in any subsequent filing with the SEC.

As a result of these and other factors, we may not 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. The forward-looking statements contained in this Quarterly Report on Form 10-Q reflect our views as of the date hereof. We do not assume and specifically disclaim 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. Condensed Consolidated Financial Statements (unaudited).

Verastem, Inc.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except per share amounts)

	September 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 170,470	$ 43,514
Short-term investments	—	31,992
Accounts receivable, net	5,685	2,524
Inventory	—	3,096
Restricted cash	9,367	507
Prepaid expenses and other current assets	3,033	3,328
Total current assets	188,555	84,961
Property and equipment, net	497	947
Right-of-use asset, net	2,820	3,077
Intangible assets, net	—	20,008
Restricted cash	25,875	35,241
Other assets	23	812
Total assets	$ 217,770	$ 145,046
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 4,681	$ 9,655
Accrued expenses	23,164	19,365
Lease liability, short-term	533	420
Derivative liability, short-term	—	450
Current portion of long-term debt	9,300	—
Total current liabilities	37,678	29,890
Non-current liabilities:		
Long-term debt	26,397	35,067
Convertible senior notes	20,841	68,556
Lease liability, long-term	3,081	3,489
Other non-current liabilities	—	870
Total liabilities	87,997	137,872
Stockholders' equity:		
Preferred stock, $0.0001 par value; 5,000 shares authorized, no shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	—	—
Common stock, $0.0001 par value; 300,000 and 200,000 shares authorized, 169,540 and 80,118 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	17	8
Additional paid-in capital	702,403	531,937
Accumulated other comprehensive income	—	14
Accumulated deficit	(572,647)	(524,785)
Total stockholders' equity	129,773	7,174
Total liabilities and stockholders' equity	$ 217,770	$ 145,046

See accompanying notes to the condensed consolidated financial statements.

Verastem, Inc.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(unaudited)
(in thousands, except per share amounts)

	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Revenue:				
Product revenue, net	$ 5,829	$ 4,032	$ 15,098	$ 8,722
License and collaboration revenue	2,818	5,000	2,912	5,118
Sale of COPIKTRA license and related assets	70,000	—	70,000	—
Total revenue	78,647	9,032	88,010	13,840
Operating expenses:				
Cost of sales - product	866	371	1,753	906
Cost of sales - intangible amortization	8	392	793	1,177
Cost of sales - sale of COPIKTRA license and related assets	31,187	—	31,187	—
Research and development	10,955	12,219	31,223	33,322
Selling, general and administrative	20,614	22,153	55,660	77,484
Total operating expenses	63,630	35,135	120,616	112,889
Income (loss) from operations	15,017	(26,103)	(32,606)	(99,049)
Other expense	—	—	(1,313)	—
Interest income	19	1,005	497	3,770
Interest expense	(1,898)	(5,041)	(14,440)	(15,156)
Net income (loss)	$ 13,138	$ (30,139)	$ (47,862)	$ (110,435)
Net income (loss) per share—basic	$ 0.08	$ (0.41)	$ (0.32)	$ (1.49)
Net income (loss) per share—diluted	$ 0.08	(0.41)	(0.32)	(1.49)
Weighted average common shares outstanding used in computing:				
Net income (loss) per share—basic	169,510	74,228	147,766	73,988
Net income (loss) per share—diluted	169,760	74,228	147,766	73,988
Net loss	$ 13,138	$ (30,139)	$ (47,862)	$ (110,435)
Unrealized (loss) gain on available-for-sale securities	—	(59)	(14)	(100)
Comprehensive loss	$ 13,138	$ (30,198)	$ (47,876)	$ (110,535)

See accompanying notes to the condensed consolidated financial statements.

Verastem, Inc.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(unaudited)
(in thousands, except share data)

	Common stock		Additional paid-in capital	Accumulated other comprehensive (loss) income	Accumulated deficit	Total stockholders' equity
	Shares	Amount				
Balance at December 31, 2019	**80,117,531**	**$ 8**	**$ 531,937**	**$ 14**	**$ (524,785)**	**$ 7,174**
Net loss	—	—	—	—	(37,990)	(37,990)
Unrealized (loss) on available-for-sale marketable securities	—	—	—	(5)	—	(5)
Issuance of common stock resulting from exercise of stock options	645,628	—	983	—	—	983
Issuance of common stock resulting from vesting of restricted stock units	58,166	—	(51)	—	—	(51)
Stock-based compensation expense	—	—	1,370	—	—	1,370
Issuance of common stock resulting from private investment in public equity offering, net of issuance costs of $6,171	46,511,628	5	93,824	—	—	93,829
Issuance of common stock under Employee Stock Purchase Plan	227,141	—	259	—	—	259
Conversion of 2019 Notes into common stock	34,796,350	3	57,411	—	—	57,414
Balance at March 31, 2020	**162,356,444**	**$ 16**	**$ 685,733**	**$ 9**	**$ (562,775)**	**$ 122,983**
Net loss	—	—	—	—	(23,010)	(23,010)
Unrealized (loss) on available-for-sale marketable securities	—	—	—	(9)	—	(9)
Issuance of common stock resulting from exercise of stock options	179,266	—	551	—	—	551
Issuance of common stock resulting from vesting of restricted stock units	32,650	—	(31)	—	—	(31)
Stock-based compensation expense	—	—	1,659	—	—	1,659
Issuance of common stock resulting from at-the-market transactions, net of issuance costs of $55	6,769,559	1	12,229	—	—	12,230
Balance at June 30, 2020	**169,337,919**	**$ 17**	**$ 700,141**	**$ —**	**$ (585,785)**	**$ 114,373**
Net income	—	—	—	—	13,138	13,138
Issuance of common stock under Employee Stock Purchase Plan	131,052	—	148	—	—	148
Issuance of common stock resulting from vesting of restricted stock units	71,476	—	(42)	—	—	(42)
Stock-based compensation expense	—	—	2,156	—	—	2,156
Balance at September 30, 2020	**169,540,447**	**$ 17**	**$ 702,403**	**$ —**	**$ (572,647)**	**$ 129,773**

Balance at December 31, 2018	**73,806,344**	**$ 7**	**$ 499,741**	**$ 127**	**$ (375,576)**	**$ 124,299**
Net loss	—	—	—	—	(38,102)	(38,102)
Unrealized (loss) on available-for-sale marketable securities	—	—	—	(17)	—	(17)
Issuance of common stock resulting from exercise of stock options	46,803	—	75	—	—	75
Issuance of common stock resulting from vesting of restricted stock units	23,792	—	(43)	—	—	(43)
Stock-based compensation expense	—	—	2,248	—	—	2,248
Balance at March 31, 2019	**73,876,939**	**$ 7**	**$ 502,021**	**$ 110**	**$ (413,678)**	**$ 88,460**
Net loss	—	—	—	—	(42,194)	(42,194)
Unrealized (loss) on available-for-sale marketable securities	—	—	—	(24)	—	(24)
Stock-based compensation expense	—	—	3,065	—	—	3,065
Balance at June 30, 2019	**73,876,939**	**$ 7**	**$ 505,086**	**$ 86**	**$ (455,872)**	**$ 49,307**
Net loss	—	—	—	—	(30,139)	(30,139)
Unrealized (loss) on available-for-sale marketable securities	—	—	—	(59)	—	(59)
Issuance of common stock under Employee Stock Purchase Plan	341,701	—	439	—	—	439
Issuance of common stock resulting from vesting of restricted stock units	50,000	—	—	—	—	—
Issuance of common stock resulting from exercise of stock options	45,104	—	54	—	—	54
Stock-based compensation expense	—	—	1,915	—	—	1,915
Balance at September 30, 2019	**74,313,744**	**$ 7**	**$ 507,494**	**$ 27**	**$ (486,011)**	**$ 21,517**

See accompanying notes to the condensed consolidated financial statements.

Verastem, Inc.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(in thousands)

	Nine months ended September 30, 2020	2019
Operating activities		
Net loss	$ (47,862)	$ (110,435)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	450	335
Amortization of acquired intangible asset	793	1,177
Amortization of right-of-use asset and lease liability	(38)	154
Stock-based compensation expense	5,185	7,228
Amortization of deferred financing costs, debt discounts and premiums and discounts on available-for-sale marketable securities	9,765	4,426
Change in fair value of interest make whole provision for 2019 Notes	1,313	—
Changes in operating assets and liabilities:		
Accounts receivable, net	(3,161)	(1,897)
Inventory	3,096	(151)
Prepaid expenses, other current assets and other assets	1,084	(1,100)
Accounts payable	(4,974)	(1,411)
Accrued expenses and other liabilities	3,951	7
Other long-term liabilities	(870)	370
Intangible assets & property, plant and equipment	19,465	—
Net cash used in operating activities	(11,803)	(101,297)
Investing activities		
Purchases of property and equipment	(33)	(7)
Purchases of investments	—	(73,186)
Maturities of investments	32,050	137,680
Net cash provided by investing activities	32,017	64,487
Financing activities		
Proceeds from long-term debt, net of issuance costs	—	9,694
Proceeds from the exercise of stock options and employee stock purchase program	1,940	569
Interest make-whole payments on the 2019 Notes	(1,763)	—
Proceeds from the issuance of common stock, net	106,059	—
Net cash provided by financing activities	106,236	10,263
Increase (decrease) in cash, cash equivalents and restricted cash	126,450	(26,547)
Cash, cash equivalents and restricted cash at beginning of period	79,262	130,608
Cash, cash equivalents and restricted cash at end of period	$ 205,712	$ 104,061
Supplemental disclosure of non-cash investing and financing activities		
Common stock issuance costs included in accounts payable and accrued expenses	$ 15	$ 15
Conversion of 2019 Notes into common stock	$ 57,414	$ —
Purchases of property and equipment included in accounts payable and accrued expenses	$ 217	$ —
Settlement of restricted stock units for tax withholdings included in accrued expenses	$ 124	$ —

See accompanying notes to the condensed consolidated financial statements.

Verastem, Inc.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. Nature of business

Verastem, Inc. (the Company) is a development-stage biopharmaceutical company committed to the development and commercialization of new medicines to improve the lives of patients diagnosed with cancer. The Company's pipeline is focused on novel small molecule drugs that inhibit critical signaling pathways in cancer that promote cancer cell survival and tumor growth, including RAF/MEK inhibition and focal adhesion kinase (FAK) inhibition.

The Company's product candidates, defactinib and VS-6766 (formerly known as CH5126766, CK127, and RO5126766), are being investigated for treatment of various solid tumors. The Company is currently developing its product candidates in both preclinical and clinical studies as potential therapies for certain cancers, including, ovarian cancer, lung cancer, colorectal cancer, pancreatic cancer, and mesothelioma. The Company believes that these compounds may be beneficial as therapeutics either as single agents or when used in combination with immuno-oncology agents, other pathway inhibitors or other current and emerging standard of care treatments in aggressive cancers that do not adequately respond to currently available therapies.

On September 24, 2018, the Company's first commercial product, COPIKTRA® (duvelisib), was approved by the U.S. Food and Drug Administration (the FDA) for the treatment of adult patients with certain hematologic cancers including relapsed or refractory chronic lymphocytic leukemia/ small lymphocytic lymphoma (CLL/SLL) after at least two prior therapies and relapsed or refractory follicular lymphoma (FL) after at least two prior systemic therapies. On August 10, 2020, the Company and Secura Bio, Inc. (Secura) entered into an asset purchase agreement (Secura APA). Pursuant to the Secura APA, the Company sold to Secura its exclusive worldwide license, including certain related assets for the research, development, commercialization, and manufacture in oncology indications of products containing COPIKTRA (duvelisib). The transaction closed on September 30, 2020. Refer to *Note 16. License and collaboration agreements* for a detailed discussion of the Secura APA.

The condensed consolidated financial statements include the accounts of Verastem Securities Company and Verastem Europe GmbH, wholly-owned subsidiaries of the Company. All financial information presented has been consolidated and includes the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

The Company is subject to the risks associated with other life science companies, including, but not limited to, possible failure of preclinical testing or clinical trials, competitors developing new technological innovations, inability to obtain marketing approval of the Company's product candidates, VS-6766 and defactinib, market acceptance and commercial success of the Company's product candidates, VS-6766 and defactinib, following receipt of regulatory approval, and, protection of proprietary technology and the continued ability to obtain adequate financing to fund the Company's future operations. If the Company does not obtain marketing approval and successfully commercialize its product candidates, VS-6766 and defactinib, following regulatory approval, it will be unable to generate product revenue or achieve profitability and may need to raise additional capital.

The Company has historical losses from operations and anticipates that it will continue to incur losses as it continues the research and development of its product candidates. As of September 30, 2020, the Company had cash, cash equivalents, restricted cash and short-term investments of $205.7 million, inclusive of $35.2 million of restricted cash, and accumulated deficit of $572.6 million. The Company expects its existing cash resources will be sufficient to fund its planned operations through 12 months from the date of issuance of these condensed consolidated financial statements.

The Company expects to finance the future development costs of its clinical product portfolio with its existing cash, cash equivalents and short-term investments, through future milestones and royalties received through the Secura

APA or through strategic financing opportunities that could include, but are not limited to collaboration agreements, future offerings of its equity, or the incurrence of debt. However, there is no guarantee that any of these strategic or financing opportunities will be executed or executed on favorable terms, and some could be dilutive to existing stockholders. If the Company fails to obtain additional future capital, it may be unable to complete its planned preclinical studies and clinical trials and obtain approval of certain investigational product candidates from the FDA or foreign regulatory authorities.

2. Summary of significant accounting policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with generally accepted accounting principles in the United States (GAAP) for interim financial reporting and as required by Regulation S-X, Rule 10-01 under the assumption that the Company will continue as a going concern for the next twelve months. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements, or any adjustments that might result from the uncertainty related to the Company's ability to continue as a going concern. In the opinion of management, all adjustments (including those which are normal and recurring) 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 and related disclosures at the date of the financial statements. Actual results could differ from those estimates. Additionally, operating results for the three and nine months ended September 30, 2020 are not necessarily indicative of the results that may be expected for any other interim period or for the year ending December 31, 2020. 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, 2019, as filed with the Securities and Exchange Commission (SEC) on March 11, 2020.

Significant Accounting Policies

The significant accounting policies identified in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 that require the Company to make estimates and assumptions include accrued research and development expenses, stock-based compensation, revenue recognition, collaborative arrangements, accounts receivable, inventory and intangible assets. During the nine months ended September 30, 2020 there were no material changes to the significant accounting policies.

Revenue Recognition

The Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the Company expects to receive in exchange for those goods or services in accordance with Accounting Standards Codification (ASC) Topic 606 *Revenue from Contracts with Customers* (ASC 606). To determine revenue recognition for contracts with its customers, the Company performs the following five step assessment: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception and once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract, determines which goods and services are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Product Revenue, Net

Product Revenue, Net – The Company sold COPIKTRA to a limited number of specialty pharmacies and specialty distributors in the United States. These customers subsequently resold COPIKTRA either directly to patients or

to community hospitals or oncology clinics with in-office dispensaries who in turn distribute COPIKTRA to patients. In addition to distribution agreements with customers, the Company also entered into arrangements with (1) certain government agencies and various private organizations (Third-Party Payers), which may provide for chargebacks or discounts with respect to the purchase of COPIKTRA, and (2) Medicare and Medicaid, which may provide for certain rebates with respect to the purchase of COPIKTRA.

The Company recognized revenue on sales of COPIKTRA when a customer obtains control of the product, which occurs at a point in time (typically upon delivery). Product revenues are recorded at the wholesale acquisition costs, net of applicable reserves for variable consideration. Components of variable consideration include trade discounts and allowances, Third-Party Payer chargebacks and discounts, government rebates, other incentives, such as voluntary co-pay assistance, product returns, and other allowances that are offered within contracts between the Company and customers, payors, and other indirect customers relating to the Company's sale of COPIKTRA. These reserves, as detailed below, are based on the amounts earned, or to be claimed on the related sales, and are classified as reductions of accounts receivable or a current liability. These estimates take into consideration a range of possible outcomes based upon relevant factors such as customer contract terms, information received from third parties regarding the anticipated payor mix for COPIKTRA, known market events and trends, industry data, and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled with respect to sales made.

The amount of variable consideration which is included in the transaction price may be constrained and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized under contracts will not occur in a future period. The Company's analyses contemplate the application of the constraint in accordance with ASC 606. For the three and nine months ended September 30, 2020, the Company determined a material reversal of revenue would not occur in a future period for the estimates detailed below and, therefore, the transaction price was not reduced further. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Trade Discounts and Allowances: The Company generally provided customers with invoice discounts on sales of COPIKTRA for prompt payment, which are explicitly stated in the Company's contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized. In addition, the Company compensated its specialty distributor customers for sales order management, data, and distribution services. The Company has determined such services are not distinct from the Company's sale of COPIKTRA to the specialty distributor customers and, therefore, these payments have also been recorded as a reduction of revenue within the condensed consolidated statements of operations and comprehensive income (loss) for the three and nine months ended September 30, 2020.

Third-Party Payer Chargebacks, Discounts and Fees: The Company executed contracts with Third-Party Payers which allowed for eligible purchases of COPIKTRA at prices lower than the wholesale acquisition cost charged to customers who directly purchase the product from the Company. In some cases, customers charged the Company for the difference between what they paid for COPIKTRA and the ultimate selling price to the Third-Party Payers. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable, net. Chargeback amounts are generally determined at the time of resale to the qualified Third-Party Payer by customers, and the Company generally issues credits for such amounts within a few weeks of the customer's notification to the Company of the resale. Reserves for chargebacks consist of credits that the Company expects to issue for units that remain in the distribution channel inventories at the end of each reporting period that the Company expects will be sold to Third-Party Payers, and chargebacks that customers have claimed, but for which the Company has not yet issued a credit. In addition, the Company compensated certain Third-Party Payers for administrative services, such as account management and data reporting. These administrative service fees have also been recorded as a reduction of product revenue within the condensed consolidated statements of operations and comprehensive income (loss) for the three and nine months ended September 30, 2020.

Government Rebates: The Company was subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of

product revenue and the establishment of a current liability which is included in accrued expenses on the condensed consolidated balance sheets. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Other Incentives: Other incentives which the Company offered include voluntary co-pay assistance programs, which are intended to provide financial assistance to qualified commercially-insured patients with prescription drug co-payments required by payors. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive for product that has been recognized as revenue but remains in the distribution channel inventories at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability which is included as a component of accrued expenses on the condensed consolidated balance sheets.

Product Returns: Consistent with industry practice, the Company generally offers customers a limited right of return for product that has been purchased from the Company. The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company estimates product return liabilities using available industry data and its own sales information, including its visibility into the inventory remaining in the distribution channel.

Subject to certain limitations, the Company's return policy allows for eligible returns of COPIKTRA for credit under the following circumstances:

- Receipt of damaged product;
- Shipment errors that were a result of an error by the Company;
- Expired product that is returned during the period beginning three months prior to the product's expiration and ending six months after the expiration date;
- Product subject to a recall; and
- Product that the Company, at its sole discretion, has specified can be returned for credit.

If taxes should be collected from customers relating to product sales and remitted to governmental authorities, they will be excluded from product revenue. The Company expenses incremental costs of obtaining a contract when incurred, if the expected amortization period of the asset that the Company would have recognized is one year or less.

Licenses and Sales of Intellectual Property

Exclusive Licenses of Intellectual Property - The Company may enter into collaboration and licensing arrangements for research and development, manufacturing, and commercialization activities with collaboration partners for the development and commercialization of its product candidates, which have components within the scope of ASC 606. The arrangements generally contain multiple elements or deliverables, which may include (i) licenses, or options to obtain licenses, to the Company's intellectual property or sale of the Company's license, (ii) research and development activities performed for the collaboration partner, (iii) participation on joint steering committees, and (iv) the manufacturing of commercial, clinical or preclinical material. Payments pursuant to these arrangements typically include non-refundable, upfront payments, milestone payments upon the achievement of significant development events, research and development reimbursements, sales milestones, and royalties on product sales. The amount of variable consideration is constrained until it is probable that the revenue is not at a significant risk of reversal in a future period. The contracts into which the Company enters generally do not include significant financing components.

In determining the appropriate amount of revenue to be recognized as it fulfills its obligations under each of its collaboration and license agreements, the Company performs the following steps: (i) identification of the promised goods or services in the contract within the scope of ASC 606; (ii) determination of whether the promised goods or services are performance obligations including whether they are distinct in the context of the contract; (iii) measurement of the

transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation. As part of the accounting for these arrangements, the Company must use significant judgment to determine: a) the number of performance obligations based on the determination under step (ii) above; b) the transaction price under step (iii) above; c) the stand-alone selling price for each performance obligation identified in the contract for the allocation of transaction price in step (iv) above; and d) the measure of progress in step (v) above. The Company uses judgment to determine whether milestones or other variable consideration, except for royalties on license arrangements, should be included in the transaction price as described further below.

If a license to the Company's intellectual property is determined to be distinct from the other promises or performance obligations identified in the arrangement, the Company recognizes revenue from non-refundable, upfront fees allocated to the license when the license is transferred to the customer and the customer is able to use and benefit from the license. In assessing whether a promise or performance obligation is distinct from the other elements, the Company considers factors such as the research, development, manufacturing and commercialization capabilities of the collaboration partner and the availability of its associated expertise in the general marketplace. In addition, the Company considers whether the collaboration partner can benefit from a promise for its intended purpose without the receipt of the remaining elements, whether the value of the promise is dependent on the unsatisfied promise, whether there are other vendors that could provide the remaining promise, and whether it is separately identifiable from the remaining promise. For licenses that are combined with other promises, the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue. The Company evaluates the measure as of progress of each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition. The measure of progress, and thereby periods over which revenue should be recognized, is subject to estimates by management and may change over the course of the arrangement. Such a change could have a material impact on the amount of revenue the Company records in future periods.

Customer Options: If an arrangement is determined to contain customer options that allow the customer to acquire additional goods or services such as research and development services or manufacturing services, the goods and services underlying the customer options are not considered to be performance obligations at the inception of the arrangement; rather, such goods and services are contingent on exercise of the option, and the associated option fees are not included in the transaction price. The Company evaluates customer options for material rights or options to acquire additional goods or services for free or at a discount. If a customer option is determined to represent a material right, the material right is recognized as a separate performance obligation at the outset of the arrangement. The Company allocates the transaction price to material rights based on the relative standalone selling price, which is determined based on the identified discount and the estimated probability that the customer will exercise the option. Amounts allocated to a material right are not recognized as revenue until, at the earliest, the option is exercised.

Milestone Payments: At the inception of each arrangement that includes milestone payments, the Company evaluates whether the milestones are considered probable of being achieved and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within the control of the Company or the licensee, such as regulatory approvals, are not considered probable of being achieved until those approvals are received. The Company evaluates factors such as the scientific, clinical, regulatory, commercial, and other risks that must be overcome to achieve the respective milestone in making this assessment. There is considerable judgment involved in determining whether it is probable that a significant revenue reversal would not occur. At the end of each subsequent reporting period, the Company reevaluates the probability of achievement of all milestones subject to constraint and, if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenues and earnings in the period of adjustment.

Royalties: For license arrangements that include sales-based royalties, including milestone payments based on a level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied). To date, the Company has not recognized any royalty revenue resulting from any of its licensing arrangements.

For sales of license and intellectual property, that include sale-based royalties, including milestone payments based on a level of sales, the Company evaluates whether the royalties and sales based milestones are considered probable of being achieved and estimates the amount of royalties to include over the contractual term using the expected value method and estimates the sales-based milestones using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated royalty and milestone value is included in the transaction price. Royalties and sales-based milestones for territories for which there is not regulatory approval are not considered probable until such regulatory approval is achieved. The Company evaluates factors such as whether consideration is outside the Company's control, timeline for when the uncertainty will be resolved and historical sales of COPIKTRA if applicable. There is considerable judgment involved in determining whether it is probable that a significant revenue reversal would not occur. At the end of each subsequent reporting period, the Company reevaluates the probability of achievement of all milestones subject to constraint and amount of royalty revenue to be received and, if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenues and earnings in the period of adjustment.

Collaborative Arrangements: Contracts are considered to be collaborative arrangements when they satisfy the following criteria defined in ASC Topic 808, *Collaborative Arrangements* (ASC 808): (i) the parties to the contract must actively participate in the joint operating activity and (ii) the joint operating activity must expose the parties to the possibility of significant risk and rewards, based on whether or not the activity is successful. Payments received from or made to a partner that are the result of a collaborative relationship with a partner, instead of a customer relationship, such as co-development activities, are recorded as a reduction or increase to research and development expense, respectively.

Concentrations of credit risk and off-balance sheet risk

Cash, cash equivalents, short-term investments and trade accounts receivable are financial instruments that potentially subject the Company to concentrations of credit risk. The Company mitigates this risk by maintaining its cash and cash equivalents and investments with high quality, accredited financial institutions. The management of the Company's investments is not discretionary on the part of these financial institutions. As of September 30, 2020, the Company's cash, cash equivalents and short-term investments were deposited at two financial institutions and it has no significant off-balance sheet concentrations of credit risk, such as foreign currency exchange contracts, option contracts or other hedging arrangements.

As of September 30, 2020 there were two customers that cumulatively made up more than 60% of the Company's trade accounts receivable balance. The Company assesses the creditworthiness of all its customers and sets and reassesses customer credit limits to ensure collectability of any trade accounts receivable balances are assured.

For each of the three and nine months ended September 30, 2020, there were three and four customers, respectively who each individually accounted for greater than 10% of the Company's total product revenue, net and license and collaboration revenue.

Recently Issued Accounting Standards Updates

In June 2016, the FASB issued Accounting Standard Update (ASU) No. 2016-13, Measurement of Credit Losses on Financial Instruments (ASU 2016-13). ASU 2016-13 will replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. In November 2019, the FASB issued ASU 2019-10, Financial Instruments – Credit Losses (Topic 326), Derivatives (Topic 815), and Leases (Topic 842). This ASU delayed the required adoption for SEC filers that are smaller reporting companies as of their determination on November 15, 2019, until annual and interim periods beginning after December 15, 2022, with early adoption permitted. The Company has determined that as of November 15, 2019, it is a smaller reporting company and has not elected to early adopt this standard. The Company is currently evaluating the impact the adoption of the standard will have on its condensed consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU No 2019-12, Simplifying Accounting for Income Taxes (ASU 2019-12). ASU 2019-12 removes certain exceptions for recognizing deferred taxes for investments, performing intraperiod

allocations, calculating income taxes in interim periods, and adds certain guidance to remove complexity in certain areas. ASU 2019-12 is effective for all entities for annual and interim periods beginning after December 15, 2020. An entity is permitted to early adopt either the entire standard or only the provisions that eliminate or modify requirements. The Company has not elected to early adopt this standard and is currently evaluating the impact the adoption of the standard will have on its condensed consolidated financial statements and related disclosures.

In August 2020, the FASB issued No. ASU 2020-06, Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40) (ASU 2020-06). ASU 2020-06 simplifies the complexity associated with applying U.S. GAAP for certain financial instruments with characteristics of liabilities and equity. More specifically, the amendments focus on the guidance for convertible instruments and derivative scope exception for contracts in an entity's own equity. The ASU also simplifies the diluted earnings per share (EPS) calculation in certain areas. For smaller reporting companies, ASU 2020-06 is effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. The Company is currently evaluating the impact ASU 2020-06 will have on its condensed consolidated financial statements and related disclosures.

Recently Adopted Accounting Standards Updates

In November 2018, the Financial Accounting Standards Board (FASB) issued ASU 2018-18, Collaborative Arrangements (ASU 2018-18): Clarifying the Interaction between ASC 808 and ASC 606, which makes targeted improvements for collaborative arrangements to clarify that certain transactions between collaborative arrangement participants should be accounted for as revenue under ASC 606 when the collaborative arrangement participant is a customer in the context of a unit of account, adds unit of account guidance in ASC 808 to align with guidance in ASC 606, and clarifies presentation of certain revenues with a collaborative arrangement participant which are not directly related to a third party. ASU 2018-18 is effective for annual and interim periods beginning after December 15, 2019, with early adoption permitted. This guidance requires entities to adopt on a retrospective basis to the date the Company adopted ASC 606. The Company adopted ASU 2018-18 as of January 1, 2020 on a retrospective basis to January 1, 2018, the date at which the Company adopted ASC 606, and it did not have a material impact on the Company's condensed consolidated financial statements or disclosures.

In August 2018, the FASB issued ASU 2018-15, Intangibles-Goodwill and Other-Internal Use Software: Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. ASU 2018-15 is effective for annual and interim periods beginning after December 15, 2019, with early adoption permitted. The Company adopted this standard effective January 1, 2020 on a prospective basis. The adoption of this ASU did not have an effect on the Company's financial statements of disclosures.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement, which eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosure requirements. ASU 2018-13 is effective for all entities for annual and interim periods beginning after December 15, 2019. The Company adopted this standard effective January 1, 2020 on a prospective basis. The adoption of this ASU did not have an effect on the Company's financial statements of disclosures.

3. Cash, cash equivalents and restricted cash

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

	September 30, 2020	December 31, 2019
Cash and cash equivalents	$ 170,470	$ 43,514
Restricted cash	35,242	35,748
Total cash, cash equivalents and restricted cash	**$ 205,712**	**$ 79,262**

Amounts included in restricted cash as of September 30, 2020 and December 31, 2019 represent (i) cash that the Company is contractually obligated to maintain in accordance with the terms of the Amended Term Loan Agreement, (ii) cash received pursuant to a funded research and development agreement with the Leukemia and Lymphoma Society (the LLS Research Funding Agreement) which is restricted for future expenditures for specific R&D studies and (iii) cash held to collateralize outstanding letters of credit provided as a security deposit for the Company's office space located in Needham, Massachusetts in the amount of approximately $35.0 million, $0.0 million, and $0.2 million respectively, at September 30, 2020 and $35.0 million, $0.5 million, and $0.2 million, respectively, at December 31, 2019. Restricted cash related to Amended Term Loan Agreement is included on the condensed balance sheet at September 30, 2020 in the amount of $9.4 million in current restricted cash and $25.6 million in non-current restricted cash. Restricted cash related to the Amended Term Loan Agreement is segregated between current restricted cash and non-current restricted cash in correlation to the segregation of the Amended Term Loan Agreement between current and non-current at September 30, 2020. Restricted cash related to Amended Term Loan Agreement is included on the condensed balance sheet at December 31, 2019 in non-current restricted cash. Letters of credit are included in non-current restricted cash on the condensed consolidated balance sheets at September 30, 2020 and December 31, 2019, and cash related to the LLS Research Funding Agreement is included in current restricted cash on the condensed consolidated balance sheet at December 31, 2019.

4. Fair value of financial instruments

The Company determines the fair value of its financial instruments based upon the fair value hierarchy, which 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 that the Company can access at the measurement date.
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.

Items Measured at Fair Value on a Recurring Basis

The following table presents information about the Company's financial instruments that are measured at fair value on a recurring basis (in thousands):

	September 30, 2020			
Description	**Total**	**Level 1**	**Level 2**	**Level 3**
Financial assets				
Cash equivalents	$ 131,693	$ 131,693	$ —	$ —
Total financial assets	**$ 131,693**	**$ 131,693**	**$ —**	**$ —**

	December 31, 2019			
Description	**Total**	**Level 1**	**Level 2**	**Level 3**
Financial assets				
Cash equivalents	$ 77,176	$ 75,678	$ 1,498	$ —
Short-term investments	31,992	—	31,992	—
Total financial assets	**$ 109,168**	**$ 75,678**	**$ 33,490**	**$ —**
Derivative liability	$ 450	—	—	$ 450

The Company's cash equivalents and short-term investments consist of U.S. Government money market funds, corporate bonds, agency bonds and commercial paper of publicly traded companies. The investments and cash equivalents 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 Company did not adjust or override any fair value measurements provided by the pricing services as of September 30, 2020 and December 31, 2019.

During 2019, a derivative liability was recorded as a result of the issuance of the 2019 Notes (see *Note 12. Convertible Senior Notes*). The fair value measurement of the derivative liability is classified as Level 3 under the fair value hierarchy and it has been valued using unobservable inputs. These inputs include: (1) a simulated share price at the time of conversion of the 2019 Notes, (2) assumed timing of conversion of the 2019 Notes, (3) risk-adjusted discount rate to present value the probability-weighted cash flows, and (4) entity specific cost of equity. Significant increases or decreases in any of those inputs in isolation could result in a significantly lower or higher fair value measurement.

The fair value of the derivative liability was determined using a Monte-Carlo simulation by calculating fair value of the 2019 Interest Make-Whole Payment to 2019 Note holders based on assumed timing of conversion of the 2019 Notes. At December 31, 2019, the risk-adjusted discount rate was determined to be 13.08% and entity specific cost of equity was determined to be 16.54%.

The following table represents a reconciliation of the derivative liability recorded in connection with the issuance of the 2019 Notes (in thousands):

January 1, 2020	$ 450
Fair value adjustment	1,313
Derivative liability extinguished upon conversion	(1,763)
September 30, 2020	$ —

During the nine months ended September 30, 2020 the derivative liability has been settled upon conversion of all 2019 Notes into shares of common stock (see *Note 12. Convertible Senior Notes*).

Fair Value of Financial Instruments

The fair value of the Company's long-term debt is determined using a discounted cash flow analysis with current applicable rates for similar instruments as of the condensed consolidated balance sheet dates. The carrying value of the Company's long-term debt, including the current portion, at September 30, 2020 and December 31, 2019 was approximately $35.7 million and $35.1 million, respectively. The Company estimates that the fair value of its long-term debt, including the current portion, was approximately $37.0 million at both September 30, 2020 and December 31, 2019. The fair value of the Company's long-term debt was determined using Level 3 inputs.

The fair value of the Company's 5.00% Convertible Senior Notes due 2048 (the 2018 Notes) as of September 30, 2020 was approximately $10.0 million, which differs from the carrying value of the 2018 Notes of $20.8 million. The fair value of the 2018 Notes was determined using Level 2 inputs.

5. Investments

Cash, cash equivalents, restricted cash and short-term investments consist of the following (in thousands):

	September 30, 2020			
	Amortized Cost	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Fair Value**
Cash, cash equivalents & restricted cash:				
Cash and money market accounts	$ 205,712	$ —	$ —	$ 205,712
Total cash, cash equivalents & restricted cash:	$ 205,712	$ —	$ —	$ 205,712

	December 31, 2019			
	Amortized Cost	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Fair Value**
Cash, cash equivalents & restricted cash:				
Cash and money market accounts	$ 77,764	$ —	$ —	$ 77,764
Corporate bonds, agency bonds and commercial paper (due within 90 days)	1,498	$ —	$ —	$ 1,498
Total cash, cash equivalents & restricted cash:	$ 79,262	$ —	$ —	$ 79,262
Investments:				
Corporate bonds and commercial paper (due within 1 year)	$ 31,979	$ 14	$ —	$ 31,993
Total investments	$ 31,979	$ 14	$ —	$ 31,993
Total cash, cash equivalents, restricted cash and investments	**$ 111,241**	**$ 14**	**$ —**	**$ 111,255**

There were no realized gains or losses on investments for the three and nine months ended September 30, 2020 or 2019, respectively. There were zero and two investments in an unrealized loss position as of September 30, 2020 and December 31, 2019, respectively. None of these investments had been in an unrealized loss position for more than

12 months. The fair value of these securities as of September 30, 2020 and December 31, 2019 was $0 and $5.8 million, respectively, and the aggregate unrealized loss was immaterial. The Company considered the decline in the market value for these securities to be primarily attributable to current economic conditions. As it was not more likely than not that the Company would be required to sell these securities before the recovery of their amortized cost basis, which may be at maturity, the Company did not consider these investments to be other-than-temporarily impaired as of September 30, 2020 and December 31, 2019, respectively.

6. Inventory

Inventory consists of the following (in thousands):

	September 30, 2020	December 31, 2019
Raw materials	$ —	$ 955
Work in process	—	2,040
Finished goods	—	101
Total inventories	**$ —**	**$ 3,096**

Pursuant to the Secura APA, discussed further in *Note 16. License and collaboration agreements*, the Company sold its exclusive worldwide license for the research, development, commercialization, and manufacture in oncology indications of products containing COPIKTRA (duvelisib) and certain existing duvelisib inventory. In connection with the sale to Secura, the Company expensed approximately $6.0 million of existing duvelisib inventory transferred to Secura as cost of sales – sale of COPIKTRA license and related assets for the three and nine months ended September 30, 2020.

7. Intangible assets

Intangible assets consisted of $22.0 million milestone payment which became payable upon the FDA marketing approval on September 24, 2018, pursuant to the amended and restated license agreement with Infinity Pharmaceuticals, Inc. (Infinity). The Company made the milestone payment of $22.0 million to Infinity in November 2018. The Company recorded approximately less than $0.1 million and $0.8 million in amortization expense related to finite-lived intangible assets during the three and nine months ended September 30, 2020 using the straight-line methodology.

On July 2, 2020, the Company's intangible asset met the Held for Sale criteria and the Company ceased amortization. Pursuant to the Secura APA, discussed further in *Note 16. License and collaboration agreements* the Company sold its exclusive worldwide license for the research, development, commercialization, and manufacture in oncology indications of products containing COPIKTRA (duvelisib) to which the Company's intangible asset related thereto. In connection with the sale the Company expensed the remaining balance of $19.2 million as cost of sales – sale of COPIKTRA license and related assets during the three and nine months ended September 30, 2020.

8. Accrued expenses

Accrued expenses consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Compensation and related benefits	8,078	7,399
Contract research organization costs	6,423	5,467
Commercialization costs	2,707	3,028
Interest	874	897
Consulting fees	3,283	1,610
Professional fees	882	573
Other	917	391
Total accrued expenses	**$ 23,164**	**$ 19,365**

9. Product revenue reserves and allowances

As of September 30, 2020, the Company's sole source of product revenue has been from sales of COPIKTRA in the United States, which it began shipping to customers on September 25, 2018. The following table summarizes activity in each of the product revenue allowance and reserve categories for the nine months ended September 30, 2020 (in thousands):

	Trade discounts and allowances	Third-Party Payer chargebacks, discounts and fees	Government rebates and other incentives	Returns	Total
Balance at December 31, 2019	$ 111	$ 255	$ 372	$ 76	$ 814
Provision related to sales in the current year	626	1,846	673	377	3,522
Adjustments related to prior period sales	—	—	—	—	—
Credits and payments made	(590)	(1,805)	(725)	(327)	(3,447)
Ending balance at September 30, 2020	**$ 147**	**$ 296**	**$ 320**	**$ 126**	**$ 889**

Trade discounts and Third-Party Payer chargebacks and discounts are recorded as a reduction to accounts receivable, net on the condensed consolidated balance sheets. Trade allowances and Third-Party Payer fees, government rebates, other incentives and returns are recorded as a component of accrued expenses on the condensed consolidated balance sheets.

10. Leases

On April 15, 2014, the Company entered into a lease agreement for approximately 15,197 square feet of office and laboratory space in Needham, Massachusetts. Effective February 15, 2018, the Company amended its lease agreement to relocate within the facility to another location consisting of 27,810 square feet of office space (the Amended Lease Agreement). The Amended Lease Agreement extends the expiration date of the lease from September 2019 through May 2025. Pursuant to the Amended Lease Agreement, the initial annual base rent amount is approximately $0.7 million, which increases during the lease term to $1.1 million for the last twelve-month period.

The Company has accounted for its Needham, Massachusetts office space as an operating lease. The Company's lease contains an option to renew and extend the lease terms and an option to terminate the lease prior to the expiration date. The Company has not included the lease extension or the termination options within the right-of-use asset and lease liability on the condensed consolidated balance sheets as neither option is reasonably certain to be exercised. The Company's lease includes variable non-lease components (e.g., common area maintenance, maintenance, consumables, etc.) that are not included in the right-of-use asset and lease liability and are reflected as an expense in the period incurred. The Company does not have any other operating or finance leases.

In calculating the present value of future lease payments, the Company has elected to utilize its incremental borrowing rate based on the remaining lease term at the date of adoption of ASC Topic 842, *Leases* of January 1, 2019. The Company has elected to account for lease components and associated non-lease components as a single lease component and has allocated all of the contract consideration to the lease components only. This will potentially result in the initial and subsequent measurement of the balances of the right-of-use asset and lease liability for leases being greater than if the policy election was not applied.

As of September 30, 2020, a right-of-use asset of $2.8 million and lease liability of $3.6 million are reflected on the condensed consolidated balance sheets. The elements of lease expense were as follows (dollar amounts in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Lease Expense				
Operating lease expense	$ 221	$ 222	$ 664	$ 666
Total Lease Expense	**$ 221**	**$ 222**	**$ 664**	**$ 666**
Other Information - Operating Leases				
Operating cash flows paid for amounts included in measurement of lease liabilities	$ 252	$ 180	$ 703	$ 512

	September 30, 2020
Other Balance Sheet Information - Operating Leases	
Weighted average remaining lease term (in years)	4.8
Weighted average discount rate	14.6%
Maturity Analysis	
2020	$ 252
2021	1,019
2022	1,039
2023	1,060
2024	1,081
Thereafter	546
Total	**$ 4,997**
Less: Present value discount	(1,383)
Lease Liability	**$ 3,614**

11. Long-term debt

On March 21, 2017, the Company entered into a term loan facility of up to $25.0 million with Hercules Capital, Inc. (Hercules). The term loan facility is governed by a loan and security agreement, dated March 21, 2017 (the Original Loan Agreement). The Original Loan Agreement was amended on January 4, 2018, March 6, 2018, October 11, 2018, April 23, 2019, and November 14, 2019 (the Amended Loan Agreement) to increase the total borrowing limit under the Original Loan Agreement from up to $25.0 million to up to $75.0 million, pursuant to certain conditions of funding.

Per the terms of the Amended Loan Agreement, the Company may borrow up to an aggregate of $75.0 million, of which $35.0 million was outstanding immediately as of April 23, 2019 (Fourth Amendment Date) (Amended Term A Loan) as a result of the existing outstanding principal of term loans of $25.0 million being converted into the Amended Term A Loan, and an additional $10.0 million being drawn on the Fourth Amendment Date. The remaining $40.0 million of borrowing capacity may be drawn in multiple tranches comprised of (i) a term loan in an amount of up to $15.0 million upon the Company generating cumulative net product revenues (as defined in the Amended Loan Agreement) of either (a) $37.5 million on or before April 30, 2020 or (b) $50.0 million on or before June 30, 2020 (Amended Term B Loan), and (ii) a term loan in an amount of up to $25.0 million available through December 31, 2021, subject to Hercules' approval and certain other conditions specified in the Amended Loan Agreement (the Amended Term C Loan, and together with the Amended Term A Loan and Amended Term B Loan, the Amended Term Loan). The funding conditions for the Amended Term B Loan have not been met and expired on June 30, 2020. As of September 30, 2020, the Company has borrowed a total of $35.0 million in term loans.

The Company must maintain unrestricted and unencumbered cash in accounts subject to control agreements in favor of Hercules of an aggregate amount greater than or equal to 100% of the outstanding debt obligations under the Amended Term Loan Agreement, unless and until the Company receives of Net Product Revenues (as defined in the Amended Loan Agreement) of at least $20 million on or before December 31, 2020, measured on a trailing six month basis (Initial Net Product Revenue Threshold). As of September 30, 2020, the Company has not met the Initial Net Product Revenue Threshold. Due to the Secura sale discussed below in *Note 16. License and collaboration agreements*, the Company can no longer meet the Initial Net Product Revenue Threshold. The Company has recorded a total $35.0 million in current restricted cash and non-current restricted cash on the condensed consolidated balance sheets. As the Initial Net Product Revenue Threshold is not possible of achievement, the Company must, on a monthly basis, either (a) maintain at all times during such month unrestricted and unencumbered cash in accounts subject to control agreements in favor of Hercules, in an aggregate amount greater than or equal to 50% of the outstanding debt obligations under the Amended Loan Agreement, or (b) show net product revenues of at least 80% of the amounts shown on the Company's most recent board approved financial and business projections, measured on a trailing six month basis as of the end of such calendar month,

The Amended Term Loan will mature on December 1, 2022 (Amended Term Loan Maturity Date). Each advance accrues interest at a floating per annum rate equal to the greater of (a) 9.75% or (b) the lesser of (i) 12.00% and (ii) the sum of (x) 9.75% plus (y) (A) the prime rate (as defined in the Amended Loan Agreement) minus (B) 5.50%. The Amended Term Loan provides for interest-only payments until April 1, 2021, which may be extended to December 1, 2021 subject to the Company generating $40.0 million in net product revenue on a trailing six-month basis on or prior to December 31, 2020 provided that no event of default has occurred. Thereafter, amortization payments will be payable monthly in equal installments of principal and interest (subject to recalculation upon a change in prime rates).

The Amended Term Loan is secured by a lien on substantially all of the Company's assets, other than intellectual property and contains customary covenants and representations, including a liquidity covenant, minimum net revenue covenant, financial reporting covenant and limitations on dividends, indebtedness, collateral, investments, distributions, transfers, mergers or acquisitions, taxes, corporate changes, deposit accounts, and subsidiaries.

On the Fourth Amendment Date, the Company was required to pay any outstanding accrued interest as well as the final payment fee equal to 4.5% on the outstanding principal balance, or $1.1 million. No prepayment charges were due as a result of executing the Fourth Amendment or conversion of the existing term loans into Amended Term A Loans.

The events of default under the Amended Loan Agreement include, without limitation, and subject to customary grace periods, (i) any failure by us to make any payments of principal or interest under the Amended Loan Agreement, any promissory notes or any other loan documents, (ii) any breach or default in the performance of any covenant under the Amended Loan Agreement, (iii) any making of false or misleading representations or warranties in any material respect, (iv) the Company's insolvency or bankruptcy, (v) certain attachments or judgments on the assets of Verastem, Inc., or (vi) the occurrence of any material default under certain agreements or obligations of ours involving indebtedness, or (vii) the occurrence of a material adverse effect. If an event of default occurs, Hercules is entitled to take enforcement action, including acceleration of amounts due under the Amended Loan Agreement.

The Amended Loan Agreement also contains other customary provisions, such as expense reimbursement and confidentiality. Hercules has indemnification rights and the right to assign the Amended Term Loan.

The Company assessed all terms and features of the Amended Loan Agreement in order to identify any potential embedded features that would require bifurcation or any beneficial conversion features. As part of this analysis, the Company assessed the economic characteristics and risks of the Amended Loan Agreement, including put and call features. The Company determined that all features of the Amended Loan Agreement were clearly and closely associated with a debt host and did not require bifurcation as a derivative liability, or the fair value of the feature was immaterial to the Company's condensed consolidated financial statements. The Company reassesses the features on a quarterly basis to determine if they require separate accounting. There have been no changes to the Company's original assessment through September 30, 2020.

The future principal payments under the Amended Term Loan are as follows as of September 30, 2020 (in thousands):

2021	$	14,234
2022		20,766
Total principal payments	**$**	**35,000**

12. Convertible Senior Notes

On October 17, 2018, the Company closed a registered direct public offering of $150.0 million aggregate principal amount of the Company's 5.00% Convertible Senior Notes due 2048 (the 2018 Notes). The 2018 Notes are governed by the terms of a base indenture for senior debt securities (the 2018 Base Indenture), as supplemented by the first supplemental indenture thereto (the Supplemental Indenture and together with the 2018 Base Indenture, the 2018 Indenture), each dated October 17, 2018, by and between the Company and Wilmington Trust, National Association, as trustee. The 2018 Notes are senior unsecured obligations of the Company and bear interest at a rate of 5.00% per annum, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on May 1, 2019. The 2018 Notes will mature on November 1, 2048, unless earlier repurchased, redeemed or converted in accordance with their terms.

The 2018 Notes are convertible into shares of the Company's common stock, par value $0.0001 per share, together, if applicable, with cash in lieu of any fractional share, at an initial conversion rate of 139.5771 shares of common stock per $1,000 principal amount of the 2018 Notes, which corresponds to an initial conversion price of approximately $7.16 per share of common stock and represents a conversion premium of approximately 15.0% above the last reported sale price of the common stock of $6.23 per share on October 11, 2018. Upon conversion, converting noteholders will be entitled to receive accrued interest on their converted 2018 Notes. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

The Company has the right, exercisable at its option, to cause all Notes then outstanding to be converted automatically if the "Daily VWAP" (as defined in the 2018 Indenture) per share of the Company's common stock equals or exceeds 130% of the conversion price on each of at least 20 VWAP Trading Days (as defined in the 2018 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date the Company first issued the 2018 Notes.

The 2018 Indenture includes customary covenants and sets forth certain events of default after which the 2018 Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving the Company or certain of its subsidiaries after which the 2018 Notes become automatically due and payable. The 2018 Notes contain a subjective acceleration clause whereby the holders of the 2018 Notes have the option to call the 2018 Notes upon the occurrence of a Fundamental Change (as defined in the 2018 Indenture). The Company has determined that this acceleration is not probable and therefore the 2018 Notes are classified as a non-current liability on the condensed balance sheets.

The Company assessed all terms and features of the 2018 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, the Company assessed the economic characteristics and risks of the 2018 Notes, including the conversion, put and call features. The conversion feature was initially bifurcated as an embedded derivative but subsequently qualified for a scope exception to derivative accounting upon the Company's stockholders approving an increase in the number of authorized shares of Common Stock in December 2018. The Company determined that all other features of the 2018 Notes were clearly and closely associated with the debt host and did not require bifurcation as a derivative liability, or the fair value of the feature was immaterial to the Company's condensed consolidated financial statements. The Company reassesses the features on a quarterly basis to determine if they require separate accounting. There have been no changes to the Company's original assessment through September 30, 2020.

On November 14, 2019 and December 23, 2019, the Company entered into privately negotiated agreements to exchange approximately $114.3 million and $7.4 million, respectively, aggregate principal amount of the 2018 Notes for (i) approximately $62.9 million and $4.0 million, respectively, aggregate principal amount of 5.00% Convertible Senior Second Lien Notes due 2048 (the 2019 Notes), (ii) an aggregate of approximately $11.4 million and $0.7 million in 2018 Notes principal repayment and (iii) accrued interest on the 2018 Notes through November 14, 2019 and December 23, 2019, respectively. The 2019 Notes are governed by the terms of an indenture (the 2019 Indenture). The 2019 Notes are senior secured obligations of the Company and bear interest at 5.00% per annum, payable semi-annually in arrears on May 1 and November 1 of each year. The 2019 Notes will mature on November 1, 2048, unless earlier repurchased, redeemed or converted in accordance with the terms thereof.

The 2019 Notes are convertible into shares of the Company's common stock, par value $0.0001 per share, together, if applicable, with cash in lieu of any fractional share, at an initial conversion rate of 606.0606 shares of common stock per $1,000 principal amount of the 2019 Notes, which corresponds to an initial conversion price of approximately $1.65 per share of common stock and represents a conversion premium of approximately 52.8% above the last reported sale price of the Company's common stock of $1.08 per share on November 11, 2019. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

The Company has the right, exercisable at the Company's option, to cause all 2019 Notes then outstanding to be converted automatically if the "Daily VWAP" (as defined in the 2019 Indenture) per share of the Company's common stock equals or exceeds 121% of the conversion price on each of at least 20 VWAP Trading Days (as defined in the 2019 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Days period commencing on or after the date the Company first issued the 2019 Notes (Company's Mandatory Conversion Option).

Upon conversion, converting noteholders will be entitled to receive accrued interest on their converted 2019 Notes. In addition, if the 2019 Notes are converted with a conversion date that is on or prior to November 1, 2020, other than in connection with the Company's exercise of the Company's Mandatory Conversion Option then the consideration due upon any such conversion will also include a cash interest make-whole payment for all future scheduled interest payments on the converted 2019 Notes through November 1, 2020 (2019 Notes Interest Make-Whole Provision).

The Company assessed all terms and features of the 2019 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, the Company assessed the economic characteristics and risks of the 2019 Notes, including the conversion, put and call features. In consideration of the 2019 Notes Interest Make-Whole Provision, the Company concluded the provision required bifurcation as a derivative. It was determined that the fair value of the derivative upon the November 14, 2019 and December 23, 2019 issuance of the 2019 Notes was $0.2 million in the aggregate; and the Company recorded this amount as a derivative liability and the offsetting amount as a debt discount as a reduction to the carrying value of the 2019 Notes on the closing dates. It was determined that the fair value of the derivative at December 31, 2019 was $0.5 million.

During the first three months of the nine month period ended September 30, 2020, 2019 Note holders converted $57.4 million aggregate principal of 2019 Notes in exchange for 34,796,350 shares of common stock and $1.8 million of cash for the 2019 Note Interest Make-Whole Provision. The Company recorded approximately $0.0 million and $1.3 million for the three and nine months ended September 30, 2020, respectively, as other expense for the change in fair value of the 2019 Notes Interest Make-Whole Provision in the condensed consolidated statements of operations and comprehensive income (loss). The Company determined that all other features of the 2019 Notes were clearly and closely associated with a debt host and did not require bifurcation as a derivative liability, or the fair value of the feature was immaterial to the Company's condensed consolidated financial statements. As of September 30, 2020, all 2019 Notes have converted into shares of common stock.

13. Common stock

Private Investment in Public Equity (PIPE)

On February 27, 2020, the Company entered into a Securities Purchase Agreement (Purchase Agreement) with certain institutional investors in which the Company agreed to sell 46,511,628 shares of common stock at a purchase price of $2.15 per share, which represents 12.6% premium to the last reported sale price of the Company's common stock of $1.91 per share on February 27, 2020. On March 3, 2020, the closing occurred. The aggregate proceeds net of underwriting discounts and offering costs, were approximately $93.8 million.

At-the-market equity offering programs

In March 2017, the Company established an at-the-market equity offering program pursuant to which it was able to offer and sell up to $35.0 million of its common stock at then current market prices from time to time through Cantor Fitzgerald & Co. (Cantor) as sales agent. In August 2017, the Company amended its sales agreement with Cantor to increase the maximum aggregate offering price of shares of common stock that can be sold under the at-the-market equity offering program to $75.0 million.

During the three and nine months ended September 30, 2020, the Company sold 0 shares and 6,769,559 shares, respectively under this program for net proceeds of approximately $0 million and $12.2 million, respectively (after deducting commissions and other offering expenses). Through September 30, 2020, the Company has sold a total of 18,287,913 shares under this program for net proceeds of approximately $59.6 million (after deducting commissions and other offering expenses).

14. Stock-based compensation

Stock options

A summary of the Company's stock option activity and related information for the nine months ended September 30, 2020 is as follows:

	Shares	Weighted-average exercise price per share	Weighted-average remaining contractual term (years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2019	17,258,524	$ 4.00	7.3	$ 185
Granted	621,357	$ 1.92		
Exercised	(824,894)	$ 1.86		
Forfeited/cancelled	(4,142,720)	$ 3.97		
Outstanding at September 30, 2020	12,912,267	$ 4.04	6.5	$ 11
Vested at September 30, 2020	8,562,159	$ 4.75	5.6	$ 10
Vested and expected to vest at September 30, 2020(1)	12,702,267	$ 4.07	6.5	$ 11

(1) This represents the number of vested options as of September 30, 2020, plus the number of unvested options expected to vest as of September 30, 2020.

The fair value of each stock option granted during the nine months ended September 30, 2020 and 2019 was estimated on the grant date using the Black-Scholes option-pricing model using the following weighted-average assumptions:

	September 30,	
	2020	2019
Risk-free interest rate	0.75 %	2.10 %
Volatility	94 %	86 %
Dividend yield	—	—
Expected term (years)	5.8	5.8

Restricted stock units (RSUs)

The Company awards RSUs to employees under its Amended and Restated 2012 Incentive Plan and its inducement award program. Each RSU entitles the holder to receive one share of the Company's common stock when the RSU vests. The RSUs generally vest in either (i) four substantially equal installments on each of the first four anniversaries of the vesting commencement date, (ii) 100 percent on the first anniversary of the vesting commencement date, (iii) thirty three and one-third percent (33 1/3%) on the first anniversary of the vesting commencement date and as to an additional eight and two-thirds percent (8.33%) at the end of each successive three-month period thereafter, (iv) 100 percent after approximately 21 months from the vesting commencement date, and (v) 50% after approximately four months from vesting commencement date and 50% after one year from vesting commencement date subject to the employee's continued employment with, or service to, the Company on such vesting date. Compensation expense is recognized on a straight-line basis.

A summary of RSU activity during the nine months ended September 30, 2020 is as follows:

	Shares	Weighted-average grant date fair value per share
Outstanding at December 31, 2019	678,089	$ 2.36
Granted	3,825,007	$ 1.56
Vested	(595,289)	$ 2.25
Forfeited/cancelled	(149,259)	$ 2.69
Outstanding at September 30, 2020	3,758,548	$ 1.55

On March 27, 2020, the Company amended all outstanding stock options and RSUs awards held by employees (including executive officers), other than certain performance-based awards, to provide that, in the event of a change of control, such equity awards currently held by employees that are outstanding and unvested immediately prior to a change of control of the Company will become fully vested and, if applicable, exercisable immediately prior to, and subject to the consummation of, such change of control. The amendment was implemented to provide assurance to the Company's existing employees and not in response to any change of control offer for the Company.

The Company modified all unvested equity awards held by employees included in the August 2020 Restructuring discussed in *Note 19 Restructurings*. On September 30, 2020, the Company accelerated all unvested awards held by employees included in the August 2020 Restructuring to be fully vested on September 30, 2020. As a result of the modification, the Company recognized incremental stock compensation cost of approximately $0.5 million during the three and nine months ended September 30, 2020 within selling, general and administrative expense.

Employee stock purchase plan

At the Special Meeting of Stockholders, held on December 18, 2018, the stockholders approved the 2018 Employee Stock Purchase Plan (2018 ESPP). On June 21, 2019, the board of directors of the Company amended and restated the 2018 ESPP, to account for certain non-material changes to the plan's administration (the Amended and Restated 2018 ESPP). The Amended and Restated 2018 ESPP provides eligible employees with the opportunity, through regular payroll deductions, to purchase shares of the Company's common stock at 85% of the lesser of the fair market value of the common stock (a) on the date the option is granted, which is the first day of the purchase period, and (b) on the exercise date, which is the last business day of the purchase period. The Amended and Restated 2018 ESPP generally allows for two six-month purchase periods per year beginning in January and July, or such other periods as determined by the compensation committee of the Company's board of directors. The Company has reserved 2,000,000 shares of common stock for the administration of the Amended and Restated 2018 ESPP. The fair value of shares expected to be purchased under the Amended and Restated 2018 ESPP was calculated using the following weighted-average assumptions:

	Nine months ended September 30,	
	2020	2019
Risk-free interest rate	1.04 %	2.26 %
Volatility	109 %	88 %
Dividend yield	—	—
Expected term (years)	0.5	0.5

For the nine months ended September 30, 2020 and 2019, the Company has recognized $0.1 million and $0.4 million, respectively, of stock-based compensation expense under the Amended and Restated 2018 ESPP. During the nine months ended September 30, 2020 the Company issued 358,193 shares of common stock for proceeds of $0.4 million under the Amended and Restated 2018 ESPP.

15. Net income (loss) per share

Basic net income (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. Diluted net loss per common share is calculated by increasing the denominator by the weighted-average number of additional shares that could have been outstanding from securities convertible into common stock, such as stock options, restricted stock units, and employee stock purchase plan shares (using the "treasury stock" method), and the 2018 Notes and 2019 Notes (using the "if-converted" method), unless their effect on net loss per share is anti-dilutive.

The computation of basic and diluted net income (loss) per share attributable to common stockholders consists of the following:

	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Numerator				
Net income (loss)	**13,138**	**(30,139)**	**(47,862)**	**(110,435)**
Denominator				
Weighted average shares outstanding - basic	169,510	74,228	147,766	73,988
Effect of dilutive securities:				
Restricted Stock Units	137	-	-	-
Stock Options	86	-	-	-
Employee Stock Purchase Plan	27	-	-	-
Weighted average shares outstanding - diluted	**169,760**	**74,228**	**147,766**	**73,988**
Net income (loss) per share - basic	0.08	(0.41)	(0.32)	(1.49)
Net income (loss) per share - diluted	0.08	(0.41)	(0.32)	(1.49)

The following potentially dilutive securities were excluded from the calculation of diluted net income (loss) per share for the periods indicated because including them would have had an anti-dilutive effect:

	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Outstanding stock options	11,613,978	16,493,690	12,912,267	16,493,690
Outstanding restricted stock units	807,566	816,959	3,758,548	816,959
2018 Notes	3,950,032	20,936,548	3,950,032	20,936,548
Employee Stock Purchase Plan	—	262,852	105,533	262,852
Total potentially dilutive securities	**16,371,576**	**38,510,049**	**20,726,380**	**38,510,049**

16. License and collaboration agreements

Secura Bio, Inc. (Secura)

On August 10, 2020, the Company and Secura signed the Secura APA and on September 30, 2020, the transaction closed.

Pursuant to the Secura APA, the Company sold to Secura its exclusive worldwide license, including related assets, for the research, development, commercialization, and manufacture in oncology indications of products containing duvelisib. The sale included certain intellectual property related to duvelisib in oncology indications, certain existing duvelisib inventory, claims and rights under certain contracts pertaining to duvelisib. Pursuant to the Secura APA, Secura assumed all operational and financial responsibility for activities that were part of the Company’s duvelisib oncology program, including all commercialization efforts related to duvelisib in the United States and Europe, as well as the Company’s ongoing duvelisib clinical trials. Further, Secura assumed all obligations with existing collaboration partners developing and commercializing duvelisib, which include Yakult Honsha Co., Ltd. (Yakult), CSPC Pharmaceutical Group Limited (CSPC), and Sanofi. Additionally, Secura assumed all royalty payment obligations due under the amended and restated license agreement with Infinity.

Pursuant to the terms of the Secura APA, Secura has agreed to pay the Company (i) an up-front payment of $70.0 million which was paid to the Company in September 2020, (ii) regulatory milestone payments up to $45.0 million, consisting of a payment of $35.0 million upon receipt of regulatory approval of COPIKTRA in the United States for the treatment of peripheral T-cell lymphoma and a payment of $10.0 million upon receipt of the first regulatory approval for the commercial sale of COPIKTRA in the European Union for the treatment of peripheral T-cell lymphoma, (iii) sales milestone payments of up to $50.0 million, consisting of $10.0 million when total worldwide net sales of COPIKTRA exceed $100.0 million, $15.0 million when total worldwide net sales of COPIKTRA exceed $200.0 million and $25.0 million when total worldwide net sales of COPIKTRA exceed $300.0 million, (c) low double-digit royalties on the annual aggregate net sales above $100.0 million in the United States, European Union, and the United Kingdom of Great Britain and Northern Ireland and (d) 50% of all royalty, milestone and sublicense revenue payments payable to Secura under the Company's existing license agreements with Sanofi, Yakult, and CSPC, and 50% of all royalty and milestone payments payable to Secura under any license or sublicense agreement entered into by Secura in certain jurisdictions.

In connection with the Secura APA, the Company and Secura entered into a transition services agreement (Secura TSA). Under the terms of the Secura TSA, the Company will provide certain support functions at Secura's direction for a term of less than one year from the date of execution, unless earlier terminated or extended according to the terms of the Secura TSA (Secura TSA Services). Secura may cancel the Secura TSA at sole discretion for any or no reason with five days' notice. Services performed are paid at a mutually agreed upon rate.

The Company evaluated the Secura APA and Secura TSA in accordance with ASC 606 as the Company concluded that the counterparty, Secura, is a customer. The Company identified the following performance obligations under the Secura APA and Secura TSA:

- a bundled performance obligation consisting of delivery of the duvelisib global license and intellectual property, certain existing duvelisib inventory, certain duvelisib contracts and clinical trials, certain regulatory approvals, and certain regulatory documentation and books and records (the Bundled Secura Performance Obligation); and

- Secura TSA Services.

The Company concluded that the duvelisib global license and intellectual property were not distinct within the context of the contract (i.e. separately identifiable) because the other assets including certain existing duvelisib inventory, certain duvelisib contracts and clinical trials, certain regulatory approval, and certain regulatory documentation and books and records do not have stand-alone value from other duvelisib global license and intellectual property and Secura could not benefit from them without the duvelisib global license and intellectual property. Consistent with the guidance under ASC 606-10-25-16A, the Company disregarded immaterial promised goods and services when determining performance obligations.

The Company has determined that the upfront payment of $70.0 million, future potential milestone payments and royalties including from Secura's sublicensees should be allocated to the delivery of the Bundled Secura Performance Obligation. The Company has the right to consideration for TSA services in an amount that corresponds directly with the value to Secura of the Company's performance to date. Consideration allocated to the Secura TSA Services will be recognized as such services are provided over the performance period using an output method based on the amount to which the Company has a right to invoice.

Future potential milestones and royalties were excluded from the transaction price, as all milestone amounts and royalties were fully constrained under the guidance. As part of our evaluation of the constraint, the Company considered a number of factors in determining whether there is significant uncertainty associated with the future events that would result in the milestone payments and royalties. Those factors include: the amount of variable consideration is highly susceptible to factors outside of the Company's influence, the uncertainty about the consideration is not expected to be resolved for a long period of time, with respect to future global royalties the Company considered that there is no history of selling COPIKTRA outside of the United States to be able to forecast results reliably. Future potential milestone payments and royalties were fully constrained as the risk of significant revenue reversal related to these amounts has not yet been resolved.

During the three and nine months ended September 30, 2020, the Company recognized $70.0 million as sale of COPIKTRA license and related assets revenue related to delivery of the Bundled Secura Performance Obligation within the statements of operations and comprehensive income (loss). The Company recognized approximately $31.2 million of cost of sales – sale of COPIKTRA license and related assets within the statements of operations and comprehensive income (loss) which consisted of $19.2 million, $6.0 million, $5.8 million and $0.2 million for the intangible asset, certain duvelisib inventory, net duvelisib contract prepaid balances and manufacturing equipment, respectively, which were delivered to Secura as part of the sale.

Pro Forma Financial Information

The following pro forma financial information reflects the consolidated results of operations of the Company as if the duvelisib sale to Secura had taken place on January 1, 2019. The pro forma financial information is not necessarily indicative of the results of operations as they would have been had the transaction been effected on the assumed date.

	Three months ended September 30,		Nine months ended September 30,	
	2020	2019	2020	2019
Net revenue	1,250	2,500	1,250	2,500
Net loss	(13,308)	(13,394)	(52,551)	(48,915)
Net loss per share—basic	(0.08)	(0.18)	(0.36)	(0.66)
Net loss per share—diluted	(0.08)	(0.18)	(0.36)	(0.66)

The pro forma statements include adjustments to eliminate the direct operating results attributable to duvelisib as if the duvelisib sale to Secura occurred on January 1, 2019. The adjustments include elimination of all product revenue, net, sale of COPIKTRA license and related assets revenue, cost of sales – product, cost of sales – intangible amortization, and cost of sales – sale of COPIKTRA license and related assets which were solely and directly related to duvelisib. The adjustments include removing license and collaboration revenue the Company would not have earned if the duvelisib sale had taken place January 1, 2019. Net revenue for the three and nine months ended September 30, 2020 includes $1.3 million or 50% of the $2.5 million milestone earned by Sanofi. Net revenue for the three and nine months ended September 30, 2019 includes $2.5 million or 50% of the $5.0 million upfront received in connection with entering into the license and collaboration agreement with Sanofi. Adjustments to research and development, and selling, general and administrative expenses include amounts that are directly related to duvelisib. The pro forma adjustments do not include any adjustments to other expense, interest income or interest expense. Nonrecurring pro forma transaction costs directly attributable to the Secura transaction were approximately $3.5 million for the three and nine month period ended September 30, 2020 and have been deducted from the net loss above. With respect to selling, general and administrative expenses the Company has adjusted the direct expenses associated with duvelisib, including commercial activities. With respect to research and development expenses, the Company allocates the expenses related to external research and development services, such as contract research organizations, clinical sites, manufacturing organizations and consultants by project. The Company uses our employee and infrastructure resources across multiple research and development projects. The Company's project costing methodology does not allocate personnel and other indirect costs to specific clinical programs. Accordingly, for both selling, general and administrative and research and development expenses, the pro forma adjustments do not include adjustments for allocations of indirect operating costs as these costs are deployed across multiple programs not directly related to duvelisib. In addition, the Company has not included any allocations of anticipated savings due to costs that may be reduced or eliminated.

Chugai Pharmaceutical Co., Ltd (Chugai)

On January 7, 2020, the Company entered into a license agreement with Chugai (the Chugai Agreement) whereby Chugai granted the Company an exclusive worldwide license for the development, commercialization and manufacture of products containing VS-6766, a dual RAF/MEK inhibitor.

Under the terms of the Chugai Agreement, the Company received an exclusive right to develop and commercialize products containing VS-6766 at the Company's own cost and expense. The Company is required to pay Chugai a non-refundable payment of $3.0 million which was paid in February 2020. The Company is further obligated to pay Chugai double-digit royalties on net sales of products containing VS-6766, subject to reduction in certain circumstances. Chugai also obtained opt back rights to develop and commercialize VS-6766 (a) in the European Union, which option may be exercised through the date the Company submits a NDA to the FDA for a product which contains VS-6766 as the sole active pharmaceutical ingredient and (b) in Japan and Taiwan, which option may be exercised through the date the Company receives marketing authorization from the FDA for a product which contains VS-6766 as the sole active pharmaceutical ingredient. As consideration for executing either option, Chugai would have to make a payment to the Company calculated on the Company's development costs to date. Chugai and the Company have made customary representations and warranties and have agreed to certain customary covenants, including confidentiality and indemnification.

Unless earlier terminated, the Chugai Agreement will expire upon the fulfillment of the Company's royalty obligations to Chugai for the sale of any products containing the VS-6766, which royalty obligations expire on a product-by-product and country-by-country basis, upon the last to occur, in each specific country, of (a) expiration of valid patent claims covering such product or (b) 12 years from the first commercial sale of such product in such country.

The Company may terminate the Chugai Agreement upon 180 days' written notice. Subject to certain limitations, Chugai may terminate the Chugai Agreement upon written notice if the Company challenges any patent licensed by Chugai to the Company under the Chugai Agreement. Either party may terminate the license agreement in its entirety with 120 days' written notice for the other party's material breach if such party fails to cure the breach. Either party may also terminate the Chugai Agreement in its entirety upon certain insolvency events involving the other party.

The Company evaluated the license agreement with Chugai under ASC Topic 805, *Business Combinations* (ASC 805*)* and concluded that as the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar assets, the transaction did not meet the requirements to be accounted for as a business combination and therefore was accounted for as an asset acquisition. The Company recorded the up-front payment of $3.0 million as research and development expense within the condensed consolidated statement of operations for the nine months ended September 30, 2020.

Sanofi

On July 25, 2019, the Company entered into a license and collaboration agreement with Sanofi (the Sanofi Agreement), under which the Company granted exclusive rights to Sanofi to develop and commercialize products containing duvelisib in Russia, the Commonwealth of Independent States (CIS), Turkey, the Middle East and Africa (collectively the "Sanofi Territory") for the treatment, prevention, palliation or diagnosis of any oncology indication in humans or animals.

Under the terms of the Sanofi Agreement, Sanofi received the exclusive right to develop and commercialize products containing duvelisib in the Sanofi Territory under mutually agreed upon development and commercialization plans at Sanofi's own cost and expense. In addition, Sanofi received certain limited manufacturing rights in the event the Company is unable to manufacture or supply sufficient quantities of duvelisib or products containing duvelisib to Sanofi during the term of the Sanofi Agreement. The Company retained all rights to duvelisib outside the Sanofi Territory, except for those territories previously and exclusively licensed to other partners.

Sanofi paid the Company an upfront, non-refundable payment of $5.0 million in August 2019. The Company is also entitled to receive aggregate payments of up to $42.0 million if certain regulatory and commercial milestones are successfully achieved. Sanofi is obligated to pay the Company double-digit royalties on net sales of products containing duvelisib in the Sanofi Territory, subject to reduction in certain circumstances. For the three and nine months ended September 30, 2020, the Company recognized $2.5 million of license revenue upon achievement of two development milestones in the three month period ended September 30, 2020.

As discussed above as of September 30, 2020, Secura has assumed from the Company all responsibilities and obligations under the Sanofi Agreement. After September 30, 2020, the Company is entitled to 50% of future milestone payments and royalties pursuant to the Secura APA discussed under heading *Secura Bio, Inc. (Secura)* above. Future milestone and royalty payments pursuant to the Sanofi Agreement will be paid by Sanofi to Secura. The Company's portion of such milestone and royalty payments will be subsequently remitted to the Company by Secura.

Yakult Honsha Co., Ltd. (Yakult)

On June 5, 2018, the Company entered into a license and collaboration agreement with Yakult (the Yakult Agreement), under which the Company granted exclusive rights to Yakult to develop and commercialize products containing duvelisib in Japan for the treatment, prevention, palliation or diagnosis of all oncology indications in humans or animals.

Yakult paid the Company an upfront, non-refundable payment of $10.0 million in June 2018. The Company is also entitled to receive aggregate payments of up to $90.0 million if certain development, regulatory and commercial milestones are successfully achieved. Yakult is obligated to pay the Company a double-digit royalty on net sales of products containing duvelisib in Japan, subject to reduction in certain circumstances, and to fund certain global development costs related to worldwide clinical trials conducted by the Company in which Yakult has opted to participate on a pro-rata basis. For the nine months ended September 30, 2020, there have been no additional milestones achieved under the Yakult Agreement.

As discussed above as of September 30, 2020, Secura has assumed from the Company all responsibilities and obligations under the Yakult Agreement. After September 30, 2020, the Company is entitled to 50% of future milestone payments and royalties pursuant to the Secura APA discussed under heading *Secura Bio, Inc. (Secura)* above. Payments pursuant to the Yakult Agreement will be paid by Yakult to Secura. The Company's portion of such milestone and royalty payments will be subsequently remitted to the Company by Secura.

CSPC Pharmaceutical Group Limited (CSPC)

On September 25, 2018, the Company entered into a license and collaboration agreement with CSPC (the CSPC Agreement), under which the Company granted exclusive rights to CSPC to develop and commercialize products containing duvelisib in the People's Republic of China (China), Hong Kong, Macau and Taiwan (each, a Region and collectively, the CSPC Territory) for the treatment, prevention, palliation or diagnosis of all oncology indications in humans.

CSPC paid the Company an aggregate upfront, non-refundable payment of $15.0 million in 2018. The Company is also entitled to receive aggregate payments of up to $160.0 million if certain development, regulatory and commercial milestones are successfully achieved. CSPC is obligated to pay the Company a double-digit royalty on net sales of products containing duvelisib in the CSPC Territory, subject to reduction in certain circumstances, and to fund certain global development costs related to worldwide clinical trials conducted by the Company in which CSPC has opted to participate on a pro-rata basis. For the nine months ended September 30, 2020 there have been no additional milestones achieved under the CSPC Agreement.

As discussed above as of September 30, 2020, Secura has assumed from the Company all responsibilities and obligations under the CSPC Agreement. After September 30, 2020, the Company is entitled to 50% of future milestone payments and royalties pursuant to the Secura APA discussed under heading *Secura Bio, Inc. (Secura)* above. Payments pursuant to the CSPC Agreement will be paid by CSPC to Secura. The Company's portion of such milestone and royalty payments will be subsequently remitted to the Company by Secura.

17. Income taxes

The Company did not record a federal or state income tax provision or benefit for the three and nine months ended September 30, 2020 and 2019, respectively, due to the expected loss before income taxes to be incurred for the years ended December 31, 2020 and 2019, as well as the Company's continued maintenance of a full valuation allowance against its net deferred tax assets.

18. Commitments and contingencies

The Company has no other commitments other than minimum lease payments as disclosed in Note 10. *Leases*.

19. Restructurings

On October 28, 2019, the Company committed to an operational plan to reduce overall operating expenses, including the elimination of approximately 40 positions across the Company and other cost-saving measures (the October 2019 Restructuring). The October 2019 Restructuring was designed to streamline operations, speed execution, and reflect the focused, account-based approach in the field. The Company recorded $1.2 million of costs in the fourth quarter of 2019, for one-time termination benefits to the affected employees, including cash severance payments, healthcare benefits, and outplacement assistance.

On February 27, 2020, following further analysis of the Company's strategy, the Company committed to an operational plan to reduce overall operating expenses, including the elimination of approximately 31 positions across the Company and other cost-saving measures (the February 2020 Restructuring). The February 2020 Restructuring is designed to streamline operations, speed execution of the Company's clinical development of defactinib and CH5126766, and reflect a focused, account-based approach in the field.

In August 2020, in connection with the duvelisib sale to Secura pursuant to the Secura APA, the Company committed to a strategic restructuring (the August 2020 Restructuring). The restructuring included a workforce reduction of approximately 41 positions primarily in the Company's commercial operations department.

During the three and nine months ended September 30, 2020, the Company recorded an aggregate expense of $3.0 million and $4.8 million, respectively, which is reflected in the condensed consolidated statements of operation and comprehensive income (loss) as selling general, and administrative expense for $2.9 million and $4.3 million, respectively, and research and development expense for $0.1 million and $0.5 million, respectively, for the February 2020 Restructuring and August 2020 Restructuring for one-time termination benefits for employee severance, benefits, and related costs.

The following table summarizes the accrued liabilities activity recorded in connection with the restructurings for the nine months ended September 30, 2020 (in thousands):

Employee severance, benefits and related costs	Amounts accrued at December 31, 2019	Charges	Amount Paid	Adjustments	Amounts accrued at September 30, 2020
October 2019 Restructuring	631	—	(626)	(5)	—
February 2020 Restructuring	—	1,788	(1,653)	10	145
August 2020 Restructuring	—	2,993	—	—	2,993
Total	$ 631	$ 4,781	$ (2,279)	$ 5	$ 3,138

20. Subsequent events

The Company reviews all activity subsequent to the end of the quarter but prior to issuance of the condensed consolidated financial statements for events that could require disclosure or that could impact the carrying value of assets or liabilities as of the balance sheet date. The Company is not aware of any material subsequent events other than the following:

2018 Notes Exchange

On November 6, 2020, the Company entered into a privately negotiated agreement with an investor who is a holder of the Company's 2018 Notes to exchange approximately $28.0 million aggregate principal amount of 2018 Notes for approximately $28.0 million aggregate principal amount of newly issued 5.00% Convertible Senior Notes due 2048 (the 2020 Notes). The issuance of the 2020 Notes is expected to close on November 13, 2020 (the Closing Date), subject to customary closing conditions. The 2020 Notes will be governed pursuant to a indenture by and between the Company and Wilmington Trust, National Association, as trustee and collateral agent (the Trustee), dated as of October 17, 2018 (the Base Indenture), as supplemented by the second supplemental indenture thereto to be dated the Closing Date (the Supplement Indenture and together with the Base Indenture, the 2020 Indenture).

The Company will have the right, exercisable at its option, to cause all 2020 Notes then outstanding to be converted automatically if the "Daily VWAP" (as defined in the 2020 Indenture) per share of the Company's common stock equals or exceeds 123.08% of the conversion price on each of at least 20 "VWAP Trading Days" (as defined in the 2020 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date the Company first issued the 2020 Notes.

The initial conversion rate for the 2020 Notes is 307.6923 shares of the Company's common stock per $1,000 principal amount of the 2020 Notes, which is equivalent to an initial conversion price of approximately $3.25 per share, representing an approximately 153.9% premium to the sale price of $1.28 per share of the Company's common stock on November 5, 2020, as reported on the Nasdaq Global Market. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

Prior to November 1, 2023, the Company will not have the right to redeem the 2020 Notes. On or after November 1, 2023, the Company may elect to redeem the 2020 Notes, in whole or in part, at a cash redemption price equal to the principal amount of the 2020 Notes to be redeemed, plus accrued and unpaid interest, if any.

Unless the Company has previously called all outstanding 2020 Notes for redemption, the 2020 Notes will be subject to repurchase by the Company at the holders' option on each of November 1, 2023, November 1, 2028, November 1, 2033, November 1, 2038 and November 1, 2043 (or, if any such date is not a business day, on the next business day) at a cash repurchase price equal to the principal amount of the 2020 Notes to be repurchased, plus accrued and unpaid interest, if any.

If a Fundamental Change (as defined in the 2020 Indenture) occurs at any time, subject to certain conditions, holders may require the Company to purchase all or any portion of their 2020 Notes at a purchase price equal to 100% of the principal amount of the 2020 Notes to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the "Fundamental Change Repurchase Date" (as defined in the 2020 Indenture). If a "Make-Whole Fundamental Change" (as defined in the 2020 Indenture) occurs on or before November 1, 2022 and a holder elects to convert its 2020 Notes in connection with such Make-Whole Fundamental Change, such holder may be entitled to an increase in the conversion rate in certain circumstances as set forth in the 2020 Indenture.

Upon conversion of the 2020 Notes, holders will receive a cash payment equal to the accrued and unpaid interest on the converted 2020 Notes.

The 2020 Notes are the Company's senior unsecured obligations and will be senior in right of payment to the Company's future indebtedness that is expressly subordinated in right of payment to the 2020 Notes, and equal in right of payment with the Company's existing and future indebtedness that is not so subordinated, and effectively subordinated to the Company's existing and future indebtedness, to the extent of the value of the collateral securing such indebtedness. The 2020 Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries.

The Company will issue the 2020 Notes in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1934, as amended (the Securities Act). Any shares of common stock issued upon conversion of the 2020 Notes will be issued pursuant to Section 3(a)(9) of the Securities Act as an exchange with existing security holders. Based on the initial maximum conversion rate of 833.3333 shares of common stock per $1,000 principal amount of notes, a maximum of approximately 23.3 million shares of common stock are initially issuable upon conversion of the 2020 Notes. The offer and sale of the 2020 Notes and the shares of common stock issuable upon conversion of the 2020 Notes have not been, and will not be, registered under the Securities Act.

The foregoing summary of the 2020 Notes, the Base Indenture and the Supplemental Indenture does not purport to be complete and is qualified in its entirety by reference to the text of the 2020 Notes, the Base Indenture and the Supplemental Indenture, and the form of 5.00% Convertible Senior Note due 2048 included in the Supplemental Indenture, which are filed as Exhibits 4.1, 4.2 and 4.3 respectively, with this Quarterly Report on Form 10-Q and are incorporated herein by reference.

Repayment of Amended Term Loan

On November 9, 2020, the Company repaid in full all principal, accrued and unpaid interest, fees, and expenses under the Amended Loan Agreement with Hercules in an aggregate amount of $37.4 million (the Payoff Amount). The Payoff Amount includes the principal balance of $35.0 million, final payment fee of $1.8 million, prepayment penalty fee of $0.5 million, and accrued and unpaid interest of $0.1 million. Effective upon Hercules receipt of the Payoff Amount, the Amended Loan Agreement has been terminated along with Hercules' commitment to provide funding under any future term loans. All liens on substantially all of the Company's assets to secure the loans under the Amended Loan Agreement have been terminated and released.

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 condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q. 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 on Form 10-Q and in our Annual Report on Form 10-K for our fiscal year ended December 31, 2019. Please also refer to the sections under headings "Forward-Looking Statements" and "Risk Factors" in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for our fiscal year ended December 31, 2019.

OVERVIEW

We are a development-stage biopharmaceutical company committed to the development and commercialization of new medicines to improve the lives of patients diagnosed with cancer. Our pipeline is focused on novel small molecule drugs that inhibit critical signaling pathways in cancer that promote cancer cell survival and tumor growth, including RAF/MEK inhibition and focal adhesion kinase (FAK) inhibition.

Our most advanced product candidates, VS-6766 (formerly known as CH5126766, CK127, and RO5126766) and defactinib, are being investigated for treatment of various solid tumors. We are currently developing our product candidates, VS-6766 and defactinib in both preclinical and clinical studies as potential therapies for certain cancers, including, ovarian cancer, lung cancer, colorectal cancer, pancreatic cancer, and mesothelioma. We believe that these compounds may be beneficial as therapeutics either as single agents or when used in combination with immuno-oncology agents, other pathway inhibitors or other current and emerging standard of care treatments in aggressive cancers that do not adequately respond to currently available therapies.

VS-6766 is an orally available first-in-class unique small molecule RAF/MEK inhibitor. Standard MEK inhibitors paradoxically induce MEK phosphorylation (pMEK) by relieving extracellular-signal-regulated-kinase (ERK)-dependent feedback inhibition of RAF which may limit their efficacy. By inhibiting RAF phosphorylation of MEK, VS-6766 has the advantage of not inducing pMEK. This unique mechanism of VS-6766 enables more effective inhibition of ERK signaling and may confer enhanced therapeutic activity against ERK-dependent, RAS or BRAF mutant tumors. VS-6766 has been studied in over 150 patients and has shown a manageable safety profile to date. Initial signs of activity have been observed in clinical studies as a monotherapy in KRAS mutant, non-small cell lung cancer (NSCLC), endometrial and ovarian cancers, in BRAF mutant ovarian cancer, and in RAS mutant multiple myeloma.

Defactinib, is a targeted inhibitor of Focal Adhesion Kinase (FAK). FAK is a non-receptor tyrosine kinase encoded by the Protein Tyrosine Kinase-2 (PTK-2) gene that is involved in cellular adhesion and, in cancer, metastatic capability. Defactinib in combination with VS-6766 is being studied in an ongoing Phase 1 Investigator Sponsored Study (IST) (FRAME) in patients with KRAS mutant advanced solid tumors, including ovarian cancer, NSCLC and colorectal cancer. Defactinib is delivered orally and designed to be a potential therapy for patients to take at home under the advice of their physician. We have initiated discussions with regulatory authorities in second quarter of 2020 and have met with the regulatory authorities in third quarter of 2020, with the goal of commencing registration-directed trials investigating the defactinib/VS-6766 combination by the end of 2020.

Initial Results from the Phase 1 Study (FRAME) Investigating the Combination of VS-6766 and Defactinib in Patients with KRAS Mutant Cancers and Subsequent Analyses

The poster presentation at the AACR 2020 Virtual Meeting held in April 2020 described safety and dose response data from the dose-escalation portion and expansion cohorts from an open-label, investigator-initiated Phase 1 study conducted in the United Kingdom assessing the combination of RAF/MEK and FAK inhibitor therapy in patients with LGSOC and KRAS mutant NSCLC. The study evaluated the combination of VS-6766 and defactinib. VS-6766 was administered using a twice-weekly dose escalation schedule and was administered 3 out of every 4 weeks. Defactinib was administered using a twice-daily dose escalation schedule, also 3 out of every 4 weeks. Dose levels were assessed in

3 cohorts: cohort 1 (VS-6766 3.2mg, defactinib 200mg); cohort 2a (VS-6766 4mg, defactinib 200mg); and cohort 2b (VS-6766 3.2mg, defactinib 400mg).

In the patients with LGSOC (n=8), the ORR was 50% (n=4). Among the patients with KRAS mutant LGSOC (n=6), the ORR was 67% (n=4). Of the 4 patients who have responded, 3 had a prior MEK inhibitor and as of November 2019 had been on study for a median of 20.5 months (range 7-23 months). In the patients with NSCLC (n=10), all of which had KRAS mutations, 1 patient achieved a partial response and 1 patient with a 22% tumor reduction still on treatment as of November 2019. Median time on treatment for this cohort was approximately 18 weeks.

Based on an observation of higher response rates seen in patients with $KRAS^{G12V}$ mutations in the investigator-initiated Phase 1 combination study, we conducted a combined analysis with data from the combination study and the prior single-agent study that utilized a twice-weekly dosing schedule of VS-6766 to get a more complete picture of activity in $KRAS^{G12V}$ mutations. The subsequent, combined analysis (VS-6766 monotherapy and defactinib combination) showed a 57% ORR (4/7 patients); as a single agent (2/5 patients) and in combination with defactinib (2/2 patients) in $KRAS^{G12V}$ mutant NSCLC. Similarly, the combined analysis showed a 60% ORR (3/5 patients); as a single agent (1/2 patients) and in combination with defactinib (2/3 patients) in $KRAS^{G12V}$ mutant gynecologic cancers. All $KRAS^{G12V}$ responses were confirmed responses per RECIST criteria. These additional analyses were conducted by Verastem Oncology to understand the impact that various KRAS variants may have had on response to identify potential signals to pursue in future prospective studies. This additional analysis was not part of the AACR 2020 poster presentation.

The most common side effects seen in the Phase 1 study were rash, creatine kinase elevation, nausea, hyperbilirubinemia and diarrhea, most being NCI CTC Grade 1/2 and all were reversible. The recommended Phase 2 dose was determined to be cohort 1 (VS-6766 3.2mg, defactinib 200mg).

The preliminary data reported in the study suggest that a novel intermittent dosing schedule of RAF/MEK and FAK inhibitor combination therapy has promising clinical activity in patients with KRAS mutant LGSOC and $KRAS^{G12V}$ mutant NSCLC, including patients previously treated with a MEK inhibitor. Expansion cohorts remain ongoing.

Updated Phase 1/2 FRAME Study Results in Patients with LGSOC

On September 16, 2020, we presented updated Phase 1/2 FRAME study results in patients with LGSOC. Among the patients with LGSOC (n=17), the overall response rate (ORR) was 41% (7 of 17 patients), all partial responses (PRs). Among the patients with KRAS-G12 mutant LGSOC (n=9), the ORR was 56% (5 of 9 patients). Of the seven patients who responded, five had received one or more prior MEK inhibitors. In patients with KRAS mutant LGSOC receiving the recommended Phase 2 dosing (RP2D) regimen, the ORR was 50% (3 of 6 patients). The LGSOC cohort of the FRAME study remains ongoing, with 53% (9 of 17 patients) still on study as of the data cutoff date of August 17, 2020, with three patients on treatment for two years or more.

The most common Grade ≥3 treatment-related adverse events (TEAEs) observed for the recommended Phase 2 dosing regimen were rash (4%) and elevated creatine kinase (4%). No patients discontinued from the FRAME study due to TEAEs.

The novel, intermittent, combination dosing schedule used in the FRAME study continues to show encouraging clinical activity in patients with KRAS mutant LGSOC, including in patients who had previously progressed following treatment with a MEK inhibitor.

In addition, defactinib is currently being investigated in combination with immunotherapeutic and other agents through ISTs. In 2020, it is planned to report results from certain ongoing dose escalation combination studies involving defactinib.

COPIKTRA is an oral inhibitor of phosphoinositide 3-kinase (PI3K), and the first approved dual inhibitor of PI3K-delta and PI3K-gamma, two enzymes known to help support the growth and survival of malignant B-cells and T-

cells. PI3K signaling may lead to the proliferation of malignant B-cells and T-cells and is thought to play a role in the formation and maintenance of the supportive tumor microenvironment. COPIKTRA was approved by the U.S. Food & Drug Administration (FDA) on September 24, 2018 and is now indicated for the treatment of adult patients with relapsed or refractory chronic lymphocytic leukemia/small lymphocytic lymphoma (CLL/SLL) after at least two prior therapies and relapsed or refractory follicular lymphoma (FL) after at least two prior systemic therapies. The indication in FL is approved under accelerated approval based on overall response rate. Continued approval for this FL indication may be contingent upon verification and description of clinical benefits in confirmatory trials.

On August 10, 2020, we and Secura signed an Asset Purchase Agreement (Secura APA) and on September 30, 2020, the transaction closed. Pursuant to the Secura APA, we sold our exclusive worldwide license for the research, development, commercialization, and manufacture in oncology indications of products containing duvelisib. A detailed description of the terms and conditions of the Secura APA is contained below under the heading *License and collaboration agreements*. With the transition of the duvelisib program to Secura, we are focusing our efforts on our lead product candidates, VS-6766 and defactinib.

Our operations to date have been organizing and staffing our company, business planning, raising capital, identifying and acquiring potential product candidates, undertaking preclinical studies and clinical trials for our product candidates and duvelisib and initiating U.S. commercial operations following the approval of COPIKTRA. We have financed our operations to date primarily through public offerings of our common stock, sales of common stock under our at-the-market equity offering programs, our loan and security agreement executed with Hercules Capital, Inc. (Hercules) in March 2017, as amended, the upfront payments under our license and collaboration agreements with Sanofi, Yakult and CSPC, the upfront payment under the Secura APA, the issuance of the 2018 Notes in October 2018 and the proceeds in connection with the PIPE. With our U.S. commercial launch of COPIKTRA on September 24, 2018, we had recently begun financing a portion of our operations through product revenue.

As of September 30, 2020, we had an accumulated deficit of $572.6 million. Our net income (loss) was $13.1 million, $(47.9) million, $(30.1) million and $(110.4) million for the three and nine months ended September 30, 2020 and 2019, respectively. We expect to incur significant expenses and operating losses for the foreseeable future as a result of the continued research and development of VS-6766, and defactinib. As of September 30, 2020, we had cash, cash equivalents, restricted cash and short-term investments of $205.7 million, inclusive of $35.2 million of restricted cash. We expect our existing cash resources will be sufficient to fund our planned operations through 12 months from the date of issuance of these condensed consolidated financial statements.

We expect to finance the future development costs of our clinical product portfolio with our existing cash, cash equivalents and short-term investments, through future milestones and royalties received through the Secura APA or through strategic financing opportunities that could include, but are not limited to collaboration agreements, future offerings of our equity, or the incurrence of debt. However, there is no guarantee that any of these strategic or financing opportunities will be executed or executed on favorable terms, and some could be dilutive to existing stockholders. If we fail to obtain additional future capital, we may be unable to complete our planned preclinical studies and clinical trials and obtain approval of certain investigational product candidates from the FDA or foreign regulatory authorities.

COVID-19 pandemic

The current COVID-19 pandemic has presented a substantial public health and economic challenge around the world and is affecting our employees, patients, communities and business operations, as well as the U.S. economy and financial markets. We have been carefully monitoring the COVID-19 pandemic and its impact on our operations. All employees who are able to work from home have been working from home since mid-March 2020. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning COVID-19, the actions taken to contain it or treat its impact and the economic impact on local, regional, national and international markets.

While we are currently continuing our clinical trials, we expect that COVID-19 precautions may directly or indirectly impact the timeline for some of our clinical trials. We had seen a reduction in site initiation, participant

recruitment and enrollment, due to the COVID-19 pandemic. In particular, based on updates we have received, there was a slowdown in enrollment for the Phase 1 IST (FRAME) studying VS-6766 in combination with defactinib in patients with KRAS mutant advanced solid tumors. COVID-19 limits our ability to access, analyze, and predict when data will available for presentation. Due to COVID-19 precautions and impacts, we are not able to predict when scientific meetings will be held and the impact this could have on our ability to share clinical results. While we are currently seeing patient accruals among our studies pick back up as conditions alleviate in certain areas, if conditions worsen we may experience further delays on completing our clinical trials. To help mitigate some of the impacts to our clinical trials, we are pursuing innovative approaches such as remote patient visits where possible.

We contract with third parties for the supply of raw materials and manufacture of VS-6766 and defactinib for preclinical studies and clinical trials. Our third party suppliers and manufacturers have informed us they have put in place measures to reduce the risk of COVID-19 from effecting their operations and to date we have not experienced delays or interruptions in our supply chain.

For additional information on the various risks posed by the COVID-19 pandemic, please read *Item 1A. Risk Factors* included in this Quarterly Report.

CRITICAL ACCOUNTING POLICIES AND SIGNIFICANT JUDGMENTS AND ESTIMATES

Our discussion and analysis of our financial condition and results of operations is based upon our condensed consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles. The preparation of these condensed consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of certain assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in our financial statements, and the amounts of revenues and expenses during the reported periods.

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, 2019, related to revenue recognition, collaborative agreements, accrued research and development expenses, stock-based compensation, accounts receivable, inventory, intangible assets and leases. During the nine months ended September 30, 2020, there were no material changes to our critical accounting policies.

RESULTS OF OPERATIONS

Comparison of the three months ended September 30, 2020 and 2019

	Three months ended September 30,			
	2020	2019	Change	% Change
Revenue:				
Product revenue, net	$ 5,829	$ 4,032	$ 1,797	45%
License and collaboration revenue	2,818	5,000	(2,182)	-44%
Sale of COPIKTRA license and related assets	70,000	—	70,000	100%
Total revenue	78,647	9,032	69,615	771%
Operating expenses:				
Cost of sales - product	866	371	495	133%
Cost of sales - intangible amortization	8	392	(384)	-98%
Cost of sales - sale of COPIKTRA license and related assets	31,187	—	31,187	100%
Research and development	10,955	12,219	(1,264)	-10%
Selling, general and administrative	20,614	22,153	(1,539)	-7%
Total operating expenses	63,630	35,135	28,495	81%
Income (loss) from operations	15,017	(26,103)	41,120	-158%
Interest income	19	1,005	(986)	-98%
Interest expense	(1,898)	(5,041)	3,143	-62%
Net income (loss)	$ 13,138	$ (30,139)	$ 43,277	-144%

Product revenue, net. Product revenue, net for the three months ended September 30, 2020 (2020 Quarter) was $5.8 million compared to $4.0 million for the three months ended September 30, 2019 (2019 Quarter). Product revenue, net consisted of net product sales of COPIKTRA in the United States. We began commercial sales of COPIKTRA within the United States in September 2018 following receipt of FDA marketing approval. The $1.8 million increase was primarily driven by an increase in product shipments for COPIKTRA as a result of greater market penetration. Pursuant to the Secura APA discussed below under the heading *License and collaboration arrangements*, we have sold our license to sell COPIKTRA to treat patients in oncology indications and therefore will not recognize COPIKTRA product revenue in future periods.

License and collaboration revenue. License and collaboration revenue for the 2020 Quarter comprised of Sanofi achieving two development milestones in the 2020 Quarter totaling $2.5 million and $0.3 million of duvelisib shipments to Sanofi. 2019 Quarter license and collaboration revenue consisted of a $5.0 million upfront payment received in connection with our license and collaboration agreement with Sanofi.

Sale of COPIKTRA license and related assets revenue. Sale of COPIKTRA license and related assets revenue for the 2020 Quarter was comprised of a $70.0 million upfront payment recognized under the Secura APA discussed below under the heading *License and collaboration arrangements*. We had no sale of COPIKTRA license and related assets revenue for the 2019 Quarter.

Costs of sales - product. Costs of sales - product for the 2020 Quarter was $0.9 million compared to $0.4 million for the 2019 Quarter. The $0.5 million increase was primarily driven by an increase in the volume of COPIKTRA sold and corresponding increases in royalties, manufacturing and other costs during the 2020 Quarter as compared to the 2019 Quarter. Cost of sales - product consisted of costs associated with the manufacturing of COPIKTRA, royalties owed to Healthcare Royalty Partners (HCR) and Infinity Pharmaceuticals, Inc. (Infinity) on such sales, and certain period costs. We expensed the manufacturing costs of COPIKTRA as operating expenses in the periods prior to July 1, 2018. In the third quarter of 2018, we began capitalizing inventory costs for COPIKTRA manufactured in preparation for our launch in the United States based on our evaluation of, among other factors, the status of the COPIKTRA New Drug Application (NDA) in the United States and the ability of our third-party suppliers to successfully manufacture commercial quantities of COPIKTRA. Certain of the costs of COPIKTRA units recognized as revenue during the 2020 Quarter and 2019 Quarter were expensed prior to the September 2018 FDA marketing approval and, therefore, are not included in cost of sales - product during this period.

Cost of sales – intangible amortization. Cost of sales – intangible amortization for the 2020 Quarter was less than $0.1 million compared to $0.4 million for the 2019 Quarter. In July 2020, our intangible asset met the Held for Sale criteria and we ceased amortization. Cost of sales – intangible amortization was related to the COPIKTRA finite-lived intangible asset which we recognized and began amortizing in September 2018.

Cost of sales – sale of COPIKTRA license and related assets Cost of sales – sale of COPIKTRA license and related assets for the 2020 Quarter was $31.2 million consisting of certain assets delivered to Secura under the Secura APA. For the 2020 Quarter, we recognized approximately $19.2 million, $6.0 million, $5.8 million and $0.2 million for the intangible asset, certain duvelisib inventory, net duvelisib contract prepaid balances and manufacturing equipment, respectively which were delivered to Secura as part of the sale. There was no cost of sales – sale of COPIKTRA license and related assets for the 2019 Quarter.

Research and development expense. Research and development expense for the 2020 Quarter was $11.0 million compared to $12.2 million for the 2019 Quarter. The $1.2 million decrease was primarily driven by a decrease of $1.6 million in contract research organization (CRO) costs, and a decrease of $1.1 million in personnel related costs, including non-cash stock-based compensation as a result of reduced headcount, partially offset by an increase of $0.4 million in investigated sponsored trial (IST) expenses, $0.4 million in costs for drug substance and drug product, and $0.7 million in consulting and other costs.

We allocate the expenses related to external research and development services, such as CROs, clinical sites, manufacturing organizations and consultants by project. We use our employee and infrastructure resources across multiple research and development projects. Our project costing methodology does not allocate personnel and other indirect costs to specific clinical programs. The following table summarizes our allocation of research and development expenses to our clinical programs, including VS-6766, defactinib and COPIKTRA, for the 2020 Quarter and the 2019 Quarter.

	Three months ended September 30,	
	2020	2019
	(in thousands)	
COPIKTRA	$ 4,263	$ 6,929
Defactinib/VS-6766	2,814	510
Unallocated and other research and development expense	3,450	4,337
Unallocated stock-based compensation expense	428	443
Total research and development expense	$ 10,955	$ 12,219

The decrease in COPIKTRA related costs of $2.6 million for the 2020 Quarter as compared to the 2019 Quarter was driven by a decrease of $1.9 million in CRO costs, and a decrease of $0.7 million in costs for drug substance and drug product. Defactinib/VS-6766 2020 Quarter costs are primarily comprised of $1.8 million in costs for drug substance, drug product, and clinical supply and $0.6 million of CRO costs. Unallocated and other research and development expense includes $1.7 million and $2.8 million of personnel costs for the 2020 Quarter and the 2019 Quarter, respectively. In future quarters, we expect defactinib and VS-6766 expenses to increase in as we commence our registration directed trials and we expect our COPIKTRA expenses to significantly decrease.

Selling, general and administrative expense. Selling, general and administrative expense for the 2020 Quarter was $20.6 million compared to $22.2 million for the 2019 Quarter. The decrease of $1.6 million from the 2019 Quarter to the 2020 Quarter primarily resulted from a decrease of $1.0 million in travel costs, $0.7 million personnel related costs, including non-cash stock-based compensation as a result of reduced headcount, and a decrease of $0.3 million in consulting and professional fees partially offset by an increase of $0.4 million in other costs.

Interest income. Interest income for the 2020 Quarter was less than $0.1 million compared to $1.0 million for the 2019 Quarter. The decrease of $1.0 million was primarily due to lower investment cost basis and lower interest rates on investments.

Interest expense. Interest expense for the 2020 Quarter was $1.9 million compared to $5.0 million for the 2019 Quarter. The decrease of $3.1 million was primarily due to reduced interest as a result of the reduction in 2018 Notes principal balance. As of September 30, 2020 and June 30, 2020, there was $28.3 million aggregate principal amount outstanding of the 2018 Notes as compared to $150.0 million aggregate principal amount outstanding of the 2018 Notes at September 30, 2019 and June 30, 2019.

Restructuring: In August 2020, in connection with the Secura APA, we committed to a strategic restructuring. The restructuring included a workforce reduction of approximately 41 positions primarily in our commercial operations department.

During the 2020 Quarter, we recorded an aggregate expense of $3.0 million for restructuring expenses, which is reflected in the condensed consolidated statements of operation and comprehensive income (loss) as selling general, and administrative expense and research and development expense of $2.9 million and $0.1 million, respectively, for one-time termination benefits for employee severance, benefits, and related costs.

Comparison of the nine months ended September 30, 2020 and 2019

	Nine months ended September 30,			
	2020	2019	Change	% Change
Revenue:				
Product revenue, net	$ 15,098	$ 8,722	$ 6,376	73%
License and collaboration revenue	2,912	5,118	(2,206)	-43%
Sale of COPIKTRA license and related assets	70,000	—	70,000	100%
Total revenue	88,010	13,840	74,170	536%
Operating expenses:				
Cost of sales - product	1,753	906	847	93%
Cost of sales - intangible amortization	793	1,177	(384)	-33%
Cost of sales - sale of COPIKTRA license and related assets	31,187	—	31,187	100%
Research and development	31,223	33,322	(2,099)	-6%
Selling, general and administrative	55,660	77,484	(21,824)	-28%
Total operating expenses	120,616	112,889	7,727	7%
Income (loss) from operations	(32,606)	(99,049)	66,443	-67%
Other expense	(1,313)	—	(1,313)	100%
Interest income	497	3,770	(3,273)	-87%
Interest expense	(14,440)	(15,156)	716	-5%
Net income (loss)	$ (47,862)	$ (110,435)	$ 62,573	-57%

Product revenue, net. Product revenue, net for the nine months ended September 30, 2020 (2020 Period) was $15.1 million compared to $8.7 million for the nine months ended September 30, 2019 (2019 Period). Product revenue, net consisted of net product sales of COPIKTRA in the United States. We began commercial sales of COPIKTRA within the United States in September 2018 following receipt of FDA marketing approval. The $6.4 million increase was primarily driven by an increase in product shipments for COPIKTRA as a result of greater market penetration. Pursuant to the Secura APA discussed below under the heading *License and collaboration arrangements* we have sold our license to sell COPIKTRA to treat patients in oncology indications and therefore will not recognize COPIKTRA product revenue in future periods.

License and collaboration revenue. License and collaboration revenue for the 2020 Period comprised of Sanofi achieving two development milestones during the 2020 Period totaling $2.5 million and $0.4 million of duvelisib shipments to Sanofi, Yakult Honsha Co., Ltd. (Yakult), CSPC Pharmaceutical Group Limited (CSPC). License and collaboration revenue for the 2019 Period was $5.1 million, comprised of a $5.0 million upfront payment received in connection to our collaboration agreement with Sanofi and $0.1 million related to the shipment of clinical supply of duvelisib to Yakult and CSPC during the 2019 Period.

Sale of COPIKTRA license and related assets revenue. Sale of COPIKTRA license and related assets revenue for the 2020 Period was comprised of a $70.0 million upfront payment recognized under the Secura APA discussed below under the heading *License and collaboration arrangements*. We had no sale of COPIKTRA license and related assets for the 2019 Period.

Costs of sales - product. Costs of sales - product for the 2020 Period was $1.8 million compared to $0.9 million for the 2019 Period. The $0.9 million increase was primarily driven by an increase in the volume of COPIKTRA sold and corresponding increases in royalties, manufacturing and other costs during the 2020 Period as compared to the 2019 Period. Cost of sales - product consisted of costs associated with the manufacturing of COPIKTRA, royalties owed to HCR and Infinity on such sales, and certain period costs. We expensed the manufacturing costs of COPIKTRA as operating expenses in the periods prior to July 1, 2018. In the third quarter of 2018, we began capitalizing inventory costs for COPIKTRA manufactured in preparation for our launch in the United States based on our evaluation of, among other factors, the status of the COPIKTRA NDA in the United States and the ability of our third-party suppliers to successfully manufacture commercial quantities of COPIKTRA. Certain of the costs of COPIKTRA units recognized as revenue during the 2020 Period and 2019 Period were expensed prior to the September 2018 FDA marketing approval and, therefore, are not included in cost of sales - product during this period.

Cost of sales – intangible amortization. Cost of Sales – intangible amortization for the 2020 Period was $0.8 million compared to $1.2 million for the 2019 Period. In July 2020, our intangible asset met the Held for Sale criteria and we ceased amortization. Cost of sales – intangible amortization was related to the COPIKTRA finite-lived intangible asset which we recognized and began amortizing in September 2018.

Cost of sales – sale of COPIKTRA license and related assets. Cost of sales - sale of COPIKTRA license and related assets for the 2020 Period was $31.2 million consisting of certain assets delivered to Secura under the Secura APA. For the 2020 Period, we recognized approximately $19.2 million, $6.0 million, $5.8 million and $0.2 million for the intangible asset, certain duvelisib inventory, net duvelisib contract prepaid balances and manufacturing equipment, respectively which were delivered to Secura as part of the sale. There was no cost of sales – sale of COPIKTRA license and related assets for the 2019 Period.

Research and development expense. Research and development expense for the 2020 Period was $31.2 million compared to $33.3 million for the 2019 Period. The $2.1 million decrease was primarily related to a decrease of $4.3 million in CRO costs, $2.3 million in personnel related costs, including non-cash stock-based compensation as a result of reduced headcount, partially offset by an increase in $3.0 million due to a non-refundable payment of $3.0 million to Chugai in the 2020 Period for the VS-6766 license described further below under the heading *License and collaboration agreements*, increase of $1.1 million in IST costs, and an increase of $0.4 million in consulting and other costs.

We allocate the expenses related to external research and development services, such as CROs, clinical sites, manufacturing organizations and consultants by project. We use our employee and infrastructure resources across multiple research and development projects. Our project costing methodology does not allocate personnel and other indirect costs to specific clinical programs. The following table summarizes our allocation of research and development expenses to our clinical programs, including VS-6766, defactinib and COPIKTRA, for the 2020 Period and the 2019 Period.

	Nine months ended September 30,	
	2020	2019
	(in thousands)	
COPIKTRA	$ 12,398	$ 18,273
Defactinib/VS-6766	7,810	1,388
Unallocated and other research and development expense	9,963	12,384
Unallocated stock-based compensation expense	1,052	1,277
Total research and development expense	$ 31,223	$ 33,322

The decrease in COPIKTRA related costs of $5.9 million for the 2020 Period as compared to the 2019 Period was driven by a decrease of $3.7 million of CRO costs, a decrease of $2.3 million in costs for drug substance and drug

product, and a decrease of $1.1 million in clinical supply and other costs which is partially offset by an increase of $1.2 million in costs for ISTs. Defactinib/VS-6766 2020 Period costs are primarily comprised of a $3.0 million non-refundable payment to Chugai, $3.5 million in costs for drug substance and drug product and $0.6 million in CRO costs. Unallocated and other research and development expense includes $6.1 million and $8.3 million of personnel costs for the 2020 Period and the 2019 Period, respectively. In future periods, we expect defactinib and VS-6766 expenses to increase in as we commence our registration directed trials and we expect our COPIKTRA expenses to significantly decrease.

Selling, general and administrative expense. Selling, general and administrative expense for the 2020 Period was $55.7 million compared to $77.5 million for the 2019 Period. The decrease of $21.8 million from the 2019 Period to the 2020 Period primarily resulted from a decrease of $9.9 million in personnel related costs, including non-cash stock-based compensation as a result of reduced headcount, $8.7 million in consulting and professional fees, primarily related to the support of commercial launch activities in the 2019 Period, decrease of 3.0 million in reduced travel and a decrease of $0.2 million in other costs.

Other expense. Other expense for the 2020 Period was $1.3 million compared to $0.0 million for the 2019 Period. Other expense of approximately $1.3 million for the 2020 Period was for the mark-to-market adjustment related to the bifurcated make-whole interest provision derivative liability related to the 2019 Notes.

Interest income. Interest income for the 2020 Period was $0.5 million compared to $3.8 million for the 2019 Period. The decrease of $3.3 million was primarily due to lower investment cost basis and lower interest rates on investments.

Interest expense. Interest expense for the 2020 Period was $14.4 million compared to $15.2 million for the 2019 Period. The decrease of $0.8 million was primarily due to reduced interest expense as a result of the reduction in 2018 Notes and 2019 Notes principal balance. As of September 30, 2020, there was $28.3 million aggregate principal amount outstanding of the 2018 Notes and as of December 31, 2019 there was an aggregate principal amount outstanding of $85.7 million of 2018 Notes and 2019 Notes compared to $150.0 million aggregate principal amount outstanding of the 2018 Notes at September 30, 2019 and December 31, 2018. The decrease is partially offset by non-cash interest expense of $8.1 million recorded upon conversion of the 2019 Notes to common stock recognized during the first three months of the 2020 Period.

Restructuring: On October 28, 2019, we committed to an operational plan to reduce overall operating expenses, including the elimination of approximately 40 positions and other cost-saving measures (the October 2019 Restructuring). We recorded $1.2 million expense in the fourth quarter of 2019, for one-time termination benefits to the affected employees, including cash severance payments, healthcare benefits, and outplacement assistance.

On February 27, 2020, we committed to an operational plan to reduce overall operating expenses, including the elimination of approximately 31 positions and other cost-saving measures (the “February 2020 Restructuring”).

In August 2020, in connection with the duvelisib sale to Secura pursuant to the Secura APA we committed to a strategic restructuring (the August 2020 Restructuring). The restructuring included a workforce reduction of approximately 41 positions primarily in our commercial operations department.

During the 2020 Period, we recorded an aggregate expense of $4.8 million for restructuring expenses, which is reflected in the condensed consolidated statements of operation and comprehensive income (loss) as selling general, and administrative expense and research and development expense of $4.3 million and $0.5 million, respectively, for one-time termination benefits for employee severance, benefits, and related costs.

LIQUIDITY AND CAPITAL RESOURCES

Sources of liquidity

We have financed our operations to date primarily through public and private offerings of our common stock, sales of common stock under our at-the-market equity offering programs, our loan and security agreement executed with Hercules in March 2017, as amended, the upfront payments under our license and collaboration agreements with Yakult, CSPC, and Sanofi, the upfront payment under the Secura APA, the issuance of 2018 Notes in October 2018, and the proceeds in connection with the PIPE. With the commercial launch of COPIKTRA in the United States in September 2018, we had recently begun financing a portion of our operations through product revenue. As of September 30, 2020, in connection with the Secura APA, we no longer sell COPIKTRA in the United States. We expect to finance a portion of our business through future milestones and royalties received pursuant through the Secura APA.

As of September 30, 2020 we had $205.7 million in cash, cash equivalents, and restricted cash, inclusive of $35.2 million of restricted cash. We primarily invest our cash, cash equivalents and short-term investments in U.S. Government money market funds and corporate bonds and commercial paper of publicly traded companies.

Risks and uncertainties include those identified under Item 1A. Risk Factors, in this Quarterly Report and in any subsequent filings with the SEC.

Cash flows

The following table sets forth the primary sources and uses of cash for the 2020 Period and the 2019 Period (in thousands):

	Nine months ended September 30,	
	2020	2019
Net cash (used in) provided by:		
Operating activities	$ (11,803)	$ (101,297)
Investing activities	32,017	64,487
Financing activities	106,236	10,263
Increase (decrease) in cash, cash equivalents and restricted cash	**$ 126,450**	$ (26,547)

Operating activities. The use of cash in both periods resulted primarily from our net losses adjusted for non-cash charges and changes in the components of working capital. The $89.5 million decrease in cash used in operating activities for the 2020 Period compared to the 2019 Period was primarily due to increased revenue, decreased selling, general and administrative expenses, and a net decrease in components of working capital.

Investing activities. The cash provided by investing activities for the 2020 Period primarily relates to the net maturities of investments of $32.1 million. The cash provided by investing activities for the 2019 Period primarily reflects the net maturities of investments of $64.5 million.

Financing activities. The cash provided by financing activities for the 2020 Period primarily represents $93.8 in net proceeds from sales of our common stock under the Purchase Agreement described below, $12.2 million in net proceeds received under our at-the-market equity offering program, and $1.9 million of proceeds received related to exercise of stock options and employee stock purchase plan. This is partially offset by $1.8 million of interest-make whole payments on the 2019 Notes. The cash provided by financing activities for the 2019 Period primarily represents $9.7 million of net proceeds as a result of the Hercules Amended Loan Agreement and $0.6 million of proceeds received related to stock option exercises and employee stock purchase plan.

On February 27, 2020, we entered into a Purchase Agreement with certain institutional investors in which we agreed to sell 46,511,628 shares of common stock at a purchase price of $2.15 per share, which represents 12.6% premium to the last reported sale price of our common stock of $1.91 per share on February 27, 2020. On March 3, 2020,

the closing occurred. The aggregate proceeds net of underwriting discounts and offering costs, were approximately $93.8 million.

In March 2017, we established an at-the-market equity offering program pursuant to which we were able to offer and sell up to $35.0 million of our common stock at then current market prices from time to time through Cantor Fitzgerald & Co. (Cantor) as sales agent. In August 2017, we amended our sales agreement with Cantor to increase the maximum aggregate offering price of shares of common stock that can be sold under the at-the-market equity offering program to $75.0 million.

During the three and nine months ended September 30, 2020, we sold 0 and 6,769,559 shares under the at-the market equity offering program for net proceeds of approximately $12.2 million (after deducting commissions and other offering expenses). Through September 30, 2020, we have sold a total of 18,287,913 shares under this program for net proceeds of approximately $59.6 million (after deducting commissions and other offering expenses).

On October 17, 2018, we closed a registered direct public offering of $150.0 million aggregate principal amount of our 5.00% Convertible Senior Notes due 2048 (the 2018 Notes). The 2018 Notes are governed by the terms of a base indenture for senior debt securities (the 2018 Base Indenture), as supplemented by the first supplemental indenture thereto (the Supplemental Indenture and together with the 2018 Base Indenture, the 2018 Indenture), each dated October 17, 2018, by and between us and Wilmington Trust, National Association, as trustee. The 2018 Notes are senior unsecured obligations of us and bear interest at a rate of 5.00% per annum, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on May 1, 2019. The 2018 Notes will mature on November 1, 2048, unless earlier repurchased, redeemed or converted in accordance with their terms.

The 2018 Notes are convertible into shares of our common stock, par value $0.0001 per share, together, if applicable, with cash in lieu of any fractional share, at an initial conversion rate of 139.5771 shares of common stock per $1,000 principal amount of the 2018 Notes, which corresponds to an initial conversion price of approximately $7.16 per share of common stock and represents a conversion premium of approximately 15.0% above the last reported sale price of the common stock of $6.23 per share on October 11, 2018. Upon conversion, converting noteholders will be entitled to receive accrued interest on their converted 2018 Notes. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

We have the right, exercisable at our option, to cause all 2018 Notes then outstanding to be converted automatically if the “Daily VWAP” (as defined in the 2018 Indenture) per share of our common stock equals or exceeds 130% of the conversion price, which equates to approximately $9.31 per share, on each of at least 20 VWAP Trading Days (as defined in the 2018 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date we first issued the 2018 Notes.

The 2018 Indenture includes customary covenants and sets forth certain events of default after which the 2018 Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving us or certain of its subsidiaries after which the 2018 Notes become automatically due and payable.

We assessed all terms and features of the 2018 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, we assessed the economic characteristics and risks of the 2018 Notes, including the conversion, put and call features. The conversion feature was initially bifurcated as an embedded derivative but subsequently qualified for a scope exception to derivative accounting upon our stockholders approving an increase in the number of authorized shares of common stock in December 2018. We determined that all other features of the 2018 Notes were clearly and closely associated with the debt host and did not require bifurcation as a derivative liability, or the fair value of the feature was immaterial to our condensed consolidated financial statements. We reassess the features on a quarterly basis to determine if they require separate accounting. There have been no changes to our original assessment through September 30, 2020.

On November 14, 2019 and December 23, 2019, we entered into privately negotiated agreements to exchange approximately $114.3 million and $7.4 million, respectively, aggregate principal amount of the 2018 Notes for (i)

approximately $62.9 million and $4.0 million, respectively, aggregate principal amount of 5.00% Convertible Senior Second Lien Notes due 2048 (the 2019 Notes) (ii) an aggregate of approximately $11.4 million and $0.7 million in 2018 Notes principal repayment and (iii) accrued interest on the 2018 Notes through November 14, 2019 and December 23, 2019, respectively. The 2019 Notes are governed by the terms of an indenture (the 2019 Indenture). The 2019 Notes are senior secured obligations of ours and bear interest at 5.00% per annum, payable semi-annually in arrears on May 1 and November 1 of each year. The 2019 Notes will mature on November 1, 2048, unless earlier repurchased, redeemed or converted in accordance with the terms thereof.

The 2019 Notes are convertible into shares of our common stock, par value $0.0001 per share, together, if applicable, with cash in lieu of any fractional share, at an initial conversion rate of 606.0606 shares of common stock per $1,000 principal amount of the 2019 Notes, which corresponds to an initial conversion price of approximately $1.65 per share of common stock and represents a conversion premium of approximately 52.8% above the last reported sale price of our common stock of $1.08 per share on November 11, 2019. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

We have the right, exercisable at our option, to cause all 2019 Notes then outstanding to be converted automatically if the “Daily VWAP” (as defined in the 2019 Indenture) per share of our common stock equals or exceeds 121% of the conversion price on each of at least 20 VWAP Trading Days (as defined in the 2019 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date we first issued the 2019 Notes. (Mandatory Conversion Option).

Upon conversion, converting noteholders will be entitled to receive accrued interest on their converted 2019 Notes. In addition, if the 2019 Notes are converted with a conversion date that is on or prior to November 1, 2020, other than in connection with our exercise of our Mandatory Conversion Option then the consideration due upon any such conversion will also include a cash interest make-whole payment for all future scheduled interest payments on the converted 2019 Notes through November 1, 2020 (2019 Notes Interest Make-Whole Provision).

We assessed all terms and features of the 2019 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, we assessed the economic characteristics and risks of the 2019 Notes, including the conversion, put and call features. In consideration of the 2019 Notes Interest Make-Whole Provision, we concluded the provision required bifurcation as a derivative. It was determined that the fair value of the derivative upon the November 14, 2019 and December 23, 2019 issuance of the 2019 Notes was $0.2 million in aggregate; and we recorded this amount as a derivative liability and the offsetting amount as a debt discount as a reduction to the carrying value of the 2019 Notes on the closing dates. It was determined that the fair value of the derivative at December 31, 2019 was $0.5 million.

During the first three months of nine month period ended September 30, 2020, 2019 Note holders converted $57.4 million aggregate principal of 2019 Notes in exchange for 34,796,350 shares of common stock and $1.8 million of cash for 2019 Interest Make-Whole Provision. We recorded the change in fair value of the 2019 Interest Make-Whole Provision of $1.3 million for the nine months ended September 30, 2020 as other expense in the condensed consolidated statement of operations and comprehensive income (loss). We determined that all other features of the 2019 Notes were clearly and closely associated with a debt host and did not require bifurcation as a derivative liability, or the fair value of the feature was immaterial to our condensed consolidated financial statements. As of September 30, 2020, all 2019 Notes have converted into shares of common stock.

On November 6, 2020, we entered into a privately negotiated agreement with an investor who is a holder of our 2018 Notes to exchange approximately $28.0 million aggregate principal amount of 2018 Notes for approximately $28.0 million aggregate principal amount of newly issued 5.00% Convertible Senior Notes due 2048 (the 2020 Notes). The issuance of the 2020 Notes is expected to close on November 13, 2020 (the Closing Date), subject to customary closing conditions. The 2020 Notes will be governed pursuant to the 2018 Base Indenture as supplemented by the second supplemental indenture thereto to be dated the Closing Date (the Supplement Indenture and together with the 2018 Base Indenture, the 2020 Indenture).

We will have the right, exercisable at our option, to cause all 2020 Notes then outstanding to be converted automatically if the "Daily VWAP" (as defined in the 2020 Indenture) per share of our common stock equals or exceeds 123.08% of the conversion price on each of at least 20 "VWAP Trading Days" (as defined in the 2020 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date we first issued the 2020 Notes.

The initial conversion rate for the 2020 Notes is 307.6923 shares of our common stock per $1,000 principal amount of the 2020 Notes, which is equivalent to an initial conversion price of approximately $3.25 per share, representing an approximately 153.9% premium to the sale price of $1.28 per share of the Company's common stock on November 5, 2020, as reported on the Nasdaq Global Market. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

Prior to November 1, 2023, we will not have the right to redeem the 2020 Notes. On or after November 1, 2023, we may elect to redeem the 2020 Notes, in whole or in part, at a cash redemption price equal to the principal amount of the 2020 Notes to be redeemed, plus accrued and unpaid interest, if any.

Unless we have previously called all outstanding 2020 Notes for redemption, the 2020 Notes will be subject to repurchase by us at the holders' option on each of November 1, 2023, November 1, 2028, November 1, 2033, November 1, 2038 and November 1, 2043 (or, if any such date is not a business day, on the next business day) at a cash repurchase price equal to the principal amount of the 2020 Notes to be repurchased, plus accrued and unpaid interest, if any.

Upon conversion of the 2020 Notes, holders will receive a cash payment equal to the accrued and unpaid interest on the converted 2020 Notes.

The 2020 Notes are our senior unsecured obligations and will be senior in right of payment to our future indebtedness that is expressly subordinated in right of payment to the 2020 Notes, and equal in right of payment with our existing and future indebtedness that is not so subordinated, and effectively subordinated to our existing and future indebtedness, to the extent of the value of the collateral securing such indebtedness. The 2020 Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent we is not a holder thereof) preferred equity, if any, of our subsidiaries.

As of September 30, 2020, there was $28.3 million aggregate principal amount outstanding of the 2018 Notes compared to $28.3 million and $57.4 million aggregate principal amount outstanding of the 2018 Notes and 2019 Notes, respectively, for a total of $85.7 million aggregate principal amount outstanding as of December 31, 2019.

On March 21, 2017, we entered into a term loan facility of up to $25.0 million with Hercules, a Maryland corporation. The term loan facility is governed by a loan and security agreement, dated March 21, 2017 (the Original Loan Agreement), which originally provided for up to four separate advances, of which an aggregate of $15.0 million were drawn down during the year ended December 31, 2017. The Original Loan Agreement was amended on January 4, 2018, March 6, 2018, October 11, 2018, April 23, 2019, and November 14, 2019 (the Amended Loan Agreement) to increase the total borrowing limit under the Original Loan Agreement from up to $25.0 million to up to $75.0 million, pursuant to certain conditions of funding.

Per the terms of the Amended Loan Agreement, the we may borrow up to an aggregate of $75.0 million, of which $35.0 million was outstanding immediately as of April 23, 2019 (Fourth Amendment Date) (Amended Term A Loan) as a result of the existing outstanding principal of term loans of $25.0 million being converted into the Amended Term A Loan, and an additional $10.0 million being drawn on the Fourth Amendment Date. The remaining $40.0 million of borrowing capacity may be drawn in multiple tranches comprised of (i) a term loan in an amount of up to $15.0 million upon us generating cumulative net product revenues (as defined in the Amended Loan Agreement) of either (a) $37.5 million on or before April 30, 2020 or (b) $50.0 million on or before June 30, 2020 (Amended Term B Loan), and (ii) a term loan in an amount of up to $25.0 million available through December 31, 2021, subject to Hercules' approval and certain other conditions specified in the Amended Loan Agreement (the Amended Term C Loan,

and together with the Amended Term A Loan and Amended Term B Loan, the Amended Term Loan). The funding conditions for the Amended Term B Loan have not been met and expired on June 30, 2020. As of September 30, 2020, we have borrowed a total of $35.0 million in term loans.

The Amended Term Loan will mature on December 1, 2022. Each advance accrues interest at a floating per annum rate equal to the greater of (a) 9.75% or (b) the lesser of (i) 12.00% and (ii) the sum of (x) 9.75% plus (y) (A) the prime rate (as defined in the Amended Loan Agreement) minus (B) 5.50%. The Amended Term Loan provides for interest-only payments until April 1, 2021, which may be extended to December 1, 2021 subject to us generating $40.0 million in net product revenue on a trailing six-month basis on or prior to December 31, 2020 provided that no event of default has occurred. Thereafter, amortization payments will be payable monthly in equal installments of principal and interest (subject to recalculation upon a change in prime rates).

On the Fourth Amendment Date, we were required to pay any outstanding accrued interest as well as the final payment fee equal to 4.5% on the outstanding principal balance of the Amended Term Loan, or $1.1 million. No prepayment charges were due as a result of executing the Amendment or conversion of the existing term loans into Amended Term A Loans.

On November 9, 2020, we repaid in full all principal, accrued and unpaid interest, fees, and expenses under the Amended Loan Agreement with Hercules in an aggregate amount of $37.4 million (the Payoff Amount). The Payoff Amount includes the principal balance of $35.0 million, final payment fee of $1.8 million, prepayment penalty fee of $0.5 million, and accrued and unpaid interest of $0.1 million. Effective upon Hercules receipt of the Payoff Amount, the Amended Loan Agreement has been terminated along with Hercules' commitment to provide funding under any future term loans. All liens on substantially all of our assets to secure the loans under the Amended Loan Agreement have be terminated and released.

License and collaboration agreements

Secura

On August 10, 2020, we and Secura signed an Asset Purchase Agreement (Secura APA) and on September 30, 2020, the transaction closed.

Pursuant to the Secura APA, we sold to Secura our exclusive worldwide license for the research, development, commercialization, and manufacture in oncology indications of products containing duvelisib. The sale included certain intellectual property related to duvelisib in oncology indications, certain existing duvelisib inventory, claims and rights under certain contracts pertaining to duvelisib. Pursuant to the Secura APA, Secura assumed all operational and financial responsibility for activities that were part of the duvelisib oncology program, including all commercialization efforts related to duvelisib in the United States and Europe, as well as our ongoing duvelisib clinical trials. Further, Secura assumed all obligations with existing collaboration partners developing and commercializing duvelisib, which include Yakult Honsha Co., Ltd. (Yakult), CSPC Pharmaceutical Group Limited (CSPC), and Sanofi. Additionally, Secura assumed all royalty payment obligations due under the amended and restated license agreement with Infinity.

Pursuant to the terms of the Secura APA, Secura has agreed to pay the us (i) an up-front payment of $70.0 million which paid to us in September 2020 (ii) regulatory milestone payments up to $45.0 million, consisting of a payment of $35.0 million upon receipt of regulatory approval of COPIKTRA in the United States for the treatment of peripheral T-cell lymphoma and a payment of $10.0 million upon receipt of the first regulatory approval for the commercial sale of COPIKTRA in the European Union for the treatment of peripheral T-cell lymphoma, (iii) sales milestone payments of up to $50.0 million, consisting of $10.0 million when total worldwide net sales of COPIKTRA exceed $100.0 million, $15.0 million when total worldwide net sales of COPIKTRA exceed $200.0 million and $25.0 million when total worldwide net sales of COPIKTRA exceed $300.0 million, (c) low double-digit royalties on the annual aggregate net sales above $100.0 million in the United States, European Union, and the United Kingdom of Great Britain and Northern Ireland and (d) 50% of all royalty, milestone and sublicense revenue payments payable to Secura under the Company's existing license agreements with Sanofi, Yakult, and CSPC, and 50% of all royalty and milestone payments payable to Secura under any license or sublicense agreement entered into by Secura in certain jurisdictions.

Pursuant to the terms of the Secura APA, Secura made an up-front payment of $70 million to us in September 2020. Additionally, Secura is obligated to make royalty payments to us on net sales over $100 million of any products in any oncology indication containing duvelisib in the United States, European Union, and the United Kingdom of Great Britain and Northern Ireland in the low double digits. Secura's royalty obligations remain in effect on a country-by-country basis upon the last to occur (a) 10 years from the first commercial sale of product containing duvelisib in such country or (b) the expiration of all valid patent claims covering products containing duvelisib in such country. We are also entitled to receive additional aggregate milestone payments of up to $95 million if certain regulatory and sales milestones are successfully achieved. With respect our collaboration partners, we are entitled to receive half of both (i) royalties received from net sales of duvelisib from Yakult, CSPC or Sanofi and (ii) any development, regulatory, or commercial milestone payments received from Yakult, CSPC or Sanofi. In addition, we are entitled to receive half of all royalty and milestone payments payable to Secura under any license or sublicense agreement entered into by Secura after the closing in certain jurisdictions.

In connection with the Secura APA, we and Secura entered into a transition services agreement (Secura TSA). Under the terms of the Secura TSA, we will provide certain support functions at Secura's directions for a term of less than one year from the date of execution, unless earlier terminated or extended according to the terms of the Secura TSA. Services performed are paid at a mutually agreed upon rate.

We recognized the upfront payment of $70.0 million as sale of COPIKTRA license and related assets revenue during the quarter ended September 30, 2020.

Chugai

On January 7, 2020, we entered into a license agreement with Chugai (the Chugai Agreement) whereby Chugai granted us an exclusive worldwide license for the development, commercialization and manufacture of products containing VS-6766, a dual RAF/MEK inhibitor.

Under the terms of the Chugai Agreement, we received an exclusive right to develop and commercialize products containing VS-6766 at our own cost and expense. We are required to pay Chugai a non-refundable payment of $3.0 million which was paid in February 2020. We are further obligated to pay Chugai double-digit royalties on net sales of products containing VS-6766, subject to reduction in certain circumstances. Chugai also obtained opt back rights to develop and commercialize VS-6766 (a) in the European Union, which option may be exercised through the date we submits a NDA to the FDA for a product which contains VS-6766 as the sole active pharmaceutical ingredient and (b) in Japan and Taiwan, which option may be exercised through the date we receive marketing authorization from the FDA for a product which contains VS-6766 as the sole active pharmaceutical ingredient. As consideration for executing either option, Chugai would have to make a payment to us calculated on our development costs to date. Chugai and we have made customary representations and warranties and have agreed to certain customary covenants, including confidentiality and indemnification.

Unless earlier terminated, the Chugai Agreement will expire upon the fulfillment of the royalty obligations to Chugai for the sale of any products containing the VS-6766, which royalty obligations expire on a product-by-product and country-by-country basis, upon the last to occur, in each specific country, of (a) expiration of valid patent claims covering such product or (b) 12 years from the first commercial sale of such product in such country.

We may terminate the Chugai Agreement upon 180 days' written notice. Subject to certain limitations, Chugai may terminate the Chugai Agreement upon written notice if we challenge any patent licensed by Chugai to us under the Chugai Agreement. Either party may terminate the license agreement in its entirety with 120 days' written notice for the other party's material breach if such party fails to cure the breach. Either party may also terminate the Chugai Agreement in its entirety upon certain insolvency events involving the other party.

We evaluated the license agreement with Chugai under ASC 805 and concluded that as the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar assets, the transaction did not meet the requirements to be accounted for as a business combination and therefore was accounted for as an asset

acquisition. We recorded the up-front payment of $3.0 million as research and development expense within the condensed consolidated statement of operations for the nine months ended September 30, 2020.

Sanofi

On July 25, 2019, we entered into a license and collaboration agreement with Sanofi (the Sanofi Agreement), under which we granted exclusive rights to Sanofi to develop and commercialize products containing duvelisib in Russia, the Commonwealth of Independent States (CIS), Turkey, the Middle East and Africa (collectively the "Sanofi Territory") for the treatment, prevention, palliation or diagnosis of any oncology indication in humans or animals.

During the three months ended September 30, 2020, Sanofi achieved certain development milestones of $2.5 million which we recognized as license and collaboration revenue during the quarter ended September 30, 2019.

As discussed above as of September 30, 2020, Secura has assumed all responsibilities and obligations under the Sanofi Agreement from us.

Yakult

On June 5, 2018, we entered into a license and collaboration agreement with Yakult (the Yakult Agreement), under which we granted exclusive rights to Yakult to develop and commercialize products containing duvelisib in Japan for the treatment, prevention, palliation or diagnosis of all oncology indications in humans or animals.

As discussed above as of September 30, 2020, Secura has assumed all responsibilities and obligations under the Yakult Agreement from us.

CSPC

On September 25, 2018, we entered into a license and collaboration agreement with CSPC (the CSPC Agreement), under which we granted exclusive rights to CSPC to develop and commercialize products containing duvelisib in the People's Republic of China (China), Hong Kong, Macau and Taiwan (each, a Region and collectively, the CSPC Territory) for the treatment, prevention, palliation or diagnosis of all oncology indications in humans.

As discussed above as of September 30, 2020, Secura has assumed all responsibilities and obligations under the CSPC Agreement from us.

Funding requirements

We expect to continue to incur significant expenses and operating losses. We anticipate that our expenses and operating losses will continue as we:

- continue our ongoing clinical trials, including with VS-6766 and defactinib;
- initiate additional clinical trials for our product candidates;
- maintain, expand and protect our intellectual property portfolio;
- acquire or in-license other products and technologies;
- hire additional clinical, development and scientific personnel;
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts; and
- establish and maintain a sales, marketing and distribution infrastructure to commercialize any products for which we may obtain marketing approval.

We expect our existing cash resources will be sufficient to fund our obligations for at least the next twelve months from the date of filing of this Quarterly Report on Form 10-Q. Because of the numerous risks and uncertainties associated with the development and commercialization of our product candidates, and the extent to which we may enter

into collaborations with third parties for development and commercialization of our product candidates, we are unable to estimate the amounts of increased capital outlays and operating expenses associated with completing the development of our current product candidates. Our future capital requirements will depend on many factors, including:

- the costs and timing of commercialization activities for our product candidates for which we expect to receive marketing approval;
- the scope, progress and results of our ongoing and potential future clinical trials;
- the extent to which we acquire or in-license other product candidates and technologies;
- the costs, timing and outcome of regulatory review of our product candidates (including our efforts to seek approval and fund the preparation and filing of regulatory submissions);
- revenue received from commercial sales our product candidates, should any of our other product candidates also receive marketing approval;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property related claims;
- our ability to establish collaborations or partnerships on favorable terms, if at all; and
- Receipt of milestone payments and royalties pursuant to the Secura APA including timing of such receipt.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

CONTRACTUAL OBLIGATIONS AND COMMITMENTS

The disclosure of our contractual obligations and commitments was reported in our Annual Report on Form 10-K for the year ended December 31, 2019. There have not been any material changes from the contractual obligations and commitments previously disclosed in such report.

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 SEC 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, restricted cash, cash equivalents and short-term investments of $205.7 million as of September 30, 2020 consisting of cash, U.S. Government money market funds, agency bonds, corporate bonds and commercial paper of publicly traded companies. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates, including interest rate changes resulting from the impact of the COVID-19 pandemic, particularly because most of our investments are interest bearing. 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 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 which may be denominated in foreign currencies. 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 September 30, 2020, an immaterial amount of our total liabilities was denominated in currencies other than the functional currency.

As of September 30, 2020, we have borrowed $35.0 million under the Amended Loan Agreement. The Amended Loan Agreement bears interest per annum equal to the greater of either (a) 9.75% or (b) the lesser of (i) 12.00% and (ii) the sum of (x) 9.75% plus (y) (A) the prime rate minus (B) 5.50%. Changes in interest rates can cause interest charges to fluctuate under the Amended Loan Agreement. A 10% increase in current interest rates would have resulted in an immaterial increase in the amount of cash interest expense for the nine months ended September 30, 2020.

The 2018 Notes bear interest at a fixed rate and therefore have minimal exposure to changes in interest rates; however, because the interest rates are fixed, we may be paying a higher interest rate, relative to market, in the future if our credit rating improves or other circumstances change.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures

Our management, with the participation of our Chief Executive Officer and our Chief Business and Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2020. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934 (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. 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 September 30, 2020 our Chief Executive Officer and our Chief Business and Financial 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

There have been no changes in our internal control over financial reporting during the three months ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

None.

Item 1A. Risk Factors.

In light of the sale of COPIKTRA (duvelisib) to Secura, we are updating all our risk factors previously disclosed in Item 1A of our Annual Report on Form 10-K for year ended December 31, 2019 filed with the SEC on March 11, 2020 and our Quarter Report on Form 10-Q for the quarter ended March 31, 2020 filed with the SEC on May 7, 2020 with the following risk factors:

Risks Related to the Development of Our Product Candidates.

We may not be successful in obtaining necessary rights to compounds and product candidates for our development pipeline through acquisitions and in-licenses.

We may seek to acquire new compounds and product candidates from other pharmaceutical and biotechnology companies, academic scientists and other researchers, such as our exclusive in-license from Pfizer, Inc. (Pfizer) and Chugai Pharmaceutical Co., Ltd (Chugai) to research, develop, commercialize, and manufacture products in oncology indications containing defactinib and VS-6766, respectively. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products. The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We also may be unable to license or acquire the relevant compound or product candidate on terms that would allow us to make an appropriate return on our investment. Any product candidate that we acquire may require additional development efforts prior to commercial sale, including manufacturing, pre-clinical testing, extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development.

In addition, future product or business acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products, product candidates or technologies;
- higher than expected acquisition and integration costs;
- increased amortization expenses; and
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions.

Future business acquisitions may also entail certain additional risks, such as:

- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

If clinical trials of our product candidates fail to demonstrate safety and efficacy to the satisfaction of regulatory authorities or do not otherwise produce positive results, we may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of our product candidates.

Before obtaining marketing approval from regulatory authorities for the sale of our product candidates, we must complete extensive clinical trials to demonstrate the safety and efficacy of our product candidates in humans. Clinical testing is expensive, difficult to design and implement, can take many years to complete and is uncertain as to outcome. A failure of one or more clinical trials can occur at any stage of testing. The outcome of preclinical testing and early clinical trials may not be predictive of the success of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. For example, a further review and analysis of this data may change the conclusions drawn from this unaudited data indicating less promising results than we currently anticipate.

In some instances, there can be significant variability in safety and/or efficacy results between different trials of the same product candidate due to numerous factors, including changes in trial protocols, differences in size and type of the patient populations, adherence to the dosing regimen and other trial protocols and the rate of dropout among clinical trial participants. There also may be significant variability in the safety results obtained through the long-term follow-up of patients from ongoing studies. We do not know whether any clinical trial we may conduct or follow-up data we collect will demonstrate consistent or adequate efficacy and/or safety sufficient to obtain regulatory approval to market our product candidates.

In addition, the design of a clinical trial may determine whether its results will support approval of a product and flaws in the design of a clinical trial may not become apparent until the clinical trial is well advanced. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products.

A failure of one or more clinical trials could indicate a higher likelihood that subsequent clinical trials of the same product candidate in the same or other indications or subsequent clinical trials of other related product candidates will be unsuccessful for the same reasons as the unsuccessful clinical trials.

We may experience numerous unforeseen events during, or as a result of, clinical trials that could delay or prevent our ability to receive marketing approval or commercialize our product candidates, including:

- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- we may have delays in reaching or fail to reach agreement on clinical trial contracts or clinical trial protocols with prospective trial sites;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate or our participants may drop out of these clinical trials at a higher rate than we anticipate;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- regulators or institutional review boards may require that we or our investigators suspend or terminate clinical trials for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks;
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators or institutional review boards to suspend or terminate the trials.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete clinical trials of our product candidates or other testing, if the results of these trials or tests are not positive or are only modestly positive or if there are safety concerns, we may:

- be delayed in obtaining or not obtain marketing approval for our product candidates;
- obtain approval for indications or patient populations that are not as broad as intended or desired;
- obtain approval with labeling that includes significant use or distribution restrictions including imposition of a Risk Evaluation and Mitigation Strategy (REMS), or safety warnings, including boxed warnings;
- be subject to additional post marketing testing requirements; or
- have the product removed from the market after obtaining marketing approval.

The FDA and foreign regulatory authorities may determine that the results from our ongoing and future trials do not support regulatory approval and may require us to conduct an additional clinical trial or trials. If these agencies take such a position, the costs of development of our product candidates could increase materially and their potential market introduction could be delayed. The regulatory agencies could also require that we conduct additional clinical, nonclinical or manufacturing validation studies and submit that data before it will consider an NDA. Our product development costs will also increase if we experience delays in clinical testing or marketing approvals. We do not know whether any clinical trials will begin as planned, will need to be restructured or will be completed on schedule, or at all. Significant clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring products to market before we do and impair our ability to successfully commercialize our product candidates and may harm our business and results of operations.

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

We may not be able to initiate or continue clinical trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or similar regulatory authorities outside the United States. In addition, there are a number of ongoing clinical trials being conducted by other companies for product candidates treating cancer. Patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors' product candidates, particularly if they view such treatments to be more conventional and established.

Patient enrollment is affected by other factors including:

- the size and nature of the patient population;
- severity of the disease under investigation;
- eligibility criteria for the study in question;
- perceived risks and benefits of the product candidate under study in relation to other available treatments including any new treatments that may be approved for the indications we are investigating;
- efforts to facilitate timely enrollment in clinical trials;
- patient referral practices of physicians;
- the ability to monitor patients adequately during and after treatment; and
- proximity and availability of clinical trial sites for prospective patients.

Furthermore, enrolled patients may drop out of a clinical trial, which could impair the validity or statistical significance of the clinical trial. A number of factors can influence the patient discontinuation rate, including, but not limited to:

- the inclusion of a placebo arm in a trial;
- possible inactivity or low activity of the product candidate being tested at one or more of the dose levels being tested;
- the occurrence of adverse side effects, whether or not related to the product candidate; and
- the availability of numerous alternative treatment options, including clinical trials evaluating competing product candidates, that may induce patients to discontinue their participation in the trial.

Our inability to enroll a sufficient number of patients for our clinical trials would result in significant delays or may require us to abandon one or more clinical trials altogether. Enrollment delays in our clinical trials may result in increased development costs for our product candidates, which would cause the value of our company to decline and limit our ability to obtain additional financing.

Preclinical studies and preliminary and interim data from clinical trials of our product candidates are not necessarily predictive of the results or success of ongoing or later clinical trials of our product candidates. If we cannot replicate the results from our preclinical studies and clinical trials of our product candidates, we may be unable to successfully develop, obtain regulatory approval for and commercialize our product candidates.

Preclinical studies and any positive preliminary and interim data from our clinical trials of our product candidates may not necessarily be predictive of the results of ongoing or later clinical trials. Even if we are able to complete our planned clinical trials of our product candidates according to our current development timeline, the positive results from clinical trials of our product candidates may not be replicated in subsequent clinical trial results. Also, our later stage clinical trials could differ in significant ways from earlier stage clinical trials, which could cause the outcome of the later stage trials to differ from our earlier stage clinical trials. For example, these differences may include changes to inclusion and exclusion criteria, efficacy endpoints and statistical design. Many companies in the pharmaceutical and biotechnology industries, including us, have suffered significant setbacks in late stage clinical trials after achieving positive results in an earlier stage of development. If we fail to produce positive results in our planned clinical trials of any of our product candidates, the development timeline and regulatory approval and commercialization prospects for our product candidates, and, correspondingly, our business and financial prospects, would be materially adversely affected.

Our approach to the treatment of cancer through the killing of cancer cells and disruption of the tumor microenvironment is relatively unproven, and we do not know whether we will be able to develop any products of significant commercial value.

We are developing product candidates to treat cancer by using targeted agents to kill cancer cells or disrupt the tumor microenvironment and thereby thwart their growth and proliferation of cancer cells.

Research on the use of small molecules to inhibit FAK and RAF/MEK signaling pathways and disrupt the tumor microenvironment is an emerging field and, consequently, there is still uncertainty about whether defactinib and VS-6766 are effective in improving outcomes for patients with cancer.

Any products that we develop may not effectively target cancer cells, enhance anti-tumor immunity, or modulate the local tumor microenvironment. While we are currently conducting clinical trials for other product candidates that we believe will attack cancer cells through the inhibition of the FAK or RAF/MEK signaling pathways and potentially disrupt the tumor microenvironment, we may not ultimately be successful in demonstrating their efficacy, alone or in combination with other treatments.

The approval of our product candidates as part of a combination therapy for the treatment of certain cancers may be more costly than our prior clinical trials, may take longer to achieve regulatory approval, may be associated with new, more severe or serious and unanticipated adverse events, and may have a smaller market opportunity.

Part of our current business model involves conducting clinical trials to study the effects of combining our product candidates with other approved and investigational targeted therapies, chemotherapies, and immunotherapies to treat patients with cancer. Regulatory approval for a combination treatment generally requires clinical trials to evaluate the activity of each component of the combination treatment. As a result, it may be more difficult and costly to obtain regulatory approval of our product candidates for use as part of a combination treatment than obtaining regulatory approval of our product candidates alone. In addition, we also risk losing the supply of any approved or investigational product being combined with our product candidate in these clinical trials. Furthermore, the potential market opportunity for our product candidates is difficult to estimate precisely. For instance, if one of our product candidates receives regulatory approval from a combination study, it may be approved solely for use in combination with the approved or investigational product in a particular indication and the market opportunity our product candidate would be dependent upon the continued use and availability of the approved or investigational product. In addition, because physicians, patients and third-party payors may be sensitive to the addition of the cost of our product candidates to the cost of treatment with the other products, we may experience downward pressure on the price that we can charge for our product candidates if they receive regulatory approval. Further, we cannot be sure that physicians will view our product candidates, if approved as part of a combination treatment, as sufficiently superior to a treatment regimen consisting of

only the approved or investigational product. Additionally, the adverse side effects of our product candidates may be enhanced when combined with other products. If such adverse side effects are experienced, we could be required to conduct additional pre-clinical and clinical studies and if such adverse side effects are severe, we may not be able to continue the clinical trials of the combination therapy because the risks may outweigh the therapeutic benefit of the combination.

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

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

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

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

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

The development and commercialization of new drug products is highly competitive. We face competition with respect to our current product candidates and will face competition with respect to any product candidates that we may seek to develop or commercialize in the future, from major pharmaceutical companies, specialty pharmaceutical companies and biotechnology companies worldwide. There are a number of large pharmaceutical and biotechnology companies that currently market and sell products or are pursuing the development of products for the treatment of the disease indications for which we are developing our product candidates, including Novartis AG, Pfizer, Genentech, Inc., Mirati Therapeutics, Inc., Eli Lily and Company, Amgen, Inc., Silenseed LTD, and others. Some of these competitive products and therapies are based on scientific approaches that are the same as or similar to our approach, and others are based on entirely different approaches. Potential competitors also include academic institutions, government agencies and other public and private research organizations that conduct research, seek patent protection and establish collaborative arrangements for research, development, manufacturing and commercialization.

We are developing our product candidates for the treatment of cancer. There are a variety of available therapies marketed for cancer. In many cases, these drugs are administered in combination to enhance efficacy. Some of these drugs are branded and subject to patent protection, and others are available on a generic basis. Many of these approved drugs are well established therapies and are widely accepted by physicians, patients and third-party payors. Insurers and other third-party payors may also encourage the use of generic products. We expect that our product candidates, if approved, will be priced at a significant premium over competitive generic products.

Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller and other early stage

companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These third parties compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

In addition, to the extent that products or product candidates of our competitors demonstrate serious adverse side effects or are determined to be ineffective in clinical trials, the commercialization and the development of our product candidates could be negatively impacted.

If we fail to obtain regulatory approval in jurisdictions outside the United States, we will not be able to market our products in those jurisdictions.

We intend to seek regulatory approval for our product candidates in countries outside of the United States and expect that these countries will be important markets for our products, if approved. Marketing our products in these countries will require separate regulatory approvals in each market and compliance with numerous and varying regulatory requirements. The regulations that apply to the conduct of clinical trials and approval procedures vary from country to country and may require additional testing. Moreover, the time required to obtain approval may differ from that required to obtain FDA approval. In addition, in many countries outside the United States, a drug must be approved for reimbursement before it can be approved for sale in that country. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. Failure to obtain regulatory approval in one country may have a negative effect on the regulatory approval process in others. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize our products in any foreign market.

Preclinical testing and clinical trials of our product candidates may not be successful. If we are unable to obtain marketing approval for or successfully commercialize any of our product candidates, or if we experience significant delays in doing so, our business will be materially harmed.

We have invested a significant portion of our efforts and financial resources in the research and development of our product candidates. Our ability to generate product revenues will depend heavily on the successful commercialization and development of our product candidates. The success of our product candidates will depend on several factors, including the following:

- initiation and successful enrollment and completion of our clinical trials;
- receipt of marketing approvals from the FDA and other regulatory authorities for our future product candidates, including pricing approvals where required;
- establishing and maintaining commercial manufacturing capabilities or making arrangements with third-party manufacturers;
- obtaining and maintaining patent and trade secret protection and regulatory exclusivity for our product candidates;
- establishing and maintaining commercial capabilities, including hiring and training a sales force, and launching commercial sales of the products, if and when approved, whether alone or in collaboration with others;
- acceptance of the products, if and when approved, by patients, the medical community and third-party payors;
- securing and maintaining coverage and adequate reimbursement for our products from third party payors;
- effectively competing with other therapies; and
- a continued acceptable safety and efficacy profile of the products following approval.

Many of these factors are beyond our control, including clinical development, the regulatory submission process, potential threats to our intellectual property rights and the manufacturing, marketing and sales efforts of any collaborator. If we do not achieve one or more of these factors in a timely manner or at all, we could experience

significant delays or an inability to successfully commercialize our product candidates, which would materially harm our business.

If serious adverse or unexpected side effects are identified during the development of our product candidates, we may need to abandon or limit our development of some of our product candidates.

Our product candidates are in various stages of clinical development and their risk of failure is high. It is impossible to predict when or if our other product candidates will prove effective or safe in humans or will receive marketing approval. If our product candidates are associated with undesirable side effects or have characteristics that are unexpected, we may need to abandon their development or limit development to certain uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk benefit perspective. Patients in our clinical trials have experienced serious adverse events, deemed by us and the clinical investigator to be related to our product candidates. Serious adverse events generally refer to adverse events, that result in death, are life threatening, require hospitalization or prolonging of hospitalization, or cause a significant and permanent disruption of normal life functions, congenital anomalies or birth defects, or require intervention to prevent such outcomes.

Defactinib is in our Phase 1 and Phase 2 clinical trials and the development program continues to progress. VS-6766 is in a Phase 1 clinical trial. For both defactinib and VS-6766, the toxicities reported to date have been predictable and manageable.

As a result of adverse events observed to date, or further safety or toxicity issues that we may experience in our clinical trials in the future, we may not receive approval to market any product candidates, which could prevent us from ever generating revenue from the sale of products or achieving profitability. Results of our trials could reveal an unacceptably high severity and prevalence of side effects. In such an event, our trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of our products candidates for any or all targeted indications. Many compounds that initially showed promise in early stage testing for treating cancer have later been found to cause side effects that prevented further development of the compound. In addition, while we and our clinical trial investigators currently determine if serious adverse or unacceptable side effects are drug related, the FDA or other non-U.S. regulatory authorities may disagree with our or our clinical trial investigators' interpretation of data from clinical trials and the conclusion that a serious adverse effect or unacceptable side effect was not drug related.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we focus on research programs and product candidates that we identify for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products.

Any future product candidates that we commercialize may become subject to unfavorable pricing regulations or third-party coverage and reimbursement policies, which would harm our business.

In both domestic and foreign markets, any product candidates that may receive marketing approval in the future will depend, in part, on favorable pricing as well as the availability of coverage and amount of reimbursement by third party payors, including governments and private health plans. Substantial uncertainty exists regarding coverage and reimbursement by third party payors of newly approved health care products.

Outside the United States, some countries require approval of the sale price of a drug before the product can be marketed. In many such countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental

control even after initial approval is granted. As a result, we might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay our commercial launch of the product, possibly for lengthy time periods, and negatively impact the revenues we are able to generate from the sale of the product in that country. Adverse pricing limitations may hinder our ability to recoup our investment in product candidates, even if those product candidates obtain marketing approval.

Cost containment is a key trend in the United States and elsewhere. Third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that coverage and reimbursement will be available for any product that we commercialize and, if reimbursement is available, the level of reimbursement. Coverage and reimbursement may impact the demand for, or the price of, any product candidate for which we obtain marketing approval. If coverage and reimbursement are not available or reimbursement is available only to limited levels, we may not be able to successfully commercialize the product candidates for which we may obtain marketing approval.

Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of any products that we may develop.

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical trials and will face an even greater risk if we commercially sell any other products we may develop. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any product candidates or products that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants;
- significant costs to defend the related litigation;
- substantial monetary awards to trial participants or patients;
- loss of revenue; and
- the inability to commercialize any products that we may develop.

We currently hold $10.0 million in product liability insurance coverage in the aggregate, with a per incident limit of $10.0 million, which may not be adequate to cover all liabilities that we may incur. We may need to increase our insurance coverage as we commercialize any future product candidates or if we initiate additional clinical trials in the United States and around the world. Insurance coverage is increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise.

A pandemic, epidemic or outbreak of an infectious disease, such as COVID-19, has and may in the future adversely affect our business.

Broad-based business or economic disruptions could adversely affect our ongoing or planned research and development activities, our financial condition and our results of operations. For example, United States residents and businesses in major urban centers have been hit especially hard by the global spread of COVID-19, which has resulted in certain disruptions to our business and may in the future result in additional disruptions to our business. Examples of both include:

- Reductions in patient visits for clinical trials. Clinical investigators have reduced patient visits for in-process clinical trials and have transitioned to remote patient visits where possible. Further, we have seen a reduction in site initiation, participant recruitment and enrollment, due to the COVID-19 pandemic, which could further pause or delay our clinical trials. In addition, participant dosing, study monitoring and data analysis may be paused or delayed due to changes in hospital or academic institution policies, federal, state or local regulations, prioritization of hospital resources toward pandemic efforts, or other reasons related to the COVID-19 pandemic. While we are currently seeing patient accruals among our studies pick back up as conditions alleviate in certain areas, if conditions worsen we may experience further delays on completing our clinical trials.
- Accessibility limitations on our contract research organizations (CROs). The ability of principal investigators and site staff to perform their functions, who as healthcare providers, may have heightened exposure to COVID-19, could be disrupted and cause elongation or de-prioritization of our clinical trials, increase the costs related to such development, and materially adversely impact our clinical trial operations.
- Limitations on third party manufacturers and distributors. We currently utilize third parties to, among other things, supply raw materials, produce drug substance, drug product, and drug packaging. Some of our third party manufacturers and distributors may in the future be limited and, at times, precluded from delivering us raw materials, drug substance, drug product, and drug packaging on a timely basis, for a variety of reasons, including without limitation an evolving understanding of how international, federal, and/or state authorities define "essential business", their inability to remain open due to lost business in other parts of their portfolios, or because of international, federal, and/or state prioritization orders requiring our manufacturers to produce for and our distributors to distribute to governmental entities, competitors and/or other companies before they produce for us.
- Capital markets volatility. Equity and debt markets have experienced significant volatility since the spread of COVID-19 into the United States, which makes it more difficult to raise capital at a reasonable valuation or at all.
- Health risks for our employees. The health and wellbeing of our employees, including our commercial teams who may visit our hospital customers, and the employees of our third parties is at risk– if a significant number of our personnel were to be diagnosed with COVID-19, placed in quarantine due to potential exposure to COVID-19, or need to care for family members diagnosed with COVID-19, it may result in significant business disruption.
- Work-from-home limitations. We have asked most employees to work from home, which could impact our ability to effectively plan, execute, communicate and maintain our corporate culture. The remote working environment could increase our cyber security risk, create data accessibility concerns, and make us more susceptible to communication disruptions.
- Regulatory disruption. There may be interruptions or delays in the operations of the FDA or other regulatory authorities, which may impact review and approval timelines.
- Business interruptions or disruptions. There may be interruptions or disruptions that directly or indirectly adversely affect our or our current or potential collaboration partners' organizations, which may delay or disrupt our business plans or impact a collaboration partner's ability to fully perform under our agreements with them.

Each of these factors could have a material adverse effect on our business and results of operations. The extent to which COVID-19 impacts our results will depend on many factors and future developments, including new information about COVID-19 and any new government regulations which may emerge to contain the virus, among others.

Risks Related to Our Commercial Agreements

We depend on Secura. for the achievement and payment of the contingent consideration under the asset purchase agreement between us and Secura pursuant to which we sold the COPIKTRA assets to Secura. If Secura is unsuccessful in developing and commercializing COPIKTRA, we may not receive such payments or otherwise capitalize on the market potential of COPIKTRA.

On September 30, 2020, we completed the disposition of the Company's rights, title and interest in and to COPIKTRA to Secura Bio, Inc. (Secura). Under the terms of the asset purchase agreement with Secura, we are entitled to contingent consideration, including milestone payments and royalties, dependent upon the further development and commercial success of COPIKTRA. Accordingly, our ability to receive the contingent consideration will depend on Secura's ability to successfully develop and commercialize COPIKTRA.

Secura's ability to develop and commercialize COPIKTRA is subject to a number of risks and uncertainties, including the following:

- Secura has significant discretion in determining how to develop further and commercialize COPIKTRA, including through potential collaborators and partners;
- Secura may not commit sufficient resources to development, marketing or distribution of COPIKTRA;
- Even if diligently pursued, Secura's efforts to develop and commercialize COPIKTRA may not be successful;
- Secura may not properly maintain or defend its intellectual property rights or may use its proprietary information in such a way as to invite litigation that could jeopardize or invalidate the intellectual property of COPIKTRA; and
- disputes may arise between Secura and us that result in the delay of payments or in costly litigation that diverts management attention and resources.

If we do not realize the anticipated benefits of our license agreements with Pfizer for the FAK program and Chugai for the dual RAF/MEK candidate program, our business could be adversely affected.

Our license agreements with Pfizer for defactinib and Chugai for VS-6766 may fail to further our business strategy as anticipated or to achieve anticipated benefits and success. We may make or have made assumptions relating to the impact of the acquisition of defactinib and VS-6766 on our financial results relating to numerous matters, including:

- the cost of development and commercialization of defactinib and VS-6766; and
- other financial and strategic risks related to the license agreements with Pfizer and Chugai.

Further, we may incur higher than expected operating and transaction costs, and we may encounter general economic and business conditions that adversely affect us relating to our license agreements with Pfizer and Chugai. If one or more of these assumptions are incorrect, it could have an adverse effect on our business and operating results, and the benefits from our license agreements with Pfizer for defactinib and Chugai for VS-6766 may not be realized or be of the magnitude expected.

Risks Related to Our Financial Position and Need for Additional Capital

We have incurred significant losses since our inception. We expect to incur losses for the foreseeable future and may never achieve or maintain profitability.

Since inception, we have incurred significant operating losses. As of September 30, 2020, we had an accumulated deficit of $572.6 million. To date, we have generated minimal product revenues and have financed our operations primarily through public and private offerings of our common stock, sales of our common stock pursuant to our at-the-market equity offering programs, our loan and security agreement, as amended, with Hercules Capital Inc. (Hercules), the issuance of our 2018 Notes, upfront payments under our license and collaboration agreements with Yakult, CSPC, and Sanofi, and the upfront payment under the Secura APA. As of September 30, 2020, there was $25.0 million available to borrow under the amended term loan facility with Hercules, subject to Hercules' approval and certain conditions of funding. We have devoted substantially all of our efforts to research and development. We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future. The net losses we incur may fluctuate significantly from quarter to quarter. We anticipate that our expenses will increase substantially if and as we:

- continue our ongoing clinical trials with our product candidates, including with defactinib and VS-6766;
- initiate additional clinical trials for our product candidates;
- maintain, expand and protect our intellectual property portfolio;
- acquire or in-license other products and technologies;
- hire additional clinical, development and scientific personnel;
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts; and
- establish and maintain a sales, marketing and distribution infrastructure to commercialize any products for which we obtain marketing approval.

To become and remain profitable, we must develop and eventually commercialize a product or products with significant market potential. This will require us to be successful in a range of challenging activities, including completing preclinical testing and clinical trials of our product candidates, obtaining marketing approval for these product candidates and manufacturing, marketing and selling those products for which we may obtain marketing approval. We may never succeed in these activities and, even if we do, may never generate revenues that are significant or large enough to achieve profitability. If we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would decrease the value of the company and could impair our ability to raise capital, maintain our research and development efforts, expand our business or continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

We will continue to need substantial additional funding. If we are unable to raise capital when needed, we would be forced to delay, reduce or eliminate our product development programs or commercialization efforts, including for VS-6766.

We expect our expenses to increase in connection with our ongoing activities, particularly as we continue the clinical development of our product candidates. We expect our existing cash resources at September 30, 2020 will be sufficient to fund our current operating plan and capital expenditure requirements beyond the next twelve months from the issuance date of these financial statements. We will need to obtain substantial additional funding in connection with our continuing operations, including for our clinical development programs. Our future capital requirements will depend on many factors, including:

- the scope, progress and results of our ongoing and potential future clinical trials;
- the extent to which we acquire or in-license other product candidates and technologies;
- the costs, timing and outcome of regulatory review of our product candidates (including our efforts to seek approval and fund the preparation and filing of regulatory submissions);
- revenue received from commercial sales of our product candidates, should any of our product candidates receive marketing approval;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property related claims; and
- our ability to establish collaborations or partnerships on favorable terms, if at all.

Conducting clinical trials is a time consuming, expensive and uncertain process that takes years to complete, and we may never generate the necessary data or results required to obtain marketing approval of any of our product candidates. Our commercial revenues will be derived from sales of products. It will take several years to achieve sales, and we will need to continue to rely on additional financing to further our clinical development objectives. Adequate additional financing may not be available to us on acceptable terms, or at all.

Risks Related to Our Indebtedness

Our level of indebtedness and debt service obligations could adversely affect our financial condition and may make it more difficult for us to fund our operations.

As of September 30, 2020, we had an aggregate of $63.3 million of debt outstanding, consisting of $35.0 million under our loan and security agreement with Hercules and $28.3 million in 2018 Notes.

We may not have cash available in an amount sufficient to enable us to make interest or principal payments on our indebtedness when due.

Failure to satisfy our current and future debt obligations under the Amended Loan Agreement, or the 2018 Indenture or breaching any covenants under the Amended Loan Agreement, or the 2018 Indenture subject to specified cure periods with respect to certain breaches, could result in an event of default and, as a result, could accelerate all of the amounts due. Further, the 2018 Notes are subject to repurchase by us, at the option of the holders, at certain dates as specified within the 2018 Indenture prior to maturity in 2048. In the event of an acceleration of amounts due under the Amended Loan Agreement, or the 2018 Indenture, we may not have enough available cash or be able to raise additional funds through equity or debt financings to repay such indebtedness at the time of such acceleration. In that case, we may be required to delay, limit, reduce or terminate our product candidate development or grant to others the rights to develop and market our product candidates that we would otherwise prefer to develop and market internally. Hercules could also exercise their rights to take possession and dispose of the collateral securing the term loans on a first priority basis, which collateral includes substantially all of our property other than our intellectual property. Our business, financial condition and results of operations could be materially adversely affected as a result of any of these events. We are subject to certain restrictive covenants which, if breached, could have a material adverse effect on our business and prospects.

The Amended Loan Agreement and the 2018 Indenture impose operating and other restrictions on us. Such restrictions will affect, and in many respects limit or prohibit, our ability and the ability of any future subsidiary to, among other things:

- dispose of certain assets;
- change our lines of business;
- engage in mergers, acquisitions or consolidations;
- incur additional indebtedness;
- create liens on assets;
- pay dividends and make distributions or repurchase our capital stock; and
- engage in certain transactions with affiliates.

Risks Related to Our Dependence on Third Parties

We rely in part on third parties to conduct our clinical trials and preclinical testing, and if they do not properly and successfully perform their obligations to us, we may not be able to obtain regulatory approvals for and commercialize any of our other product candidates.

We rely on third parties, such as CROs, clinical data management organizations, medical institutions and clinical investigators, to conduct, provide monitors for and manage data from all of our clinical trials. We compete with many other companies for the resources of these third parties.

Any of these third parties may terminate their engagements with us at any time. If we need to enter into alternative arrangements, it would delay our product development activities and ultimately the commercialization of our product candidates.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities. For example, we will remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial. Moreover, the FDA and other regulatory agencies require us to comply with standards, commonly referred to as Good Clinical Practices (GCP) for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable GCP requirements, the clinical data

generated in our clinical trials may be deemed unreliable and the FDA or other regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP requirements. We also are required to register ongoing clinical trials and post the results of completed clinical trials on government-sponsored databases, such as ClinicalTrials.gov, within certain timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for some of our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates.

We intend to rely on third parties to conduct investigator sponsored clinical trials of our product candidates. Any failure by a third party to meet its obligations with respect to the clinical development of our product candidates may delay or impair our ability to obtain regulatory approval for our product candidates.

We intend to rely on academic and private non-academic institutions to conduct and sponsor clinical trials relating to our product candidates. We will not control the design or conduct of the investigator sponsored trials, and it is possible that the FDA or non-U.S. regulatory authorities will not view these investigator-sponsored trials as providing adequate support for future clinical trials, whether controlled by us or third parties, for any one or more reasons, including elements of the design or execution of the trials or safety concerns or other trial results.

Such arrangements will provide us certain information rights with respect to the investigator sponsored trials, including access to and the ability to use and reference the data, including for our own regulatory filings, resulting from the investigator sponsored trials. However, we do not have control over the timing and reporting of the data from investigator sponsored trials, nor do we own the data from the investigator sponsored trials. If we are unable to confirm or replicate the results from the investigator sponsored trials or if negative results are obtained, we would likely be further delayed or prevented from advancing further clinical development of our product candidates. Further, if investigators or institutions breach their obligations with respect to the clinical development of our product candidates, or if the data proves to be inadequate compared to the firsthand knowledge we might have gained had the investigator sponsored trials been sponsored and conducted by us, then our ability to design and conduct any future clinical trials ourselves may be adversely affected.

Additionally, the FDA or non-U.S. regulatory authorities may disagree with the sufficiency of our right of reference to the preclinical, manufacturing or clinical data generated by these investigator-sponsored trials, or our interpretation of preclinical, manufacturing or clinical data from these investigator-sponsored trials. If so, the FDA or other non-U.S. regulatory authorities may require us to obtain and submit additional preclinical, manufacturing, or clinical data before we may initiate our planned trials and/or may not accept such additional data as adequate to initiate our planned trials.

We contract with third parties for the manufacture of our product candidates and for compound formulation research, and these third parties may not perform satisfactorily.

We do not have any manufacturing facilities or personnel. We currently obtain all of our supply of our product candidates for clinical development from third-party manufacturers or third-party collaborators, and we expect to continue to rely on third parties for the manufacture of clinical quantities of our product candidates. In addition, we currently rely on third parties for the development of various formulations of our product candidates. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts.

We do not currently have arrangements in place for redundant supply or a second source for bulk drug substance or drug product. Even though we have supply agreements in place with our third-party manufacturers, reliance on third-party manufacturers entails additional risks, including:

- reliance on the third party for regulatory compliance and quality assurance;
- the possible breach of the manufacturing agreement by the third party, including the misappropriation of our proprietary information, trade secrets and know how;
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us; and
- disruptions to the operations of our manufacturers or suppliers caused by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier or a catastrophic event affecting our manufacturers or suppliers.

Third-party manufacturers may not be able to comply with current good manufacturing practices (cGMP) regulations or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products and harm our business and results of operations.

Any products that we may develop may compete with other product candidates and products for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us. Any interruption of the development or operation of the manufacturing facilities due to, among other reasons, events such as order delays for equipment or materials, equipment malfunction, quality control and quality assurance issues, regulatory delays and possible negative effects of such delays on supply chains and expected timelines for product availability, production yield issues, shortages of qualified personnel, discontinuation of a facility or business, failure or damage to a facility by natural disasters or public health crises, such as the COVID-19 pandemic, could result in the cancellation of shipments, loss of product in the manufacturing process or a shortfall in available product candidates or materials.

If our current contract manufacturers cannot perform as agreed or these parties cease to provide quality manufacturing and related services to us, we may be required to replace that manufacturer. If we are not able to engage appropriate replacements in a timely manner, our ability to manufacture our product candidates in sufficient quality and quantity required for planned pre-clinical testing, clinical trials and potential commercial use of our product candidates would be adversely affected. Although we believe that there are several potential alternative manufacturers who could manufacture our product candidates, we may incur added costs and delays in identifying and qualifying any such replacement, as well as producing the drug product and obtaining regulatory approvals for the new manufacturer. In addition, we have to enter into technical transfer agreements and share our know-how with the third-party manufacturers, which can be time consuming and may result in delays. In light of the lead time needed to manufacture our product candidates, and the availability of underlying materials, we may not be able to, in a timely manner or at all, establish or maintain sufficient commercial manufacturing arrangements on commercially reasonable terms necessary to provide adequate supply of our product candidates to meet demands that exceed our clinical assumptions. Furthermore, we may not be able to obtain the significant financial capital that may be required in connection with such arrangements. Even after successfully engaging third parties to execute the manufacturing process for our product candidates, such parties may not comply with the terms and timelines they have agreed to for various reasons, some of which may be out of their or our control, which could impact our ability to execute our business plans on expected or required timelines in connection with the commercialization of and the continued development of our product candidates. We may also be required to enter into long-term manufacturing agreements that contain exclusivity provisions and/or substantial termination penalties, which could have a material adverse effect on our business prior to and after commercialization.

Our current and anticipated future dependence upon others for the manufacture of our other product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that receive marketing approval on a timely and competitive basis.

If we are not able to establish collaborations, we may have to alter our development and commercialization plans.

Our drug development programs and the potential commercialization of our product candidates will require substantial additional cash to fund expenses. For some of our product candidates, we may decide to collaborate with

pharmaceutical and biotechnology companies for the development and potential commercialization of those product candidates.

We face significant competition in seeking appropriate collaborators. Whether we reach a definitive agreement for a collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to patients, the potential of competing products, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on and whether such a collaboration could be more attractive than the one with us for our product candidate. Collaborations are complex and time consuming to negotiate and document. In addition, there have been a significant number of recent business combinations among large pharmaceutical companies that have resulted in a reduced number of potential future collaborators.

We may not be able to negotiate collaborations on a timely basis, on acceptable terms, or at all. If we are unable to do so, we may have to curtail the development of certain product candidates, reduce or delay our development programs, delay potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to further develop our product candidates or bring them to market and generate product revenue.

We may depend on collaborations with third parties for the development and commercialization of our product candidates. If those collaborations are not successful, we may not be able to capitalize on the market potential of our product candidates.

We may seek third-party collaborators for the development and commercialization of our product candidates. Our likely collaborators for any collaboration arrangements include large and mid-size pharmaceutical companies, regional and national pharmaceutical companies and biotechnology companies. If we do enter into any such arrangements with any third parties, we will likely have limited control over the amount and timing of resources that our collaborators dedicate to the development or commercialization of our product candidates. Our ability to generate revenues from these arrangements will depend on our collaborators' abilities to successfully perform the functions assigned to them in these arrangements.

Collaborations involving our product candidates would pose the following risks to us:

- collaborators have significant discretion in determining the efforts and resources that they will apply to these collaborations;
- collaborators may not pursue development and commercialization of our product candidates or may elect not to continue or renew development or commercialization programs based on clinical trial results, changes in the collaborator's strategic focus or available funding or external factors such as an acquisition that diverts resources or creates competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing; collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates if the collaborators believe that competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours;
- a collaborator with marketing and distribution rights to one or more products may not commit sufficient resources to the marketing and distribution of such product or products;

- collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our proprietary information or expose us to potential litigation;
- disputes may arise between the collaborators and us that result in the delay or termination of the research, development or commercialization of our products or product candidates or that result in costly litigation or arbitration that diverts management attention and resources; and
- collaborations may be terminated and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable product candidates.

Collaboration agreements may not lead to development or commercialization of product candidates in the most efficient manner or at all. If a future collaborator of ours were to be involved in a business combination, the continued pursuit and emphasis on our product development or commercialization program could be delayed, diminished or terminated.

Risks Related to Our Intellectual Property

If we fail to comply with our obligations under our intellectual property licenses with third parties, we could lose license rights that are important to our business.

We are a party to a number of intellectual property license agreements with third parties, including Pfizer and Chugai, and expect to enter into additional license agreements in the future. Our existing license agreements impose, and we expect that future license agreements will impose, various diligence, milestone payment, royalty, insurance and other obligations on us. For example, under our license agreements with Pfizer and Chugai, we are required to use diligent or commercially reasonable efforts to develop and commercialize licensed products under the agreement and to satisfy other specified obligations. If we fail to comply with our obligations under these licenses, our licensors may have the right to terminate these license agreements, in which event we might not be able to market any product that is covered by these agreements, or to convert the exclusive licenses to non-exclusive licenses, which could materially adversely affect the value of the product candidate being developed under these license agreements. Termination of these license agreements or reduction or elimination of our licensed rights may result in our having to negotiate new or reinstated licenses with less favorable terms, which may not be possible. If Pfizer were to terminate its license agreement with us for any reason, we would lose our rights to defactinib. If Chugai were to terminate its license agreement with us for any reason, we could lose our rights to VS-6766.

If we are unable to obtain and maintain patent protection for our products, or if our licensors are unable to obtain and maintain patent protection for the products that we license from them, or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize products similar or identical to ours, and our ability to successfully commercialize our products may be adversely affected.

Our success depends in large part on our and our licensors' ability to obtain and maintain patent protection in the United States and other countries with respect to our products. We and our licensors seek to protect our proprietary position by filing patent applications in the United States and abroad related to our products that are important to our business. We cannot be certain that any patents will issue with claims that cover our product candidates.

The patent prosecution process is expensive and time consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. Moreover, in some circumstances, we do not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering products that we license from third parties and are reliant on our licensors. Therefore, we cannot be certain that these patents and applications will be prosecuted and enforced in a manner consistent with the best interests of our business. If such licensors fail to maintain such patents, or lose rights to those patents, the rights we have licensed may be reduced or eliminated.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our and our licensors' patent rights are highly uncertain. Our and

our licensors' pending and future patent applications may not result in patents being issued which protect our products or which effectively prevent others from commercializing competitive products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection.

The laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases, at all. Therefore, we cannot be certain that we or our licensors were the first to make the inventions claimed in our owned or licensed patents or pending patent applications, or that we or our licensors were the first to file for patent protection of such inventions.

Assuming the other requirements for patentability are met, in the United States, for patents that have an effective filing date prior to March 15, 2013, the first to make the claimed invention is entitled to the patent, while outside the United States, the first to file a patent application is entitled to the patent. In March 2013, the United States transitioned to a first inventor to file system in which, assuming the other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent. We may be subject to a third-party pre-issuance submission of prior art to the U.S. Patent and Trademark Office, or become involved in opposition, derivation, reexamination, inter parties review or interference proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, allow third parties to commercialize our products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights.

Even if our owned and licensed patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical products, or limit the duration of the patent protection of our products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, our licensors may have rights to file and prosecute such claims and we are reliant on them.

Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain and could have a material adverse effect on the success of our business.

Our commercial success depends upon our ability and the ability of our collaborators to commercialize, develop, manufacture, market and sell our product candidates without infringing the proprietary rights of third parties. We have yet to conduct comprehensive freedom to operate searches to determine whether our use of certain of the patent rights owned by or licensed to us would infringe patents issued to third parties. We may become party to, or threatened with, future adversarial proceedings or litigation regarding intellectual property rights with respect to our products, including interference proceedings before the U.S. Patent and Trademark Office. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future. If we are found to infringe a third party's intellectual property rights, we could be required to obtain a license from such third party to continue developing and marketing our products. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. We could be forced, including by court order, to cease commercializing the infringing product. In addition, we could be found liable for monetary damages. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could materially harm our business. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

Many of our employees were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees do not use the proprietary information or know how of others in their work for us, we may be subject to claims that we or these employees have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such employee's former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for some of our products, we also rely on trade secrets, including unpatented know how, technology and other proprietary information, to maintain our competitive position. We seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time consuming, and the outcome is unpredictable. In addition, some courts inside and outside

the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

Risks Related to Achieving Regulatory Approval of Our Product Candidates and Other Legal Compliance Matters

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

Obtaining approval of an NDA can be a lengthy, expensive and uncertain process. The activities associated with a product candidate's development and commercialization, including its design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to obtain marketing approval for product candidates will prevent us from commercializing such product candidates. We have not received approval to market any of our current product candidates from regulatory authorities in any jurisdiction in the United States. We have only limited experience in filing and supporting the applications necessary to gain marketing approvals and expect to rely on third-party contract research organizations to assist us in this process. Securing FDA approval requires the submission of extensive preclinical and clinical data and supporting information to the FDA for each therapeutic indication to establish the product candidate's safety and efficacy. Securing FDA approval also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities by, the FDA. A product candidate may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude our obtaining marketing approval or prevent or limit commercial use.

The process of obtaining marketing approvals, both in the United States and abroad, is expensive, may take many years if additional clinical trials are required, if approval is obtained at all, and can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Changes in marketing approval policies during the development period, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted product application, may cause delays in the approval or rejection of an application. The FDA has substantial discretion in the approval process and may refuse to accept any application or may decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent marketing approval of a product candidate. Any marketing approval we ultimately obtain may be subject to more limited indications than those we propose or subject to restrictions or post approval commitments that render the approved product not commercially viable.

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

We have received orphan drug designation for certain of our product candidates, but there can be no assurance that we will be able to prevent third parties from developing and commercializing products that are competitive to these product candidates.

We received orphan drug designation in the United States and European Union for the use of defactinib in ovarian cancer, and in the United States, the European Union, and Australia for the use of defactinib in mesothelioma. Orphan drug exclusivity grants seven years of marketing exclusivity under the Federal Food, Drug and Cosmetic Act (FDCA), up to ten years of marketing exclusivity in Europe, and five years of marketing exclusivity in Australia. Other companies have received orphan drug designations for compounds other than defactinib for the same indications for which we may have received orphan drug designation in corresponding territories. While orphan drug exclusivity for defactinib provides market exclusivity against the same active ingredient for the same indication, we would not be able to exclude other companies from manufacturing and/or selling drugs using the same active ingredient for the same

indication beyond that timeframe on the basis of orphan drug exclusivity. Furthermore, the marketing exclusivity in Europe can be reduced from ten years to six years if the orphan designation criteria are no longer met or if the drug is sufficiently profitable so that market exclusivity is no longer justified. Even if we are the first to obtain marketing authorization for an orphan drug indication, there are circumstances under which the FDA may approve a competing product for the same indication during the seven-year period of marketing exclusivity, such as if the later product is the same compound as our product but is shown to be clinically superior to our product, or if the later product is a different drug than our product candidate. Further, the seven-year marketing exclusivity would not prevent competitors from obtaining approval of the same compound for other indications or of another compound for the same use as the orphan drug.

We may seek fast track designation for one or more of our product candidates, but we might not receive such designation, and even if we do, such designation may not actually lead to a faster development or regulatory review or approval process, and it does not ensure that we will receive marketing approval.

Any sponsor may seek fast track designation for a drug if it is intended for the treatment of a serious condition and nonclinical or clinical data demonstrate the potential to address unmet medical need for this condition, a drug sponsor may apply for FDA fast track designation. If we seek fast track designation for a product candidate, we may not receive it from the FDA. However, even if we receive fast track designation, fast track designation does not ensure that we will receive marketing approval or that approval will be granted within any particular timeframe. We may not experience a faster development or regulatory review or approval process with fast track designation compared to conventional FDA procedures. In addition, the FDA may withdraw fast track designation if it believes that the designation is no longer supported by data from our clinical development program. Fast track designation alone does not guarantee qualification for the FDA's priority review procedures.

Any product candidate for which we obtain marketing approval could be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with our products, when and if any of them are approved.

Any product candidate for which we obtain marketing approval, along with the manufacturing processes, post approval clinical data, labeling, advertising and promotional activities for such product, will be subject to continual requirements of and review by the FDA and other regulatory authorities. These requirements include submissions of safety and other post marketing information and reports, registration and listing requirements, cGMP requirements relating to quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and recordkeeping. Even if marketing approval of a product candidate is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for costly post marketing testing and surveillance to monitor the safety or efficacy of the product, including the imposition of a REMS.

The FDA closely regulates the post approval marketing and promotion of drugs to ensure drugs are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off label use and if we do not market our products for their approved indications, we may be subject to enforcement action for off label marketing.

In addition, later discovery of previously unknown problems with our products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may yield various results, including:

- restrictions on such products, manufacturers or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post marketing clinical trials;
- warning or untitled letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;

- fines, restitution or disgorgement of profits or revenue;
- suspension or withdrawal of marketing approvals;
- refusal to permit the import or export of our products;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

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

Our relationships with customers and third-party payors will be subject to applicable anti-kickback, fraud and abuse and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, including physicians, and third-party payors play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with healthcare providers, third-party payors and other parties within the healthcare industry may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute any products for which we obtain marketing approval. Restrictions under applicable federal and state healthcare and regulatory laws and regulations within the United States include the following:

- the federal healthcare anti-kickback statute prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the anti-kickback statute or specific intent to violate it in order to have committed a violation;
- the federal False Claims Act (FCA), which imposes criminal and civil penalties on individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government and actions under the FCA may be brought by private whistleblowers as well as the government. In addition, the government may assert that a claim including items and services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the FCA;
- the federal civil monetary penalties laws, which impose civil fines for, among other things, the offering or transfer of remuneration to a Medicare or state healthcare program beneficiary if the person knows or should know it is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of services reimbursable by Medicare or a state healthcare program, unless an exception applies;
- the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program and HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, also establishes requirements related to the privacy, security and transmission of individually identifiable health information which apply to many healthcare providers, physicians and third-party payors with whom we interact;
- the federal false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for healthcare benefits, items or services;
- the federal anti-kickback prohibition known as Eliminating Kickbacks in Recovery Act or EKRA, enacted in 2018 prohibits certain payments related to referrals of patients to certain providers (recovery homes, clinical treatment facilities and laboratories) and applies to services reimbursed by private health plans as well as government health care programs;

- the FDCA, which among other things, strictly regulates drug product and medical device marketing, prohibits manufacturers from marketing such products for off-label use and regulates the distribution of samples;
- federal laws that require pharmaceutical manufacturers to report certain calculated product prices to the government or provide certain discounts or rebates to government authorities or private entities, often as a condition of reimbursement under governmental healthcare programs;
- federal and state consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;
- the so-called federal "sunshine law" or Open Payments that requires manufacturers of drugs, devices, biologics and medical supplies to report to the Department of Health and Human Services information related to payments and other transfers of value to physicians and teaching hospital and, beginning with transfers of value occurring in 2021, other healthcare practitioners, as well as ownership and investment interests held by physicians and their immediate family members; and
- analogous state laws and regulations, such as state anti-kickback and false claims laws, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non- governmental third-party payors, including private insurers, and some state laws regulate interactions between pharmaceutical companies and healthcare providers and require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring drug manufacturers to report information related to payments to physicians and other healthcare providers or marketing expenditures and pricing information. State laws also govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Similar healthcare and data privacy laws and regulations exist in the European Union and other foreign jurisdictions, including reporting requirements detailing interactions with and payments to healthcare providers and laws governing the privacy and security of certain protected information. For example, in May 2018, a new privacy regime, the General Data Protection Regulation (GDPR), took effect enhancing our obligations with respect to operations in the European Economic Area, or the EEA, and increasing the scrutiny applied to transfers of personal data from the EEA (including health data from our clinical sites in the EEA) to countries that are considered by the European Commission to lack an adequate level of data protection, such as the United States. The compliance obligations imposed by the GDPR have required us to revise our operations and increased our cost of doing business. In addition, the GDPR imposes substantial fines for breaches of data protection requirements, and it confers a private right of action on data subjects for breaches of data protection requirements.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices, including arrangements we may have with physicians and other healthcare providers, or patient assistance programs, may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government funded healthcare programs, such as Medicare and Medicaid, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business is found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs. Further, defending against any such actions can be costly, time-consuming and may require significant personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired.

Our employees, independent contractors, principal investigators, CROs, consultants and vendors may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements, which could cause significant liability for us and harm our reputation.

We are exposed to the risk that our employees, independent contractors, principal investigators, CROs, consultants and vendors may engage in fraud or other misconduct, including intentional failures to: comply with FDA regulations or similar regulations of comparable foreign regulatory authorities, provide accurate information to the FDA or comparable foreign regulatory authorities, comply with manufacturing standards we have established, comply with federal and state healthcare fraud and abuse laws and regulations and similar laws and regulations established and enforced by comparable foreign regulatory authorities, report financial information or data accurately or disclose unauthorized activities to us. Such misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws, standards or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our product candidates and affect the prices we may obtain.

In the United States and some foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could, among other things, prevent or delay marketing approval of our product candidates, restrict or regulate post approval activities and affect our ability to profitably sell any of our product candidates for which we obtain marketing approval.

The U.S. healthcare industry generally and U.S. government healthcare programs in particular are highly regulated and subject to frequent and substantial changes. The U.S. government and individual states have been aggressively pursuing healthcare reform. For example, in March 2010, President Obama signed into law the Health Care Reform Act, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The law, for example, increased drug rebates under state Medicaid programs for brand name prescription drugs and extended those rebates to Medicaid managed care and assessed a fee on manufacturers and importers of brand name prescription drugs reimbursed under certain government programs, including Medicare and Medicaid.

The provisions of the Healthcare Reform Act have been subject to judicial and Congressional challenges, as well as efforts by the Trump administration to modify certain requirements of the Healthcare Reform Act by executive branch order. For example, on January 20, 2017, President Trump signed an Executive Order directing federal agencies with authorities and responsibilities under the Healthcare Reform Act to waive, defer, grant exemptions from, or delay the implementation of any provision of the Healthcare Reform Act that would impose a fiscal or regulatory burden on states, individuals, healthcare providers, health insurers, or manufacturers of pharmaceuticals or medical devices. In Congress, there have been a number of legislative initiatives to modify, repeal and/or replace portions of the Healthcare Reform Act. Tax reform legislation enacted at the end of 2017 eliminated the tax penalty for individuals who do not maintain sufficient health insurance coverage beginning in 2019. The Bipartisan Budget Act of 2018 contained various provisions that affect coverage and reimbursement of drugs, including an increase in the discount that manufacturers of Medicare Part D brand name drugs must provide to Medicare Part D beneficiaries during the coverage gap from 50% to 70% starting in 2019. Congress may consider other legislation to modify, repeal and/or replace certain elements of the Healthcare Reform Act. In December 2018, a federal district court judge, in a challenge brought by a number of state attorneys general, found the Healthcare Reform Act unconstitutional in its entirety because, once Congress repealed the individual mandate provision, there was no longer a basis to rely on Congressional taxing authority to support enactment of the law. In December 2019, a federal appeals court agreed that the individual mandate provision was unconstitutional but remanded the case back to the district court to assess more carefully whether any provisions of the Healthcare Reform Act were severable and could survive. In November, the Supreme Court will hear the case. Pending resolution of the litigation, which could take some time, the Healthcare Reform Act is still operational in all respects. We continue to evaluate the effect that the Healthcare Reform Act and its possible repeal, replacement or modification may have on our business. Such legislation and other healthcare reform measures that may be adopted in the future could have a material

adverse effect on our industry generally and on our ability to successfully commercialize our products and product candidates.

In addition, other broader legislative changes have been adopted that could have an adverse effect upon, and could prevent, our products' commercial success. The Budget Control Act of 2011, as amended, or the Budget Control Act, includes provisions intended to reduce the federal deficit, including reductions in Medicare payments to providers through 2029. Any significant spending reductions affecting Medicare, Medicaid or other publicly funded or subsidized health programs, or any significant taxes or fees imposed as part of any broader deficit reduction effort or legislative replacement to the Budget Control Act, or otherwise, could have an adverse impact on our anticipated product revenues.

Individual states in the United States have also become increasingly active in passing legislation and implementing regulations designed to control pharmaceutical product pricing, including price constraints, restrictions on copayment assistance by pharmaceutical manufacturers, marketing cost disclosure and transparency measures, and, in some cases, measures designed to encourage importation from other countries and bulk purchasing.

We cannot be sure whether additional legislative changes will be enacted, or whether the regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post marketing testing and other requirements.

Risks Related to Employee Matters and Managing Growth

We may experience difficulties in managing restructurings and restructuring activities may not be as effective as anticipated.

On October 28, 2019, February 27, 2020, and August 2020 we committed to operation plans to reduce overall operating expenses, including the elimination of approximately 40 positions, 31 positions, and 41 positions, respectively.

The workforce reductions were designed to streamline operations, speed execution of the Company's clinical development of defactinib and VS-6766. We may not realize, in full or in part, the anticipated benefits, savings and improvements in our cost structure from our restructuring efforts due to unforeseen difficulties, delays or unexpected costs. Furthermore, our restructuring plan may be disruptive to our operations. If we are unable to realize the expected operational efficiencies and cost savings from the restructuring, our operating results and financial condition would be adversely affected. There can be no assurance that we will be successful in implementing our restructuring program. Future growth would impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees. Our future financial performance and our ability to develop our product candidates or additional assets will depend, in part, on our ability to effectively manage any future growth or restructuring, as the case may be.

Our future success depends on our ability to retain our chief executive officer and other key executives and to attract, retain and motivate qualified personnel.

We are highly dependent on Brian Stuglik, Chief Executive Officer, Daniel Paterson, our President and Chief Operating Officer, and Robert Gagnon, our Chief Business and Financial Officer. Although we have formal employment agreements with Brian Stuglik, Daniel Paterson, and Robert Gagnon, these agreements do not prevent them from terminating their employment with us at any time. We do not maintain "key person" insurance for any of our executives or other employees. The loss of the services of any of these persons could impede the achievement of our research, development and commercialization objectives.

Recruiting and retaining qualified scientific, clinical, manufacturing and sales and marketing personnel will also be critical to our success. We may not be able to attract and retain these personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies, universities and research institutions for similar personnel. Although we have implemented a retention plan for certain key employees, our retention plan may not

be successful in incentivizing these employees to continue their employment with us. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors, including our scientific co-founders, may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us.

We may expand our development, regulatory and future sales and marketing capabilities over time, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

We may experience significant growth over time in the number of our employees and the scope of our operations, particularly in the areas of drug development, regulatory affairs and sales and marketing. To manage our anticipated future growth, we may continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and the limited experience of our management team in managing a company with such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel when we expand. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Our business and operations may be materially adversely affected in the event of computer system breaches or failures.

Despite the implementation of security measures, our internal computer systems, and those of our contract research organizations and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, natural disasters, fire, terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our key business processes and clinical development programs. For example, the loss of clinical trial data from ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could be exposed to liability, which could have a material adverse effect on our operating results and financial condition and possibly delay the further development and commercialization of our product candidates.

Risks Related to Our Common Stock

Provisions in our corporate charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our corporate charter and our bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions:

- establish a classified board of directors such that not all members of the board are elected at one time;
- allow the authorized number of our directors to be changed only by resolution of our board of directors;
- limit the manner in which stockholders can remove directors from the board;
- establish advance notice requirements for stockholder proposals that can be acted on at stockholder meetings and nominations to our board of directors;

- require that stockholder actions must be affected at a duly called stockholder meeting and prohibit actions by our stockholders by written consent;
- limit who may call stockholder meetings;
- authorize our board of directors to issue preferred stock without stockholder approval, which could be used to institute a "poison pill" that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our board of directors; and
- require the approval of the holders of at least 75% of the votes that all our stockholders would be entitled to cast to amend or repeal certain provisions of our charter or bylaws.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

The market price of our common stock has been, and may continue to be, highly volatile.

Our stock price has been volatile. Since January 27, 2012, when we became a public company, the price for one share of our common stock has reached a high of $18.82 and a low of $0.83 through September 30, 2020. We cannot predict whether the price of our common stock will rise or fall. The market price for our common stock may be influenced by many factors, including:

- the success of competitive products or technologies;
- results of clinical trials of our product candidates or those of our competitors;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key personnel;
- the level of expenses related to any of our product candidates or clinical development programs;
- the results of our efforts to discover, develop, acquire or in-license additional product candidates or products;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- variations in our financial results or those of companies that are perceived to be similar to us;
- changes in the structure of healthcare payment systems;
- market conditions in the pharmaceutical and biotechnology sectors;
- general economic, industry and market conditions; and
- the other factors described in this "Risk Factors" section.

In addition, the stock market in general and the market for small pharmaceutical companies and biotechnology companies in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of particular companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. In the past, following periods of volatility in the market, securities class action litigation has often been instituted against companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business and financial condition.

Failure to comply with The Nasdaq Global Market continued listing requirements may result in our common stock being delisted from The Nasdaq Global Market.

If our stock price falls below $1.00 per share, we may not continue to qualify for continued listing on The Nasdaq Global Market (Nasdaq). To maintain listing, we are required, among other things, to maintain a minimum closing bid price of $1.00 per share. If the closing bid price of our common stock is below $1.00 per share for 30 consecutive business days, we will receive a deficiency notice from Nasdaq advising us that we have a certain period of time,

typically 180 days, to regain compliance by maintaining a minimum closing bid price of at least $1.00 for at least ten consecutive business days, although Nasdaq could require a longer period.

The delisting of our common stock would significantly affect the ability of investors to trade our common stock and negatively impact the liquidity and price of our common stock. In addition, the delisting of our common stock could materially adversely impact our ability to raise capital on acceptable terms or at all. Delisting from Nasdaq could also have other negative results, including the potential loss of confidence by our current or prospective third-party providers and collaboration partners, the loss of institutional investor interest, and fewer licensing and partnering opportunities.

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

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all of our future earnings to finance the growth and development of our business. In addition, the terms of any current or future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for our stockholders for the foreseeable future.

Raising additional capital or entering into certain licensing arrangements may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to our product candidates.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, grants and government funding, strategic alliances and licensing arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. To the extent that we enter into certain licensing arrangements, the ownership interest of our existing stockholders may be diluted if we elect to make certain payments in shares of our common stock. For example, pursuant to the terms of our license agreement with Infinity, we may elect to make certain milestone payments in shares of common stock in lieu of cash, according to a formula set forth in the license agreement. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. For example, see our risk factors under the heading “Risks Related to Our Indebtedness.”

If we raise additional funds through collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish future revenue streams or valuable rights to product candidates or to grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Risks Related to the 2018 Notes

Servicing our debt, including the 2018 Notes, requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the 2018 Notes, depends on the timing of regulatory reviews and approvals and our future performance, which is subject to regulatory, economic, financial, competitive and other factors beyond our control. We are a clinical stage biopharmaceutical company and we have not yet generated any profit from product sales. We expect to continue to incur losses as we continue our clinical development of, and seek regulatory approvals for, our product candidates, prepare to commercialize any approved products and add infrastructure and personnel to support our product development efforts and operations. Accordingly, our business may not generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and

our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

The 2018 Notes are effectively subordinated to our secured indebtedness and structurally subordinated to any liabilities of our subsidiaries.

The 2018 Notes are our senior, unsecured obligations and are senior in right of payment to our future indebtedness that is expressly subordinated in right of payment to the 2018 Notes; equal in right of payment with our existing and future indebtedness that is not so subordinated, and effectively subordinated to our existing and future secured indebtedness, to the extent of the value of the collateral securing such indebtedness. The 2018 Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent we are not a holder thereof) preferred equity, if any, of our subsidiaries. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt will be available to pay obligations on the 2018 Notes only after the secured debt has been repaid in full from these assets, and the assets of our subsidiaries will be available to pay obligations on the 2018 Notes only after all claims of such subsidiaries' creditors, including trade creditors and preferred equity holders have been repaid in full. There may not be sufficient assets remaining to pay amounts due on any or all of the 2018 Notes then outstanding. The 2018 Indenture governing the 2018 Notes does not prohibit us from incurring additional senior debt or secured debt, nor do they prohibit any of our subsidiaries from incurring additional liabilities.

Despite our current debt levels, we may still incur substantially more debt or take other actions which would intensify the risks discussed above.

Despite our current consolidated debt levels, we and our subsidiaries may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt agreements, including the 2018 Indenture, some of which may be secured debt. The Amended Loan Agreement also restricts our ability and the ability of our subsidiaries to issue or incur additional indebtedness, including secured indebtedness, though if our loans under the Amended Loan Agreement, mature or are repaid, we may not be subject to such restrictions under the terms of any subsequent indebtedness.

We may not have the ability to raise the funds necessary to repurchase the 2018 Notes upon a fundamental change, and our existing or future debt may contain limitations on our ability to repurchase the 2018 Notes.

Holders of the 2018 Notes have the right to require us to repurchase their 2018 Notes upon the occurrence of a fundamental change at a fundamental change repurchase price equal to 100% of the principal amount of the 2018 Notes, respectively to be repurchased, *plus* accrued and unpaid interest, if any. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of the 2018 Notes surrendered therefor. In addition, our ability to repurchase the 2018 Notes may be limited by law, by regulatory authority or by agreements governing our indebtedness that exist at the time of the repurchase. The Amended Loan Agreement currently limits our ability to repurchase the 2018 Notes. Our failure to repurchase the 2018 Notes at a time when the repurchase is required by the Indenture governing the 2018 Notes would constitute a default under the Indentures. A default under the Indentures or the fundamental change itself could also lead to a default under the Amended Loan Agreement, and/or agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the 2018 Notes.

In addition, our borrowings under the Amended Loan Agreement are, and are expected to continue to be, at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income would decrease.

The Amended Loan Agreement limits our ability to pay any cash amount upon repurchase of the 2018 Notes.

The Amended Loan Agreement prohibits us from making any cash payments to repurchase the 2018 Notes upon a fundamental change. Any new credit facility that we may enter into may have similar restrictions.

Our failure to repurchase the 2018 Notes as required under the terms of the 2018 Notes would constitute a default under the Indentures governing the 2018 Notes and would permit holders of the 2018 Notes to accelerate our obligations under the 2018 Notes. A default under the Indentures or the fundamental change itself could also lead to a default under the Amended Loan Agreement, or agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the 2018 Notes.

Future sales of our common stock or equity-linked securities in the public market could lower the market price for our common stock.

In the future, we may sell additional shares of our common stock or equity-linked securities to raise capital. In addition, a substantial number of shares of our common stock are reserved for issuance upon the exercise of stock options and upon conversion of the 2018 Notes. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our common stock. The issuance and sale of substantial amounts of common stock or equity-linked securities, or the perception that such issuances and sales may occur, could adversely affect the market price of our common stock and impair our ability to raise capital through the sale of additional equity or equity-linked securities.

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

RECENT SALES OF UNREGISTERED SECURITIES

None.

PURCHASE OF EQUITY SECURITIES

We did not purchase any of our equity securities during the period covered by this Quarterly Report on Form 10-Q.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

2018 Notes Exchange

On November 6, 2020, the Company entered into a privately negotiated agreement with an investor who is a holder of the Company's 2018 Notes to exchange approximately $28.0 million aggregate principal amount of 2018 Notes for approximately $28.0 million aggregate principal amount of newly issued 5.00% Convertible Senior Notes due 2048 (the 2020 Notes). The issuance of the 2020 Notes is expected to close on November 13, 2020 (the Closing Date), subject to customary closing conditions. The 2020 Notes will be governed pursuant to a indenture by and between the Company and Wilmington Trust, National Association, as trustee and collateral agent (the Trustee), dated as of October 17, 2018 (the Base Indenture), as supplemented by the second supplemental indenture thereto to be dated the Closing Date (the Supplement Indenture and together with the Base Indenture, the 2020 Indenture).

The Company will have the right, exercisable at its option, to cause all 2020 Notes then outstanding to be converted automatically if the "Daily VWAP" (as defined in the 2020 Indenture) per share of the Company's common

stock equals or exceeds 123.08% of the conversion price on each of at least 20 “VWAP Trading Days” (as defined in the 2020 Indenture), whether or not consecutive, during any 30 consecutive VWAP Trading Day period commencing on or after the date the Company first issued the 2020 Notes.

The initial conversion rate for the 2020 Notes is 307.6923 shares of the Company’s common stock per $1,000 principal amount of the 2020 Notes, which is equivalent to an initial conversion price of approximately $3.25 per share, representing an approximately 153.9% premium to the sale price of $1.28 per share of the Company’s common stock on November 5, 2020, as reported on the Nasdaq Global Market. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends, but will not be adjusted for any accrued and unpaid interest.

Prior to November 1, 2023, the Company will not have the right to redeem the 2020 Notes. On or after November 1, 2023, the Company may elect to redeem the 2020 Notes, in whole or in part, at a cash redemption price equal to the principal amount of the 2020 Notes to be redeemed, plus accrued and unpaid interest, if any.

Unless the Company has previously called all outstanding 2020 Notes for redemption, the 2020 Notes will be subject to repurchase by the Company at the holders’ option on each of November 1, 2023, November 1, 2028, November 1, 2033, November 1, 2038 and November 1, 2043 (or, if any such date is not a business day, on the next business day) at a cash repurchase price equal to the principal amount of the 2020 Notes to be repurchased, plus accrued and unpaid interest, if any.

If a Fundamental Change (as defined in the 2020 Indenture) occurs at any time, subject to certain conditions, holders may require the Company to purchase all or any portion of their 2020 Notes at a purchase price equal to 100% of the principal amount of the 2020 Notes to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the “Fundamental Change Repurchase Date” (as defined in the 2020 Indenture). If a “Make-Whole Fundamental Change” (as defined in the 2020 Indenture) occurs on or before November 1, 2022 and a holder elects to convert its 2020 Notes in connection with such Make-Whole Fundamental Change, such holder may be entitled to an increase in the conversion rate in certain circumstances as set forth in the 2020 Indenture.

Upon conversion of the 2020 Notes, holders will receive a cash payment equal to the accrued and unpaid interest on the converted 2020 Notes

The 2020 Notes are the Company’s senior unsecured obligations and will be senior in right of payment to the Company’s future indebtedness that is expressly subordinated in right of payment to the 2020 Notes, and equal in right of payment with the Company’s existing and future indebtedness that is not so subordinated, and effectively subordinated to the Company’s existing and future indebtedness, to the extent of the value of the collateral securing such indebtedness. The 2020 Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company’s subsidiaries.

The Company will issue the 2020 Notes in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1934, as amended (the Securities Act). Any shares of common stock issued upon conversion of the 2020 Notes will be issued pursuant to Section 3(a)(9) of the Securities Act as an exchange with existing security holders. Based on the initial maximum conversion rate of 833.3333 shares of common stock per $1,000 principal amount of notes, a maximum of approximately 23.3 million shares of common stock are initially issuable upon conversion of the 2020 Notes. The offer and sale of the 2020 Notes and the shares of common stock issuable upon conversion of the 2020 Notes have not been, and will not be, registered under the Securities Act.

The foregoing summary of the 2020 Notes, the Base Indenture and the Supplemental Indenture does not purport to be complete and is qualified in its entirety by reference to the text of the 2020 Notes, the Base Indenture and the Supplemental Indenture, and the form of 5.00% Convertible Senior Note due 2048 included in the Supplemental Indenture, which are filed as Exhibits 4.1, 4.2, and 4.3, respectively, with this Quarterly Report on Form 10-Q and are incorporated herein by reference.

Repayment of Amended Term Loan

On November 9, 2020, the Company repaid in full all principal, accrued and unpaid interest, fees, and expenses under the Amended Loan Agreement with Hercules in an aggregate amount of $37.4 million (the Payoff Amount). The Payoff Amount includes the principal balance of $35.0 million, final payment fee of $1.8 million, prepayment penalty fee of $0.5 million, and accrued and unpaid interest of $0.1 million. Effective upon Hercules receipt of the Payoff Amount, the Amended Loan Agreement has been terminated along with Hercules' commitment to provide funding under any future term loans. All liens on substantially all of the Company's assets to secure the loans under the Amended Loan Agreement have been terminated and released.

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.

EXHIBIT INDEX

4.1	Indenture, dated as of October 17, 2018, between Verastem, Inc. and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to Form 8-K filed by the Registrant on October 17, 2018).
4.2*	Form of Second Supplemental Indenture, by and between the Company and Wilmington Trust, National Association.
4.3*	Form of 5.00% Convertible Senior Note due 2014 (included in Exhibit 4.2).
10.1*†#	Asset Purchase Agreement by and between Secura Bio, Inc. and Verastem, Inc.
10.2*†	Exchange Agreement by and between Verastem, Inc. and Highbridge Tactical Credit Master Fund, L.P., dated November 6, 2020.
31.1*	Certification of Principal 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 Principal 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.
99.1*	Press Release issued by Verastem, Inc. on November 9, 2020.
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page from this Current Report on form 10-Q, formatted in Inline XBRL

* Filed or furnished herewith.

† Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule or exhibit will be furnished to the Securities and Exchange Commission upon request.

Certain information in this exhibit identified by brackets is confidential and has been excluded pursuant to Item 601(b)(10)(iv) of Regulation S-K because it (i) is not material and (ii) would likely cause competitive harm to the Company if publicly disclosed. An unredacted copy of this exhibit will be furnished to the Securities and Exchange Commission on a supplemental basis upon request.

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: November 9, 2020 By: /s/ BRIAN M. STUGLIK

Brian M. Stuglik
Chief Executive Officer
(Principal executive officer)

Date: November 9, 2020 By: /s/ ROBERT GAGNON

Robert Gagnon
Chief Business and Financial Officer
(Principal financial and accounting officer)

Exhibit 4.2

VERASTEM, INC.

and

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Trustee

SECOND SUPPLEMENTAL INDENTURE

Dated as of [ ], 2020

5.00% Series 2 Convertible Senior Notes due 2048

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Exhibits

SECOND SUPPLEMENTAL INDENTURE, dated as of [ ], 2020 ("**Second Supplemental Indenture**"), between Verastem, Inc., a Delaware corporation, as issuer (the "**Company**"), and Wilmington Trust, National Association, a national banking association, as trustee (the "**Trustee**"), supplementing the Indenture, dated as of October 17, 2018, between the Company and the Trustee (the "**Base Indenture**" and, as amended, modified and supplemented by this Second Supplemental Indenture, the "**Indenture**").

Each party to the Indenture agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company's 5.00% Series 2 Convertible Senior Notes due 2048 (the "**Notes**").

ARTICLE 1. DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. DEFINITIONS. The terms defined in this **Section 1.01** (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of the Indenture and of any indenture supplemental hereto will have the respective meanings specified in this **Section 1.01** and, to the extent applicable, supersede the definitions thereof in the Base Indenture. All words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) have the same meanings as in the Base Indenture.

"**Affiliate**" has the meaning set forth in Rule 144 under the Securities Act as in effect on the Issue Date.

"**Aggregate Share Cap**" means 11,740,185 shares of Common Stock (subject to proportionate adjustment for stock dividends, stock splits or stock combinations with respect to the Common Stock).

"**Authorized Denomination**" means, with respect to a Note, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof.

"**Authorized Share Capped Conversion Rate**" means a number of shares of Common Stock, rounded down to the nearest 1/10,000th of a share, equal to:

$$\frac{AC}{N}$$

where:

AC = the Aggregate Share Cap; and

N = the aggregate principal amount of Notes to be issued pursuant to the Exchange Agreement *divided by* $1,000.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

"**Capped Conversion**" means a conversion that is settled in accordance with Section 5.03(A)(iv).

"**Cash Settlement Amount Observation Period**" means, with respect to any Capped Conversion of a Note, the five (5) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after the Conversion Date for such conversion.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company, subject to **Section 5.09**.

"**Company**" means the Person named as such in the first paragraph of this Second Supplemental Indenture and, subject to **Article 6**, its successors and assigns.

"**Company Mandatory Conversion Right**" means the right of the Company to cause Notes to be converted pursuant to **Section 5.04(A)**.

"**Conversion Consideration**" means the consideration due upon conversion of any Note, as provided in this Second Supplemental Indenture.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to convert such Note are satisfied.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 307.6923 shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5**; *provided*, *further*, that whenever the Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

"**Conversion Share**" means any share of Common Stock issued or issuable upon

conversion of any Note.

"**Daily Cash Settlement Amount**" means, with respect to any VWAP Trading Day, one-fifth of the product of (A) the excess of the Conversion Rate on such VWAP Trading Day over the Authorized Share Capped Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "VSTM <EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one (1) share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm the Company selects, which may include the Placement Agent). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Depositary**" means The Depository Trust Company or its successor.

"**Depositary Participant**" means any member of, or participant in, the Depositary.

"**Depositary Procedures**" means, with respect to any conversion, transfer, exchange or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depositary applicable to such conversion, transfer, exchange or transaction.

"**Eligible Market**" means any of The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended.

"**Exchange Agreement**" means the Exchange Agreement, dated as of November 6, 2020 between the Exchanging Investor (as defined therein) and the Company.

"**Fundamental Change**" means any of the following events:

(A) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or any employee benefit plan of the Company or its Wholly Owned Subsidiaries, has become the direct or indirect "beneficial

owner" (as defined below) of shares of the Company's common equity representing more than fifty percent (50%) of the voting power of all of the Company's then-outstanding common equity;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person, other than solely to one or more of the Company's Wholly Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's common equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

provided, *however*, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock listed on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (b)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**" and whether shares are "**beneficially owned**" will be determined in accordance with Rule 13d-3 under the Exchange Act.

"**Fundamental Change Repurchase Date**" means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

"**Fundamental Change Repurchase Notice**" means a notice (including a notice

substantially in the form of the "Fundamental Change Repurchase Notice" set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

"**Global Note**" means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depositary or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depositary.

"**Global Note Legend**" means a legend substantially in the form set forth in **Exhibit B**.

"**Holder**" means a person in whose name a Note is registered on the Registrar's books.

"**Interest Payment Date**" means, with respect to a Note, each May 1 and November 1 of each year, commencing on May 1, 2019 (or such other date specified in the certificate representing such Note). For the avoidance of doubt the Maturity Date is an Interest Payment Date.

"**Issue Date**" means November [ ], 2020.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from each of at least three (3) nationally recognized independent investment banking firms selected by the Company, which may include the Placement Agent. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price.

"**Make-Whole Fundamental Change**" means a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of the definition thereof) that becomes effective on or before November 1, 2023.

"**Make-Whole Fundamental Change Conversion Period**" means, with respect to a Make-Whole Fundamental Change, the period from, and including, the effective date of such Make-Whole Fundamental Change to, and including, the thirty fifth (35th) Trading Day after such

effective date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change, to, but excluding, the related Fundamental Change Repurchase Date).

"**Mandatory Conversion**" means a conversion pursuant to **Section 5.04(A)**.

"**Mandatory Conversion Date**" means the Conversion Date for a Mandatory Conversion, as provided in **Section 5.04(C)**.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options, contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means November 1, 2048.

"**Note Agent**" means any Registrar, Paying Agent or Conversion Agent.

"**Notes**" means the 5.00% Series 2 Convertible Senior Notes due 2048 issued by the Company pursuant to the Indenture.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Optional Repurchase**" means the repurchase of any Note by the Company pursuant to **Section 4.03**.

"**Optional Repurchase Notice**" means a notice (including a notice substantially in the form of the "Optional Repurchase Notice" set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.03(E)(i)** and **Section 4.03(E)(ii)**.

"**Optional Repurchase Price**" means the cash price payable by the Company to repurchase any Note upon an Optional Repurchase, calculated pursuant to **Section 4.03(C)**.

"**Person**" or "**person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof.

"**Physical Note**" means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

"**Placement Agent**" means Lazard Frères & Co. LLC.

"**Redemption**" means the repurchase of any Note by the Company pursuant to **Section 4.04**.

"**Redemption Date**" means the date fixed for the repurchase of any Notes by the Company pursuant to a Redemption.

"**Redemption Notice Date**" means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.04(F)**.

"**Redemption Price**" means the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.04(E)**.

"**Regular Record Date**" has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on May 1, the immediately preceding April 15; and (B) if such Interest Payment Date occurs on November 1, the immediately preceding October 15.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 4.02**.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "Scheduled Trading day" means a Business Day.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes, or any group of Subsidiaries of such Person that, in the aggregate, would constitute, a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Special Interest**" means any interest that accrues on any Note pursuant to **Section 7.03**.

"**Stock Price**" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to **clause (B)** of the definition of "Fundamental Change," then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the effective date of such Make-Whole Fundamental Change.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such

Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb) as in effect on the date of this Second Supplemental Indenture (except as provided in Section 8.3 of the Base Indenture).

"**Trustee**" means the Person named as such in the first paragraph of this Second Supplemental Indenture until a successor replaces it in accordance with the provisions of the Indenture and, thereafter, means such successor, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any Series will mean the Trustee with respect to Securities of that Series.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate during the regular trading session, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying

shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. OTHER DEFINITIONS.

Term	Defined in Section
"**Additional Shares**"	**5.08(A)**
"**Authorized Share Effective Date**"	**5.03(A)(iv)**
"**Business Combination Event**"	**6.01(A)**
"**Cash Settlement Amount**"	**5.03(A)(iv)**
"**Common Stock Change Event**"	**5.09(A)**
"**Company Mandatory Conversion Right**"	**5.04(A)**
"**Conversion Agent**"	**2.05(A)**
"**Conversion Consideration**"	**5.03(A)**
"**Default Interest**"	**2.04(B)**
"**Defaulted Amount**"	**2.04(B)**
"**Equity Conditions**"	**5.04(D)**
"**Event of Default**"	**7.01(A)**
"**Expiration Date**"	**5.06(A)(v)**
"**Expiration Time**"	**5.06(A)(v)**
"**Fundamental Change Notice**"	**4.02(E)**
"**Fundamental Change Repurchase Right**"	**4.02(A)**
"**Initial Notes**"	**2.02(A)**
"**Mandatory Conversion**"	**5.04(A)**
"**Mandatory Conversion Notice**"	**5.04(B)**
"**Maximum Number of Conversion Shares**"	**5.03(A)(iv)**
"**Optional Repurchase Date**"	**4.03(A)**
"**Optional Repurchase Date Notice**"	**4.03(D)**
"**Optional Repurchase Right**"	**4.03(A)**
"**Paying Agent**"	**2.05(A)**
"**Redemption Notice**"	**4.04(F)**
"**Reference Property**"	**5.09(A)**
"**Reference Property Unit**"	**5.09(A)**
"**Register**"	**2.05(B)**
"**Registrar**"	**2.05(A)**
"**Reporting Event of Default**"	**7.03(A)**
"**Spin-Off**"	**5.06(A)(iii)(2)**
"**Spin-Off Valuation Period**"	**5.06(A)(iii)(2)**
"**Stated Interest**"	**2.04(A)**
"**Successor Corporation**"	**6.01(A)**
"**Successor Person**"	**5.09(A)**
"**Tender/Exchange Offer Valuation Period**"	**5.06(A)(v)**

SECTION 1.03. RULES OF CONSTRUCTION.

For purposes of the Indenture:

(A) "or" is not exclusive;

(B) "including" means "including without limitation";

(C) "will" expresses a command;

(D) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(G) "herein," "hereof" and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or other subdivision of the Indenture, unless the context requires otherwise;

(H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;

(I) the exhibits, schedules and other attachments to the Indenture are deemed to form part of the Indenture;

(J) the term "**interest**," when used with respect to a Note, includes any Special Interest, unless the context requires otherwise; and

(K) the words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Indenture or any document to be signed in connection with this Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means; *provided* that notwithstanding anything herein to the contrary, the Trustee is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to reasonable procedures approved by the Trustee.

For purposes of the Indenture, the following terms of the Trust Indenture Act have the following meanings:

(i) "**Commission**" means the SEC;

(ii) "**indenture securities**" means the Notes;

(iii) "**indenture security holder**" means a Holder;

(iv) "**indenture to be qualified**" means the Indenture;

(v) "**indenture trustee**" or "**institutional trustee**" means the Trustee; and

(vi) "**obligor**" on the indenture securities means the Company.

SECTION 1.04. CONFLICTS WITH BASE INDENTURE. This Supplemental Indenture amends and supplements the provisions of the Base Indenture as the same applies to the Notes, to the provisions of which Base Indenture reference is hereby made. The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture will be applicable only with respect to, and will only govern the terms of, the Notes, which may be issued from time to time, and will not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. For all purposes under the Base Indenture, the Notes will constitute a single Series of Securities, and with regard to any matter requiring the consent under the Base Indenture of Holders of multiple Series of Securities voting together as a single class, the consent of Holders voting as a separate class will also be required and the same threshold will apply. To the extent any provision of this Supplemental Indenture limits, qualifies or conflicts with a provision of the Base Indenture, such provision of this Supplemental Indenture will control.

ARTICLE 2. THE NOTES

SECTION 2.01. FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee's certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.07** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.08**.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of the Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of the Indenture, agree

to such terms and to be bound thereby; *provided*, *however*, that, to the extent that any provision of any Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control for purposes of the Indenture and such Note.

SECTION 2.02. INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes*. On the Issue Date, there will be originally issued [ ] ($[ ]) aggregate principal amount of Notes, subject to the provisions of the Indenture (including Section 2.3 of the Base Indenture). Notes issued pursuant to this **Section 2.02(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in the Indenture as the "**Initial Notes**."

(B) *Additional Notes*. The Company may, subject to the provisions of the Indenture (including Section 2.3 of the Base Indenture), originally issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the date as of which interest begins to accrue on such additional Notes and the first Interest Payment Date of such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same Series of, and rank equally and ratably with all other, Notes issued under the Indenture; *provided*, *however*, that if any such additional Notes are not fungible with other Notes issued under the Indenture for federal income tax or federal securities laws purposes, then such additional Notes will be identified by a separate CUSIP number or by no CUSIP number.

SECTION 2.03. METHOD OF PAYMENT.

(A) *Global Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date, Optional Repurchase on an Optional Repurchase Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in the Indenture.

(B) *Physical Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date, Optional Repurchase on an Optional Repurchase Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Physical Note no later than the time the same is due as provided in the Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars ($5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash Conversion Consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is

due.

SECTION 2.04. ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

This **Section 2.04** will apply to the Notes in lieu of Section 2.13 of the Base Indenture, which will be deemed to be replaced with this **Section 2.04**, *mutatis mutandis*.

(A) *Accrual of Interest*. Each Note will accrue interest at a rate per annum equal to 5.00% (the "**Stated Interest**"), plus any Special Interest that may accrue pursuant to **Section 7.03**. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to **Sections 4.02(D)**, **4.03(C)** and **4.04(E)** (but without duplication of any payment of interest), payable semi-annually in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts*. If the Company fails to pay any amount (a "**Defaulted Amount**") payable on a Note on or before the due date therefor as provided in the Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest ("**Default Interest**") will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(C) *Delay of Payment when Payment Date is Not a Business Day*. If the due date for a payment on a Note as provided in the Indenture is not a Business Day, then, notwithstanding anything to the contrary in the Indenture or the Notes, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a "Business Day."

SECTION 2.05. REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

This **Section 2.05** will apply to the Notes in lieu of Section 2.4 of the Base Indenture, which will be deemed to be replaced with this **Section 2.05**, *mutatis mutandis*.

(A) *Generally*. The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the "**Registrar**"); (ii) an office or agency in the continental United States where Notes may be presented for payment (the "**Paying Agent**"); and (iii) an office or agency in the continental United States where Notes may be presented for conversion (the "**Conversion Agent**"). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent.

(B) *Duties of the Registrar*. The Registrar will keep a record (the "**Register**") of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company's Right to Appoint Successor Registrars, Paying Agents and Conversion Agents*. The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under the Indenture. Subject to **Section 2.05(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to the Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of the Indenture that relate to such Note Agent.

(D) *Initial Appointments*. The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

SECTION 2.06. PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST.

This **Section 2.06** will apply to the Notes in lieu of Section 2.5 of the Base Indenture, which will be deemed to be replaced with this **Section 2.06**, *mutatis mutandis*.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent

(if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in the Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to in **clause (ix)** or **(x)** of **Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

SECTION 2.07. LEGENDS.

This **Section 2.07** will apply to the Notes in lieu of Section 2.15 of the Base Indenture, which will be deemed to be replaced with this **Section 2.07**, *mutatis mutandis*.

(A) *Global Note Legend*. Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with the Indenture, required by the Depositary for such Global Note).

(B) *Other Legends*. A Note may bear any other legend or text, not inconsistent with the Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(C) *Acknowledgement and Agreement by the Holders*. A Holder's acceptance of any Note bearing any legend required by this **Section 2.07** will constitute such Holder's acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.

SECTION 2.08. TRANSFERS AND EXCHANGES.

This **Section 2.08** will apply to the Notes in lieu of Section 2.7 of the Base Indenture, which will be deemed to be replaced with this **Section 2.08**, *mutatis mutandis*.

(A) *Provisions Applicable to All Transfers and Exchanges*.

(i) Subject to this **Section 2.08**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time and the Registrar will record each such transfer or exchange in the Register.

(ii) Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.08(A)(ii)**) or portion thereof in accordance with the Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under the Indenture, as such old Note or portion thereof, as applicable.

(iii) The Company, the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of Notes, but the Company, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Notes, other than exchanges pursuant to **Sections 2.09**, **2.12** or **8.05** not involving any transfer.

(iv) Notwithstanding anything to the contrary in the Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed by applicable law with respect to any Note or share of Common Stock issued upon conversion of any Note.

(vi) Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.07**.

(vii) Upon satisfaction of the requirements of the Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(viii) Neither the Trustee nor any agent will have any responsibility or liability for any actions taken or not taken by the Depositary.

(B) *Transfers and Exchanges of Global Notes.*

(i) Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided*, *however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depositary notifies the Company or the Trustee that the Depositary is unwilling or unable to continue as depositary for such Global Note or (y) the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depositary within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and a holder of a beneficial interest in such Global Note requests to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the

owner of such beneficial interest.

(ii) Upon satisfaction of the requirements of the Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to Section 2.12 of the Base Indenture);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, a new Global Note bearing each legend, if any, required by **Section 2.07**; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Physical Notes that are in Authorized Denominations (not to exceed, in the aggregate, the principal amount of such Global Note to be so exchanged), are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures) and bear each legend, if any, required by **Section 2.07**.

(iii) Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) Subject to this **Section 2.08**, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided*, *however*, that, to effect any such transfer or exchange, such Holder must surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee

or the Registrar.

(ii) Upon the satisfaction of the requirements of the Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the "old Physical Note" for purposes of this **Section 2.08(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to Section 2.12 of the Base Indenture;

(2) if such old Physical Note is to be transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.07**;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.07**; *provided*, *however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section 2.07** then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; and (y) bear each legend, if any, required by **Section 2.07**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such

transferee; and (z) bear each legend, if any, required by **Section 2.07**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.07**.

(D) *Transfers of Notes Subject to Redemption, Repurchase or Conversion*. Notwithstanding anything to the contrary in the Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for conversion, except to the extent that any portion of such Note is not subject to conversion; (ii) is subject to a Fundamental Change Repurchase Notice or Optional Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)** or **4.03(E)**, respectively, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price or Optional Repurchase Price, as applicable, when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

SECTION 2.09. EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED, REDEEMED OR REPURCHASED.

(A) *Partial Conversions, Redemptions and Repurchases of Physical Notes*. If only a portion of a Physical Note of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change, Optional Repurchase or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such conversion, Redemption or repurchase, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.08(C)**, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted, redeemed or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so converted, redeemed or repurchased, as applicable, which Physical Note will be converted, redeemed or repurchased, as applicable, pursuant to the terms of the Indenture; *provided*, *however*, that the Physical Note referred to in this clause (ii) need not be issued at any time after which such principal amount subject to such conversion, Redemption or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.13**.

(B) *Cancellation of Converted, Redeemed and Repurchased Notes*.

(i) *Physical Notes*. If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.09(A)**) of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change, Optional Repurchase or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.13** and the time such Physical Note is surrendered for such conversion or repurchase, as

applicable, (1) such Physical Note will be cancelled pursuant to Section 2.12 of the Base Indenture; and (2) in the case of a partial conversion, Redemption or repurchase, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted, redeemed or repurchased; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.07**.

(ii) *Global Notes*. If a Global Note (or any portion thereof) is to be converted pursuant to **Section 4.04** or repurchased pursuant to a Repurchase Upon Fundamental Change, Optional Repurchase or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.13**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so converted, redeemed or repurchased, as applicable, by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to Section 2.12 of the Base Indenture).

SECTION 2.10. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under the Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under the Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided*, *however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under the Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

SECTION 2.11. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 3.03**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided*, *however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

SECTION 2.12. TEMPORARY NOTES.

This **Section 2.12** will apply to the Notes in lieu of Section 2.11 of the Base Indenture, which will be deemed to be replaced with this **Section 2.12**.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under the Indenture as definitive Notes.

SECTION 2.13. OUTSTANDING NOTES.

This **Section 2.13** will apply to the Notes in lieu of Section 2.9 of the Base Indenture, which will be deemed to be replaced with this **Section 2.13**.

(A) *Generally*. The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with Section 2.12 of the Base Indenture; (ii) assigned a principal amount of zero by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of any a Global Note representing such Note; (iii) paid in full in accordance with the Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B)**, **(C)** or **(D)** of this **Section 2.13**.

(B) *Replaced Notes*. If a Note is replaced pursuant to Section 2.8 of the Base Indenture, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a "*bona fide* purchaser" under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase*. If, on a Redemption Date, a Fundamental Change Repurchase Date, an Optional Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price, Optional Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Sections 4.02(D)**, **4.03(C)** and **4.04(E)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price, Optional Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in the Indenture.

(D) *Notes to Be Converted*. At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(A)**, upon such conversion) be deemed to cease to be outstanding, except to the extent provided

in **Section 5.03(A)**.

(E) *Cessation of Accrual of Interest*. Except as provided in **Sections 4.02(D)**, **4.03(C)** and **4.04(E)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.13**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

SECTION 2.14. REPURCHASES BY THE COMPANY.

Without limiting the generality of Section 2.12 of the Base Indenture, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders.

ARTICLE 3. COVENANTS

SECTION 3.01. PAYMENT ON NOTES.

This **Section 3.01** will apply to the Notes in lieu of Section 4.1 of the Base Indenture, which will be deemed to be replaced with this **Section 3.01**, *mutatis mutandis*.

(A) *Generally*. The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price, Redemption Price and Optional Repurchase Price for, interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in the Indenture.

(B) *Deposit of Funds*. Before 10:00 A.M., New York City time, on each Redemption Date, Fundamental Change Repurchase Date, Optional Repurchase Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

SECTION 3.02. EXCHANGE ACT REPORTS.

This **Section 3.02** will apply to the Notes in lieu of Section 4.2 of the Base Indenture, which will be deemed to be replaced with this **Section 3.02**, *mutatis mutandis*.

(A) *Generally*. The Company will send to the Trustee copies of all reports that the Company is required to file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act within fifteen (15) calendar days after the date that the Company is required to file or furnish the same (after giving effect to all applicable grace periods under the Exchange Act); *provided*, *however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC. Any report that the Company files with or furnishes to the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed or furnished via the EDGAR system (or such successor). Upon the request of any Holder, the Company will provide to such Holder a copy of any report that the Company has sent

the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee pursuant to the preceding sentence. The Company will also comply with its obligations under Section 314(a)(1) of the Trust Indenture Act.

(B) *Trustee's Disclaimer*. The Trustee need not determine whether the Company has filed or furnished any material via the EDGAR system (or such successor). The sending, filing or furnishing of reports pursuant to **Section 3.02(A)** will not be deemed to constitute actual or constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company's compliance with any of its covenants under the Indenture, as to which the Trustee is entitled to rely exclusively on Officer's Certificates.

SECTION 3.03. RESTRICTION ON ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES.

The Company will promptly deliver to the Trustee for cancellation all Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

SECTION 3.04. FURTHER INSTRUMENTS AND ACTS.

At the Trustee's request, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to more effectively carry out the purposes of the Indenture.

ARTICLE 4. REPURCHASE AND REDEMPTION

This **Article 4** will apply to the Notes in lieu of Article 3 of the Base Indenture, which will be deemed to be replaced with this **Article 4**, *mutatis mutandis*.

SECTION 4.01. NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

SECTION 4.02. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change*. Subject to the other terms of this **Section 4.02**, if a Fundamental Change occurs, then each Holder will have the right (the "**Fundamental Change Repurchase Right**") to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including as a result of the payment of the related Fundamental Change Repurchase Price, and any related

interest pursuant to the proviso to **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided*, *however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.04(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.04(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice*. On or before the twentieth (20th) calendar day after the occurrence of a Fundamental Change, the Company will (x) send to each Holder, the Trustee and the Paying Agent a notice of such Fundamental Change (a "**Fundamental Change Notice**") and (y) substantially contemporaneously therewith, issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Fundamental Change Notice.

Such Fundamental Change Notice must state:

(i) briefly, the events causing such Fundamental Change;

(ii) the effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per $1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.08**);

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with the Indenture; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right*.

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased*. To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices*. Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, *however*, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice*. A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and

(3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, *however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.09**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note

in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price*. Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be redeemed are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Compliance with Applicable Securities Laws*. To the extent applicable, the Company will comply with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in the Indenture.

(I) *Repurchase in Part*. Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

SECTION 4.03. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES ON THE OPTIONAL REPURCHASE DATES.

(A) *Right of Holders to Require the Company to Repurchase Notes on each Optional Repurchase Date*. Subject to the terms of this **Section 4.03**, each Holder will have the right (the "**Optional Repurchase Right**") to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) on each of November 1, 2023, November 1, 2028, November 1, 2033, November 1, 2038 and November 1, 2043 (or, if any such date is not a Business Day, the next Business Day) (each such date, after giving effect to the immediately preceding parenthetical, an "**Optional Repurchase Date**") for a cash repurchase price equal to the Optional Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before an Optional Repurchase Date (including as a result of the payment of the related Optional Repurchase Price), then (i) the Company may not repurchase any Notes otherwise subject to Optional Repurchase on such Optional Repurchase Date pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Optional Repurchase to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes

in accordance with the Depositary Procedures).

(C) *Optional Repurchase Price*. The Optional Repurchase Price for any Note to be repurchased on any Optional Repurchase Date pursuant to an Optional Repurchase is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, such Optional Repurchase Date; *provided*, *however*, that if such Optional Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Optional Repurchase, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Optional Repurchase Date is before such Interest Payment Date); and (ii) the Optional Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Optional Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.04(C)** and such Optional Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.04(C)**, on the next Business Day to Holders at of the Close of Business on the immediately preceding Regular Record Date; and (y) the Optional Repurchase Price will include interest, if any, on Notes to be repurchased from, and including, such Interest Payment Date.

(D) *Optional Repurchase Date Notice*. No later than twenty (20) Business Days before each Optional Repurchase Date, the Company will (x) send to each Holder, the Trustee and the Paying Agent a notice (an "**Optional Repurchase Date Notice**") and (y) substantially contemporaneously therewith, issue a press release through such national newswire service as the Company then uses or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Optional Repurchase Date Notice.

Such Optional Repurchase Date Notice must state:

(i) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.03**, including the deadline for exercising the Optional Repurchase Right with respect to such Optional Repurchase Date and the procedures for submitting and withdrawing an Optional Repurchase Notice,

(ii) such Optional Repurchase Date;

(iii) the Optional Repurchase Price and that the Holder of any Note at the Close of Business on the Regular Record Date immediately before such Optional Repurchase Date will be entitled to receive, on the Interest Payment Date falling on such Optional Repurchase Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date;

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) the current Conversion Rate;

(vi) that Notes for which an Optional Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Optional Repurchase Price;

(vii) that Notes (or any portion thereof) that are subject to an Optional Repurchase Notice that has been duly tendered may be converted (if otherwise then convertible pursuant to **Article 5**) only if such Optional Repurchase Notice is withdrawn in accordance with the Indenture; and

(viii) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver an Optional Repurchase Date Notice nor any defect in an Optional Repurchase Date Notice will limit the Optional Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Optional Repurchase.

(E) *Procedures to Exercise the Optional Repurchase Right*.

(i) *Delivery of Optional Repurchase Notice and Notes to Be Repurchased*. To exercise its Optional Repurchase Right with respect to an Optional Repurchase Date for a Note, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before such Optional Repurchase Date (or such later time as may be required by law), a duly completed, written Optional Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Optional Repurchase Notice that it receives.

(ii) *Contents of Optional Repurchase Notices*. Each Optional Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Optional Repurchase Right with respect to such principal amount of such Note;

provided, *however*, that if such Note is a Global Note, then such Optional Repurchase Notice must comply with the Depositary Procedures (and any such Optional Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.03(E)**).

(iii) *Withdrawal of Optional Repurchase Notice*. A Holder that has delivered an Optional Repurchase Notice with respect to a Note for an Optional Repurchase Date may withdraw such Optional Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before such Optional Repurchase Date. Such withdrawal notice must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and

(3) the principal amount of such Note, if any, that remains subject to such Optional Repurchase Notice, which must be an Authorized Denomination;

provided, *however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.03(E)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.09**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(F) *Payment of the Optional Repurchase Price*. Without limiting the Company's obligation to deposit the Optional Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Optional Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to an Optional Repurchase to be paid to the Holder thereof on or before the later of (i) the applicable Optional Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable as described in **Section 4.03(C)** on any Note to be repurchased pursuant to an Optional Repurchase must be paid as so described regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.03(F)**.

(G) *Compliance with Applicable Securities Laws*. To the extent applicable, the Company will comply with all federal and state securities laws in connection with an Optional Repurchase (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Optional Repurchase in the manner set forth in the Indenture.

(H) *Repurchase in Part*. Subject to the terms of this **Section 4.03**, Notes may be repurchased pursuant to an Optional Repurchase in part, but only in Authorized Denominations. Provisions of this **Section 4.03** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

SECTION 4.04. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *No Right to Redeem Before November 1, 2023*. The Company may not redeem the Notes at its option at any time before November 1, 2023.

(B) *Right to Redeem the Notes on or After November 1, 2023*. Subject to the terms of this **Section 4.04**, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after November 1, 2023, for a cash purchase price equal to the Redemption Price.

(C) *Redemption Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to **Section 4.04(E)**, on such Redemption Date), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section 4.04**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(D) *Redemption Date*. The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than sixty (60), nor less than thirty (30), calendar days after the Redemption Notice Date for such Redemption.

(E) *Redemption Price*. The Redemption Price for any Note called for Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided, however,* that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.04(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.04(C)**, on the next Business Day to Holders at of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date.

(F) *Redemption Notice*. To call any Notes for Redemption, the Company must send to each applicable Holder of such Notes (and to any beneficial owner of a Global Note, if required by applicable law), the Trustee and the Paying Agent a written notice of such Redemption (a "**Redemption Notice**").

Such Redemption Notice must state:

(i) that the Notes have been called for Redemption, briefly describing the Company's Redemption right under the Indenture;

(ii) the Redemption Date for such Redemption;

(iii) the Redemption Price per $1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.04(E)**);

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) that Notes called for Redemption may be converted at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);

(vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption;

(vii) that Notes called for Redemption must be delivered to the Paying Agent (in the case of Physical Notes) or the Depositary Procedures must be complied with (in the case of Global Notes) for the Holder thereof to be entitled to receive the Redemption Price; and

(viii) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee and the Paying Agent.

(G) *Selection, Conversion and Transfer of Notes to be Redeemed in Part*. If less than all Notes then outstanding are called for Redemption, then:

(i) the Notes to be redeemed will be selected by the Company as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Company considers fair and appropriate; and

(ii) if only a portion of a Note is subject to Redemption and such Note is converted in part, then the converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(H) *Payment of the Redemption Price*. Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the later of (i) the applicable Redemption Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the Redemption, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be redeemed are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.04(E)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.04(H)**.

ARTICLE 5. CONVERSION

SECTION 5.01. RIGHT TO CONVERT.

(A) *Generally.* Subject to the provisions of this **Article 5**, each Holder may, at its option, convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part*. Subject to the terms of the Indenture, Notes may be converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted*.

(i) *Generally*. A Holder may convert its Notes at any time until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date.

(ii) *Limitations and Closed Periods*. Notwithstanding anything to the contrary in the Indenture or the Notes:

(1) Notes may be surrendered for conversion only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be converted after the Close of Business on the Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.04**, then the Holder of such Note may not convert such Note after the Close of Business on the Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with the Indenture; and

(4) if a Fundamental Change Repurchase Notice or Optional Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** or **4.03(E)**, respectively, with respect to any Note, then such Note may not be converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)** or **4.03(E)**, as applicable; or (c) the Company fails to pay

the Fundamental Change Repurchase Price or Optional Repurchase Price, as applicable, for such Note in accordance with the Indenture.

SECTION 5.02. CONVERSION PROCEDURES.

(A) *Generally*.

(i) *Global Notes*. To convert a beneficial interest in a Global Note, the owner of such beneficial interest must (1) comply with the Depositary Procedures for converting such beneficial interest (at which time such conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D)**.

(ii) *Physical Notes*. To convert all or a portion of a Physical Note, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the conversion notice attached to such Physical Note or a facsimile of such conversion notice; (2) deliver such Physical Note to the Conversion Agent (at which time such conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D)**.

(B) *Effect of Converting a Note*. At the Close of Business on the Conversion Date for a Note (or any portion thereof), such Note (or such portion thereof) will be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.03(A)(i)**.

(C) *Holder of Record of Conversion Shares*. The Person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(D) *Taxes and Duties.* If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion; *provided*, *however*, that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(E) *Conversion Agent to Notify Company of Conversions*. If any Note is submitted for conversion to the Conversion Agent or the Conversion Agent receives any notice of conversion with respect to a Note, then the Conversion Agent will promptly notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

SECTION 5.03. SETTLEMENT UPON CONVERSION.

(A) *Conversion Consideration*.

(i) *Generally*. Subject to Section 5.03(A)(ii), Section 5.03(A)(iii) and Section 5.03(A)(iv), the type and amount of consideration (the "**Conversion Consideration**") due in respect of any Note (or portion thereof) to be converted will be (1) a number of shares of Common Stock, per $1,000 principal amount of such Note to be converted, equal to the Conversion Rate in effect on the Conversion Date for such conversion; and (2) a cash amount equal to unpaid interest that has accrued on such Note (or such portion thereof) to, but excluding, the date the Company settles such conversion (unless such Conversion Date is after a Regular Record Date and before the next Interest Payment Date, in which case (y) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such conversion, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Conversion Date is before such Interest Payment Date); and (z) the Company will not pay any separate cash amount for interest as part of the consideration due upon such conversion).

(ii) *Cash in Lieu of Fractional Shares*. If the number of shares of Common Stock deliverable pursuant to **Section 5.03(A)(i)** upon conversion of any Note is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) the Daily VWAP per share of Common Stock on the Conversion Date for such conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day).

(iii) *Conversion of Multiple Notes by a Single Holder.* If a Holder converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder.

(iv) *Cash Settlement Requirement.* The Company will use its reasonable best efforts to increase the number of authorized shares of Common Stock to an amount (such amount, the "**Maximum Number of Conversion Shares**") that is sufficient to cover the settlement of the conversion of all outstanding Notes (assuming, for these purposes, that there is added to the Conversion Rate the maximum number of Additional Shares that may be added thereto pursuant to **Section 5.08(A)**) (the first date on which the Company so increases the number of authorized shares of Common Stock and reserves a number of shares of Common Stock for issuance upon conversion of the Notes no less than the Maximum Number of Conversion Shares, the "**Authorized Share Effective Date**"). The Company will seek approval of its stockholders to amend the related provision of its restated certificate of incorporation, if not previously obtained, at each of its next three (3) regular annual meetings of its stockholders. The Company will endorse such approval in the related proxy materials. The Company will notify Holders, the Trustee and the Conversion Agent of the Authorized Share Effective Date promptly after it occurs. Notwithstanding anything to the contrary in the Indenture or the Notes, if (1) the

Conversion Date for any Note to be converted occurs before the Authorized Share Effective Date; and (2) the Conversion Rate in effect on such Conversion Date exceeds the Authorized Share Capped Conversion Rate in effect on such Conversion Date, then (x) the Company will settle such conversion in the manner set forth in **Section 5.03(A)(i)** (and no later than the date set forth in **Section 5.03(B)**, without giving effect to the proviso thereof) as if the Conversion Rate applicable to such conversion were instead equal to such Authorized Share Capped Conversion Rate; and (y) in addition to the consideration deliverable pursuant to the preceding **clause (x)**, the Company will also deliver, in settlement of such conversion, cash (the "**Cash Settlement Amount**") in an amount, per $1,000 principal amount of such Note to be converted, equal to the sum of the Daily Cash Settlement Amounts for each VWAP Trading Day in the Cash Settlement Amount Observation Period for such conversion; and (z) except as set forth in **Section 5.06**, the Company will deliver the Cash Settlement Amount no later than the second (2nd) Business Day immediately after the last VWAP Trading Day of such Cash Settlement Amount Observation Period.

(B) *Delivery of the Conversion Consideration*. Except as set forth in **Sections 5.06(A)** and **5.06(C)** or in the proviso to this sentence, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Holder on or before the second (2nd) Business Day immediately after the Conversion Date for such conversion; *provided, however*, that any Cash Settlement Amount forming part of such Conversion Consider payable pursuant to **Section 5.03(A)(iv)** will instead be paid in accordance with **clause (z)** of the final sentence of **Section 5.03(A)(iv)**.

(C) *Accrued Interest Notwithstanding Conversion.* Without limiting the Company's obligation to pay interest pursuant to **Section 5.03(A)(i)**, if a Holder converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note.

SECTION 5.04. COMPANY'S MANDATORY CONVERSION OPTION.

(A) *Mandatory Conversion*. Subject to **Section 5.04(D)**, if, at any time prior to the Maturity Date, the Daily VWAP per share of the Common Stock equals or exceeds one hundred and twenty-three 08/100 percent (123.08%) of the Conversion Price on each of at least twenty (20) VWAP Trading Days, whether or not consecutive, during any thirty (30) consecutive VWAP Trading Day period commencing on or after the Issue Date, then the Company will have the right (the "**Company Mandatory Conversion Right**"), exercisable at the Company's election, to cause all (and not less than all) Notes then outstanding to be automatically converted (any such conversion, a "**Mandatory Conversion**").

(B) *Mandatory Conversion Notice*. To exercise the Company Mandatory Conversion Right, the Company will send notice of the Company's election (a "**Mandatory Conversion Notice**") to Holders, the Trustee and the Conversion Agent no later than the fifth (5th) Business Day after the last VWAP Trading Day of such 30 consecutive VWAP Trading Day period.

Such Mandatory Conversion Notice must state:

(i) that the Notes have been called for Mandatory Conversion, briefly describing the Company Mandatory Conversion Right under the Indenture;

(ii) the Mandatory Conversion Date;

(iii) the current Conversion Rate;

(iv) the name and address of the Paying Agent and the Conversion Agent; and

(v) the CUSIP and ISIN numbers, if any, of the Notes.

(C) *Effect of Mandatory Conversion; Mandatory Conversion Date*. If the Company exercises the Company Mandatory Conversion Right in accordance with this **Section 5.04**, then a Conversion Date will automatically, and without the need for any action on the part of any Holder, the Trustee or the Conversion Agent, be deemed to occur, with respect to each Note then outstanding, on the Mandatory Conversion Date. The Mandatory Conversion Date will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than ten (10), Business Days after the Company sends the Mandatory Conversion Notice.

(D) *Mandatory Conversion Prohibited in Certain Circumstances*. Notwithstanding anything to the contrary in this **Section 5.04**, the Company may not exercise its Company Mandatory Conversion Right at any time during the period beginning on the effective date of a Fundamental Change or Make-Whole Fundamental Change and ending on the thirty-fifth (35th) Trading Day after such effective date (or, in the case of a Fundamental Change, ending on the related Fundamental Change Repurchase Date). In addition, notwithstanding anything to the contrary in this **Section 5.04**, the Company may not exercise its Company Mandatory Conversion Right unless all of the following conditions (collectively, the "**Equity Conditions**") are satisfied on each day from, and including, the date the Company sends the Mandatory Conversion Notice to, and including, the Mandatory Conversion Date:

(i) either (x) all shares of the Common Stock issuable upon Mandatory Conversion will be eligible for resale, by a person that is not an Affiliate of the Company, without registration under any applicable federal or state securities laws; or (y) a shelf registration statement registering the resale of the shares of Common Stock issuable upon conversion of the Notes is effective under the Securities Act and available for use by the persons to whom such shares are to be issued, and the Company expects such shelf registration statement to remain effective and so available for use from the date the Company sends the Mandatory Conversion Notice through the date that is thirty (30) calendar days following such Mandatory Conversion Date;

(ii) the Common Stock is listed on any Eligible Market and has not been suspended from trading on such Eligible Market (other than suspensions of not more than two (2) Trading Days and occurring before the applicable date of determination due to business announcements by the Company);

(iii) the delisting or suspension of the Common Stock is not pending and has not been threatened in writing by the applicable Eligible Market, and the Company is not then in violation of the then effective minimum listing maintenance requirements of such Eligible Market;

(iv) all shares of Common Stock issuable upon Mandatory Conversion may be issued in full without violating the listing rules of The Nasdaq Global Market or any other applicable Eligible Market on which the Common Stock is then listed or trading; and

(v) The Company has not defaulted on its obligation to convert any Note before the date the Company sends the Mandatory Conversion Notice, and no Default or Event of Default has occurred and is continuing.

If any of the Equity Conditions ceases to be satisfied at any time after the Company sends a Mandatory Conversion Notice, the Company will promptly (and no later than the scheduled Mandatory Conversion Date) notify Holders, the Trustee and the Conversion Agent of the same, specifying that the Mandatory Conversion ceases to apply. Except as set forth in the preceding sentence, the Company's issuance of a Mandatory Conversion Notice will be irrevocable.

SECTION 5.05. RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.

(A) *Stock Reserve*. At all times from and after the Authorized Share Effective Date, when any Notes are outstanding, the Company will reserve, out of its authorized but unissued and unreserved shares of Common Stock, a number of shares of Common Stock sufficient to permit the conversion of all then-outstanding Notes, assuming the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.08**.

(B) *Status of Conversion Shares; Listing*. Each Conversion Share delivered upon conversion of any Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each Conversion Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

SECTION 5.06. ADJUSTMENTS TO THE CONVERSION RATE.

(A) *Events Requiring an Adjustment to the Conversion Rate*. The Conversion Rate will be adjusted, without duplication, from time to time as follows:

(i) *Stock Dividends, Splits and Combinations*. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will be

adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or the Open of Business on such effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

For the avoidance of doubt, an adjustment made pursuant to this **Section 5.06(A)(i)** will become effective at the time set forth in the definition of CR_1 above. If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.06(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which the provisions set forth in **Sections 5.06(A)(iii)(1)** and **5.06(E)** will apply) entitling such holders, for a period of not more than forty-five (45) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

For the avoidance of doubt, an adjustment made pursuant to this **Section 5.06(A)(ii)** will become effective at the time set forth in the definition of CR_1 above. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the Ex-Dividend Date for the distribution of such rights, options or warrants not occurred.

For purposes of this **Section 5.06(A)(ii)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors.

(iii) *Spin-Offs and Other Distributed Property*.

(1) *Distributions Other than Spin-Offs*. If the Company distributes

shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(v) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to **Section 5.06(A)(i)** or **5.06(A)(ii)**;

(w) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to **Section 5.06(A)(iv)**;

(x) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.06(E)**;

(y) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to **Section 5.06(A)(iii)(2)**; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Board of Directors), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, *however*, that if FMV is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each

$1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

For the avoidance of doubt, an adjustment made pursuant to this **Section 5.06(A)(iii)(1)** will become effective at the time set forth in the definition of CR_1 above. To the extent such distribution is not so paid or made, or such rights, options or warrants are not exercised before their expiration (including as a result of being redeemed or terminated), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid or on the basis of the distribution of only such rights, options or warrants, if any, that were actually exercised, if at all.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interest, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), and such Capital Stock or equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, such Ex-Dividend Date (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price and Trading Day were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

The adjustment to the Conversion Rate pursuant to this **Section 5.06(A)(iii)(2)** will be calculated as of the last Trading Day of the Spin-Off Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off, with retroactive effect. If a Note is converted and the Conversion Date (or, in the case of a Capped Conversion, any VWAP Trading Day within the related Cash Settlement Amount Observation Period) occurs during the Spin-Off Valuation Period, then, notwithstanding anything to the contrary in the Indenture or the Notes, the Company will, if necessary, delay the settlement of such conversion (or, in the case of a Capped Conversion, settlement of the related Cash Settlement Amount) until the second (2nd) Business Day after the last day of the Spin-Off Valuation Period.

To the extent any dividend or distribution of the type set forth in this **Section 5.06(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, *however*, that if *D* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each $1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash

that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date. For the avoidance of doubt, an adjustment made pursuant to this **Section 5.06(A)(iv)** will become effective at the time set forth in the definition of CR_1 above.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock, and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{OS_0 \times SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the time (the "**Expiration Time**") such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the Expiration Time;

AC = the aggregate value (determined as of the Expiration Time by the Board of Directors) of all cash and other consideration paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (before giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices per of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.06(A)(v)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Rate pursuant to this **Section 5.06(A)(v)** will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If a Note is converted and the Conversion Date (or, in the case of a Capped Conversion, any VWAP Trading Day within the related Cash Settlement Observation Period) occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in the Indenture or the Notes, the Company will, if necessary, delay the settlement of such conversion (or, in the case of a Capped Conversion, settlement of the related Cash Settlement Amount) until the second (2nd) Business Day after the last day of the Tender/Exchange Offer Valuation Period.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Company being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases*.

(i) *Where Holders Participate in the Transaction or Event Without Conversion*. Notwithstanding anything to the contrary in **Section 5.06(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.06(A)** (other than a stock split or combination of the type set forth in **Section 5.06(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.06(A)(v)**) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date, effective date or Expiration Date, as applicable; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.06** or **Section 5.08**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in **Section 5.06**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) the issuance of any shares of Common Stock pursuant to any present

or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(3) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company not described in **clause (3)** above and outstanding as of the Issue Date;

(5) solely a change in the par value of the Common Stock; or

(6) accrued and unpaid interest on the Notes.

(C) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in the Indenture or the Notes, if:

(i) a Note is to be converted;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.06(A)** has occurred on or before the Conversion Date for such conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date;

(iii) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock; and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (and, for the avoidance of doubt, the shares issuable upon such conversion will not be entitled to participate in such event). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the second (2nd) Business Day after such first date.

(D) *Conversion Rate Adjustments where Converting Holders Participate in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in the Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.06(A)**;

(ii) a Note is to be converted;

(iii) the Conversion Date for such conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then (x) such Conversion Rate adjustment will not be given effect for such conversion; and (y) the shares of Common Stock issuable upon such conversion based on such unadjusted Conversion Rate will be entitled to participate in such dividend or distribution.

(E) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under the Indenture upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.06(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(F) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.06(A)** or **Section 5.08** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(G) *Equitable Adjustments to Prices*. Whenever any provision of the Indenture requires the Company to calculate the average of the Last Reported Sale Prices or Daily VWAPs, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), the Company will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to **Section 5.06(A)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(H) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of **Section 5.06(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(I) *Calculations*. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward to the nearest 1/10,000th), as applicable.

(J) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.06(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

SECTION 5.07. VOLUNTARY ADJUSTMENTS.

(A) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to this **Section 5.07**, then, at least fifteen (15) Business Days before such increase, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

SECTION 5.08. ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE FUNDAMENTAL CHANGE.

(A) *Generally*. If a Make-Whole Fundamental Change occurs on or before November 1, 2023 and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section 5.08**, the Conversion Rate applicable to such conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the effective date and the Stock Price of such Make-Whole Fundamental Change:

	Stock Price									
Effective Date	**$1.20**	**$1.54**	**$1.89**	**$2.23**	**$2.57**	**$2.92**	**$3.25**	**$3.63**	**$4.00**	**$4.99**
November 1, 2020	525.64	359.7317	250.8617	178.1821	119.0859	72.4926	37.9876	23.0387	12.6081	0
November 1, 2021	525.64	357.6538	247.4754	173.8772	114.9003	68.4128	33.9662	20.1223	10.9512	0
November 1, 2022	525.64	352.3512	238.83331	162.8907	105.3649	60.0176	26.4215	14.2233	7.5444	0
November 1, 2023…..	525.64	341.6583	221.4082	140.7382	81.4128	34.7735	0.0	0.0	0.0	0

If such effective date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the effective date is between two effective dates in the table above, then the number of Additional Shares will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table and the earlier and later effective dates in the table above, as applicable, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than $4.99 (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to **Section 5.08(B)**), or less than $1.20 (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in the Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds 833.3333 shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.06(A)**.

(B) *Adjustment of Stock Prices and Additional Shares.* The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in **Section 5.08(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.06(A)**. The numbers of Additional Shares in the table set forth in **Section 5.08(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.08(A)**.

(C) *Notice of the Occurrence of a Make-Whole Fundamental Change*. If a Make-Whole Fundamental Change occurs, then, promptly and in no event later than five (5) Business Days immediately after the effective date of such Make-Whole Fundamental Change, the Company will notify the Holders and the Trustee of the occurrence of such Make-Whole Fundamental Change and of such effective date, briefly stating the circumstances under which the Conversion Rate will be increased pursuant to this **Section 5.08** in connection with such Make-

Whole Fundamental Change.

(D) *Settlement of Cash Make-Whole Fundamental Changes.* For the avoidance of doubt, if holders of Common Stock receive solely cash in a Make-Whole Fundamental Change, then, pursuant to **Section 5.09**, conversions of Notes will thereafter be settled no later than the third (3rd) Business Day after the relevant Conversion Date.

SECTION 5.09. EFFECT OF COMMON STOCK CHANGE EVENT.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in the Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 5.04**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definition of "Fundamental Change" and "Make-Whole Fundamental Change," the terms "Common Stock" and "common equity" will be deemed to mean the common equity, if any, forming part of such Reference Property; and

(3) for these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith

by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average, per share of the Common Stock, of the types and amounts of consideration actually received, per share of the Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent of the weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent conversions of Notes in the manner set forth in this **Section 5.09**; (y) provide for anti-dilution and other adjustments to the Conversion Rate pursuant to **Section 5.08(A)** that are as nearly as equivalent as possible to, and in a manner consistent with this **Section 5.09**; and (z) contain such other provisions as the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions the Company reasonably determines are appropriate to preserve the economic interests of the Holders, including the right of Holders to require the Company to repurchase their Notes pursuant to **Section 4.02** or **4.03**, as the Board of Directors, acting in good faith and in a commercially reasonable manner, determines is necessary by reason of the foregoing.

(B) *Notice of Common Stock Change Events*. The Company will provide notice of each Common Stock Change Event to Holders, the Trustee and the Conversion Agent no later than the effective date of such Common Stock Change Event.

(C) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.09**.

SECTION 5.10. RESPONSIBILITY OF THE TRUSTEE.

The Trustee and any other Conversion Agent will not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent will not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent will be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock

certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Neither the Trustee nor any other agent acting under the Indenture (other than the Company, if acting in such capacity) will have any obligation to make any calculation or to determine whether the Notes may be surrendered for conversion pursuant to the Indenture, or to notify the Company or the Depositary or any of the Holders if the Notes have become convertible pursuant to the terms of the Indenture.

ARTICLE 6. SUCCESSORS

This **Article 6** will apply to the Notes in lieu of Article 5 of the Base Indenture, which will be deemed to be replaced with this **Article 6**, *mutatis mutandis*.

SECTION 6.01. WHEN THE COMPANY MAY MERGE, ETC.

(A) *Generally*. The Company will not consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person (a "**Business Combination Event**"), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company's obligations under the Indenture and the Notes; and

(ii) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

(B) *Delivery of Officer's Certificate and Opinion of Counsel to the Trustee*. Before the effective time of any Business Combination Event, the Company will deliver to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in the Indenture have been satisfied.

SECTION 6.02. SUCCESSOR CORPORATION SUBSTITUTED.

At the effective time of any Business Combination Event that complies with **Section 6.01**, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under the Indenture and the Notes with the same effect as if such Successor Corporation had been named as the Company in the Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under the Indenture and the Notes.

ARTICLE 7. DEFAULTS AND REMEDIES

This **Article 7** will apply to the Notes in lieu of Article 6 of the Base Indenture, which will be deemed to be replaced with this **Article 7**, *mutatis mutandis*.

SECTION 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or Optional Redemption or otherwise) of the principal of, or the Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for, any Note;

(ii) a default for thirty (30) days in the payment when due of interest on any Note;

(iii) the Company's failure to deliver, when required by the Indenture, a Fundamental Change Notice, an Optional Repurchase Date Notice or a notice pursuant to **Section 5.08(C)**, if such failure is not cured within five (5) Business Days after its occurrence;

(iv) a default in the Company's obligation to convert a Note in accordance with **Article 5** upon the exercise of the conversion right with respect thereto;

(v) a default in the Company's obligations under **Article 6**;

(vi) a default in any of the Company's obligations or agreements under the Indenture or the Notes (other than a default set forth in **clause (i)**, **(ii)**, **(iii)**, **(iv)** or **(v)** of this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";

(vii) a default by the Company or any of its Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least five million dollars ($5,000,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal of, or premium or interest on, any of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise; or

(2) results in such indebtedness becoming or being declared due and

payable before its stated maturity;

(viii) one or more final judgments being rendered against the Company or any of its Subsidiaries for the payment of at least five million dollars ($5,000,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance), where such judgment is not discharged or stayed within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(x)**, such order or decree remains unstayed and in effect for at least sixty (60) consecutive days.

(B) *Cause Irrelevant*. Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

SECTION 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration*. Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** with respect to the Company and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration*. Notwithstanding anything to the contrary in the Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

SECTION 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally*. Notwithstanding anything to the contrary in the Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a "**Reporting Event of Default**") pursuant to **Section 7.01(A)(vi)** arising from the Company's failure to comply with **Section 3.02** will, for each of the first one hundred and eighty (180) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the one hundred and eighty first (181st) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such one hundred and eighty first (181st) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.04(B)**).

(B) *Amount and Payment of Special Interest*. Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days beginning on, and including, the date on which such Reporting Event of Default first occurs and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof. For the avoidance of

doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note.

(C) *Notice of Election*. To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes of the report(s) that the Company failed to file with or furnish to the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer*. If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default*. No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

SECTION 7.04. OTHER REMEDIES.

(A) *Trustee May Pursue All Remedies*. If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of the Indenture or the Notes.

(B) *Procedural Matters*. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

SECTION 7.05. WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i)**, **(ii)**, **(iv)** or **(vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

SECTION 7.06. CONTROL BY MAJORITY.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Notes, or that, subject to Section 7.1 of the Base Indenture, the Trustee determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee in liability (it being understood that the Trustee does not have affirmative duty to determine whether any actions are prejudicial to any Holder), or for which the Trustee has not been provided security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such direction.

SECTION 7.07. LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to the Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for, or interest on, any Notes; or (y) the Company's obligations to convert any Notes pursuant to **Article 5**), unless:

(A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;

(B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding have delivered a request to the Trustee to pursue such remedy;

(C) such Holder or Holders have offered and, if requested, provided to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such request;

(D) the Trustee has not complied with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding have not delivered to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use the Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of the Indenture complies with the preceding sentence.

SECTION 7.08. ABSOLUTE RIGHT OF HOLDERS TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in the Indenture or the Notes, the right of each Holder of a Note to receive payment or delivery, as applicable, of the principal of, or the Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon conversion of,

such Note on or after the respective due dates therefor provided in the Indenture and the Notes, or to bring suit for the enforcement of any such payment or delivery on or after such respective due dates, will not be impaired or affected without the consent of such Holder.

SECTION 7.09. COLLECTION SUIT BY TRUSTEE.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i)**, **(ii)** or **(iv)** of **Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for, or interest on, or Conversion Consideration due pursuant to **Article 5** upon conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in Section 7.7 of the Base Indenture.

SECTION 7.10. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to Section 7.7 of the Base Indenture. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in the Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 7.11. PRIORITIES.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article 7**:

First: to the Trustee and its agents and attorneys for amounts due under Section 7.7 of the Base Indenture, including payment of all fees, compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes,

including the principal of, or the Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for, or any interest on, or any Conversion Consideration due upon conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.11**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

SECTION 7.12. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under the Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit, and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided*, *however*, that this **Section 7.12** does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section 7.08** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

ARTICLE 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

This **Article 8** will apply to the Notes in lieu of Article 8 of the Base Indenture, which will be deemed to be replaced with this **Article 8**, *mutatis mutandis*.

SECTION 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company and the Trustee may amend or supplement the Indenture or the Notes without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in the Indenture or the Notes (as determined in good faith by the Company);

(B) add guarantees with respect to the Company's obligations under the Indenture or the Notes;

(C) secure the Notes;

(D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;

(E) provide for the assumption of the Company's obligations under the Indenture and

the Notes pursuant to, and in compliance with, **Article 6** of this Second Supplemental Indenture;

(F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with a Common Stock Change Event;

(G) evidence or provide for the acceptance of the appointment, under the Indenture, of a successor Trustee;

(H) [reserved];

(I) provide for or confirm the issuance of additional Notes pursuant to **Section 2.02(B)**;

(J) comply with any requirement of the SEC in connection with effecting or maintaining the qualification of the Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect; or

(K) make any other change to the Indenture or the Notes that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect (as determined by the Company in good faith).

SECTION 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally*. Subject to **Sections 8.01**, **7.05** and **7.08** and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, without the consent of each affected Holder, no amendment or supplement to the Indenture or the Notes, or waiver of any provision of the Indenture or the Notes, may:

(i) reduce the principal, or extend the stated maturity, of any Note;

(ii) reduce the Redemption Price, Fundamental Change Repurchase Price or Optional Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the time for the payment, of interest on any Note;

(iv) make any change that adversely affects the conversion rights of any Note;

(v) impair the rights of any Holder set forth in **Section 7.08** (as such section is in effect on the Issue Date);

(vi) change the ranking of the Notes;

(vii) make any note payable in money, or at a place of payment, other than that stated in the Indenture or the Note;

(viii) reduce the amount of Notes whose Holders must consent to any amendment,

supplement, waiver or other modification; or

(ix) make any direct or indirect change to any amendment, supplement, waiver or modification provision of the Indenture or the Notes that requires the consent of each affected Holder.

For the avoidance of doubt, pursuant to **clauses (i)**, **(ii)**, **(iii)** and **(iv)** of this **Section 8.02(A)**, no amendment or supplement to the Indenture or the Notes, or waiver of any provision of the Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date, Optional Repurchase Date or the Maturity Date or upon conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment*. A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

SECTION 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

Promptly after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

SECTION 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents*. The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates*. The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided*, *however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents*. For the avoidance of doubt, each reference in the Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect*. Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

SECTION 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.3 of the Base Indenture, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

SECTION 8.06. TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided*, *however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and (subject to Sections 7.1 and 7.2 of the Base Indenture) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by the Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

ARTICLE 9. SATISFACTION AND DISCHARGE

This **Article 9** will apply to the Notes in lieu of Article 9 of the Base Indenture, which will be deemed to be replaced with this **Article 9**, *mutatis mutandis*.

SECTION 9.01. TERMINATION OF COMPANY'S OBLIGATIONS.

The Indenture will be discharged with respect to the Notes, and will cease to be of further effect as to all Notes issued under the Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to Section 2.8 of the Base Indenture) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, an Optional Repurchase Date, the Maturity Date, upon conversion or otherwise) for an amount of cash or

Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent or its designee), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be converted, Conversion Consideration) sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to Section 2.8 of the Base Indenture);

(C) the Company has paid all other amounts payable by it under the Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of the Indenture have been satisfied;

provided, *however*, that Article 7 of the Base Indenture and **Section 10.01** will survive such discharge and, until no Notes remain outstanding, Section 2.12 of the Base Indenture and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of the Indenture.

SECTION 9.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

SECTION 9.03. REINSTATEMENT.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of the Indenture pursuant to **Section 9.01** will be rescinded; *provided*, *however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

ARTICLE 10.MISCELLANEOUS

SECTION 10.01.NOTICES.

Any notice or communication by the Company or the Trustee to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Verastem, Inc.
117 Kendrick Street
Suite 500
Needham, MA 02494
Attention: General Counsel

with a copy (which will not constitute notice) to:

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Attention: Marko S. Zatylny, Esq.

If to the Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Facsimile: (302) 636-4145
Attention: Verastem, Inc. Administrator

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

All notices or communications required to be made to a Holder pursuant to the Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first

class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided*, *however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in the Indenture or the Notes, whenever any provision of the Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities.

SECTION 10.02.NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

SECTION 10.03.GOVERNING LAW; WAIVER OF JURY TRIAL.

THE INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE INDENTURE OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED BY THE INDENTURE OR THE NOTES.

SECTION 10.04.SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon the Indenture or the

transactions contemplated by the Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in **Section 10.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

SECTION 10.05.NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither the Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret the Indenture or the Notes.

SECTION 10.06.SUCCESSORS.

All agreements of the Company in the Indenture and the Notes will bind its successors. All agreements of the Trustee in the Indenture will bind its successors.

SECTION 10.07.FORCE MAJEURE.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under the Indenture or the Notes by reason of any occurrence beyond its control (including, without limitation, any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, act of terrorism, epidemic or pandemic or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

SECTION 10.08.U.S.A. PATRIOT ACT.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. Patriot Act.

SECTION 10.09.CALCULATIONS.

Except as otherwise provided in the Indenture, the Company will be responsible for making all calculations called for under the Indenture or the Notes, including determinations of the Last Reported Sale Price, Daily VWAP, accrued interest (including any Special Interest) on the Notes and the Conversion Rate.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee will promptly forward a copy of each such schedule to a Holder upon its written request therefor.

SECTION 10.10.SEVERABILITY.

If any provision of the Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of the Indenture or the Notes will not in any way be affected or impaired thereby.

SECTION 10.11.COUNTERPARTS.

The parties may sign any number of copies of this Second Supplemental Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Second Supplemental Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

SECTION 10.12.TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the headings of the Articles and Sections of this Second Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of the Indenture and will in no way modify or restrict any of the terms or provisions of the Indenture.

SECTION 10.13.WITHHOLDING TAXES.

Each Holder of a Note agrees that, in the event that it is deemed to have received a distribution that is subject to U.S. federal income tax as a result of an adjustment or the non-occurrence of an adjustment to the Conversion Rate, any resulting withholding taxes (including backup withholding) may be withheld from interest and payments upon conversion, repurchase, redemption, or maturity of the Notes. In addition, each Holder of a Note agrees that if any withholding taxes (including backup withholding) are paid on behalf of such Holder, then those withholding taxes may be set off against payments of cash or the delivery of other Conversion Consideration, if any, in respect of the Notes (or, in some circumstances, any payments on the Common Stock) or sales proceeds received by, or other funds or assets of, such Holder.

SECTION 10.14.TRUST INDENTURE ACT CONTROLS.

To the extent any provision of the Indenture limits, qualifies or conflicts with another provision that is required to be included in the Indenture by the Trust Indenture Act, then required provision of the Trust Indenture Act will control.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed as of the date first written above.

VERASTEM, INC.

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

[Signature Page to Second Supplemental Indenture]

EXHIBIT A

FORM OF NOTE

[*Insert Global Note Legend, if applicable*]

VERASTEM, INC.

5.00% Series 2 Convertible Senior Note due 2048

CUSIP No.: [___] Certificate No. [___]
ISIN No.: [___]

Verastem, Inc., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [___] dollars ($[___]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)][*] on November 1, 2048 and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: May 1 and November 1 of each year, commencing on [*date*].

Regular Record Dates: April 15 and October 15.

Additional provisions of this Note are set forth on the other side of this Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

[*] Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, Verastem, Inc. has caused this instrument to be duly executed as of the date set forth below.

VERASTEM, INC.

Date: _____ By: _____
Name:
Title:

Date: _____ By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Wilmington Trust, National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

VERASTEM, INC.

5.00% Series 2 Convertible Senior Note due 2048

This Note is one of a duly authorized issue of notes of Verastem, Inc., a Delaware corporation (the "**Company**"), designated as its 5.00% Series 2 Convertible Senior Notes due 2048 (the "**Notes**"), all issued or to be issued pursuant to an indenture, dated as of October 17, 2018, (the "**Base Indenture**"), as supplemented by the second supplemental indenture (the "**Second Supplemental Indenture**, dated as of November [●], 2020, and the Base Indenture, as so supplemented, and as may be further amended, supplemented or modified from time to time, the "**Indenture**"), and between the Company and Wilmington Trust, National Association, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. This Note will accrue interest at a rate and in the manner set forth in Section 2.04 of the Indenture. Stated Interest on this Note will begin to accrue from, and including, November 1, 2020.

2. **Maturity**. This Note will mature on November 1, 2048, unless earlier repurchased, redeemed or converted.

3. **Method of Payment**. Cash amounts due on this Note will be paid in the manner set forth in Section 2.03 of the Second Supplemental Indenture.

4. **Persons Deemed Owners**. The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges**. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes upon a Fundamental Change**. If a Fundamental Change occurs, then each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Second Supplemental Indenture.

7. **Right of Holders to Require the Company to Repurchase Notes on the Optional Repurchase Dates**. Each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) on each

Optional Repurchase Date for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Indenture.

8. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.04 of the Second Supplemental Indenture.

9. **Conversion**. The Holder of this Note may convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture. The Company will have the right to cause the automatic conversion of all Notes then outstanding in the manner, and subject to the terms, set forth in Section 5.04 of the Second Supplemental Indenture.

10. **When the Company May Merge, Etc**. Article 6 of the Second Supplemental Indenture places limited restrictions on the Company's ability to be a party to a certain transaction.

11. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

12. **Amendments, Supplements and Waivers**. The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Article 8 of the Indenture.

13. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

14. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

15. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

16. **Governing Law**. THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Verastem, Inc.
117 Kendrick Street
Suite 500
Needham, MA 02494
Attention: Chief Financial Officer

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE[*]

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[___]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

[*] Insert for Global Notes only.

CONVERSION NOTICE

VERASTEM, INC.

5.00% Series 2 Convertible Senior Notes due 2048

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

☐ the entire principal amount of

☐ $_____* aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

VERASTEM, INC.

5.00% Series 2 Convertible Senior Notes due 2048

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $_____* aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

OPTIONAL REPURCHASE NOTICE

VERASTEM, INC.

5.00% Series 2 Convertible Senior Notes due 2048

Subject to the terms of the Indenture, by executing and delivering this Optional Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Optional Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $_____* aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned directs the Company to purchase the above-referenced principal amount on (check one):

☐ November 1, 2023 ☐ November 1, 2028 ☐ November 1, 2033

☐ November 1, 2038 ☐ November 1, 2043

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Optional Repurchase Price will be paid.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

VERASTEM, INC.

5.00% Series 2 Convertible Senior Notes due 2048

Subject to the terms of the Indenture, the undersigned Holder of the within Note assigns to:

Name: _____

Address: _____

Social security or tax identification number: _____

the within Note and all rights thereunder irrevocably appoints:

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature Guarantee Medallion Program

By: _____

Authorized Signatory

EXHIBIT B

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

Exhibit 10.1

CONFIDENTIAL

FINAL

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

SECURA BIO, INC. ("PURCHASER") and

VERASTEM, INC. ("SELLER")

Dated as of August 10, 2020

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. OMISSIONS ARE DESIGNATED [***]

TABLE OF CONTENTS

EXHIBITS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of August 10, 2020, by and between:

(A) Secura Bio, Inc., a Delaware corporation ("Purchaser") and

(B) Verastem, Inc., a Delaware corporation ("Seller").

The capitalized terms used in this Agreement are defined in Exhibit A hereto, unless otherwise defined herein.

RECITALS

WHEREAS, Seller and Verastem Europe GmbH, a wholly-owned subsidiary of Seller incorporated in Germany (the "Seller Subsidiary" and, together with Seller, the "Seller Entities") are engaged in, among other things, certain activities relating to the Business; and

WHEREAS, Seller desires to sell to, or cause the Seller Subsidiary to sell to, Purchaser, and Purchaser desires to purchase from the Seller Entities, certain assets of the Seller Entities used in the Business, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual representations, warranties, covenants and promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

THE TRANSACTIONS

1.1 Purchased Assets. Subject to the terms and conditions of this Agreement (including Section 1.4 and Section 1.5), at the Closing, Seller shall, and shall cause the Seller Entities (including the Seller Subsidiary), as applicable, to, sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase from the Seller Entities, all of their respective right, title and interest in, to and under all assets of the Seller Entities used or held for use primarily in the operation of, or otherwise primarily relating to the Business or any of the Products (*provided, that*, with respect to Intellectual Property Rights and assets described in Section 1.1(b) below, Seller shall, and shall cause the Seller Entities (including the Seller Subsidiary), as applicable, to, sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase from the Seller Entities, all of their respective right, title and interest in, to and under all such Intellectual Property Rights and assets of the Seller Entities used or held for use in the operation of, or otherwise relating to the Business or any of the Products), including the following (collectively, the "Purchased Assets"):

(a) Purchased Inventory. Except for the Excluded Inventory, all inventory related to the Business or any of the Products wherever located, including the items of inventory described in Schedule 1.1(a) and owned by the Seller Entities as of the Closing Date

(collectively, the "Purchased Inventory"), and any and all rights to market and sell all such Purchased Inventory;

(b) Intellectual Property. (i) The Seller Intellectual Property and (ii) all rights and interests of any of the Seller Entities in, to and under any Licensed Intellectual Property Rights, together with (iii) all rights to enforce the Intellectual Property Rights described in clauses (i) – (ii) and all income, royalties, milestone payments, other license or sublicense-related rights to receive damages and payments due or payable as of the Closing or thereafter, including damages and payments for past, present or future infringements, violations or misappropriations thereof, the right to seek, recover and secure damages for past, present or future infringements, violations or misappropriations thereof and any and all corresponding rights and remedies therein under the laws of all jurisdictions that, now or hereafter, may be secured throughout the world; *provided*, *however*, that this Section 1.1(b) expressly excludes the any rights of the Seller Entities with respect to the Contingent Payments;

(c) Contracts. The Material License Agreements and the Contracts identified on Schedule 1.1(c) and any other Contracts primarily related to the Business or Products entered into by the Seller Entities prior to the Closing in compliance with Section 7.1 (collectively, the "Assigned Contracts");

(d) Contract Claims. All claims and other rights arising from any of the Assigned Contracts, including any of the foregoing relating to the performance or breach by third parties of their obligations under the Assigned Contracts that occur after the Closing and in each case, to the extent relating to any Assumed Liability;

(e) IT Hardware. All information technology hardware assets identified on Schedule 1.1(e);

(f) Regulatory Documentation. All Regulatory Documentation to the extent used or held for use in the operation of, or otherwise relating to, the Business or any of the Products or any filing or submission for Regulatory Approval of any of the Products.

(g) Clinical Trials. All Clinical Trials conducted in respect of the Business or any of the Products, and all data, materials and reports to the extent related thereto.

(h) Books and Records. All other design documents, certificates of analysis files, product specifications, validation documentation, packaging specifications, batch records, quality control standards, customer lists, sales, licensing, sublicensing, royalties, milestone and other payment-related data, information and reports, including all information, data and reports from or with respect to sales activities, sales representatives, customer and sales leads, customer and physician visit and meeting reports, in each case, to the extent related to the Business, any of the Products or the Purchased Assets, on whatever medium (including paper and electronic media) and all books of account, general and financial records of or to the extent related to the Business or any of the Products (other than minute books, organizational documents, stock records and similar records of the Seller Entities) (collectively, the "Books and Records") in the possession of any of the Seller Entities;

(i) Equipment and Machinery. All equipment and machinery identified on Schedule 1.1(i), and the spare parts to the extent primarily related to such equipment and machinery;

(j) Sales and Promotional Items. All sales and promotional literature, collateral, brochures, mailers, forms, displays, documentation, manuals and other sales-related materials used or held for use in the operation of, or otherwise related to, the Business or any of the Products;

(k) Goodwill. All goodwill of the Seller Entities of every kind and description pertaining to the Business, together with the exclusive right of Purchaser to represent itself as carrying on the Business in succession to the Seller Entities;

(l) Regulatory Approvals. All Regulatory Approvals of the Seller Entities related to the Business or any of the Products, it being expressly understood that if a Regulatory Application is not transferrable or cannot be transferred, then any Marketing Authorization related to such Regulatory Application shall be transferred by the Seller Entities to Purchaser or its Affiliates at the time when the Marketing Authorization is issued;

(m) Prepaid Expenses. All deposits and prepaid expenses with respect to any of the Assigned Contracts; and

(n) Other Assets. The other assets of the Seller Entities identified on Schedule 1.1(n).

1.2 Excluded Assets.

(a) Notwithstanding any other provision of this Agreement, the Purchased Assets shall not include, and the Seller Entities hereby retain and shall not sell, transfer, convey, assign or deliver to Purchaser, any property or assets of the Seller Entities not expressly set forth in Section 1.1 or any property or assets specifically set forth below (collectively, the "Excluded Assets"), which include the following:

(i) any cash, checks, money orders, marketable securities, short-term instruments and other cash equivalents, funds in time and demand deposits or similar accounts, and any evidence of indebtedness issued or guaranteed by any Governmental Authority, in each case, held by the Seller Entities (whether or not arising from the conduct of the Business);

(ii) any accounts receivable of the Seller Entities, including any accounts receivable of the Business as of the Closing (collectively, the "Accounts Receivable");

(iii) the items of inventory in the quantities described in Schedule 1.2(a)(iii) (the "Excluded Inventory");

(iv) the Seller Marks;

(v) any Intellectual Property Rights of the Seller Entities other than the Seller Intellectual Property;

(vi) (A) all Tax losses and credits, Tax loss and credit carry forwards and other Tax attributes of the Seller Entities, and (B) all deposits or advance payments with respect to Taxes, and any claims, rights and interest in and to any refund, credit or reduction of Taxes, in each case with respect to the Purchased Assets for any Pre-Closing Tax Period;

(vii) all Tax Returns and other Tax records of the Seller Entities or their Affiliates not relating exclusively to the Business, the Purchased Assets or the Assumed Liabilities;

(viii) all intercompany accounts receivable and intercompany notes where the obligor is a Seller Entity or any Affiliate of a Seller Entity;

(ix) any claims under insurance policies maintained by any Seller Entities or their Affiliates;

(x) any laptops, desktops, computer peripherals or related computer hardware other than the assets included among the Purchased Assets pursuant to Section 1.1(i) above;

(xi) all rights of the Seller Entities under this Agreement and any other Transaction Agreement;

(xii) the lease agreement, dated as of April 15, 2014 and amended as of February 15, 2018, for approximately 27,810 square feet of office space in Needham, Massachusetts; and

(xiii) the assets of the Seller Entities identified on Schedule 1.2.

(b) Without limiting Purchaser's rights under Article 13, Purchaser expressly acknowledges that it is not acquiring any rights whatsoever to the Intellectual Property Rights of the Seller Entities that are Excluded Assets.

1.3 Excluded Liabilities. The Seller Entities and their Affiliates shall retain, and shall be responsible for paying, performing and discharging when due, and the Purchaser shall not assume or have any responsibility for, any liabilities or obligations, contingent or otherwise of the Seller Entities or their Affiliates other than the Assumed Liabilities, including the following obligations and liabilities (all such obligations and liabilities not being assumed by Purchaser, including the matters set forth below in this Section 1.3, being herein called collectively, the "Excluded Liabilities"):

(a) all such liabilities and obligations of the Seller Entities arising from the Excluded Assets;

(b) all liabilities and obligations of the Seller Entities relating to the employment or termination of or for severance amounts paid, payable or otherwise owing to any current or former employee of any Seller Entity;

(c) all liabilities and obligations arising under United States Worker Adjustment and Retraining Notification Act of 1988 or similar foreign, state or local Legal Requirement ("Worker Notification Law") as a result of the termination of employment of any employee of any Seller Entity by a Seller Entity;

(d) all liabilities and obligations of the Seller Entities relating to any Employee Benefit Plan maintained, contributed to or required to be contributed by any Seller Entity or Affiliate of any Seller Entity or for which any Seller Entity or Affiliate is otherwise liable or obligated;

(e) any such liabilities with respect to indemnification of any Purchaser Indemnified Persons for any Purchaser Damages pursuant to Section 13.1;

(f) all debt of the Seller Entities for borrowed money;

(g) subject to the provisions of Article 11 and Article 13, all liabilities for Taxes with respect to the Purchased Assets, the Business or the Assumed Liabilities that are attributable to a Pre-Closing Tax Period;

(h) all liabilities or obligations in respect of claims by customers or Governmental Authorities, in each case, with respect to Product sold prior to the Closing Date;

(i) all liabilities and obligations related to Product warranty claims (regardless of whether the applicable warranty is express or implied) or related to the commercialization of the Product, in each case, with respect to Product sold prior to the Closing Date;

(j) all liabilities or obligations with respect to claims, whether founded upon negligence, breach, strict liability or other legal theory, seeking compensation or recovery for personal injury or property damage and resulting from defects or alleged defects or an alleged failure to warn for Product sold prior to the Closing Date; and

(k) all accounts payable, including any payment obligations not yet invoiced for purchases made prior to Closing, of the Seller Entities.

1.4 Non-Assignable Assets.

(a) Notwithstanding the foregoing, if any Assigned Contract or other Purchased Asset is not assignable or transferable (each, a "Non-Assignable Asset") without the consent of, or waiver by, a third party or action by a Governmental Authority (each, an "Assignment Consent"), either as a result of the provisions thereof or applicable Legal Requirements, and if any such Assignment Consent is not obtained on or prior to the Closing Date, this Agreement and the related instruments of transfer shall not constitute an assignment or transfer of such Non-Assignable Asset, and such Non-Assignable Asset shall not be included in the

Purchased Assets. Instead, without limiting Seller's obligations under Section 7.6, each of the parties hereto shall use commercially reasonable efforts to obtain all such Assignment Consents after the Closing Date and after any such consents are obtained the Seller Entities shall assign to Purchaser or its designee such Non-Assignable Assets. Following any such assignment, such assets shall be deemed Purchased Assets for purposes of this Agreement.

(b) For a period of six (6) months after the Closing and subject to payment of the Purchase Price by Purchaser pursuant to Section 2.1, the Seller Entities shall cooperate with Purchaser in any commercially reasonable arrangement designed to provide Purchaser or its designee with all of the benefits of the Non-Assignable Assets after the Closing as if the appropriate Assignment Consents had been obtained, including by granting sublicenses or other rights and establishing arrangements, whereby Purchaser or its designee shall undertake the work necessary to perform under Assigned Contracts.

1.5 Shared Contracts. Seller shall use commercially reasonable efforts prior to the Closing to cause the counterparty to each Shared Contract to consent to the partial assignment of those rights of the applicable Seller Entity under such Shared Contract related to the Business, or to otherwise reasonably cooperate with Purchaser in Purchaser's efforts to enter into a new contract with such counterparty on substantially the same terms as exist under such Shared Contract, in each case, as of the Closing. The portion related to the Product of each such Shared Contract for which the parties have received consent to such partial assignment shall thereafter be deemed to be an Assigned Contract hereunder and, if applicable, the Seller Entities shall wholly assign, or partially assign, such portion to Purchaser as of the Closing. Any Shared Contract for which the arrangements described in this Section 1.5 could not be entered into prior to the Closing shall be a Non-Assignable Asset subject to Section 1.4.

ARTICLE 2

UP-FRONT CONSIDERATION FOR TRANSFER

2.1 Purchase Price and Assumption of Assumed Liabilities. As full consideration for the sale, transfer, conveyance, assignment and delivery to Purchaser of the Purchased Assets by the Seller Entities, Purchaser shall (i) deliver to Seller (on behalf of and for the further payment to the Seller Entities consistent with the terms of this Agreement) at the Closing a wire transfer(s) of immediately available funds in an amount equal to seventy million dollars ($70,000,000) (the "Up-Front Purchase Price"), (ii) assume at the Closing and subsequently, in due course, in accordance with the terms applicable thereto, pay, perform and discharge the Assumed Liabilities and (iii) at the applicable times specified in Sections 3.1 and 3.2, deliver to Seller any Contingent Payments, in each case, that is payable to the Seller pursuant to this Agreement (collectively, the "Post-Closing Consideration" and, together with the Up-Front Purchase Price, the "Purchase Price"). The Up-Front Purchase Price shall be paid by wire transfer(s) of immediately available funds to the wire transfer address(es) of Seller as provided to Purchaser on or before the second (2nd) Business Day prior to the Closing Date.

2.2 Withholding Taxes. Notwithstanding anything to the contrary contained in this Agreement (but subject to Section 14.5 of this Agreement), Purchaser and any other party making a payment pursuant to this Agreement shall be entitled to deduct and withhold from the

consideration otherwise payable pursuant to this Agreement to any Person any amounts required under the Code or any other provision of a Legal Requirement related to Tax. To the extent that amounts are so withheld and remitted to the appropriate Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. If (i) Seller has delivered the FIRPTA Certificate and an IRS Form W-9 and (ii) Seller Subsidiary has delivered an applicable IRS Form W-8, then prior to deducting and withholding any amounts (other than any amounts subject to compensatory withholding) pursuant to this Section 2.2 (and in any event no later than five (5) calendar days prior to such withholding), the Purchaser shall notify the payee of any amounts that the Purchaser intends to withhold from any payment to such payee hereunder and provide the payee with reasonable support for the basis on which the Purchaser intends to withhold under the Code or any other provision of a Legal Requirement relating to such withholding. Subsequent to deducting and withholding any amount pursuant to this Section 2.2, the Purchaser shall on a timely basis provide Seller with evidence of the payment of such withheld amount to the appropriate Governmental Authority. The parties shall reasonably cooperate with each other (including, without limitation, the provision of a tax certification or a claim to reduce or exempt any withholding under an applicable tax treaty), as and to the extent reasonably requested by the other party, to minimize or eliminate any potential deductions and withholdings that the Purchaser or such other party may believe is required to be made under the Code or any other provision of a Legal Requirement related to Tax.

ARTICLE 3

CONTINGENT PAYMENTS AND RELATED OBLIGATIONS.

3.1 Milestone Payments.

(a) Regulatory Milestone Payments. Purchaser will pay Seller the applicable amount set forth below within thirty (30) days following the occurrence of each applicable event (each event, a "Regulatory Milestone Event") described in rows (i) and (ii) of Table A, respectively (each amount, a "Regulatory Milestone Payment").

Table A: Regulatory Milestone Events and Payments

	Regulatory Milestone Event	**Regulatory Milestone Payment**
(i)	The first Regulatory Approval (excluding pricing and reimbursement approval) for the commercial sale of Copiktra in the European Union (EU) by the European Commission or by the competent authority of any EU Member State for the treatment of Peripheral T-Cell Lymphoma.	$10,000,000

	Regulatory Milestone Event	Regulatory Milestone Payment
(ii)	The first approval of an NDA for Copiktra in the United States by the United States Food and Drug Administration (the "FDA") for the treatment of Peripheral T-Cell Lymphoma (the "US PTCL Approval").	$35,000,000

Each of the Milestone Payments set forth in Table A above will be payable only once.

(b) Sales Milestone Payments. Purchaser will pay Seller the following one time payments (each, a "Sales Milestone Payment," and together with the Regulatory Milestone Payments, the "Milestone Payments") when aggregate worldwide Net Sales of the Product, measured from and after the First Commercial Sale of the Product in the first country in the world (the "Total Net Sales"), first reach the respective thresholds indicated below:

Table B: Sales Milestone Payments

Total Net Sales	Sales Milestone Payment
Total Net Sales exceeding $100,000,000	$10,000,000
Total Net Sales exceeding $200,000,000	$15,000,000
Total Net Sales exceeding $300,000,000 (the "Third Sales Milestone").	$25,000,000

Purchaser will make each Sales Milestone Payment set forth in Table B above to Seller within thirty (30) days after the end of the calendar quarter in which the corresponding Total Net Sales threshold set forth in Table B is met, and such payment will be accompanied by a notice identifying the Net Sales and the amount payable to Seller under this Section 3.1(b); *provided, that* to the extent the Third Sales Milestone is achieved prior to the achievement of the US PTCL Approval, the payment set forth opposite the Third Sales Milestone in Table B above will not become payable unless and until such time as the US PTCL Approval is achieved (at which point, for the avoidance of doubt, such payment will be payable). In the event that more than one of the Total Net Sales thresholds set forth in Table B above are achieved in the same calendar quarter, then each applicable Sales Milestone Payment will become due and payable to Seller following the conclusion of such calendar quarter. Each of the Milestone Payments set forth in Table B above will be payable only once.

(c) Licensee Revenue Payments. Purchaser will pay to Seller (i)(A) fifty percent (50%) of all royalty payments and (B) fifty percent (50%) of all milestone payments and Sublicense Revenue Payments, in each case ((A) and (B)) actually paid (without regard to any offset or deduction against amounts due and payable to Purchaser by such Existing Licensees, their Affiliates and sublicensees, but after reduction for amounts that will be withheld or deducted under then-applicable Tax laws from such payments, but subject to the proviso below) to Purchaser by

the Existing Licensees, their Affiliates and sublicensees pursuant to the Existing Licenses specifically as consideration for the rights to develop, manufacture, commercialize or otherwise exploit the Product and (ii) (A) fifty percent (50%) of all royalty payments and (B) fifty percent (50%) of all milestone payments, in each case ((A) and (B)) actually paid to Purchaser by its other licensees and sublicensees (other than Existing Licensees, their Affiliates and sublicensees) (without regard to any offset or deduction against amounts due and payable to Purchaser by Purchaser's licensees or sublicensees, but after reduction for amounts withheld or deducted under then-applicable Tax laws by Purchaser's licensees or sublicensees) specifically as consideration for the rights to develop, manufacture, commercialize or otherwise exploit the Product in jurisdictions outside of the Royalty Territory ((i) and (ii) collectively, the "Product License Payments"); *provided however*, that, notwithstanding anything to the contrary contained herein, the amounts payable to Seller by the Purchaser under clause (i) of this Section 3.1(c) shall not be reduced by amounts withheld or deducted by an Existing Licensee under then-applicable Tax laws in respect of payments made by the Existing Licensee to the Purchaser under an Existing License to the extent of any deductions or withholding that would not have been made by such Existing Licensee under then-applicable Tax laws on a direct payment to Seller, assuming for this purpose that the Seller had timely provided valid tax certifications or treaty claims that it was qualified to make. For the avoidance of doubt, (1) with respect to the Existing Licenses, the Product License Payments shall be determined based on the Existing Licenses as such agreements exist on the Closing Date hereof, with regard only to any amendments thereto entered into after the Closing Date effected in accordance with Section 3.9 and (2) in the event that any Product License Payment (or portion thereof) owed to Seller hereunder would also result in a Royalty Payment obligation of Purchaser under Section 3.2, then such amount shall only be captured as a Product License Payment under this Section 3.1(c), and such amount shall not be included in the calculation of Royalty Payments in Section 3.2.

3.2 Royalty Payments.

(a) Royalty Rates. Subject to Sections 3.1(c) and 3.2(c), Purchaser will pay Seller a royalty equal to [***] percent ([***]%) (the "Royalty Rate") of the annual aggregate Net Sales of the Product above one hundred million dollars ($100,000,000), by Purchaser, its Affiliates or licensees or sublicensees within the Royalty Territory (but excluding the Existing Licensees, their Affiliates and sublicensees and any other licensees or sublicensees in jurisdictions outside of the Royalty Territory) in each instance, within the Royalty Territory during each calendar year of the applicable Royalty Term for the Product (the "Royalty Payments").

(b) Royalty Statements and Payments. Within twenty-five (25) Business Days of the end of each calendar quarter, Purchaser will deliver to Seller a report setting forth, for such calendar quarter, the following information, on a country-by-country (in the Royalty Territory) basis: (A) Net Sales of the Product (including aggregate total Net Sales, Net Sales in such calendar quarter and year-to-date Net Sales) and (B) the calculation for, and the total amount of, the royalties due to Seller for such calendar quarter. Purchaser will remit to the Seller the total royalty due for the sale of the Product during the applicable calendar quarter at the time each such report is delivered.

(c) Loss of Exclusivity. With respect to a Product in a country in the Royalty Territory, if (A) there is Generic Competition in such country, or (B) the Seller Registered

Intellectual Property Rights do not include any Valid Claims that cover or claim the exploitation of such Product in such country, then in either case ((A) or (B)), the Royalty Rate for such Product in such country shall be reduced to [***]percent ([***]%) for the remainder of the applicable Royalty Term. For the avoidance of doubt, and except as expressly set forth in Article 13, the Royalty Rate payable pursuant to Section 3.2(a) with respect to a particular Product in a particular territory shall never be less than [***] percent ([***]%) during the Royalty Term, regardless of whether both of the foregoing (A) and (B) are met with respect to such Product in such country.

3.3 Payments.

(a) Currency. As applicable, Net Sales that are recorded in local currencies other than United States dollars will be translated into United States dollars in a manner consistent with Purchaser'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. In the event that Purchaser does not utilize a widely accepted source of published exchange rates, then such amounts will be translated into United States dollars using the applicable currency conversion rate as published in *The Wall Street Journal*, *Eastern Edition*, (i) for sales, on the last Business Day of the applicable calendar quarter for the calendar quarter in which the relevant sales were made or (ii) for calculations of all other payments payable under this Article 3, on the day the payment obligation accrued.

(b) Method of Payment. Each payment made pursuant to this Article 3 will be made by wire transfer(s) of immediately available funds to such bank account as Seller will designate in writing to Seller at least ten (10) days before the payment is due.

(c) Late Payments. Interest on any late payment by Purchaser shall accrue from the date such payment was originally due at a rate equal to two percent (2%) above the prime rate of interest as reported in the Wall Street Journal on the date payment was due. Such interest shall be computed on the basis of a year of 360 days for the actual number of days payment is delinquent.

3.4 No Adjustment. Except as provided herein (including within the definition of Net Sales and in Sections 1.3, 3.1(c), 3.2(c) and 13.8), (a) no adjustments or offsets are permitted under this Agreement to the Contingent Payments payable to Seller pursuant to Sections 3.1 and 3.2 and (b) as between the parties, Purchaser will be solely responsible for all obligations (including any milestone, royalty or other obligations that relate to the Product) under the Material License Agreements and Purchaser's other existing or future agreements with third parties.

3.5 Infinity Agreement.

(a) Without limiting Sections 1.3 and 13.8, as between the parties, Purchaser will be solely responsible for all financial obligations (including any royalty obligations) payable to Infinity Pharmaceuticals, Inc. ("Infinity") or its Affiliates (or their respective successors or assignees) pursuant to that License Agreement dated as of October 29, 2016 between Infinity Pharmaceuticals, Inc. and Seller, as amended and restated on November 1, 2016 (the "Infinity Agreement"), that arise due to the practice or use by Purchaser, its Affiliates, licensees or

sublicensees of the Seller Intellectual Property, or any other Purchased Assets, in each case, from and after the Closing.

(b) During the Royalty Term, if Purchaser receives notice of an alleged default or breach by Purchaser or its Affiliates, licensees or sublicensees under the Infinity Agreement, then Purchaser shall provide written notice thereof to Seller as soon as reasonably practicable. During the Royalty Term, Purchaser will also provide written notice to Seller if (x) Purchaser determines that it will decline to use Diligent Efforts to cure any such alleged default or breach that Purchaser does not reasonably dispute in good faith, or (y) Purchaser has failed to cure such undisputed default or breach by the applicable cure period provided under the Infinity Agreement.

(c) During the Royalty Term, in the event of a termination of the Infinity Agreement solely as a result of Purchaser's material breach thereof (an "Infinity Default Event"), Purchaser shall pay Seller liquidated damages in the amount of seventy million dollars ($70,000,000), which liquidated damages shall not be a non-exclusive remedy; *provided*, *however*, that the parties hereto agree that any Contingent Payments shall reduce such amount on a dollar-for-dollar basis. The parties agree that an Infinity Default Event by Purchaser will materially and adversely impact the consideration that Seller has bargained for under this Agreement, and that, the provisions in this Section 3.5(c) constitute reasonable liquidated damages (and not a penalty) and a reasonable remedy to compensate Seller for its losses resulting from such Infinity Default Event.

3.6 Record Keeping. Purchaser will keep, and will use Diligent Efforts to require its Affiliates, licensees and sublicensees to keep, books and accounts of record in connection with the sale of the Product in sufficient detail to permit accurate determination of all figures necessary for verification of the Contingent Payments to be paid hereunder. Purchaser and its Affiliates will maintain such records for a period of at least three (3) years after the end of the calendar quarter in which they were generated, or such longer period as is required by applicable Legal Requirements.

3.7 Audits.

(a) Upon reasonable prior notice from Seller, Purchaser will permit, and will cause its Affiliates, licensees and sublicensees to permit, an independent certified public accounting firm of nationally recognized standing selected by Seller and reasonably acceptable to Purchaser, to examine, at Seller's sole expense, the relevant sales and financial books and records of Purchaser, its Affiliates, licensees and sublicensees, in all cases as reasonably necessary and solely to verify the amounts reported by Purchaser in accordance with Sections 3.1 and 3.2 and the payment of Contingent Payments hereunder. An examination by Seller under this Section 3.7 will occur not more than once in any calendar year and will be limited to the pertinent books and records for any calendar year ending not more than three (3) years before the date of the request. The accounting firm will be provided access to such books and records at the facility(ies) of Purchaser, its Affiliates, licensees or sublicensees, as applicable, where such books and records are normally kept and such examination will be conducted during normal business hours. Purchaser may require the accounting firm to sign a reasonably acceptable non-disclosure agreement before providing the accounting firm with access to facilities or records. Upon

completion of the audit, the accounting firm will provide both Seller and Purchaser a written report disclosing any discrepancies in the reports submitted by Purchaser or the Contingent Payments paid by Purchaser, and, in each case, the specific details concerning any discrepancies.

(b) Underpayments/Overpayments. If such accounting firm concludes that additional Contingent Payments were due to Seller, then Purchaser will pay to Seller the additional Contingent Payments within thirty (30) days of the date Purchaser receives such accountant's written report. Further, if the amount of such underpayments exceeds more than ten percent (10%) of the amount that was properly payable to Seller, then Purchaser will reimburse Seller for Seller's out-of-pocket costs in connection with the audit. If such accounting firm concludes that Purchaser overpaid Contingent Payments to Seller, then such overpayments will, at Purchaser's option, be credited against future amounts payable by Purchaser to Seller under Sections 3.1 and 3.2 or promptly refunded to Purchaser.

(c) Confidentiality. Notwithstanding any provision of this Agreement to the contrary all reports and financial information of Purchaser or its Affiliates, licensees (including the Existing Licensees) or sublicensees which are provided to or subject to review by Seller or its designee under this Section 3.7 will be at all times deemed to be Purchaser's Confidential Information and treated as such.

3.8 Diligence Obligations. During the Royalty Term, Purchaser agrees as follows:

(a) Development and Regulatory Approval. Purchaser shall, either itself or through its Affiliates, licensees (including the Existing Licensees) or sublicensees, use Diligent Efforts to develop and manufacture the Product and to pursue the Regulatory Milestone Events set forth in Table A of Section 3.1(a).

(b) Commercialization. Purchaser shall, either itself or through its Affiliates, licensees (including the Existing Licensees) or sublicensees, comply with the obligations set forth in Section 5.2 of the Infinity Agreement (as in effect on the date hereof) to use Diligent Efforts to Commercialize the IPI-145 Product that receives Marketing Authorization in the Field in the Territory (as those terms are defined in the Infinity Agreement (as in effect on the date hereof)).

(c) Diligence Reports. Until an Initial Public Offering, Purchaser shall submit semi-annual written progress reports by December 20 and June 20 of each year, summarizing in reasonable detail Purchaser's (and its Affiliates', licensees' (including the Existing Licensees) and sublicensees') activities related to the development of the Product (including with respect to progress in development in clinical trials and data read outs), including the status of obtaining Regulatory Approvals in the Territory, which reports and all information contained therein shall be deemed and treated by Seller at all times as the Confidential Information of Purchaser, except if disclosure of such reports and information is required by the Securities and Exchange Commission ("SEC"), the listing rules and standards of The Nasdaq Global Market or other applicable securities laws.

3.9 Material License Agreements. Seller's prior written consent shall be required for any termination (a) by Purchaser of the Infinity Agreement if such termination would adversely affect Seller's right to receive any Contingent Payments hereunder, or (b) by Purchaser of an Existing License if such termination would materially and adversely affect Seller's right to receive any Contingent Payments hereunder. Seller's prior written consent shall be required for any material amendment, modification, or restatement by Purchaser, in whole or in part, of any material provision of any Material License Agreement if such amendment would materially and adversely affect Seller's right to receive Contingent Payments hereunder. Purchaser shall not forgive, release or compromise any material portion of the royalties or the milestone payments payable under the Material License Agreements. Purchaser shall notify Seller as soon as reasonably practicable of (i) the receipt by Purchaser of any notice of breach of any Material License Agreement or (ii) any termination or receipt by Purchaser of any notice of termination of a Material License Agreement.

3.10 Existing Licensees. Seller acknowledges and agrees that all rights of the Seller Entities and obligations of Purchaser and its licensees and sublicensees under this Agreement are subject to the existing agreements with the Existing Licensees, and notwithstanding anything in this Agreement to the contrary Purchaser will not (a) be obligated to amend any agreement with an Existing Licensee, or (b) be deemed to be in breach of this Agreement or otherwise liable to Seller hereunder as a result of any inconsistency between the rights of Seller and/or the obligations of Purchaser or its licensees or sublicensees under this Agreement, on the one hand, and the terms and conditions of any agreement with an Existing Licensee, on the other hand.

ARTICLE 4

CLOSING AND CLOSING DELIVERIES

4.1 Closing; Time and Place. The closing of the Transactions (the "Closing") shall occur electronically through the exchange of documents, at 10:00 a.m., Eastern time, on the fifth (5th) Business Day after the day on which all of the conditions to closing set forth in Article 10 are satisfied or waived (other than conditions that are intended to be satisfied at the Closing), or at such other date, time or place as the parties may agree (the "Closing Date").

4.2 Deliveries by Seller Entities. At the Closing, Seller shall deliver, or shall undertake to procure that the Seller Subsidiary delivers, each of the following items, duly executed and delivered by the applicable Seller Entities:

(a) General Assignment and Bill of Sale. General Assignment and Bill of Sale covering all of the applicable Purchased Assets, substantially in the form attached hereto as Exhibit B (the "General Assignment and Bill of Sale");

(b) Purchaser Assignment and Assumption Agreements. One or more Purchaser Assignment and Assumption Agreements between various Seller Entities and Purchaser enforceable in various jurisdictions covering the assignment to, and assumption by, Purchaser of the Assumed Liabilities, including specific foreign agreements, the Purchased Inventory and

specified manufacturing assets, in forms to be mutually agreed upon by the parties ("Purchaser Assignment and Assumption Agreements");

(c) Intellectual Property Assignments. Assignment of Intellectual Property Rights (the "IP Assignment"), assignment of Patents (the "Patent Assignment"), and Trademark and domain name assignment (the "Trademark Assignment"), each substantially in the forms attached hereto as Exhibit C, for all of the Seller Intellectual Property, Exhibit D, for all of the Patents included among the Seller Intellectual Property including those listed on Schedule 5.8(d), and Exhibit E, for all of the Trademarks included among the Seller Intellectual Property including those listed on Schedule 5.8(d);

(d) Books and Records. The Books and Records;

(e) Certificate of Representations and Warranties. A certificate executed on behalf of Seller by an executive officer of Seller, certifying as to the matters in Section 10.1(a);

(f) Transition Services Agreement. A transition services agreement in a customary form to be agreed by the parties, obligating the Seller Entities and certain of their Affiliates to provide to Purchaser after the Closing, transition services on the terms (including pricing terms) set forth on Exhibit F (the "Transition Services Agreement"); and

(g) FIRPTA Certificate. A certification conforming to the requirements of Treasury Regulation Section 1.1445-2(b)(2) with respect to the Seller that certifies that the Seller is a "United States person" within the meaning of Section 7701 of the Code and applicable Treasury Regulations (the "FIRPTA Certificate") and

(h) Release of Encumbrances. Evidence, in form and substance reasonably satisfactory to Purchaser, that all outstanding Encumbrances against any of the Purchased Assets have been released, including copies of applicable pay-off letters (if a payoff will occur) and effective release documents (including, without limitation, with respect to the Encumbrances in favor of Hercules Capital, Inc. and in favor of Wilmington Trust, National Association) each in form and substance reasonably satisfactory to Purchaser.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver the following items, duly executed by Purchaser as applicable:

(a) Wire Transfer. One or more wire transfers of the Up-Front Purchase Price in immediately available funds in accordance with Section 2.1;

(b) General Assignment and Bill of Sale. The General Assignment and Bill of Sale;

(c) Purchaser Assignment and Assumption Agreements. The Purchaser Assignment and Assumption Agreements;

(d) Intellectual Property Assignments. The IP Assignment, the Patent Assignment and the Trademark Assignment;

(e) Transition Services Agreement. The Transition Services Agreement; and

(f) Certificate of Representations and Warranties. A certificate executed on behalf of Purchaser by an executive officer of Purchaser, certifying as to the matters in Section 10.2(a).

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth on Schedule 5 (the "Seller Disclosure Schedule") attached to this Agreement, Seller hereby represents and warrants to Purchaser as of the date of this Agreement and as of the Closing Date as follows:

5.1 Organization and Good Standing. (a) Each Seller Entity is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (b) each Seller Entity is duly qualified to conduct business and in good standing under the laws of each jurisdiction in which the operation of the Business and assets (including the Purchased Assets) that such Seller Entity operates or owns requires such qualification, except for failures that have not had a Material Adverse Effect; (c) each Seller Entity has full power and authority required to own, lease and operate its assets and to carry on the Business that it operates as now being conducted, except for failures that would not have a Material Adverse Effect; and (d) Seller owns all of the outstanding shares of capital stock of, or other equity interests in, Seller Subsidiary.

5.2 Financial Information. Schedule 5.2 hereto includes (a) the audited consolidated balance sheet of Seller for the financial year ending December 31, 2019 and the related audited consolidated statements of income, cash flow and changes in stockholders' equity of Seller for the fiscal year then ended (collectively, the "Audited Financials") and (b) the unaudited consolidated balance sheet of Seller for the three (3) months ended March 31, 2020 and the related unaudited consolidated statements of income, cash flow and changes in stockholders' equity for the three (3) months then ended (collectively, the "Interim Financials", and together with the Audited Financials, the "Financials"). The Financials (including any notes thereto) (i) were prepared in accordance with the books and records of Seller, (ii) have been prepared in accordance with GAAP, consistently applied (subject, in the case of the Interim Financials, to normal year-end audit adjustments, the effect of which will not, individually or in the aggregate, be materially adverse, and the absence of footnote disclosure that if presented, would not differ materially from those included in the Audited Financials) and (iii) fairly present the consolidated financial position of Seller as of the respective dates thereof and the consolidated results of the operations of Seller and changes in financial position for the respective periods covered thereby.

5.3 Purchased Inventory. All of the items in the Purchased Inventory (a) are, with respect to finished goods, in all material respects, of a quality and quantity saleable in the ordinary course of business, (b) meet the Seller Entities' current standards and specifications, in all material respects, and (c) to the Seller's knowledge, have been manufactured, handled, maintained, packaged and stored, as applicable, at all times in compliance in all material respects with applicable Legal Requirements.

5.4 Absence of Changes.

(a) Since March 31, 2020, through the date hereof, except as a response to any COVID-19 Measures, the Business has been operated in the ordinary course of business, and, with respect to the Business, no Seller Entity has:

(i) made capital expenditures or entered into any commitment therefore with respect to the Business or Purchased Assets in an amount greater than $25,000, except in the ordinary course of business;

(ii) with respect to the Business or Purchased Assets, mortgaged, pledged or subjected to any Encumbrance any of its assets (whether tangible or intangible) or properties;

(iii) with respect to the Business or Purchased Assets, sold, assigned, licensed, transferred, conveyed, leased or otherwise disposed of or agreed to sell, assign, license, transfer, convey, lease or otherwise dispose of any of its material assets or properties or any material portion thereof, except for (1) the sale of inventories in the ordinary course of business or (2) non-exclusive licenses of Seller Intellectual Property granted to suppliers or distributors in the ordinary course of business;

(iv) with respect to the Business or Purchased Assets, cancelled or compromised any material debt or material claim, or waived or released any material right, except for any Excluded Assets or adjustments made in the ordinary course of business (other than under any of the Material License Agreements);

(v) with respect to the Business or Purchased Assets, entered into any agreement or arrangement that limits or otherwise restricts in any material respect the Business, any of the Seller Entities or any successor to the Business or acquiror of the Purchased Assets, or that would, after the Closing, limit or restrict in any material respect Purchaser or its Affiliates from engaging in any line of business, in any location or with any firm;

(vi) abandoned, failed to defend against legal challenge, or permitted to lapse any Seller Intellectual Property or any Licensed Intellectual Property Rights;

(vii) failed to take or maintain reasonable measures to protect the confidentiality of any trade secrets or other proprietary information included in the Seller Intellectual Property or any Licensed Intellectual Property Rights;

(viii) entered into any contract not included in Schedule 5.11 that would constitute a Material Contract;

(ix) amended, modified, assigned, terminated (partially or completely), granted any waiver or release under or given any material consent with

respect to, or entered into any agreement to do any of the foregoing with respect to any Material Contract;

(x) with respect to the Business or Purchased Assets, transferred, assigned, sold or otherwise disposed of any of the Purchased Assets shown or reflected in the Financials, except for the sale of inventory in the ordinary course of business;

(xi) except as scheduled in Schedule 5.4(a)(xi) or required by any Legal Requirement as a result of activities conducted by Seller prior to the date of this Agreement, (A) made any submissions to any Governmental Authority relating to the Business, including with respect to the conduct or design of Clinical Trials sponsored or proposed by Seller or any of its Affiliates involving the Product, (B) had any material correspondence with, any domestic or foreign institutional review board, privacy board or ethics committee regarding a Clinical Trial sponsored or proposed by Seller or any of its Affiliates or involving the Product, (C) published any data or the results of any ongoing studies regarding the Product, including, to the Seller's knowledge, the results of investigator-initiated studies, or (D) otherwise initiated, supported, or facilitated any further clinical study involving the Product;

(xii) entered into any settlement, compromise or release (A) involving potential payments by or to any Seller Entity of more than $10,000 in aggregate, (B) that admit liability or consent to non-monetary relief, or (C) that otherwise are or would reasonably be expected to be material to the Business (excluding any separation agreement or release entered into with any employee or independent contractor or former employee or independent contractor);

(xiii) failed to maintain true, accurate and complete Books and Records;

(xiv) failed to keep in force and effect insurance in respect of the Purchased Assets comparable in amount and scope of coverage to that maintained as of March 31, 2020;

(xv) (A) engaged in channel stuffing or trade loading (i.e. increased sales of Products that are materially inconsistent with past practices or historical data) other than in response to *bona fide* customer orders, (B) shipped or sold Products in quantities substantially inconsistent with past practices or historical data other than in response to *bona fide* customer orders which were not encouraged or required by Seller); (C) priced Products inconsistent with past practices; (D) stopped or slowed the shipping of any Products outside of the ordinary course of business; (E) encouraged or required customers to "buy in" any Products; or (F) taken any similar actions outside of the ordinary course of business or inconsistent with past practices that would reasonably be expected to adversely impact the Business; or

(xvi) entered into any Contract, or engaged in any act or omission, to do, or which would result in, any of the foregoing.

(b) Since March 31, 2020, no event or circumstance has occurred that has had a Material Adverse Effect.

5.5 Taxes.

(a) Each Seller Entity has timely and properly filed, or has caused to be timely and properly filed on its behalf, all material Tax Returns in respect of or relating to the Business or the Purchased Assets (taking into account any extensions of time in which to file). All material Taxes required to be paid in respect of or relating to the Business and Purchased Assets have been paid.

(b) There is no dispute, audit or claim regarding a material liability for Taxes currently being conducted or pending against any Seller Entity with respect to or relating to the Business or any Purchased Asset claimed or raised by any Tax Authority in writing.

(c) There are no outstanding Encumbrances for Taxes, other than Encumbrances for Taxes not yet due and payable, on the Purchased Assets.

(d) No waivers of statutes of limitations (other than waivers no longer in force) have been granted in respect of any Taxes of each Seller Entity in respect of or relating to the Business or any Purchased Asset.

(e) During the past three (3) years, no material claim has been made by an authority in a jurisdiction where any Seller Entity does not file a Tax Return that such Seller Entity may be subject to material taxation by that jurisdiction by reason of the Business or the Purchased Assets.

(f) With respect to the Business, each Seller Entity has (i) timely deducted, withheld and remitted all material Taxes in connection with any amounts paid or owing to any employee, independent contractor, equity interest holder or other third party, and all IRS Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, and (ii) timely and properly collected all material sales, use, value-added, and similar Taxes required to be collected, and has remitted or will remit on a timely basis such amounts to the appropriate Governmental Authority.

(g) No Seller Entity is a party to or bound by any Tax allocation, indemnification, or sharing agreement (other than this Agreement or other commercial contract or arrangement entered into in the ordinary course of business that does not relate primarily to Taxes) that would bind Purchaser or any of its Affiliates after the Closing.

(h) None of the Assumed Liabilities is an obligation to make a payment that is not deductible under Section 280G of the Code or to compensate any individual for excise taxes paid pursuant to Section 4999 of the Code.

(i) No Seller Entity has any liability for the Taxes of any other Person as a transferee or successor, as the result of being or having been a member of an affiliated group as defined in Code Section 1504 (or analogous combined, consolidated or unitary group defined under any Legal Requirement related to Tax), by Contract (other than this Agreement), or otherwise (other than due to a commercial contract or arrangement entered into in the ordinary course of business that does not relate primarily to Taxes), that would bind Purchaser or any of its Affiliates after the Closing Date.

(j) None of the Purchased Assets is a "United States real property interest" under Section 897(c) of the Code.

Notwithstanding any provisions of this Agreement to the contrary, the foregoing provisions of this Section 5.5 constitute the sole representations or warranties of the Seller Entities relating to Taxes. Nothing in the Agreement, including this Section 5.5, shall be construed as providing a representation or warranty with respect to the existence, amount, expiration date or limitations on (or availability of) any Tax loss, credit, carryforward or similar Tax attribute.

5.6 Solvency; No Fraudulent Conveyance. Seller currently is, and immediately following the Closing Date, the Seller will be, Solvent for all purposes under federal bankruptcy and applicable state fraudulent transfer and fraudulent conveyance laws, and the Transactions do not constitute fraudulent transfers or fraudulent conveyances under such laws.

5.7 Reserved.

5.8 Intellectual Property.

(a) The Seller Entities exclusively own, free and clear of all Encumbrances, other than Permitted Encumbrances, all Seller Intellectual Property.

(b) All Seller Registered Intellectual Property Rights and all Licensed Registered Intellectual Property Rights (defined below) are valid, subsisting, and enforceable.

(c) Neither the operation of the Business as currently conducted by, or at the direction of, the Seller Entities nor any of the Products is infringing upon, misappropriating, or otherwise violating any Intellectual Property Rights of any other Person.

(d) Schedule 5.8(d) sets forth a complete and accurate list of all (i) Seller Registered Intellectual Property Rights, (ii) all Registered Intellectual Property Rights included among the Licensed Intellectual Property Rights exclusively licensed to any of the Seller Entities (the "Licensed Registered Intellectual Property Rights"), and (iii) all material unregistered Trademarks and domain names included among the Seller Intellectual Property. Seller has not received written notice of any action, claim or other legal proceeding, and no action, claim or other legal proceeding is pending or, to the Seller's knowledge, threatened, which challenges the validity, enforceability, ownership of or any Seller Entities' right to use or license any such Registered Intellectual Property Rights. All registrations and applications for the Seller Registered Intellectual Property Rights and, to Seller's knowledge, the Licensed Registered Intellectual Property Rights are duly registered or filed in the name of the applicable Seller Entity assigning such Intellectual Property Rights to Purchaser as required herein (or, with respect to such Licensed

Registered Intellectual Property Rights, in the name of the applicable Person granting such license to such Seller Entity or such Person's upstream licensor). All Patents included among the Seller Registered Intellectual Property Rights and, to Seller's knowledge, all Patents included among the Licensed Registered Intellectual Property Rights are, in each case, being diligently prosecuted in the respective patent offices in accordance with applicable Legal Requirements and to the Seller's knowledge no material prior art or other facts are likely to render any claims in such Patents unpatentable, invalid or unenforceable. All renewable and maintenance fees due as of the Closing with respect to the prosecution and maintenance of the Patents included among the Seller Registered Intellectual Property Rights and, to Seller's knowledge, the Licensed Registered Intellectual Property Rights, have been paid.

(e) The Patents listed on Schedule 5.8(d)(i) constitute all of the Patents owned by any of the Seller Entities that are used or held for use in the operation of, or otherwise related to, the Business or that cover any of the Products. Except for the Patents included among the Licensed Intellectual Property Rights licensed or sublicensed to the Seller Entities pursuant to an Assigned Contract that is being assigned to Purchaser as contemplated herein, no Seller Entity holds a license or other right to use any Patents that are used or held for use in the operation of, or otherwise related to, the Business, or that cover any of the Products.

(f) The Seller Entities have a valid and enforceable written license to practice all of the Licensed Intellectual Property Rights. All Intellectual Property Rights licensed to the Seller Entities pursuant to an Assigned Contract that are being assigned to Purchaser as contemplated herein, together with the Seller Intellectual Property owned by the Seller Entities, constitutes all of the Intellectual Property Rights used or otherwise necessary to operate the Business in the manner in which it is currently conducted. No Seller Entity is, and has not in the last three (3) years been, in breach of any the Material License Agreements in any material respect.

(g) To Seller's knowledge, neither the operation of the Business by the Seller Entities, nor any of the Products have in the past six (6) years infringed upon, misappropriated, or otherwise violated any Intellectual Property Rights of any other Person. To Seller's knowledge, as of the date hereof, no Person is infringing upon, misappropriating or otherwise violating any Seller Intellectual Property or any of the Licensed Registered Intellectual Property Rights.

(h) The Seller Entities have taken commercially reasonable measures to protect and maintain the confidentiality of the material Trade Secrets and Know-How included in the Seller Intellectual Property. Without limiting the foregoing, the Seller Entities have not (i) disclosed any Trade Secrets and Know-How included among the Seller Intellectual Property that is not bound by appropriate obligations of confidentiality nor (ii) licensed any Patents included among the Seller Intellectual Property other than to Existing Licensees pursuant to their respective Material License Agreement.

(i) Each Seller Entity has entered into valid and enforceable written agreements with each current and former employee, officer, contractor, or other Person who contributed to the invention, creation, or development of any Seller Intellectual Property for or on behalf of any of the Seller Entities or currently used in the operation of the Business whereby such employee, officer, contractor, or other Person agrees to obligations of confidentiality with respect

to the Trade Secrets and Know-How of the Seller Entities and assigns to such Seller Entity any ownership interest such employee, officer, contractor, or other Person may have in or to such Intellectual Property Rights. To Seller's knowledge no current or former officer, director, stockholder or Affiliate of the Seller Entities nor any of their respective officers, directors employees, or contractors, has any right, license, claim, moral right or interest whatsoever in or to any Seller Intellectual Property.

(j) Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby will (i) cause the termination of, or give rise to a right of termination of, any Material License Agreements, (ii) result in any of the Seller Entities granting to any Person any right to, or with respect to, any Intellectual Property Right included in Seller Intellectual Property, (iii) impair the right of Seller Entities, or after the Closing, Purchaser, to use or exploit in any way any Intellectual Property Rights or (iv) obligate the Purchaser to pay any royalties or other amounts to any Person that were not payable by a Seller Entity immediately prior to the execution and delivery of this Agreement.

(k) The Seller Entities have taken commercially reasonable actions to protect the security, confidentiality, integrity, and intended accessibility of the Seller Entities' IT Systems and the confidential data and other information stored or processed thereon, and, to Seller's knowledge, during the prior three (3) years, there has been no unauthorized access, use, intrusion, manipulation, corruption, or other breach of security of the Seller Entities' IT Systems, that has caused or could reasonably be expected to cause material (i) disruption of or interruption in or to the use of such IT Systems or (ii) loss, destruction, damage, or harm to the Business.

(l) To Seller's knowledge, none of the Products, nor the operation of the Business as currently conducted are covered by or infringe upon, any Intellectual Property Rights (i) identified or referenced as owned, licensed, sublicensed or optioned for license or sublicense by (1) the United States Department of the Navy at The Naval Medical Research Center pursuant to that certain Amended and Restated Development and License Agreement, dated December 24, 2012, as amended, by and between Intellikine LLC ("INK") and Infinity Pharmaceuticals, Inc. (the "INK Agreement"), (2) The Regents of the University of California pursuant to the INK Agreement or (ii) owned by either of Mundipharma International Corporation limited or Purdue Pharmaceutical products L.P. Seller has provided to Purchaser true and complete copies of the Material License Agreements and the INK Agreement prior to the date of this Agreement. The Infinity Agreement is in full force and effect and has not been materially modified or amended from the form provided to Purchaser as of the date of this Agreement. The INK Agreement is, to Seller's knowledge, in full force and effect and has not been materially modified or amended from that provided to Purchaser as of the date of this Agreement. Neither Seller nor, to Seller's knowledge, Infinity nor INK, is in default with respect to any material obligation under the INK Agreement or the Infinity Agreement, as applicable. Seller has not waived or terminated any of its rights under the Infinity Agreement, and to Seller's knowledge, no such rights under the Infinity Agreement have otherwise lapsed, expired, or been terminated in a way that would reasonably be expected to materially restrict or limit the rights acquired by Purchaser or Purchaser's ability to operate the Business after the Closing in substantially the same manner as operated prior to the Closing.

(m) Each of the Seller Entities materially complies, and has during the past five (5) years materially complied, with the Privacy and Information Security Requirements.

(n) None of the Seller Entities has received any written notice, complaint, allegation or other communication, and to the Seller's knowledge, there is no pending investigation by any Governmental Authority, regarding any actual or alleged violation of any Privacy and Information Security Requirement with respect to the Seller Entities' conduct of the Business.

(o) To Seller's knowledge, during the prior five (5) years, there has been no data security breach, privacy breach or unauthorized use of any Personal Data that is owned, used, stored, received, or controlled by or on behalf of the Seller Entities in connection with the operation of the Business.

(p) To Seller's knowledge, during the prior five (5) years, (i) the Seller Entities have not suffered a security breach with respect to any IT System that contains or provides access to Business Data, and (ii) there has been no unauthorized or illegal access to, or use or disclosure of, any Business Data.

(q) During the prior five (5) years, the Seller Entities have not notified, or been required by Privacy and Information Security Requirements to notify, any Person of any unauthorized or illegal access to, or unauthorized or illegal use or disclosure of, Personal Data.

(r) The Seller Entities employ commercially appropriate technical, administrative, physical and organizational measures that materially comply with Privacy and Information Security Requirements to protect Business Data within its custody or control.

(s) To Seller's knowledge, there are no outstanding, ongoing or unsatisfied requests from individuals seeking to exercise their data protection rights under applicable Privacy and Information Security Requirements (including any rights to access, rectify, or delete their Personal Data, or to restrict processing of or object to processing of Personal Data, or to data portability).

(t) The Seller Entities have filed any required registrations with, or made the required notifications to, the applicable data protection authority or such other Governmental Authority.

5.9 Authority; Binding Nature of Agreements.

(a) Seller has all requisite corporate power and authority to execute and deliver this Agreement and to carry out the provisions of this Agreement. Each Seller Entity has all requisite corporate power and authority to execute and deliver the other Transaction Agreements to which such Seller Entity is a party and to carry out the provisions of the other Transaction Agreements to which such Seller Entity is a party. Seller has all requisite corporate power and authority to cause Seller Subsidiary to sell to Purchaser any applicable Purchased Assets.

(b) The execution, delivery and performance by Seller of this Agreement and the other Transaction Agreements have been approved by all requisite corporate action on the part of Seller. The execution, delivery and performance by each Seller Entity of the other Transaction Agreements to which such Seller Entity is a party has been, or will be, approved by all requisite corporate action on the part of such Seller Entity. The execution, delivery and performance by Seller of this Agreement and the other Transaction Agreements does not require the approval of the stockholders of Seller.

(c) This Agreement has been duly and validly executed and delivered by Seller. Each of this Agreement and the other Transaction Agreements to which a Seller Entity is a party constitutes, or upon execution and delivery will (assuming due authorization, execution and delivery by Purchaser or its Affiliates, as applicable) constitute, the legal, valid and binding obligation of such Seller Entity, enforceable against such Seller Entity in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors' rights generally and by general principles of equity.

5.10 No Conflicts; Required Consents. The execution, delivery and performance of this Agreement or any other Transaction Agreement by any Seller Entity, or the consummation of any of the Transactions, will not:

(a) conflict with, violate or result in any breach of (i) any of the provisions of the organizational documents of such Seller Entity, (ii) any resolution or corporate action of such Seller Entity, (iii) any of the terms or requirements of any Governmental Approval held by such Seller Entity or that otherwise related to the Transactions, or (iv) any provision of any Material Contract, or require a consent under any Material Contract, other than, in the case of clause (iv), such conflicts, violations or breaches or failures to obtain consent that do not have a Material Adverse Effect;

(b) other than with respect to Antitrust Laws, give any Governmental Authority or other Person the right to (i) exercise any remedy or obtain any relief under any Legal Requirement or any Order to which such Seller Entity is bound or any of the Purchased Assets is subject or (ii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate, modify or receive any payment under any Material Contract;

(c) result in the imposition or creation of any Encumbrance upon or with respect to any material Purchased Asset; or

(d) other than with respect to Antitrust Laws, require such Seller Entity to make or deliver any material filing or material notice to a Governmental Authority.

5.11 Material Contracts.

(a) Schedule 5.11(a) sets forth an accurate, correct and complete list of any material Contracts entered into by any Seller Entity related to the Business (the "Material Contracts"), including:

(i) any Contract with a manufacturer or supplier that currently manufactures or supplies the Product;

(ii) any Contract with an agent or distributor that currently sells or distributes the Product that resulted in sales greater than $250,000 of the Product in the twelve (12) month period ending December 31, 2020;

(iii) any material Contract for any active investigator sponsored trials of the Product;

(iv) any material Contract for any active Seller-sponsored Clinical Trials of the Product;

(v) any material Contract with a pharmacy, medical service provider or pharmacy benefit manager or payer, including any material rebate agreements, in the case of each of the foregoing, for a Product;

(vi) any material Contract with any clinical research organization, contract manufacturing organization;

(vii) any Contract containing covenants by any Seller Entity not to compete in any line of business or with any Person in any geographical area, in each case, that is material to the Business, taken as a whole;

(viii) any Material License Agreement;

(ix) any Contract pursuant to which (1) any Person has granted to a Seller Entity a license, sublicense, covenant not to sue, or similar grant with respect to any Seller Intellectual Property or Licensed Intellectual Property Rights, other than non-exclusive licenses for commercially available, off-the-shelf software licensed on standard terms for internal use only or (2) a Seller Entity has granted to any Person a license, sublicense, covenant not to sue, or similar grant with respect to any Seller Intellectual Property or Licensed Intellectual Property Rights; *provided that* the foregoing clauses (1) and (2) shall exclude non-exclusive licenses granted in the ordinary course of business pursuant to non-disclosure agreements, employee invention assignment agreements, and customer end user agreements entered into in the ordinary course of business;

(x) any Contract related to the acquisition, sale or disposal of a business or the equity of any other Entity or any material assets used or held for use in the operation of, or otherwise related to, the Business or any of the Purchased Assets (whether by merger, sale of stock, sale of assets or otherwise), in each case, other than sales of inventory or obsolete equipment in the ordinary course of business;

(xi) Contracts that (1) grant any right of first refusal, right of first offer or similar right to a third party with respect to the Business or any of the Purchased Assets, (2) provide for an earn-out or similar deferred conditional

payment obligation with respect to the Business or any of the Purchased Assets, (3) include any "most favored nation" provision with respect to the Business or any of the Purchased Assets, or (4) contain any exclusivity obligation or provision otherwise restricting the operation of the Business;

(xii) Contracts evidencing any material partnerships or joint ventures;

(xiii) any other Contracts that are material to the operation of the Business, the Products or the Purchased Assets;

(xiv) any proposed arrangement of a type that, if entered into, would be a Contract described in any of (i) through (xiii) above.

(b) Seller has delivered, or will deliver to Purchaser prior to the date hereof, accurate, executed, correct and complete copies of all Assigned Contracts in effect on the date hereof.

(c) Each Material Contract is currently valid and in full force and effect and is enforceable by a Seller Entity in accordance with its terms.

(d) No Seller Entity is in material default or breach, and as of the date hereof, no party has notified any Seller Entity that it is in material default or breach under any Material Contract. To the knowledge of the Seller, no other Person is in material breach of or in default under any Assigned Contract (in each case, with or without notice or lapse of time). No event has occurred, and no circumstance or condition exists, that would reasonably be expected to (with or without notice or lapse of time) (i) result in a material violation or material breach of any material provision of any Material Contract or (ii) give any Person the right to accelerate the maturity or performance of any Material Contract, or to cancel, terminate or modify any Material Contract.

(e) No Seller Entity has knowingly waived any of its material rights under any Material Contract.

(f) Since January 1, 2020, no Seller Entity or, to the knowledge of the Seller, any other party to a Material Contract has received or provided any written notice of any intention to terminate or amend any Material Contract.

(g) Except as set forth on Schedule 5.11(g), neither the execution, delivery nor performance of this Agreement nor any other Transaction Agreement by the Seller Entities will conflict with, violate or result in any material breach of or require the consent of any counterparty to any Material Contract.

5.12 Insurance. Certain insurance policies currently in force will cease to provide coverage for the Purchased Assets effective upon Closing. There are no insurance policies or fidelity bonds that are part of the Purchased Assets or which will continue to provide insurance for the other Purchased Assets subsequent to the Closing Date.

5.13 Real Property. No Seller Entity owns any real property. No Seller Entity is party to any real property lease that is an Assigned Contract.

5.14 Environmental Matters. (a) As of the date hereof, there is no pending or, to the knowledge of Seller, threatened Environmental Claim; and (b) to the knowledge of Seller, there are no facts, circumstances, conditions or occurrences regarding any Purchased Asset that would be reasonably anticipated (i) to form the basis of an Environmental Claim or (ii) cause any Purchased Asset to be subject to any restrictions on its ownership or occupancy under any Environmental Laws, in each case except as, alone or in the aggregate, would not have a Material Adverse Effect on the Business. The Business is being conducted in compliance with all Environmental Laws except for instances of non-compliance which alone or in the aggregate would not have a Material Adverse Effect.

5.15 Compliance with Laws.

(a) Except with respect to Legal Requirements related to Taxes, Intellectual Property Rights or Environmental Claims, which shall be governed exclusively by Sections 5.5 (with respect to Taxes), 5.8 (with respect to Intellectual Property Rights) and 5.14 (with respect to Environmental Claims), since January 1, 2017, each Seller Entity, with respect to the Business, has in all material respects complied with each Legal Requirement that is applicable to it in connection with any of its properties, assets, operations or business. As of the date hereof, no Seller Entity, with respect to the Business, has received any written notice from any third party that such Seller Entity is in violation of any Legal Requirement in a manner that has had a Material Adverse Effect.

(b) Each Seller Entity and their Affiliates have, and since January 1, 2017, have had and maintained, all material Permits related to the Business, except where the failure to have such Permits individually or in the aggregate has not been and would not reasonably be expected to be material to Seller or the Business. Schedule 5.15(b) sets forth a true, accurate and complete list of each such material Permit, and each such Permit is valid and in full force and effect. There has occurred no material default by any Seller Entity or their Affiliates under, or material violation by any Seller Entities or their Affiliates of, any such Permit.

(c) Since January 1, 2017, no Seller Entity, nor any of their Affiliates, has received any written notice from any Governmental Authority or other Person to the effect that a Seller Entity or its applicable Affiliate is not, or may not be, in compliance with any Legal Requirement or any Permit in any material respect with respect to the Business. Since January 1, 2017, no Action is pending or, to the Seller's knowledge, threatened in writing to cancel, suspend, revoke or limit any of the Permits, and, to Seller's knowledge, there is no basis for any such Action.

5.16 Product Liability; Governmental Approvals.

(a) Within the last two (2) years prior to the date of this Agreement, (i) neither Seller nor the Seller Subsidiary has initiated any recall, market withdrawal or safety alert relating to the Product (and to the knowledge of Seller none are threatened in writing or pending). There are no pending, and within the last twelve (12) months prior to the date of this Agreement,

there have not been any, actions, claims or, to the knowledge of Seller, written threats thereof related to product liability involving the Product, and no such actions, claims or written threats have been settled, adjudicated or otherwise disposed of within the twelve (12) months prior to the date of this Agreement.

(b) Seller has no knowledge of any fact or condition related to the Product that would reasonably be expected to impose upon any Seller Entity a duty to recall the Product or material liability for returns or other product liability claims with respect to the Product. Except as has not had a Material Adverse Effect, the Seller Entities, with respect to the Business, (i) have obtained all applicable Governmental Approvals required by any Regulatory Authority to manufacture, market, store and distribute the Product and otherwise to operate the Business and (ii) have made all filings with, and given all notifications to, all Regulatory Authorities as required by all applicable Legal Requirements.

5.17 Proceedings and Orders.

(a) There is no material Proceeding pending or, to the knowledge of Seller, threatened in writing against the Business or affecting the Purchased Assets or Assumed Liabilities. To Seller's knowledge, no event has occurred, and no condition or circumstance exists, that might directly or indirectly give rise to or serve as a basis for the commencement of any such Proceeding.

(b) None of the Seller Entities' (with respect to the Business) properties, assets, operations or businesses, nor any of the Purchased Assets, is subject to any Order or any proposed Order, the effect of which is or would be material to the operation of the Business, taken as a whole.

(c) As of the date hereof, there are no Proceedings pending or, to the knowledge of Seller, threatened in writing relating to the Business or affecting the Purchased Assets or Assumed Liabilities, which, if adversely determined, may have, or which have had in the last twelve (12) months, a Material Adverse Effect.

5.18 Title, Condition and Sufficiency of Assets.

(a) The Seller Entities are the sole and exclusive owners of and Purchaser will acquire, and have good and valid title to, all Purchased Assets (other than with respect to Intellectual Property Rights (which is addressed in Section 5.8)), free and clear of all Encumbrances (except Permitted Encumbrances).

(b) Each piece of machinery and equipment included in the Purchased Assets has no material defects, is in good operating condition and repair (taking into account its age and usage), and is adequate and suitable in all material respects for its use in connection with the operation of the Business.

(c) The Purchased Assets, together with (i) the administrative, back-office and professional services from accounting, audit, compliance, customs, legal, treasury, finance, tax, human resources, payroll, benefits, information technology, maintenance, insurance, logistics, marketing, sales or other administrative groups, in each case that are currently provided

by the Seller Entities, any of their Affiliates or any third party to the Business as well as to the Seller Entities or one or more of their Affiliates generally, (ii) services from any employees, (iii) any Shared Contracts, (iv) any Contracts as to which a Consent is required in connection with the consummation of the Transactions but not obtained, (v) the services to be provided by the Seller Entities and their Affiliates to Purchaser and its Affiliates pursuant to this Agreement, the Transition Services Agreement and the other agreements contemplated hereby, (vi) any real property used in the operation of the Business, and (vii) the Excluded Assets constitute all of the assets, rights and property necessary for the operation of the Business as operated on the date hereof by the respective Seller Entities and their respective Affiliates and are sufficient for the conduct of the Business immediately after the Closing in substantially the same manner as conducted prior to the Closing. In the event of any inaccuracy in this Section 5.18(c) due to a good faith omission by Seller of an asset, such inaccuracy shall be deemed cured if Seller promptly causes such asset (or the benefits and burdens of such asset) to be transferred to Purchaser at no additional cost or expense to Purchaser.

5.19 Brokers. Other than with respect to fees or commissions that will be borne solely by the Seller Entities, no Seller Entity has retained any broker or finder or incurred any liability or obligation for any brokerage fees, commissions or finders fees with respect to this Agreement or the Transactions.

5.20 Regulatory Matters.

(a) Schedule 5.20(a) sets forth as of the date hereof a true and complete list of all Seller Regulatory Approvals. The Seller Regulatory Approvals include all material Regulatory Approvals that are required for or relate to the conduct of the Business as presently conducted by the Seller Entities and their Affiliates. The Seller Entities or one of their Affiliates is the sole and exclusive owner of all of the Seller Regulatory Approvals and none of the Seller Regulatory Approvals have been sold, conveyed, delivered, transferred or assigned to another party. Each such Seller Regulatory Approval (i) has, to Seller's knowledge, been validly issued or acknowledged by the appropriate Governmental Authority and is in full force and effect and (ii) is transferable to Purchaser. To Seller's knowledge, there are no facts, circumstances or conditions that would reasonably be expected to prevent Seller from performing its obligations with respect to the transfer of any Seller Regulatory Approvals to Purchaser on or after the Closing Date, as provided in Section 7.7.

(b) Schedule 5.20(b) sets forth a true and complete list of all pre-clinical and clinical studies, trials and investigations conducted or sponsored by Seller or any of its Affiliates or, to Seller's knowledge, by any other Person on or prior to the date hereof relating to the Business. Except as set forth on Schedule 5.20(b), all pre-clinical and clinical studies, trials and investigations conducted or sponsored by Seller or any of its Affiliates relating to the Business are being, and at all times have been, conducted in compliance in all material respects with all then applicable clinical protocols, informed consents and then applicable Legal Requirements administered or issued by applicable Governmental Authorities, including (to the extent applicable) (i) the FDA or other health authority standards for conducting non-clinical laboratory studies, including those contained in Title 21, part 58 of the Code of Federal Regulations, (ii)

investigational new drug requirements, (iii) FDA or other health authority standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of Clinical Trials, including those contained in Title 21, parts 50, 54, 56, 312, 314, 320 and 601 of the Code of Federal Regulations, and (iv) the International Conference on Harmonisation Guideline on Good Clinical Practice (ICH Topic E6). Except as set forth on Schedule 5.20(b), to Seller's knowledge there have been no drug-related, adverse event or events in patients in a Clinical Trial conducted or sponsored relating to the Business, the effect of which could reasonably be expected to prevent or materially delay Purchaser from obtaining approval from a Governmental Authority to market a Product in the United States. All Clinical Trial adverse events in patients in a Clinical Trial conducted or sponsored relating to the Business, to Seller's knowledge, have been disclosed to Purchaser and all associated correspondence, including actual or potential claims for recompense, have been made available to Purchaser. No Clinical Trial conducted by or on behalf of Seller has been terminated or suspended prior to completion for safety or other non-business reasons.

(c) No Governmental Authority has commenced, or, to Seller's knowledge, threatened to initiate, any Action to place a clinical hold order on, or otherwise terminate, delay or suspend any proposed or ongoing pre-clinical or clinical studies, trials, investigational new drug application or investigations conducted or proposed to be conducted in connection with the Business.

(d) The Products have been researched, developed, tested, manufactured, handled, labeled, packaged, stored, supplied, promoted, distributed, marketed, commercialized, imported, exported and sold in material compliance with all applicable Legal Requirements, including but not limited to the Federal Food, Drug and Cosmetic Act (the "FDCA"), the Public Health Service Act, and all applicable regulations promulgated thereunder.

(e) All manufacturing operations relating to the Products conducted by or on behalf of the Seller have been and are being conducted in material compliance with applicable current Good Manufacturing Practice requirements as set forth in 21 U.S.C. § 351(a)(2)(B), 21 C.F.R. Parts 210 and 211, as amended from time to time. The Products have not been voluntarily recalled, suspended, or discontinued by the Seller at the request of the FDA or any other Governmental Authority, nor has Seller received any written notice from FDA or any other Governmental Authority that it has commenced or threatened in writing to initiate any action to withdraw approval, place sales or marketing restrictions on or request the recall of the Products, or that it has commenced or threatened in writing to initiate any action to enjoin or place restrictions on the production of the Products.

(f) The Seller and its officers, employees, and agents have promoted the Products in material compliance with the FDCA, applicable regulations, and other applicable Legal Requirements. Neither the Seller, nor any of its officers, employees, or to the knowledge of Seller, agents, has received any written notice, demand, claim, complaint, demand letter, warning letter, untitled letter, or request for information from the FDA or any other Governmental Authorities or is subject to any Action alleging material noncompliance the FDCA, applicable regulations, or other Legal Requirements with regard to promotion of the Products.

(g) No Seller Entity or its Affiliates have received any written communication (including any warning letter, untitled letter, Form 483 or similar notice) from any Governmental Authority, and to Seller's knowledge there are no material Actions related to the Business pending or threatened in writing (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case (i) relating to, arising under or alleging that Seller, any of its Affiliates or any of its or their officers, employees or agents is not currently in compliance with, any Legal Requirement or (ii) regarding any debarment action or investigation in respect of any Seller Entity, any of its Affiliates or any of its or their officers, employees or agents undertaken pursuant to 21 U.S.C. Section 335a or any similar law or regulation of a Governmental Authority. There are no pending voluntary or involuntary destruction orders, seizures or other regulatory enforcement actions related to the Business and, to Seller's knowledge, no Product is the subject of any regulatory or other Action, either pending or threatened in writing, by any Governmental Authority relating to the truthfulness or scientific adequacy of data related to such Product.

(h) Since January 1, 2017, none of Seller, its Affiliates nor, to Seller's knowledge, any officer, employee, agent or distributor of a Seller Entity or its Affiliates, has made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for any other Governmental Authority to invoke any similar policy. None of Seller, its Affiliates nor, to Seller's knowledge, any officer, employee or agent of Seller or its Affiliates has been convicted of any crime or engaged in any conduct for which debarment is mandated by or authorized by 21 U.S.C. Sections 335a(a) or (b) or any similar Legal Requirements. None of the Seller Entities, their Affiliates nor, to Seller's knowledge, any officer, employee or agent of the Seller Entities or their Affiliates has been convicted of any crime or engaged in any conduct for which such Person would reasonably be expected to be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar Legal Requirements.

(i) Seller and its Affiliates are, and, since January 1, 2018, have been, in material compliance with: (i) laws and regulations pertaining to state and federal Anti-Kickback Statutes (42 U.S.C. §§ 1320a-7b(b), et seq. and their implementing regulations) and the related Safe Harbor Statutes; (ii) laws and regulations pertaining to submission of false claims to governmental or private health care payors (31 U.S.C. §§ 3729, et seq. and its implementing regulations); (iii) state laws and federal laws and regulations relating to providing and reporting of payments to health care professionals or health care entities; and (iv) the reporting and, where applicable, payment requirements of the Government Pricing Programs with respect to the Product, and have, to the extent required by such Government Pricing Programs or applicable Legal Requirements, have submitted timely, complete and accurate product, pricing and related data to such programs. Without limiting the forgoing: (A) the base date average manufacturer price for the Product is accurate and was calculated in accordance with all applicable laws and regulations; and (B) the Seller and its Affiliates have complied with (x) all applicable obligations

of a "manufacturer" under the Veterans Health Care Act of 1992, 38 USC § 8126, (y) all applicable obligations under the Seller and its Affiliates' Federal contracts, including the Federal Supply Schedule Contract, (z) all applicable obligations of a "manufacturer" under the Tricare Retail Pharmacy Program, 10 U.S.C. § 1074g, 32 C.F.R. § 199.21.

(j) None of Seller or any of its Affiliates is a "covered entity" or a "business associate" pursuant to the Health Insurance Portability and Accountability Act of 1996 (as those terms are defined in 45 C.F.R. §160.103). Since January 1, 2017, with regard to their activities related to the Purchased Assets, Seller and its Affiliates have complied in all material respects with all other applicable Legal Requirements relating to the privacy and security of individually identifiable information, including the Federal Trade Commission Act, the Children's Online Privacy Protection Act (COPPA), and similar Legal Requirements in any foreign jurisdiction in which Seller or any of its Affiliates does business.

5.21 Full Disclosure. No representation or warranty by Seller in this Agreement and no disclosure or statement by Seller contained in the Seller Disclosure Schedule or any certificate or other document furnished or to be furnished to Purchaser pursuant to this Agreement contains any intentionally untrue statement of a material fact, or intentionally omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the date of this Agreement and as of the Closing Date as follows:

6.1 Organization and Good Standing. Purchaser (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (b) is duly qualified to conduct business under the laws of each jurisdiction in which the nature of its business, the operation of its assets or the ownership or leasing of its properties requires such qualification, except for failures that have not had a Purchaser Material Adverse Effect; and (c) has full power and authority required to carry on its business as now being conducted, except for failures that would not have a Purchaser Material Adverse Effect.

6.2 Authority; Binding Nature of Agreements.

(a) Purchaser has all requisite corporate and other power and authority to execute and deliver this Agreement and all other Transaction Agreements to which it is a party and to carry out the provisions of this Agreement and the other Transaction Agreements.

(b) The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Agreements have been approved by all requisite action on the part of Purchaser. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Agreements does not require the approval of the shareholders of Purchaser.

(c) This Agreement has been duly and validly executed and delivered by Purchaser. Each of this Agreement and the other Transaction Agreements to which Purchaser is a party constitutes, or upon execution and delivery will (assuming due authorization, execution and delivery by the Seller Entities, as applicable) constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors' rights generally and by general principles of equity.

6.3 No Conflicts; Required Consents. Neither the execution, delivery and performance of this Agreement nor any other Transaction Agreement by Purchaser will:

(a) conflict with, violate or result in any breach of (i) any of the provisions of the organizational documents of Purchaser; (ii) any resolution or corporate action of Purchaser; (iii) any of the terms or requirements of any Governmental Approval held by Purchaser or that otherwise relates to the Transactions other than, in the case of clause (iii), such conflicts, violations or breaches that are not material to the Purchaser's business or the Transactions; or (iv) any provision of any Contract binding upon Purchaser, other than such conflicts, violations and breaches that would not have a Purchaser Material Adverse Effect;

(b) other than with respect to Antitrust Laws, and except as would not be material to the Purchaser's business, give any Governmental Authority or other Person the right to (i) exercise any remedy or obtain any relief under any Legal Requirement or any Order to which Purchaser or any of its assets is bound or (ii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate, modify or receive any payment under any Contract binding upon Purchaser; or

(c) other than with respect to Antitrust Laws, require Purchaser to make or deliver any material filing or material notice to a Governmental Authority, other than reporting under the Securities Exchange Act of 1934, as amended.

6.4 Sufficient Funds; Note Purchase Agreement. Purchaser shall have at the time of the Closing, sufficient funds to enable Purchaser to consummate the Transactions and to satisfy its obligations hereunder through the Closing, including the payment of the Up-Front Purchase Price and the fees and expenses relating to the Transactions and the other Transaction Agreements for which Purchaser is responsible on the terms and subject to the conditions hereunder and thereunder. Purchaser acknowledges and agrees that its obligations hereunder are not subject to any conditions regarding Purchaser's or any other purchaser's ability to obtain financing for the consummation of the Transactions. Purchaser has entered into (i) the Senior Secured Note Purchase Agreement, pursuant to which the Senior Secured Collateral Agent has committed, subject to the terms and conditions set forth therein, to provide to Purchaser up to $50,000,000 in additional senior secured debt financing and (ii) the Convertible Promissory Note Purchase Agreement, pursuant to which the Investors (as defined therein) have agreed, subject to the terms and conditions set forth therein, to provide to Purchaser up to $20,000,000 in additional financing. An accurate and complete copy of the Senior Secured Note Purchase Agreement and the Convertible Promissory Note Purchase Agreement (in each case, certain economic terms of which may be customarily redacted) as in effect on the date of this Agreement has been furnished to the Seller. Neither the Senior Secured Note Purchase Agreement nor the Convertible

Promissory Note Purchase Agreement has been amended, modified, terminated or withdrawn and both the Senior Secured Note Purchase Agreement and the Convertible Promissory Note Purchase Agreement are in full force and effect.

6.5 Proceedings and Orders.

(a) There is no material Proceeding pending or, to the knowledge of Purchaser, threatened in writing against Purchaser that has had a Purchaser Material Adverse Effect.

(b) Purchaser is not subject to any Order or any proposed Order that has had a Purchaser Material Adverse Effect, the effect of which is or would be material to the operation of the Business, taken as a whole.

6.6 Brokers. Purchaser has not retained any broker or finder or incurred any liability or obligation for any brokerage fees, commissions or finder's fees with respect to this Agreement or the Transactions.

6.7 Condition of the Business. Purchaser and its representatives and agents have made all inspections and investigations of the Business and the Purchased Assets deemed necessary by Purchaser. Purchaser is purchasing the Purchased Assets based on the results of its inspections and investigations and on the representations and warranties of the Seller Entities set forth in this Agreement or in the Transaction Agreements. In light of these inspections and investigations and the representations and warranties made to Purchaser by Seller in Article 5 hereof, Purchaser is relinquishing any right to any claim based on any representations and warranties other than those specifically included in Article 5 hereof, the Transaction Agreements and the certificates and other documents delivered pursuant hereto and thereto. Any claims Purchaser may have for breach of representation or warranty shall be based solely on the representations and warranties of Seller set forth in Article 5 hereof and of the Seller Entities in the Transaction Agreements. Purchaser acknowledges and agrees that no Seller Entity has made nor is making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article 5 hereof, and that it is not relying, and has not relied, on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Article 5 hereto. Notwithstanding the foregoing, nothing in this Agreement shall constitute a waiver by Purchaser of, a limitation of Purchaser's ability to pursue or recover for, or a disclaimer by the Seller Entities of liability for, a claim based on or arising out of Fraud.

ARTICLE 7

PRE-CLOSING COVENANTS

7.1 Conduct of the Business Prior to Closing.

(a) Except as contemplated in this Agreement, as required by Legal Requirement or with the written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement until the Closing or the earlier

termination of this Agreement pursuant to its terms, Seller shall, and shall cause its Affiliates to, in each case with respect to the Business:

(i) operate the Business in all material respects in the ordinary course of business in a manner that is consistent with past practices;

(ii) use commercially reasonable efforts to maintain and preserve the value of the Purchased Assets;

(iii) comply in all material respects with all Legal Requirements and Governmental Approvals applicable to the Business, including all COVID-19 Measures that are Legal Requirements; and

(iv) refrain from taking any action which if taken after March 31, 2020, but prior to the date hereof, would have been required to be disclosed on Schedule 5.4; *provided, however*, that the Seller may determine it needs to take measures or will sustain impacts on its business as a result of COVID-19, and nothing herein shall prevent the Seller from taking, or from causing any other Seller Entity to take, all reasonable measures (including as a response to any COVID-19 Measures) it deems fit in order to preserve its business as a result thereof, nor shall any such impact sustained by the Seller Entities be deemed as a breach of this Section 7.1(a).

(b) In the event of any material breach of the covenants contained in Section 7.1(a), Seller shall promptly (but in any event not later than three (3) Business Days following such breach) provide notice of such breach to Purchaser.

7.2 No Solicitation. Until the earlier of (a) the Closing and (b) the termination of this Agreement pursuant to its terms, no Seller Entity shall, and no Seller Entity shall permit its Subsidiaries, Affiliates, Representatives, Representatives of its Subsidiaries or Affiliates, or agents (collectively, the "Seller Representatives") to, directly or indirectly: (i) initiate, solicit or knowingly take any action to facilitate or encourage (including by way of furnishing information regarding the Business or the Purchased Assets) the submission of any proposal concerning or that would reasonably be expected to lead to the sale of all or any part of the Purchased Assets other than sales of the Product in the ordinary course of business (whether by way of merger, purchase of capital shares, purchase of assets or otherwise) (a "Competing Transaction"); or (ii) hold any discussions or enter into any agreements with, or provide or afford access to any information or respond to, any third party concerning the Business, the Purchased Assets or a proposed Competing Transaction or cooperate in any way with, agree to, assist or participate in, solicit, consider, entertain, facilitate or encourage any effort or attempt by any third party to do or seek any of the foregoing. The Seller Entities shall, and shall cause the Seller Representatives to: (A) immediately cease and cause to be terminated, any and all discussions or negotiations with any third party conducted prior to the date hereof with respect to any Competing Transaction; and (B) request the prompt return or destruction of any confidential information previously furnished to such third parties with respect to the Business, the Purchased Assets or a possible Competing Transaction and terminate the access of any such third parties to any physical or electronic data rooms to the extent such access is for the purpose of evaluating the Business, the Purchased Assets

or a possible Competing Transaction. Until the earlier of (a) the Closing and (b) the termination of this Agreement pursuant to its terms, in the event that the Seller Entities or any of the Seller Representatives receives an unsolicited proposal concerning a Competing Transaction, Seller shall as promptly as practicable (but in no event later than twenty-four (24) hours after receipt of such proposal) notify Purchaser of the receipt of such proposal. Such notice to Purchaser shall indicate the material terms and conditions of such proposal and include copies of any written materials concerning such proposal that are received by Seller after the signing of this Agreement by all parties hereto. Thereafter, until the earlier of (a) the Closing and (b) the termination of this Agreement pursuant to its terms, the Seller Entities shall keep Purchaser reasonably informed as promptly as practicable of any material developments affecting the terms and conditions of such proposal.

7.3 Access to Information. From the date of this Agreement until the Closing, Seller shall, and shall cause its Affiliates to (a) permit Purchaser and its Representatives to have reasonable access, in a manner so as not to interfere with the normal business operations of the Business, to all premises, properties, books, records (excluding, for the avoidance of doubt, Consolidated Returns (or any of the underlying Tax workpapers for a Consolidated Return)), contracts and documents to the extent related to the Business and (b) furnish Purchaser with all financial, operating and other data and information related to the Business (including copies thereof) as Purchaser may reasonably request; *provided*, *however*, that Seller shall not be required to permit any inspection or other access, or to disclose any information that in the reasonable judgment of Seller would: (i) result in the disclosure of any Trade Secrets and Know-How or other competitively-sensitive information, (ii) violate any obligation of Seller or its Affiliates with respect to confidentiality entered into prior to the date of this Agreement, (iii) violate or result in the loss or material impairment of any information subject to the attorney-client privilege or the attorney work product doctrine or (iv) violate any Legal Requirement. Without limiting the generality of the foregoing, Seller shall not be required to permit any inspection or other access to, or disclose any information regarding, any personnel file, human resources file, or other employment-related files maintained with respect to any employee of any Seller Entity.

7.4 Commercially Reasonable Efforts. Subject to Section 7.5 and Section 7.6, from the date of this Agreement until the Closing, Seller and Purchaser shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to cause to be fulfilled and satisfied all of the conditions to Closing set forth in Article 10.

7.5 Governmental Review.

(a) Subject to the terms and conditions of this Agreement (but notwithstanding Section 7.4), each of the parties hereto shall cooperate with the other parties hereto and use (and shall cause their respective Affiliates to use) their respective commercially reasonable efforts to promptly (i) take, or cause to be taken, all actions, and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to Closing set forth in Section 10.3 to be satisfied as promptly as practicable, including preparing and filing promptly and fully all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents under applicable Antitrust Laws, and (ii) obtain all approvals, consents, registrations, permits, authorizations and other

confirmations from any Governmental Authority necessary, proper or advisable under applicable Antitrust Laws to consummate the Transactions (an "Approval").

(b) In furtherance and not in limitation of the foregoing, each party hereto agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transactions as promptly as practicable and in any event within ten (10) Business Days of the date hereof and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and use commercially reasonable efforts to take, or cause to be taken, all other actions consistent with this Section 7.5 necessary to cause the expiration or, with the consent of both Purchaser and Seller, early termination of the applicable waiting periods under the HSR Act (including any extensions thereof) as soon as practicable. Each of Seller and Purchaser shall pay half of the filing fee required pursuant to the HSR Act. In the event that Purchaser pays the full filing fee required pursuant to the HSR Act, Seller shall reimburse Purchaser for one-half of such filing fee within three (3) Business Days.

(c) Each of the parties hereto shall use commercially reasonable efforts to (i) cooperate in all respects with each other in connection with any filing or submission with a Governmental Authority in connection with the Transactions under Antitrust Laws and in connection with any investigation or other inquiry by or before a Governmental Authority relating to Antitrust Laws and (ii) keep the other parties hereto informed in all material respects and on a reasonably timely basis of any material communication received by such party from, or given by such party to, the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, or any other Governmental Authority. Subject to applicable Legal Requirements relating to the exchange of information, each of the parties hereto shall have the right to review in advance, and to the extent practicable each will consult the other on, all the information relating to the other parties hereto and their respective Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any Governmental Authority in connection with the Transactions related to Antitrust Laws.

(d) In furtherance and not in limitation of the covenants of Purchaser contained in this Section 7.5, Purchaser shall use commercially reasonable efforts to resolve such objections, if any, as may be asserted by a Governmental Authority with respect to Antitrust Laws in any jurisdiction in which information on consultation obligations are required by applicable Legal Requirements to consummate the Transactions; *provided that*, notwithstanding anything to the contrary in this Agreement, Purchaser's obligations shall not include (A) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of, or holding separate (through the establishment of trust or otherwise) of its (or any of its Affiliates') assets or businesses or of the assets or businesses to be acquired by it pursuant hereto, (B) terminating any existing agreements with respect to such Purchaser's existing products; (C) entering into re-distribution agreements with a third party with respect to Purchaser's existing products; or (D) otherwise taking or committing to take actions that limit Purchaser or its Affiliates' freedom of action with respect to, or its ability to retain, one or more of its or its Affiliates' businesses, product lines or assets.

7.6 Consents. Without limiting the provisions of Section 7.5, on or prior to the Closing Date, Seller shall use its commercially reasonable efforts to obtain all Consents and make

and deliver all filings and notices listed on Schedule 7.6(a), and Purchaser shall use its commercially reasonable efforts to obtain, and agrees to take all reasonable actions that Seller reasonably requests in order to assist Seller in obtaining all Consents and make and deliver all filings and notices listed on Schedule 7.6(b).

7.7 Regulatory Matters.

(a) Transfer of Seller Regulatory Approvals. For one hundred eighty (180) days after Closing, Seller will, and will cause its Affiliates to, assist with the transfer of the Seller Regulatory Approvals to Purchaser or Purchaser's Affiliates and, as may be reasonably requested by Purchaser, in Purchaser's preparation of all notifications or filings required to be filed with the applicable Governmental Authority in order to transfer the Seller Regulatory Approvals to Purchaser or Purchaser's Affiliates. Without limiting the foregoing and to the extent applicable with respect to any particular Seller Regulatory Approvals, (i) Seller shall, and shall cause its Affiliates to, submit or file all documents required to be submitted by Seller or such Affiliates, as the current owner of a Regulatory Approvals, pursuant to 21 C.F.R. part 314.72; (ii) Purchaser shall submit or file all documents required to be submitted by Purchaser, as the new owner of a Regulatory Application, pursuant to 21 C.F.R. part 314.72; (iii) Seller shall, and shall cause its Affiliates to, take all other actions imposed upon a current owner of a Regulatory Application, by an applicable Legal Requirement or Governmental Authority, to transfer the Seller Regulatory Approvals to Purchaser or Purchaser's Affiliates; and (iv) Purchaser or Purchaser's Affiliates shall take all other actions imposed upon a new owner of a Regulatory Application, as may be required, by an applicable Legal Requirement or the applicable Governmental Authority, to accept the transfer of the Seller Regulatory Approvals and responsibility therefor from Seller.

(b) Complaints. After the Closing Date for a period of one hundred eighty (180), Seller shall notify Purchaser promptly (and in any event within the time period required by a Legal Requirement) if Seller or any of its Affiliates receives a complaint or a report of an adverse drug experience with respect to the Product. In addition, during the one hundred eighty (180) period immediately following the Closing Date, Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to assist Purchaser (and Purchaser shall reimburse Seller its reasonable expenses incurred in connection therewith) in connection with the investigation of and response to any complaint or adverse drug experience report related to the Product that occurred prior to the Closing Date. All notifications pursuant to this Section 7.7(b) shall be by electronic mail at such addresses agreed upon by the parties' respective safety divisions.

(c) Cooperation. Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to cooperate with Purchaser in supplying reasonable information or assistance in Purchaser's fulfillment of its obligations under this Section 7.7.

7.8 Note Purchase Agreement and Convertible Promissory Note Purchase Agreement. Purchaser shall not amend, modify or change the Senior Secured Note Purchase Agreement or the Convertible Promissory Note Purchase Agreement in a manner that would reasonably be expected to delay or prevent the Closing without the prior written consent of Seller, and subject to the satisfaction of all of the conditions to the Closing set forth in this Agreement, Purchaser shall draw down on the financing referred to in the Senior Secured Note Purchase

Agreement and the Convertible Promissory Note Purchase Agreement when the conditions set forth in this Agreement are satisfied.

7.9 Cooperation.

(a) Prior to the Closing, the Seller shall and shall cause the Seller Subsidiary to use commercially reasonable efforts to provide to the Purchaser, and shall use its commercially reasonable efforts to cause their respective officers, employees, advisors and other representatives to provide to the Purchaser, such customary cooperation that is reasonably requested by the Purchaser in connection with the financing contemplated by the Senior Secured Note Purchase Agreement and the Convertible Promissory Note Purchase Agreement, including using commercially reasonable efforts to: (i) furnish the Purchaser and the Senior Secured Note Purchasers as promptly as practicable with customary pertinent information regarding the Purchased Assets as may be reasonably requested in writing by the Purchaser for use in connection with the financing; and (ii) arranging for customary payoff letters, lien terminations and instruments of discharge from third-party lenders and trustees to be delivered at the Closing relating to the Purchased Assets. Notwithstanding the foregoing:

(i) such requested cooperation shall not unreasonably disrupt the operations of the Seller or Seller Subsidiary; (A) nothing in this Section 7.9 shall require cooperation to the extent it would (x) cause any condition to the Closing set forth in Article 10 to not be satisfied, (y) cause any breach of this Agreement or (z) result in a violation of applicable law; and (B) the Seller shall only be obligated to deliver information pursuant to this Section 7.9 to the extent that it may be reasonably obtained from the books and records of the Seller or the Seller Subsidiary (without undue effort or expense);

(ii) neither the Seller nor the Seller Subsidiary shall be required to (1) pay any commitment or other similar fee, (2) incur or assume any liability in connection with the financings contemplated by the Senior Secured Note Purchase Agreement or the Convertible Promissory Note Purchase Agreement, (3) deliver or obtain opinions of internal or external counsel, (4) provide access to or disclose information where the Seller or the Seller Subsidiary reasonably determines that such access or disclosure could jeopardize the attorney-client privilege or contravene any law or (5) waive or amend any terms of this Agreement or any other contractual agreement to which the Seller or the Seller Subsidiary is party;

(iii) none of the Seller, the Seller Subsidiary or any of their respective directors, managers, officers or employees shall be required to execute, deliver or enter into, or perform any agreement, document or instrument with respect to the financings contemplated by the Senior Secured Note Purchase Agreement or the Convertible Promissory Note Purchase Agreement; and

(iv) None of the Seller, the Seller Subsidiary or their respective Affiliates or representatives shall be required to (i) bear any cost or expense or (ii) take any action that would subject any such Person to actual or potential liability, in each case, in connection with the financing contemplated by the Senior Secured

Note Purchase Agreement, the financing contemplated by the Convertible Promissory Note Purchase Agreement or their performance of the obligations under this Section 7.9.

(b) Purchaser shall indemnify, defend and hold harmless Seller, the Seller Subsidiary and each of the respective Affiliates and representatives of each of the foregoing from and against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties suffered or incurred by them in connection with the financing contemplated by the Senior Secured Note Purchase Agreement and the Convertible Promissory Note Purchase Agreement and the performance of their respective obligations under this Section 7.9 and the provision of any information utilized in connection therewith, other than to the extent such losses arise out of the bad faith, gross negligence or willful misconduct of Seller, the Seller Subsidiary, their Affiliates or their respective agents. Purchaser shall, promptly upon request of Seller, reimburse Seller and the Seller Subsidiary for all reasonable out-of-pocket fees, costs and expenses incurred by such Persons (including those of its Affiliates and representatives) in connection with the cooperation required by this Section 7.9.

7.10 Transitional Trademark License.

(a) License. Subject to the Usage Guidelines set forth in Section 7.10(b), Purchaser shall have and Seller (on behalf of itself and its Affiliates) hereby grants to Purchaser a limited, non-exclusive, non-transferrable (except as set forth in Section 14.5), royalty-free, paid-up, worldwide right and license to use the Seller Marks in connection with the Products, the Purchased Assets and the conduct of the Business for a transitional period until such time as Purchaser has obtained all necessary Governmental Approvals, Marketing Authorizations and any other approvals or requirements under applicable Legal Requirements to permit Purchaser to transition off of and cease its use of the Seller Marks (including in any Regulatory Documentation) and has exhausted all inventory of the Products and other related materials bearing any Seller Marks (or such later time as Purchaser and Seller may otherwise mutually agree in writing), including the right to grant sublicenses to the extent reasonably consistent with past practice of Seller or its Affiliate prior to the Closing, to operate the Business in a reasonably similar manner or as may otherwise be required under applicable Legal Requirements; provided that, such transitional period shall conclude as promptly as possible, and in any event shall not exceed twenty-four (24) months from the Closing Date (the "Transition End Date"); provided, further, that the Transition End Date shall automatically extend on a country by country basis during such time as Purchaser is actively pursuing label changes and a delay in connection therewith is solely a result of delays from regulatory agencies (provided, that, notwithstanding anything to the contrary herein, in no event shall the Transitional Trademark License End Date exceed the date that is forty-eight (48) months from the Closing Date). Purchaser shall maintain the quality of any products or services of the Business marked or marketed under the Seller Marks. It is understood and agreed that, as between Purchaser and Seller, Seller shall retain all right, title and interest in and to Seller Marks. All use of the Seller Marks permitted pursuant to this Section 7.10 shall inure to the benefit of Seller or its Affiliates; provided, that all use of the Trademarks included among the Purchased Assets shall inure to the benefit of Purchaser. Seller acknowledges and agrees that nothing contained herein shall require Purchaser to (i) change, amend or modify any contract, agreement, document or other business writing, (ii) modify, obscure or destroy any internal or non-customer-facing equipment or materials or (iii) modify, obscure or destroy any product,

component, inventory or packaging existing, in-process or for which Purchaser is contractually committed to receive or supply or as may be required under applicable Legal Requirements, at the time of expiration of the foregoing license, for which Purchaser shall have the benefit of the foregoing license for a reasonable sell-off period of such items.

(b) Usage Guidelines.

(i) Purchaser shall, and shall cause its Affiliates, licensees, sublicensees and subcontractors to comply with all quality standards, quality control requirements, and style or usage guidelines (collectively, the "***Usage Guidelines***") provided by Seller to Purchaser with respect to use of the Seller Marks stipulated in this Section 7.10(b)(i). Purchaser acknowledges and agrees that no ownership rights are vested or created by the trademark license granted pursuant to Section7.10(a), and that all goodwill developed by virtue of the use of the Seller Marks in accordance with this Section 7.10(b)(i) inures to the benefit of Seller. Upon Seller's request, Purchaser shall submit to Seller representative samples of materials bearing the Seller Marks for Seller's review. Purchaser shall not change, modify, alter, create, combine with other trademarks or use the Seller Marks in any manner that would reasonably be expected to result in, or does result in (i) a material adverse impact on such Seller Marks or the goodwill associated therewith in any country, or (ii) a material negative reputational impact on Seller's or any of its Affiliates' business in any country, or (iii) the creation of material adverse publicity in any country for Seller or any of its Affiliates. Purchaser shall, and shall cause its Affiliates, sublicensees, licensees and subcontractors to, use the Seller Marks in accordance with (A) sound trademark usage principles, (B) all Legal Requirements, and (C) all Usage Guidelines. Upon receipt by Purchaser of any notice from Seller that Purchaser or its Affiliates, licensees, sublicensees or subcontractors have failed to comply with any of the terms or conditions of this Section 7.10(b)(i), Purchaser shall use its commercially reasonable efforts, and shall cause its affiliates, licensees, sublicensees and subcontractors to use commercially reasonable efforts to, remedy such failure on a timely basis.

(ii) At Seller's request, Purchaser shall execute any documents required in the reasonable opinion of Seller to be entered as a "registered user" or recorded licensee of the Seller Marks or to be removed as registered user or licensee thereof.

ARTICLE 8

POST-CLOSING COVENANTS

8.1 Cooperation.

(a) After the Closing, upon the reasonable request of Purchaser, Seller shall, and shall cause each Seller Entity to, use commercially reasonable efforts to (a) execute and deliver any and all further materials, documents and instruments of conveyance, transfer or assignment as may reasonably be requested by Purchaser to effect, record or verify the transfer to,

and vesting in Purchaser of, such Seller Entity's right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances, in accordance with the terms of this Agreement, (b) cooperate with Purchaser, at Purchaser's expense, to enforce the terms of any Assigned Contracts, including terms relating to confidentiality and Intellectual Property Rights, to Purchaser, (c) cooperate with reasonable requests from Purchaser to ensure an orderly transfer of customer relationships involving the Business to Purchaser, and (d) transfer any Purchased Assets not otherwise delivered at the Closing, subject to the other provisions of this Agreement. After the Closing, Seller shall, and shall cause each Seller Entity to, promptly deliver to Purchaser (i) any mail, packages, orders, inquiries and other communications addressed to such Seller Entity and relating to the Business and (ii) any property that such Seller Entity receives and that properly belongs to Purchaser or any of its Affiliates. After the Closing, Purchaser shall, and shall cause its Affiliates to, promptly deliver to Seller (A) any mail, packages, orders, inquiries and other communications addressed to a Seller Entity or any of its Affiliates and relating to a business of a Seller Entity or its Affiliates other than the Business and (B) any property that Purchaser or such Affiliate receives and that properly belongs to a Seller Entity or any of its Affiliates.

(b) If Purchaser determines in good faith, in consultation with its auditors, that it will be required to file in the future with the SEC, pursuant to Rule 3-05 of Regulation S-X, audited annual financial statements of the Business (the "Audited Financial Statements") and/or unaudited quarterly financial statements of the Business (the "Unaudited Financial Statements") for the periods specified by Rule 3-05 of Regulation S-X (the Audited Financial Statements together with the Unaudited Financial Statements, the "SEC Financial Statements"), then (i) Purchaser shall notify Seller of such determination prior to the third (3rd) anniversary of the Closing Date and (ii) Seller shall, and shall cause each Seller Entity to deliver to Purchaser as soon as reasonably practicable, but in any event no later than ninety (90) days after being notified of the requirement by Purchaser, the SEC Financial Statements. Seller will use commercially reasonable efforts to ensure that the SEC Financial Statements will be (A) prepared in accordance with the books and records of the Business, (B) prepared in accordance with Regulation S-X and GAAP, and (C) in the case of the Audited Financial Statements, be accompanied by an opinion (the "Audit Opinion") of Ernst & Young (the "Independent Auditor"), which opinion shall comply with Regulation S-X. Until to the third (3rd) anniversary of the Closing Date, Seller will use commercially reasonable efforts to cause the Independent Auditor to provide Purchaser the consents requested by Purchaser to permit the inclusion of the Audit Opinion with respect to the Audited Financial Statements in Purchaser's reports and registration statements filed with the SEC for periods required under applicable Legal Requirements no later than five (5) Business Days prior to any required filing date of any such filings. Purchaser shall reimburse Seller for (x) all of the reasonable costs and expenses of the Independent Auditor third-party consultants and other third-party expenses incurred by the Seller Entities in connection with complying with this Section 8.1(b) and (y) all of the other reasonable costs and expenses of the Seller Entities (calculated at the FTE Rate set forth in the Transition Services Agreement) to the extent such costs and expenses pursuant to this clause (y) exceed, in the aggregate, fifty thousand dollars ($50,000).

(c) Without limiting Seller's obligations under Section 8.1 or the Transition Services Agreement, promptly following the Closing and as Purchaser may otherwise reasonably request from time to time, Seller will cooperate and work together with Purchaser to facilitate the transition of the Products and the Business, and shall provide and deliver to Purchaser

technical transfer data/documentation, including transfer and delivery of copies of (1) all relevant technical documentation, (2) specifications, (3) written operating procedures, (4) Regulatory Documentation, and (5) tangible embodiments of any Trade Secrets and Know-How, data and applicable materials in the foregoing (1)-(4) and any other embodiments of any other Intellectual Property Rights, in each case included among the Purchased Assets, and any additional information and materials otherwise agreed as a part of any transfer plan.

8.2 Return of Assets; Transfer of Purchased Assets.

(a) If, for any reason after the Closing, any asset is ultimately determined to be an Excluded Asset or Purchaser is found to be in possession of any Excluded Asset or subject to an Excluded Liability, (i) Purchaser shall return or transfer and convey (without further consideration) to the appropriate Seller Entity, and Seller shall cause such Seller Entity to accept or assume, as applicable, such asset or Excluded Liability; (ii) Seller shall cause the appropriate Seller Entity to assume (without further consideration) any liabilities associated with such assets or Excluded Liabilities; and (iii) Purchaser shall, and Seller shall cause the appropriate Seller Entity to, execute such documents or instruments of conveyance or assumption and take such further acts which are reasonably necessary or desirable to effect the transfer of such asset or Excluded Liability back to the Seller Entity.

(b) In the event that any Purchased Asset or Assumed Liability is discovered by the Seller Entities or any of their Affiliates or identified to Seller in writing by Purchaser at any time after the Closing Date, possession or ownership of which has not been transferred to, or assumed by, either Purchaser or its Affiliates at such time, the Seller Entities shall promptly take such steps as may be required to transfer, or cause to be transferred, such Purchased Assets or Assumed Liabilities to such Purchaser, subject to Section 1.4 and otherwise in accordance with the terms of this Agreement, at no additional charge to Purchaser or its Affiliates, and Purchaser or its Affiliates shall accept such Purchased Assets or assume such Assumed Liabilities, as the case may be.

8.3 Records and Documents. For a period of three (3) years after the Closing, at the other party's request, each party shall provide the other party and its Representatives with access to and the right to make copies of those records and documents related to the Business (possession of which is retained by a Seller Entity or transferred to Purchaser as applicable), as may be necessary in connection with any third-party litigation, the preparation of financial statements or the conduct of any audit or investigation by a Governmental Authority.

8.4 Bulk Sales Waiver. Purchaser hereby waives compliance by each Seller Entity with any applicable bulk sales Legal Requirements in connection with the Transactions.

8.5 Confidentiality.

(a) Purchaser acknowledges and agrees for the benefit of the Seller Entities that, without limitation to any other rights or obligations under the Confidentiality Agreement, all Confidential Information disclosed in connection with Purchaser's due diligence investigation of the Business, the Purchased Assets and the evaluation of the Transactions, including pursuant to Section 7.3, shall be treated as and remain confidential in accordance with

the terms of the Confidentiality Agreement from the date of this Agreement until the Closing Date, collectively as "Evaluation Material," "Restricted Information" and "Operational Know-How," as applicable (in each case as defined in the Confidentiality Agreement).

(b) Except as required by law or administrative process and except for information which is now or hereafter becomes public other than as a result of a breach of this Section 8.5(b), without limitation to any other rights or obligations under the Confidentiality Agreement, for a period of three (3) years after the Closing Date, Seller shall not, and shall cause the Seller Entities not to, disclose to any other Person any Confidential Information exclusively used in or exclusively relating to the Business or the Purchased Assets, whether in written, oral or other form; *provided that* nothing in this Section 8.5(b) shall in any way limit the disclosure of any such information to the Representatives of any Seller Entities in order to assist the Seller Entities with respect to (i) the Transactions and the other documents referred to herein or (ii) the conduct of the Seller Entities' businesses other than the Business; *provided further, that* nothing contained herein shall be construed as a reservation by Seller under, or the granting by Purchaser to Seller of any rights by implication, estoppel or otherwise, in or to any Seller Intellectual Property.

(c) In order to ensure ongoing compliance with the Confidentiality Agreement, if this Agreement is terminated in accordance with Article 12, Purchaser shall, for a period of two (2) years after the date of termination and at Seller's request, provide Seller with all information reasonably requested by Seller regarding any products launched by Purchaser following the date hereof that are similar to the Product, as determined by Seller in good faith, which information shall be deemed and treated by Seller at all times as the Confidential Information of Purchaser.

8.6 Non-Solicitation of Employees. For a period of two (2) years after the Closing Date, without the prior written consent of Seller, (i) Purchaser shall not, and shall cause its Affiliates not to, hire, and (ii) Purchaser shall cause each of its and its Affiliates' respective employees who were directly and materially involved in the Transactions, not to solicit for employment, in each case, any of the employees of Seller or any of its Affiliates as of the Closing Date to whom Purchaser or any of its Affiliates may have been directly or indirectly introduced as a result of the Transactions or Purchaser's consideration of a potential transaction with Seller; *provided that* Purchaser and its Affiliates shall not be restricted by this Section 8.6 from any general solicitation for employees or public advertising of employment opportunities (including through the use of employment agencies) not specifically directed at any such persons.

8.7 Non-Competition. For a period of two (2) years after the Closing Date, without the prior written consent of Purchaser, Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, (a) engage in or assist others in the development, manufacture, marketing, sale or distribution of any Competing Product (the "Restricted Business"), (b) have an ownership or financial interest in any Person that engages, directly or indirectly, in the Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant, or (c) cause, induce or encourage any material actual or prospective client, customer, distributor, pharmacy, supplier, licensor or other stakeholder of the Business, or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, it shall not be deemed to be a violation of this Section 8.7 for Seller: (i) to invest in any third Person which invests in,

manages or operates a Restricted Business, so long as Seller's and its Affiliates' aggregate investment is less than 5% of the outstanding ownership interest in such third Person or (ii) to acquire any Person or business engaged in a Restricted Business if (A) the principal purpose of such acquisition is not to engage in the Restricted Business, (B) the acquired Person or business is not primarily engaged in the Restricted Business and (C) (1) revenues of such Person or business for the twelve-month period immediately preceding the date of such acquisition derived from the Restricted Business was less than thirty percent (30%) of the aggregate revenues of such Person over such period and (2) Seller either ceases conducting such Restricted Business or enters into a definitive agreement to divest such Restricted Business within twelve (12) months after the acquisition thereof. For purposes of this Section 8.7, the term "Affiliates" shall not include any Person that acquires a controlling interest, whether directly or indirectly, in Seller, whether through acquisition of voting securities, by Contract, or otherwise.

8.8 Scope and Choice of Law. It is the understanding of the parties that the scope of the covenants contained in Sections 8.6 and 8.7 hereof both as to time and area covered, are reasonable and necessary to protect the rights of the Purchaser and the rights of the Seller Entities. It is the parties' intention that these covenants be enforced to the greatest extent (but to no greater extent) in time, area and degree of participation as is permitted by the laws of the State of Delaware. The parties further agree that, in the event that any provision of Sections 8.6 or 8.7 hereof shall be determined by any state or federal court within the State of Delaware to be unenforceable by reason of its being extended over too great a time or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. If any such covenants or any part of such covenants is to any extent declared illegal or unenforceable by a state or federal court within the State of Delaware, then the remainder of such covenants, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each such remaining covenant shall be valid and enforceable to the fullest extent permitted by law.

8.9 Remedy for Breach. The parties agree that either party shall be entitled to seek injunctive relief against the other in the event of any breach or threatened breach of any of the covenants contained in Sections 8.5, 8.6 or 8.7.

8.10 Accounts Receivable. The parties hereto acknowledge and agree that all Accounts Receivable shall remain the property of the Seller Entities and their Affiliates and shall be collected by the Seller Entities subsequent to the Closing. In the event that, subsequent to the Closing, Purchaser or Purchaser's Affiliates receives any payments from any obligor with respect to an account receivable outstanding on the Closing Date, then Purchaser shall within twenty (20) Business Days after receipt of such payment remit the full amount of such payment to the applicable Seller Entity. In the case of the receipt by Purchaser of any payment from any obligor of any Seller Entity and Purchaser; then, unless otherwise specified by such obligor, such payment shall be applied first to amounts owed to the Seller Entities with the excess, if any, remitted to Purchaser. In the event that, subsequent to the Closing, any Seller Entity or its Affiliates receives any payments from any obligor with respect to an account receivable of Purchaser for any period after the Closing Date, then the Seller Entity shall within twenty (20) Business Days after receipt of such payment remit the full amount of such payment to Purchaser. In the case of the receipt by any Seller Entity or its Affiliates of any payment from any obligor of any Seller Entity and

Purchaser; then, unless otherwise specified by such obligor, such payment shall be applied first to amounts owed to the Seller Entities with the excess, if any, remitted to Purchaser.

8.11 Transfer of Seller Intellectual Property. Notwithstanding anything to the contrary in this Agreement or any ancillary agreement hereto, Purchaser shall be responsible for preparing and filing all instruments and documents necessary to effect the assignment of the Seller Intellectual Property to Purchaser, including all costs and expenses of preparing and recording country-specific assignments and legalization of signatures (where required).

ARTICLE 9

RESERVED

ARTICLE 10

CONDITIONS TO CLOSING

10.1 Conditions to Purchaser's Obligation to Close. The obligations of Purchaser to consummate the Transactions shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Purchaser in writing:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of Seller in (A) Section 5.4(b) of this Agreement and (B) Sections 5.1, 5.8(a), 5.9 and 5.19 (collectively, the "Seller's Fundamental Representations") shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date; (ii) the representations and warranties of Seller in this Agreement (other than as set forth in clause (i)) shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date (or, to the extent such representations and warranties speak as of a specific date or time, they shall be true in all respects as of such date or time), except as otherwise contemplated by this Agreement and except for such inaccuracies under such representations and warranties which, taken together in their entirety, would not, individually or in the aggregate, result in a Material Adverse Effect; and (iii) as of the Closing, Seller shall have performed, in all material respects, all covenants and obligations in this Agreement required to be performed by Seller on or prior to the Closing Date.

(b) Documents. Seller shall have delivered, or caused to have been delivered, to Purchaser all of the documents and agreements set forth in Section 4.2.

10.2 Conditions to Seller's Obligation to Close. The obligations of the Seller Entities to consummate the Transactions shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Seller in writing:

(a) Representations, Warranties and Covenants. (i) The representations and warranties of Purchaser in Sections 6.1, 6.2, 6.4 and 6.6 this Agreement shall be true and correct in all respects as of the Closing Date, (ii) the representations and warranties of Purchaser in this Agreement (other than as set forth in clause (i)) shall be true and correct in all respects as of the Closing Date (or, to the extent such representations and warranties speak as of a specific

date or time, they shall be true in all respects as of such date or time), except as otherwise contemplated by this Agreement and except for such inaccuracies under such representations and warranties, which, taken together in their entirety, would not, individually or in the aggregate, result in a Purchaser Material Adverse Effect; and (iii) Purchaser shall have performed, in all material respects, all covenants and obligations in this Agreement required to be performed by Purchaser on or prior to the Closing Date.

(b) Deliveries. Purchaser shall have delivered to Seller all of the documents and agreements set forth in Section 4.3.

10.3 Conditions to Obligations of Each Party to Close. The respective obligations of each party to this Agreement to consummate the Transactions shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, which may be waived by mutual consent of Seller and Purchaser, in writing:

(a) No Legal Impediments to Closing. No Order shall be in effect, or be pending by any Governmental Authority, which prohibits, renders illegal, or enjoins, the consummation of the Transactions. There shall not be any Legal Requirement pending or in effect, prohibiting Seller from selling the Business or the Purchased Assets or that makes this Agreement or the consummation of the Transactions illegal.

(b) HSR. Any applicable waiting period (and any extensions thereof) under the HSR Act shall have expired or been terminated.

ARTICLE 11

TAX MATTERS

11.1 Purchase Price Allocation. The parties agree that the purchase and sale of the Purchased Assets pursuant to this Agreement will be treated for Tax purposes as a taxable purchase of assets by Purchaser. No later than ninety (90) days after the Closing, Seller shall provide Purchaser with an allocation of the Up-Front Purchase Price (plus the Assumed Liabilities and any other liabilities deemed assumed by Purchaser for United States federal income Tax purposes) among the Purchased Assets (the "Purchase Price Allocation"). The Purchase Price Allocation will be prepared in good faith using commercially reasonable judgment in accordance with Section 1060 of the Code (and any similar provision of state, local or foreign law, as appropriate) and any third-party valuation of the Purchased Assets. Thereafter, Purchaser shall have fifteen (15) days either to (i) agree with and accept the Purchase Price Allocation or (ii) in good faith, suggest changes to the Purchase Price Allocation and attempt to agree with Seller as to the contents of the Purchase Price Allocation. Purchaser and Seller shall consult in good faith on the Purchase Price Allocation to resolve any differences, but neither party shall be bound by the other party's suggestions. In the event that the Purchase Price Allocation has been agreed to between the Purchaser and Seller, the parties shall report, act and file their respective Tax Returns (including IRS Form 8594) in accordance with the Purchase Price Allocation and any adjustments thereto and shall not take any position on a Tax Return or in a Tax audit or similar proceeding inconsistent with the Purchase Price Allocation or any adjustments thereto except upon a final determination by an applicable Tax Authority. If any subsequent adjustment is required to be made

to the Purchase Price Allocation (including as a result of any Contingent Payment made by the Purchaser pursuant to this Agreement), the Purchase Price Allocation shall be revised to take such adjustment into account in a manner consistent with the initial Purchase Price Allocation. Seller and Purchaser shall provide the other promptly with any other information reasonably required to complete the Purchase Price Allocation and any adjustments thereto.

11.2 Transfer Taxes. Notwithstanding anything to the contrary in this Agreement, the parties agree that (i) the Purchase Price is exclusive of any Transfer Taxes and (ii) Seller and Purchaser shall each pay, when due, and be responsible for, 50% of any Transfer Taxes and related fees imposed on or payable in connection with the transactions contemplated by this Agreement; *provided, that* the Purchaser shall be responsible for 100% of any VAT that is imposed in connection with this Transaction. Purchaser shall prepare and timely file all necessary documentation and Tax Returns required to be filed with respect to such Transfer Taxes and provide a copy of such Tax Return to the appropriate Seller Entity. Seller and Purchaser shall, and shall cause their respective Affiliates to, cooperate (i) to timely prepare and file any Tax Returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes, and (ii) to maintain accurate records of Transfer Taxes owed and paid.

11.3 Cooperation; Allocation of Taxes.

(a) Purchaser and Seller agree to furnish or cause to be furnished to each other, upon request and at the expense of the requesting party, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities (including reasonable access to Tax Returns and Books and Records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Tax Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Purchaser and Seller agree to cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Assumed Liabilities. For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, in no event shall Seller allow access to, or otherwise allow the examination of, a Consolidated Return (or any of the underlying Tax workpapers for a Consolidated Return).

(b) In the case of any Tax period that includes (but does not end on) the Closing Date (a "Straddle Period"), the amount of Taxes with respect to the Business or Purchased Assets that relate to a Pre-Closing Tax Period will be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Pre-Closing Tax Period and the denominator of which is the number of days in such Straddle Period. Notwithstanding the forgoing, items attributable to any action taken by Purchaser on the Closing Date after the Closing that is not in the ordinary course of business and is not contemplated by this Agreement will be paid by Purchaser and will not be attributable to a Pre-Closing Tax Period. Any refunds of Taxes with respect to the Purchased Assets or the Business for any Straddle Period actually received will be apportioned between the Purchaser and the Seller in a manner consistent with the allocation of Taxes as set forth in this Section 11.3(b).

ARTICLE 12

TERMINATION

12.1 Circumstances for Termination.

At any time prior to the Closing, this Agreement may be terminated by written notice explaining the reason for such termination:

(a) by the mutual written consent of Purchaser and Seller;

(b) by Purchaser, if it is not in material breach of any material provision of this Agreement, and if Seller shall have breached in any material respect any provision of this Agreement, which breach would render unsatisfied any condition contained in Section 10.1 or 10.3, and (i) is incapable of being cured, or (ii) if capable of being cured is not cured prior to the Business Day prior to the Drop-Dead Date;

(c) by Seller, if it is not in material breach of any material provision of this Agreement, and if Purchaser shall have breached in any material respect any provision of this Agreement, which breach would render unsatisfied any condition contained in Section 10.2 or 10.3, and (i) is incapable of being cured, or (ii) if capable of being cured is not cured prior to the Business Day prior to the Drop-Dead Date; and

(d) by either Seller or Purchaser, if (i) the Closing has not occurred on or prior to November 10, 2020 (the "Drop-Dead Date") for any reason and (ii) the party seeking to terminate this Agreement hereunder has not primarily caused such failure to close.

12.2 Effect of Termination. If this Agreement is terminated in accordance with Section 12.1, all obligations of the parties hereunder shall terminate, except for the obligations set forth in this Article 12 (Termination) and Sections 14.1 (Expenses), 14.6 (Governing Law) and 14.7 (Jurisdiction; Waiver of Jury Trial); *provided*, *however*, that nothing herein shall relieve any party from liability resulting from any willful and material breach of this Agreement. For purposes of this Section 12.2, a "willful and material breach of this Agreement" shall mean a deliberate action or omission (including a failure to cure circumstances) where the breaching party knows such action or omission is or would reasonably be expected to result in, or intends such action or omission to be or reasonably expects such action or omission to, result in a breach of this Agreement.

ARTICLE 13

INDEMNIFICATION

13.1 Indemnification by Seller. Subject to the limitations set forth in this Article 13, from and after the Closing, Seller shall indemnify, defend and hold harmless Purchaser and its officers, directors, agents, employees and Affiliates (collectively, the "Purchaser Indemnified Persons") from and against any and all Damages (collectively, "Purchaser Damages"), arising out of, relating to or resulting from (a) any breach of or inaccuracy in a representation or warranty of Seller contained in this Agreement (without giving effect to any "Material Adverse Effect" or other

similar materiality qualifications included in such representation or warranty solely for purposes of calculating the amount of any Damages subject to indemnification hereunder (and not for purposes of establishing a breach or inaccuracy hereunder)); (b) any breach of a covenant of Seller contained in this Agreement; (c) any Excluded Liability; and (d) any Seller Taxes.

13.2 Indemnification by Purchaser. Subject to the limitations set forth in this Article 13, from and after the Closing, Purchaser shall indemnify, defend and hold harmless the Seller Entities and their respective officers, directors, agents, employees and Affiliates (collectively, the "Seller Indemnified Persons") from and against any and all Damages (collectively, "Seller Damages"), arising out of, relating to or resulting from (a) any breach of or inaccuracy in a representation or warranty of Purchaser contained in this Agreement; (b) any breach of a covenant of Purchaser contained in this Agreement; (c) any Assumed Liability; or (d) any Taxes related to the Purchased Assets for all Post-Closing Tax Periods (calculated in accordance with Section 11.3).

13.3 Time for Claims. No claim may be made or suit instituted seeking indemnification pursuant to Sections 13.1(a) or 13.2(a) unless a written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnitee is provided to the Indemnitor prior to the first (1st) anniversary of the Closing Date; *provided*, *however*, that (i) claims may be made with respect to the representations and warranties set forth in Section 5.5 (Taxes) until thirty (30) days after expiration of applicable statutes of limitations relating to the subject matter thereof and (ii) claims may be made with respect to the Seller's Fundamental Representations, the Select Intellectual Property Representations and the Purchaser's representations and warranties in Sections 6.1, 6.2 and 6.6 (collectively, the "Purchaser's Fundamental Representations") until the first to occur of (A) end of the Royalty Term and (B) twenty (20) years.

13.4 Procedures for Indemnification.

(a) Third-Party Claims. Promptly after receipt by a party entitled to indemnification under Sections 13.1 or 13.2 or any other provision of this Agreement (the "Indemnitee") of written notice of the assertion or the commencement of any Proceeding with respect to any matter referred to in Sections 13.1 or 13.2 or in any other applicable provision of this Agreement made or brought by any Person who is not a party to this Agreement (a "Third Party Claim"), the Indemnitee shall give written notice describing such claim or Proceeding in reasonable detail in light of the circumstances then known to the Indemnitee to the party obligated to indemnify Indemnitee (the "Indemnitor"), and thereafter shall keep the Indemnitor reasonably informed with respect thereto; *provided*, *however*, that failure of the Indemnitee to keep the Indemnitor reasonably informed as provided herein shall not relieve the Indemnitor of its obligations hereunder except to the extent that the Indemnitor is prejudiced thereby. If any Proceeding shall be commenced against any Indemnitee by a third party, the Indemnitor shall be entitled to participate in such Proceeding and assume the defense thereof with counsel reasonably satisfactory to the Indemnitee, at the Indemnitor's sole expense; *provided*, *however*, that the Indemnitor shall not have the right to assume the defense of any Proceeding if (i) such Third Party Claim involves criminal liability; (ii) the Indemnitee shall have one or more legal or equitable defenses available to it which are different from or in addition to those available to the Indemnitor, and, in the reasonable opinion of the Indemnitee, counsel for the Indemnitor could not adequately

represent the interests of the Indemnitee because such interests could be in conflict with those of the Indemnitor; (iii) such litigation is reasonably likely to have a material adverse effect on any other matter beyond the scope or limits of the indemnification obligation of the Indemnitor; or (iv) the Indemnitor shall not have assumed the defense of the litigation in a timely fashion (but in any event within thirty (30) days of notice of such Proceeding). If the Indemnitor shall assume the defense of any Proceeding, the Indemnitee shall be entitled to participate in any Proceeding at its expense, and the Indemnitor shall not settle such Proceeding unless (A) the settlement shall include as an unconditional term thereof the giving by the claimant or the plaintiff of a full and unconditional release of the Indemnitee from all liability with respect to the matters that are subject to such Proceeding, (B) the settlement shall not include a finding or admission of any violation of a Legal Requirement or any violation of the rights of any Person, (C) the settlement imposes any injunctive relief or other restrictions of any kind or nature on the Indemnitee or (D) otherwise shall have been approved by the Indemnitee, such approval not to be unreasonably withheld or delayed.

(b) Direct Claims. Any claim by an Indemnitee on account of Damages which do not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnitee giving the Indemnitor written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnitee and, if then known, the amount of Damages incurred by the Indemnitee (the "Claimed Amount") to the Indemnitor and thereafter shall keep the Indemnitor reasonably informed with respect thereto; *provided*, *however*, that failure of the Indemnitee to keep the Indemnitor reasonably informed as provided herein shall not relieve the Indemnitor of its obligations hereunder except to the extent that the Indemnitor is prejudiced thereby. The Indemnitor shall have thirty (30) days after its receipt of such notice (the "Review Period") to respond in writing to such Direct Claim, whereby the Indemnitor shall (i) agree that the Indemnitee is entitled to receive all of the Claimed Amount (in which case, within five (5) Business Days of such response, the Indemnitor shall pay the Indemnitee the Claimed Amount to an account designated by the Indemnitee in writing not less than two (2) Business Days prior to such payment), (ii) agree that the Indemnitee is entitled to receive part, but not all, of the Claimed Amount (in which case, within five (5) Business Days of such response, the Indemnitor shall pay the Indemnitee the Claimed Amount to an account designated by the Indemnitee in writing not less than two (2) Business Days prior to such payment), or (iii) contest that the Indemnitee is entitled to receive any off the Claimed Amount including the reasons therefor. If the Indemnitor in such response contests the payment of all or part of the Claimed Amount, the Indemnitor and the Indemnitee shall use commercially reasonable efforts to resolve such dispute. If such dispute is not resolved within sixty (60) days following the delivery by the Indemnitor of such response, the Indemnitor and the Indemnitee shall each have the right to submit such dispute to a court of competent jurisdiction, subject to Section 14.7. Any amounts owed to the Indemnitee pursuant to (A) a resolution of such dispute between the parties or (B) a final, non-appealable decision of such court of competent jurisdiction with respect to such dispute shall be referred to herein as the "Final Amount". During the Review Period, the Indemnitee shall allow the Indemnitor and its professional advisors to investigate the matter or circumstances alleged to give rise to the Direct Claim and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnitee shall reasonably cooperate with the Indemnitor's investigation by giving such information and assistance (including the right to examine any documents or records exclusively related to such Direct Claim) as the Indemnitor or any of its professional advisors may reasonably request.

13.5 Limitations on Indemnification.

(a) Notwithstanding anything herein to the contrary, Seller shall not be obligated to indemnify any Purchaser Indemnified Person under Section 13.1(a): (i) unless the aggregate of all Purchaser Damages exceeds $250,000 (the "Seller's Indemnification Deductible"), at which point, the full amount of all Purchaser Damages shall be recoverable or (ii) to the extent that the aggregate of all Purchaser Damages exceeds $7,000,000 (the "Seller's Indemnification Cap"); *provided*, *however*, that the Seller's Indemnification Cap and Seller's Indemnification Deductible shall not apply to nor count towards any Seller indemnification obligation (A) arising out of, relating to or resulting from Fraud by any Seller Entity or arising out of, relating to or resulting under Sections 13.1(b), (c) or (d) or (B) arising out of, relating to or resulting from a breach of or inaccuracy in any of the representations and warranties set forth in Section 5.5 (Taxes), any Seller's Fundamental Representations or any Select Intellectual Property Representations. Notwithstanding anything herein to the contrary, Seller shall not be obligated to indemnify any Purchaser Indemnified Person under Section 13.1(a) with respect to Purchaser Damages arising out of, relating to or resulting from a breach of or inaccuracy in any of Seller's Fundamental Representations to the extent that the aggregate of all Purchaser Damages exceeds the Purchase Price actually paid to the Seller pursuant to this Agreement. Notwithstanding anything herein to the contrary, Seller shall not be obligated to indemnify any Purchaser Indemnified Person under this Article 13 with respect to Purchaser Damages (i) for Taxes attributable to any action taken by Purchaser on the Closing Date after the Closing that is not in the ordinary course of business and is not contemplated by this Agreement, which will be paid by Purchaser and will not be attributable to a Pre-Closing Tax Period or (ii) with respect to any matter if Purchaser had knowledge of such matter prior to Closing.

(b) Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to indemnify any Seller Indemnified Person under Section 13.2(a): (i) unless the aggregate of all Seller Damages exceeds $250,000 (the "Purchaser's Indemnification Deductible"), at which point, the full amount of all Seller Damages shall be recoverable or (ii) to the extent that the aggregate of all Seller Damages exceeds $7,000,000 (the "Purchaser's Indemnification Cap"): *provided*, *however*, that the Purchaser's Indemnification Cap and the Purchaser's Indemnification Deductible shall not apply to nor count towards any Purchaser indemnification obligation (A) arising out of, relating to or resulting from Fraud by Purchaser or arising out of, relating to or resulting under Sections 13.2(b), (c) or (d), or (B) arising out of, relating to or resulting from a breach of or inaccuracy in any of Purchaser's Fundamental Representations. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to indemnify any Seller Indemnified Person under this Article 13 with respect to Seller Damages for Taxes (1) attributable to any action taken by the Seller Entities before the Closing, which will be paid by Seller and will not be attributable to a Post-Closing Tax Period, or (2) incurred before the Closing Date.

(c) Without prejudice to any obligations arising under a Legal Requirement, each party shall, and shall cause its respective Affiliates to, take all reasonable steps to mitigate any Damage upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the extent reasonably necessary to remedy the breach that gives rise to such Damage, which costs, for the avoidance of doubt, shall be recoverable as Seller Damages or Purchaser Damages.

(d) Notwithstanding any provision herein to the contrary, neither party shall be entitled to claims of breach or indemnification pursuant to this Agreement (including any breach or inaccuracy of the representations and warranties contained in this Agreement) more than once with respect to the same breach.

(e) LIMITATION OF LIABILITY, DISCLAIMER OF CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, AND EXCEPT FOR CLAIMS PURSUANT TO (I) SECTION 8.5, (II) SECTION 13.1(C) AND (III) SECTION 13.2(C), NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COST OF COVER, BUSINESS INTERRUPTION OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, ARISING FROM THE PERFORMANCE OF, OR RELATING TO, THIS AGREEMENT REGARDLESS OF WHETHER SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF, OR THE FORESEEABILITY OF, SUCH DAMAGES.

13.6 Limitations on Select Intellectual Property Indemnification.

(a) Notwithstanding anything herein to the contrary, with respect to any Purchaser Damages arising out of, relating to or resulting from any breach of or inaccuracy in the Select Intellectual Property Representations, (i) Seller shall be obligated to indemnify such Purchaser Indemnified Person only for twenty percent (20%) of the aggregate Purchaser Damages incurred in connection with any such breach or inaccuracy and (ii) Seller shall not be obligated to indemnify any Purchaser Indemnified Person for any Purchaser Damages incurred in connection with any such breach or inaccuracy to the extent that the aggregate of all such indemnification payments made by Seller in respect of such Purchaser Damages exceeds $100,000,000 (the "IP Indemnification Limit"); *provided*, *however*, that the limitations in this Section 13.6(a) shall not apply to nor count towards Seller indemnification obligations arising out of, relating to or resulting from Fraud by any Seller Entity.

(b) The parties acknowledge and agree that any Purchaser Damages within the IP Indemnification Limit shall be recoverable by Purchaser as follows: (i) the first $30,000,000 of Purchaser Damages (the "Direct IP Indemnification Limit"), at the sole discretion of the Purchaser, shall be recoverable either directly from Seller or through setoff pursuant to Section 13.8, and (ii) all remaining Purchaser Damages in excess of the Direct IP Indemnification Limit shall be recoverable exclusively through setoff pursuant to Section 13.8; *provided*, *however*, that, with respect to clause (ii), (A) such setoff shall only occur at the time when any Contingent Payments are due and shall not accrue as unpaid towards future Contingent Payment and (B) the amount of any Purchaser Damages to be offset against any single Contingent Payment shall not exceed twenty percent (20%) of such Contingent Payment.

13.7 Third Party Contributors. The amount of any and all Damages for which indemnification is provided pursuant to this Article 13 shall be net of any amounts actually received by the Indemnitee with respect to such Damages (i) under insurance policies after giving effect to any deductible, retention or equivalent loss rated premium adjustment and any costs or expenses incurred in recovering such insurance proceeds and (ii) otherwise from any third party. Notwithstanding anything herein to the contrary, but subject to Section 13.5(c), Indemnitee shall

have no obligation to seek payment from any insurance policy or to maintain insurance policies; *provided*, *however* that the Purchaser Indemnified Persons shall first pursue payment or recovery under the Existing Licenses for any Purchaser Damages, to the extent such Damages are recoverable under the terms of the applicable Existing Licenses, prior to seeking indemnification under this Agreement.

13.8 Right of Setoff. Subject to Section 13.6(b), Purchaser may, at its sole discretion, set off (i) any Final Amount with respect to a Direct Claim to which Purchaser is the Indemnitee pursuant to Section 13.4 and (ii) the amount of Purchaser Damages for which Seller is required to indemnity any Purchaser Indemnitee pursuant to this Agreement in respect of any Third Party Claim, as finally determined pursuant to (A) a resolution of such dispute between the parties or (B) a final, non-appealable decision of such court of competent jurisdiction, in the case of each of (i) and (ii), against amounts otherwise payable pursuant to Sections 3.1 or 3.2.

13.9 Remedies Exclusive. With the exception of (a) any claims of Fraud which are proven and upon which a judgment entered in the involved proceeding shall be expressly based, (b) claims pursuant to Section 14.15 and (c) as contemplated by Section 3.5(c), Seller and Purchaser expressly agree that from and after the Closing the provisions of this Article 13 shall be the sole and exclusive remedy for all claims of breach or indemnification pursuant to this Agreement after the Closing Date. Nothing in this Section 13.9 shall limit any party's right to seek and obtain any equitable relief to which any party shall be entitled pursuant to Section 14.15 or to seek any remedy on account of any Fraud by any party or their Affiliates and each of their respective Representatives.

13.10 Tax Treatment of Indemnification. For all Tax purposes, Purchaser and Seller agree to treat any indemnity payment under this Agreement as an adjustment to the Purchase Price unless otherwise required by law.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Expenses. Whether or not the Transactions are consummated, unless otherwise indicated expressly herein, each party shall pay its own costs and expenses in connection with this Agreement and the Transactions, including the fees and expenses of its advisers, accountants and legal counsel.

14.2 Interpretation. Except as otherwise explicitly specified to the contrary, (a) references to a Section, Article, Exhibit or Schedule means a Section or Article of, or Schedule or Exhibit to, this Agreement, unless another agreement is specified, (b) the word "including" (in its various forms) means "including without limitation," (c) references to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rules or regulation, in each case as amended or otherwise modified from time to time, (d) the phrase "ordinary course of business" means an action taken, or omitted to be taken, by any Person in the ordinary course of such Person's business consistent with past practice (including, for the avoidance of doubt, recent past practice in light of the current pandemic, epidemic or disease outbreak); *provided*, *however*, that any action taken, or omitted to be taken, that relates to, or arises

out of, any pandemic, epidemic or disease outbreak (including any COVID-19 Measures) shall be deemed to be in the ordinary course of business, (e) words in the singular or plural form include the plural and singular form, respectively, (f) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement, (g) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if," (h) the headings contained in this Agreement, in any Exhibit or Schedule hereto 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, (i) the words "will" and "shall" shall be interpreted to have the same meaning, (j) references to "$" shall mean United States dollars and (k) the word "or" is not exclusive.

14.3 Entire Agreement. This Agreement, including the other documents, agreements, Exhibits and Schedules specifically referred to herein, constitutes the entire agreement between and among the parties hereto with regard to the subject matter hereof, and supersedes all prior agreements and understandings with regard to such subject matter. Except for the Confidentiality Agreement, there are now no agreements, representations or warranties between or among the parties other than those set forth in the Agreement or the documents and agreements contemplated in this Agreement. The parties acknowledge and agree that notwithstanding any terms within to the contrary, the Confidentiality Agreement shall not expire nor be terminated in accordance with its terms for any reason on or prior to the earlier of the Closing Date or the termination of this Agreement.

14.4 Amendment, Waivers and Consents. This Agreement shall not be changed or modified, in whole or in part, except by supplemental agreement or amendment signed by the parties. Any party may waive compliance by any other party with any of the covenants or conditions of this Agreement, but no waiver shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any consent under this Agreement shall be in writing and shall be effective only to the extent specifically set forth in such writing.

14.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided*, *however*, that no party hereto may assign any right or obligation hereunder without the prior written consent of all other parties hereto, except that Purchaser may collaterally assign its rights under this Agreement to any financial institution or other lender financing or refinancing the transactions contemplated hereby or otherwise extending credit to Purchaser or its Affiliates. Notwithstanding anything in this Section 14.5 to the contrary, no assignment shall relieve the assigning party of its obligations hereunder. If any withholding taxes are imposed with respect to any payment contemplated under this Agreement as a result of an assignment or other transfer Purchaser of its rights or obligations hereunder to another entity (or as a result of a subsequent transfer following such assignment or transfer), and such withholding taxes would not have been imposed with respect to such payment under then-applicable Tax Laws if Purchaser had not assigned or transferred its rights or obligations hereunder (or such subsequent transfer had not occurred) (such incremental withholding taxes, "Incremental Taxes"), then the amount payable to the Seller shall be increased to take into account such Incremental Taxes so that the Seller receives an amount equal to the sum it would have received had no such Incremental Taxes been withheld.

14.6 Governing Law. The rights and obligations of the parties shall be governed by, and this Agreement shall be interpreted, construed and enforced in accordance with, the laws of the State of Delaware, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

14.7 Jurisdiction; Waiver of Jury Trial.

(a) Any judicial proceeding brought against any of the parties to this Agreement or any dispute arising out of this Agreement or related hereto may be brought in the courts of the State of Delaware, or in the United States District Court for the District of Delaware, and, by execution and delivery of this Agreement, each of the parties to this Agreement accepts the exclusive jurisdiction of such courts and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. The foregoing consents to jurisdiction shall not constitute general consents to service of process in the State of Delaware for any purpose except as provided above and shall not be deemed to confer rights on any Person other than the parties to this Agreement. Each of the parties to this Agreement agree that service of any process, summons, notice or document by United States mail to such party's address for notice hereunder shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters for which it has submitted to jurisdiction pursuant to this Section 14.7(a).

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, PROCEEDING OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

14.8 Rules of Construction. The parties acknowledge that each party has read and negotiated the language used in this Agreement. The parties agree that, because all parties participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous language in favor of or against any party by reason of that party's role in drafting this Agreement.

14.9 Severability. If any provision of this Agreement, as applied to either party or to any circumstance, is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

14.10 Exhibits and Schedules. All Exhibits and Schedules attached hereto shall be deemed to be a part of this Agreement and are fully incorporated in this Agreement by reference. Disclosure in any Schedule shall qualify (a) the corresponding Section of the Agreement to which such Schedule refers and (b) any other Sections of this Agreement to the extent that it is reasonably apparent on the face of such disclosure that such disclosure also qualifies or applies to such other Sections.

14.11 Notices. Any notice required or permitted to be given hereunder shall be sufficient if in writing and (a) delivered in person or by express delivery or courier service, (b) sent by email of a PDF document (with written confirmation of receipt) or (c) deposited in the mail registered or certified first class, postage prepaid and return receipt requested. Each notice shall be deemed given when so delivered personally, or sent by email transmission, or, if sent by express

delivery or courier service, one (1) Business Day after being sent, or if mailed, five (5) Business Days after the date of deposit in the mail. A notice of change of address or email shall be effective only when done in accordance with this Section 14.11.

To Purchaser at:	Secura Bio, Inc. 1995 Village Center Circle, Suite 128 Las Vegas, Nevada 89134 Attention: Mark E. Spring Brett Lund Email: mark.spring@securabio.com; blund@securabio.com
With copies to:	Paul Hastings LLP Twelfth Floor 4747 Executive Drive San Diego, CA 92121 Attention: Deyan Spiridonov Email: spiri@paulhastings.com
To any of the Seller Entities at:	Verastem, Inc. 117 Kendrick Street, Suite 500 Needham, Massachusetts, 02494 Attention: Brian M. Stuglik Email: bstuglik@verastem.com
With copies to:	Ropes & Gray LLP Prudential Tower 800 Boylston Street Boston, MA 02199-3600 Attention: Marko Zatylny Email: marko.zatylny@ropesgray.com

14.12 Rights of Parties. Other than as set forth in Section 14.16, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

14.13 Public Announcements. Except as may be required by applicable Legal Requirements or stock exchange rules, no party to this Agreement or any Affiliate or Representative of such party shall make any public announcements or otherwise communicate with any news media in respect of this Agreement or the Transactions without prior consent of the other parties, such consent not to be unreasonably withheld, and prior to any announcement or

communication the parties shall cooperate as to the timing and contents of any such announcement or communication.

14.14 Counterparts. This Agreement may be signed in any number of counterparts, including facsimile copies thereof or electronic scan copies thereof delivered by electronic mail, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

14.15 Specific Performance. The parties hereby expressly recognize and acknowledge that immediate, extensive and irreparable damage would result, no adequate remedy at law would exist and damages would be difficult to determine in the event that any provision of this Agreement is not performed in accordance with its specific terms or otherwise breached. It is hereby agreed that the parties shall be entitled to specific performance of the terms hereof and immediate injunctive relief and other equitable relief, without the necessity of proving the inadequacy of money damages as a remedy, and the parties further hereby agree to waive any requirement for the securing or posting of a bond in connection with the obtaining of such injunctive or other equitable relief. Such remedies, and any and all other remedies provided for in this Agreement, shall, however, be cumulative in nature and not exclusive and shall be in addition to any other remedies whatsoever which any party may otherwise have. Each of the parties hereby acknowledges that the existence of any other remedy contemplated by this Agreement does not diminish the availability of specific performance of the obligations hereunder or any other injunctive relief. Each of the parties further acknowledges and agrees that injunctive relief or specific performance will not cause an undue hardship to such party.

14.16 Waiver of Conflicts. The Purchaser hereby (i) waives, on its own behalf and agrees to cause its current and future Affiliates to waive, any conflicts that may arise after the Closing with regard to Prior Company Counsel in connection with any dispute relating in any way to this Agreement or the Transactions contemplated hereby between the Purchaser or any of its Affiliates, on the one hand, and the Seller or any of its Affiliates, on the other hand, and (ii) agrees that Prior Company Counsel may represent the Seller or any of its Affiliates in such dispute even though the interest of the Seller or its Affiliates may be directly adverse to the Purchaser or any of its Affiliates, and even though Prior Company Counsel may have represented the Purchaser or any of its Affiliates in a matter substantially related to such dispute, or may be handling ongoing matters for the Purchaser or any of its Affiliates. In addition, the Purchaser, on its own behalf and on behalf of its current and future Affiliates, further agrees that, notwithstanding anything in this Agreement to the contrary, as to all communications among any Prior Company Counsel or the Seller Entities or any of their respective directors, managers, members, partners, officers or employees or Affiliates that relate in any way to this Agreement or the Transactions contemplated hereby, the attorney-client privilege and the expectation of client confidence belongs to the Seller and shall be controlled solely by the Seller and shall not pass to or be claimed by the Purchaser or any of its respective Affiliates. Accordingly, the Purchaser shall not have access to any such communications, or to the files of Prior Company Counsel that relate in any way to this Agreement or the Transactions contemplated hereby. Notwithstanding the above, the Purchaser, on its behalf and on behalf of its current and future Affiliates, further understands and agrees that the consummation of the Transactions may result in the inadvertent disclosure of such information that may be confidential or subject to a claim of privilege. The Purchaser, on its behalf and on behalf of its current and future Affiliates, further understands and agrees that any disclosure of

such information that may be confidential or subject to a claim of privilege will not prejudice or otherwise constitute a waiver of any claim of privilege. The Purchaser, on its behalf and on behalf of its current and future Affiliates, agrees to use commercially reasonable efforts to return promptly any such inadvertently disclosed information to the appropriate Person upon becoming aware of its existence. The Purchaser agrees to take, and to cause its current and future Affiliates to take, all steps necessary to implement the intent of this Section 14.16. Each of the parties acknowledges that it has had the opportunity to discuss and obtain adequate information concerning the significance and material risks of, and reasonable available alternatives to, the waivers, permissions and other provisions of this Agreement, including the opportunity to consult with counsel other than Prior Company Counsel. This Section 14.16 is for the benefit of the Seller Entities and Prior Company Counsel, and Prior Company Counsel is an intended third-party beneficiary of this Section 14.16. This Section 14.16 shall be irrevocable, and no term of this Section 14.16 may be amended, waived or modified, without the prior written consent of the Seller and each Prior Company Counsel affected thereby.

[Signatures Follow on a Separate Page]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by their respective officers thereunto duly authorized all as of the date first written above.

"Purchaser"

SECURA BIO, INC.

By: /s/ Joseph M. Limberg
Name: Joseph M. Limberg
Title: President and Chief Executive Officer

[Signature Page to Asset Purchase Agreement]

"Seller"

VERASTEM, INC.

By: /s/ Brian Stuglik
Name: Brian Stuglik
Title: Chief Executive Officer

[Signature Page to Asset Purchase Agreement]

CERTAIN DEFINITIONS

"Accounts Receivable" shall have the meaning specified in Section 1.2(a)(ii).

"Action" means any claim, action, suit, arbitration, inquiry, audit, proceeding or investigation.

"Affiliate" of any Person shall mean any Person directly or indirectly controlling, controlled by, or under common control with, such Person; *provided*, *however*, that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract, or otherwise.

"Agreement" shall have the meaning specified in the Preamble.

"Antitrust Laws" shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other federal, state and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

"Approval" shall have the meaning specified in Section 7.5(a).

"Assigned Contracts" shall have the meaning specified in Section 1.1(c).

"Assignment Consent" shall have the meaning specified in Section 1.4(a).

"Assumed Liabilities" shall mean all liabilities and obligations, contingent or otherwise of the Seller Entities to the extent arising out of, resulting from or related to the Business or the Purchased Assets after the Closing or the operation of the Business as conducted after the Closing, except the Excluded Liabilities. "Assumed Liabilities" shall include: (i) all liabilities and obligations of the Seller Entities or their Affiliates, as applicable, under the Assigned Contracts arising on or after the Closing Date to the extent not related to pre-closing breaches of such Assigned Contracts by any Seller Entity or its Affiliates; (ii) all liabilities and obligations related to Product warranty claims (regardless of whether the applicable warranty is express or implied) or commercialization activities after the Closing, in each case, with respect to Product sold on or after the Closing Date; (iii) all liabilities or obligations with respect to claims, whether founded upon negligence, breach, strict liability or other legal theory, seeking compensation or recovery for personal injury or property damage and resulting from defects or alleged defects or an alleged failure to warn for Product sold on or after the Closing Date; (iv) subject to the provisions of Article 13, all liabilities and obligations to the extent resulting from the alleged or actual infringement, misappropriation, or violation of a third party's Intellectual Property Rights resulting from the use, commercialization, development, manufacture, sale, offer for sale or importation of the Product; (v) all liabilities and obligations for any returns with respect to Product sold on or

after the Closing Date; (vi) all liabilities and obligations under the Non-Assignable Assets to the extent that the Seller Entities are cooperating in a commercially reasonable arrangement designed to provide Purchaser or its designee with the benefits of such Non-Assignable Asset after the Closing; (vii) all liabilities and obligations assumed by Purchaser under this Agreement or any other Transaction Agreement; and (viii) subject to the provisions of Article 11 and Article 13, all liabilities for Taxes related to the Purchased Assets, the Business or the Assumed Liabilities that are attributable to a Post-Closing Tax Period; *provided, however*, that Assumed Liabilities shall not include (1) any accounts payable of the Seller Entities as of the Closing or (2) subject to the provisions of Article 11 and Article 13, any liability for Taxes with respect to the Purchased Assets for a Pre-Closing Tax Period.

"Audit Opinion" shall have the meaning specified in Section 8.1(b).

"Audited Financial Statements" shall have the meaning specified in Section 8.1(b).

"Audited Financials" shall have the meaning specified in Section 5.2.

"Books and Records" shall have the meaning specified in Section 1.1(h).

"Business" shall mean the research, development (including preclinical studies and Clinical Trials), manufacture, registration (including applications and submissions for Regulatory Approval and any other activities to secure and maintain market access (including any phase IV/post-approval clinical study that is not required to obtain or maintain Regulatory Approval)), use, import, export, marketing, promotion, offering for sale, sale, licensing, sublicensing, testing, support, supply, storage and distribution of the Products and any components or intermediates thereof or therefor, in each case, in the Field, each as conducted by or on behalf of the Seller Entities or any of the Existing Licensees as of the Closing and, for clarity, including any and all of the foregoing with respect to any Products currently in development by or on behalf of any of the Seller Entities or any of the Existing Licensees as of the Closing. For clarity, "Business" includes all operations and activities undertaken by or on behalf of any of the Seller Entities or any of the Existing Licensees pursuant to or in connection with the exercise of any rights or licenses granted to any of the Seller Entities pursuant to the Infinity Agreement or sublicenses of such rights and licenses granted to any of the Existing Licensees as of the Closing.

"Business Data" means all non-public Trade Secrets and Know-How included in the Seller Intellectual Property.

"Business Day" shall mean any day other than (i) a Saturday or a Sunday or (ii) a day on which banking and savings and loan institutions are closed in New York, New York.

"Clinical Trial" shall mean a human clinical study conducted on human subjects that is designed to (i) establish the metabolism and pharmacologic actions of a pharmaceutical product in humans, the side effects associated with increasing doses, structure-activity relationships, and mechanism of action in humans, (ii) investigate the safety and efficacy of the pharmaceutical product for its intended use, and to define warnings, precautions and adverse reactions that may be associated with the pharmaceutical product in the dosage range to be prescribed, (iii) support Regulatory Approval of such pharmaceutical product or label expansion

of such pharmaceutical product, and/or (iv) confirm the clinical benefit of a pharmaceutical product in a particular indication.

"Closing" shall have the meaning specified in Section 4.1.

"Closing Date" shall have the meaning specified in Section 4.1.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended.

"Combination Product" means a finished dosage form of a product that contains or is comprised of a Product and one or more other pharmaceutical or biological products, and that is either (a) packaged together with the Product for sale or shipment as a single unit at a single price, or (b) marketed and sold collectively with the Product as a single product at a single price.

"Competing Product" shall mean any pharmaceutical product that is a PI3K delta inhibitor that is indicated for CLL (chronic lymphocytic leukemia), FL (follicular lymphoma), SLL (small lymphocytic lymphoma) or PTCL (peripheral t-cell lymphoma) and that is delivered orally, for clarity, including Copiktra in the Field.

"Competing Transaction" shall have the meaning specified in Section 7.2.

"Compound" means a compound and any references to a Compound shall include all of its various chemical forms, including acids, bases, salts, metabolites, esters, isomers, enantiomers, pro-drug forms, hydrates, solvates, polymorphs and degradants thereof in crystal, powder or other form.

"Confidential Information" shall mean all Trade Secrets and Know-How and other confidential or proprietary information of a Person, including information derived from reports, investigations, research, work in progress, codes, marketing and sales programs, financial projections, cost summaries, pricing formulae, contract analyses, financial information, projections, confidential filings with any state or federal agency, and all other confidential concepts, methods of doing business, ideas, materials or information prepared or performed for, by or on behalf of such Person by its employees, officers, directors, agents, representatives, or consultants.

"Confidentiality Agreement" shall mean that certain Confidential Disclosure Agreement between Purchaser and Seller, effective as of February 17, 2020.

"Consent" shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Approval).

"Consolidated Return" shall mean any consolidated, combined or unitary Tax Return filed with respect to a group that includes through the Closing Date a Seller Entity or any Affiliate of the Seller Entities.

"Contingent Payments" shall mean the Milestone Payments, the Royalty Payments and the Product License Payments.

"Contract" shall mean any written agreement, contract, obligation, promise, understanding, arrangement, commitment or undertaking of any nature.

"Convertible Promissory Note Purchase Agreement" shall mean that certain Convertible Note Purchase Agreement, dated as of August 10, 2020, by and among the Purchaser and the Investors listed on Schedule I thereto.

"Copiktra" shall mean the product currently marketed and sold by the Seller Entities as of the Closing under the name "COPIKTRA" containing the Compound known as IPI-145 or Duvelisib (as such Compound is further described in Schedule A-1 to the Seller Disclosure Schedule) in its current, FDA-approved formulation, strengths and dosage form in the Field and any other Compound thereof.

"Copyrights" shall mean all works of authorship, copyrightable works and copyrights, including all copyright registrations and applications, whether published or unpublished.

"COVID-19" shall mean SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemics or disease outbreaks.

"COVID-19 Measures" shall mean any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester or any other law, order, directive, guidelines or recommendations by any Governmental Authority in connection with or in respect to COVID-19.

"CSPC" shall have the meaning set forth in the definition of "Existing Licenses."

"Damages" shall mean and include any loss, damage, injury, settlement, judgment, award, fine, penalty, Tax, cost, fee or expense of any nature (including documented and reasonable fees and expenses of counsel, consultants, experts and other documented and reasonable professional fees).

"Diligent Efforts" shall mean the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible; *provided*, *however*, that a Person required to use "Diligent Efforts" under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person under this Agreement or any of the Material License Agreements. Without limiting the generality of the foregoing, in determining Diligent Efforts with respect to the development and commercialization of the Product or the Compound known as "IPI-145" or "Duvelisib" or "INK1197", the parties shall take into account the following: the market potential of the Product or such Compound, safety and efficacy, product profile, competitiveness of the marketplace for the Product, the proprietary position of the Product, the regulatory structure involved, the availability and level of reimbursement for such treatment by third party payors or health insurance plans, the potential total profitability of the Product marketed or to be marketed and other relevant factors affecting the cost, risk and timing of development and the total potential reward to be obtained if the Product is commercialized.

"Direct IP Indemnification Limit" shall have the meaning specified in Section 13.6(b).

"Drop-Dead Date" shall have the meaning specified in Section 12.1(d).

"Early Access Program" shall mean any program that provides patients with a Product for a use that has not been approved for marketing in any country or region in the Territory and that is not primarily intended to obtain information about the safety or effectiveness of a drug. "Early Access Programs" shall include treatment INDs / protocols, and named patient programs.

"Employee Benefit Plan" shall mean each plan, arrangement, program or policy, whether funded or unfunded, including each (i) employee pension benefit plan within the meaning of Section 3(2) of ERISA, (ii) employee welfare benefit plan within the meaning of Section 3(1) of ERISA, and (iii) bonus or other incentive, remuneration, severance, fringe-benefit, retention, change-of-control, profit-sharing, equity-based or deferred compensation arrangement.

"Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest or other similar encumbrance, in each case excluding any Permitted Encumbrance.

"Entity" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust or company (including any limited liability company or joint stock company) or other similar entity.

"Environmental Claim" shall mean any claim, action, investigation or notice against or involving the Business or the Purchased Assets by any Governmental Authority alleging liability under or a violation of any Environmental Law.

"Environmental Laws" shall mean all statutes, laws and regulations of any Governmental Authority relating to pollution or protection or preservation of human health or safety (in relation to exposure to Hazardous Substances) or the environment, including statutes, laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, generation, storage, containment (whether above ground or underground), disposal, transport or handling of Hazardous Substances.

"Evaluation Material" shall have the meaning specified in Section 8.5(a).

"Excluded Assets" shall have the meaning specified in Section 1.2.

"Excluded Liability" shall have the meaning specified in Section 1.3.

"Existing Licensee" shall have the meaning set forth in the definition of "Existing Licenses".

"Existing Licenses" shall mean each of: (i) that certain License and Collaboration Agreement entered into as of July 25, 2019 by and between Seller and Sanofi; (ii) that certain License and Collaboration Agreement entered into as of June 5, 2018 by and between Seller and Yakult Honsha Co., Ltd.; and (iii) that certain License and Collaboration Agreement entered into

as of September 25, 2018 by and between Seller and CSPC Pharmaceutical Group Limited (as amended and restated by and between Seller, CSPC Pharmaceutical Group Limited and CSPC Pharmaceutical Co., Ltd. on October 29, 2018 (CSPC Pharmaceutical Group Limited and CSPC Pharmaceutical Co., Ltd., collectively, "CSPC")) (each of Sanofi, Yakult Honsha Co., Ltd, and CSPC, an "Existing Licensee").

"FDA" shall have the meaning specified in Section 3.1(a).

"FDCA" shall have the meaning specified in Section 5.20(d).

"Field" shall mean the treatment, prevention, palliation or diagnosis of any oncology indication in humans or animals.

"Financials" shall have the meaning specified in Section 5.2.

"FIRPTA Certificate" shall have the meaning specified in Section 4.2(g).

"First Commercial Sale" shall mean, with respect to a given Product in a given country or region of the Territory, the first sale of such Product after the Closing by Purchaser, its Affiliates, licensees (including Existing Licensees) or sublicensees to a third party in such country after such Product has been granted Regulatory Approval by the appropriate Governmental Authority for commercial sale in such country; *provided that*, any sale occurring under an Early Access Program shall be deemed a "First Commercial Sale" for purposes hereunder.

"Fraud" shall mean actual and intentional fraud under Delaware law (including the requisite elements of a (i) false representation of fact made by the defendant, (ii) the defendant's knowledge or belief that the representation was false or the defendant's reckless indifference to the truth of that representation, (iii) the defendant's intention to induce the plaintiff to act or refrain from acting, (iv) the plaintiff's action or inaction taken in justifiable reliance upon the representation, and (v) damage to the plaintiff caused by such reliance).

"GAAP" shall mean United States generally accepted accounting principles in effect from time to time.

"General Assignment and Bill of Sale" shall have the meaning specified in Section 4.2(a).

"Generic Competition" means, with respect to a Product in a country in the Royalty Territory, that the sales of one (1) or more Generic Products in such country achieve, in the aggregate during any calendar quarter, more than twenty-five percent (25%) of the sum of (i) the aggregate unit sales of such Product sold by Purchaser or its Affiliates or licensees in such country, and (ii) the aggregate unit sales of such Generic Product in such country, as measured by IMS standard units sold based on data provided by IMS International, or if such data is not available, such other reliable data source as reasonably agreed upon by Purchaser and Seller.

"Generic Product" means with respect to a Product, any pharmaceutical product that (i) is sold by a third party (other than Purchaser's Affiliates or licensees); (ii) is approved for marketing or sale by a Regulatory Authority as a substitutable generic for such Product, (iii) has

received Regulatory Approval based on reference to or reliance on data contained in an earlier Regulatory Approval for such Product (including any IND, NDA or other application or submission for Regulatory Approval) and (iv) contains the same active pharmaceutical ingredient as the active pharmaceutical ingredient in such Product.

"Government Pricing Programs" means the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), any state supplemental rebate or other state drug price reporting program, the 340B Drug Pricing Program (42 U.S.C. § 256b), Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the VA Federal Supply Schedule Program (38 U.S.C. § 8126) and the Tricare Retail Pharmacy Program (10 U.S.C. § 1074g, 32 C.F.R. § 199.21).

"Governmental Approval" shall mean any: (i) permit, license, certificate, concession, Consent, clearance, confirmation, exemption, franchise, certification, designation, rating, registration, variance, qualification or accreditation issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Legal Requirement, including all applications for any of the foregoing, together with any renewals, extensions or modifications thereof and additions thereto ("Permits"); (ii) with respect to a pharmaceutical or biological product in a country or regulatory jurisdiction, the approval or other action of a Governmental Authority necessary for the testing, manufacturing, marketing, labeling, distribution, advertising, commercial sale or use of such product in such country or regulatory jurisdiction, including the authorization of an Investigational New Drug Application or NDA by the FDA or any analogous approval in jurisdictions other than the United States, and including any "orphan drug" or similar designation, but, in all cases, excluding any separate pricing or reimbursement approval, where required ("Regulatory Approval"); or (iii) right under any Contract with any Governmental Authority.

"Governmental Authority" shall mean any: (i) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Entity and any court or other tribunal); (iv) multinational organization or body; or (v) individual, Entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, arbitral, regulatory, police, military or taxing authority or power.

"Hazardous Substances" means any hazardous material, substance, pollutant, contaminant, waste, chemical substance or mixture, pesticide, petroleum, petroleum product or byproduct, asbestos or asbestos-containing material, polychlorinated biphenyls or other substance or materials for which liability is imposed or standards of conduct established pursuant to any Environmental Laws, including all substances defined or regulated as "Hazardous," "Toxic" or a "Pollutant" pursuant to any Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Incremental Taxes" shall have the meaning specified in Section 14.5.

"IND" shall mean an Investigational New Drug Application submitted to the FDA, or an analogous application or submission with any analogous agency or Governmental Authority outside of the United States for the purposes of obtaining permission to conduct Clinical Trials.

"Indemnitee" shall have the meaning specified in Section 13.4.

"Indemnitor" shall have the meaning specified in Section 13.4.

"Independent Auditor" shall have the meaning specified in Section 8.1(b).

"Infinity" shall have the meaning specified in Section 3.5(a)

"Infinity Agreement" shall have the meaning specified in Section 3.5(a)

"Infinity Default Event" shall have the meaning specified in Section 3.5(c).

"Initial Public Offering" shall mean the first underwritten public offering of common shares of Purchaser registered under the Securities Act of 1933, as amended.

"INK" shall have the meaning specified in Section 5.8(l).

"Intellectual Property Rights" shall mean and include all intellectual property and all rights in and to intellectual property, including the following and all rights of the following types: (i) Patents, Trade Secrets and Know-How, Copyrights, and Trademarks, (ii) domain names and the registrations thereof, social media accounts and handles, websites and website content, (iii) any rights similar, corresponding or equivalent to any of the foregoing anywhere in the world, and (iv) all tangible embodiments of any of the foregoing.

"Interim Financials" shall have the meaning specified in Section 5.2.

"IP Indemnification Limit" shall have the meaning specified in Section 13.6(a).

"IT Systems" means all hardware, servers, data communication equipment, software, information technology systems and computer networks (including third party provided systems and services) that are owned or used by (but only to the extent under the control of) any of the Seller Entities in connection with the operation of the Business.

"Legal Requirement" shall mean any law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, permit, ruling, directive, pronouncement, requirement (licensing or otherwise), specification, determination, decision, opinion or interpretation that is, has been issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Licensed Intellectual Property Rights" shall mean all Intellectual Property Rights (including Registered Intellectual Property Rights) that are (i) owned by third parties and (ii) used or held for use in the operation of, or otherwise related to, operation of the Business or any of the Products, including any such Intellectual Property Rights licensed or sublicensed to a Seller Entity

for use in the operation of the Business pursuant to any Material License Agreement or any other Contract included in the Purchased Assets.

"Marketing Authorization" shall mean the grant of all necessary permits, registrations, authorizations, governmental licenses and approvals (or waivers) required for the manufacture, promotion, marketing, storage, import, export, transport, distribution, use, offer for sale, sale or other commercialization of a Product in any country.

"Material Adverse Effect" shall mean, with respect to the Business, taken as a whole, or to the Purchased Assets, taken as a whole, any event, change or effect that, when taken individually or together with all other adverse events, changes and effects, (a) is or would reasonably be expected to be materially adverse to the financial condition, assets, business or operations of the Business, taken as a whole, or to the Purchased Assets, taken as a whole or (b) would prevent or materially delay consummation of the Transactions; *provided*, *however*, that any events, changes or effects will not be deemed to constitute a Material Adverse Effect to the extent resulting from (i) general changes or conditions in general economic, political or market conditions or in the industries (or therapeutic areas) in which the Business operates, except to the extent that such changes or conditions in the industries (or therapeutic areas) in which the Business operates have a materially disproportionate effect on the Business, taken as a whole, compared with other companies or businesses operating in such industries (or therapeutic areas); (ii) the loss or departure (or threatened loss or departure) of directors, officers, employees, or other service providers of the Business, or the termination, reduction (or potential reduction) or any other adverse development (or potential adverse development) in the Business's relationships with any of its customers, suppliers, distributors or other business partners, in each case as a result of the announcement or pendency of this Agreement or the Transactions or the performance by the parties of the obligations hereunder; (iii) any failure by any Seller Entity or the Business to meet internal projections or forecasts for any period (provided that the underlying causes of such failure may be taken into account in determining whether there has been a Material Adverse Effect); (iv) acts of war or terrorism (or the escalation of the foregoing) or natural disasters or other force majeure events; (v) any epidemic, pandemic or disease outbreak (including COVID-19), or any law, regulation, statute, directive, pronouncement or guideline issued by a Governmental Authority, the Centers for Disease Control and Prevention, the World Health Organization or industry group providing for business closures, "sheltering-in-place" or other restrictions that relate to, or arise out of, an epidemic, pandemic or disease outbreak (including COVID-19) or any change in such law, regulation, statute, directive, pronouncement or guideline or interpretation thereof following the date of this Agreement; (vi) changes in any Legal Requirements applicable to the Business or applicable accounting regulations or principles or the interpretation thereof; (vii) the acts or omissions of, or circumstances affecting, Purchaser or its Affiliates; (viii) compliance by the Seller Entities or any of their Affiliates with a request by Purchaser that the Seller Entities or any of their Affiliates take an action (or refrain from taking an action) to the extent such action or inaction is in compliance with such request; and (ix) any action taken by the Seller Entities or any of their Affiliates as required by this Agreement (other than any action to comply with Section 7.1 of this Agreement) or with Purchaser's written consent.

"Material Contracts" shall have the meaning specified in Section 5.11(a).

"Material License Agreements" shall mean the Existing Licenses and the Infinity Agreement.

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

"Milestone Payments" shall have the meaning specified in Section 3.1(b).

"NDA" means with respect to a Product, a New Drug Application and all supplements and amendments thereto filed with the FDA with respect to such Product, including all documents, data, correspondence, and other information concerning such Product which are necessary for, or included in any material correspondence provided to or received from Governmental Authorities related to such filings or any Marketing Authorization to use, sell, supply or market such Product in the United States. For clarity, for purposes of Table A in Section 3.1(a), "NDA" shall include a supplemental New Drug Application.

"Net Sales" shall mean, with respect to sales of a Product in a particular period, the gross amounts invoiced by Purchaser, its Affiliates, licensees or its sublicensees from the arms-length, commercial sales or other dispositions (excluding sales or dispositions for use in Clinical Trials or other scientific testing, for research and development, or for compassionate use, in any case for which Purchaser, its Affiliates, licensees or its sublicensees receive no substantial revenue) of such Product to unrelated third parties during such period net of reserves for doubtful accounts or bad debt determined in accordance with GAAP (provided, that any such amounts excluded via such reserve that are subsequently actually received by Purchaser shall be included through an adjustment in the calendar quarter following such receipt thereof), less the following deductions (to the extent included in the gross amount invoiced or otherwise directly paid or incurred by Purchaser, its licensees, Affiliates or its sublicensees):

(a) trade, cash and quantity discounts actually allowed and taken directly with respect to such sales or other dispositions;

(b) tariffs, duties, excises, sales taxes or other taxes or governmental charges imposed upon and paid directly with respect to the delivery, sale or use of the Product and included and separately stated in the applicable invoice (excluding national, state or local taxes based on income);

(c) allowances for amounts repaid, credited or discontinued, by reason of rejections, defects, damage, recalls or returns or because of reasonable and customary chargebacks, refunds, coupons, patient co-pay savings cards, rebates (including related administration fees), wholesaler fee for service, reasonable amounts of physician samples, reasonable amounts of free products given to indigent patients, retroactive price reductions or any other items substantially similar in character and substance to the foregoing, with equitable adjustments to be made from time to time for any differences between these allowances and actual amounts;

(d) other amounts previously included in Net Sales of the Product that are written-off by Purchaser as uncollectible in accordance with Purchaser's standard practices for writing off uncollectible amounts consistently applied;

(e) freight, insurance and other transportation charges incurred in shipping the Product to third parties, included and separately stated in the applicable invoice; and

(f) any administrative fees (to the extent such fees are captured by GAAP) paid to group purchasing organizations or managed care entities for sale of Products;

provided, however, that no deduction shall be made for any amounts payable under the Infinity Agreement, including any royalties paid or payable thereunder.

Such amounts shall be determined from the books and records of Purchaser, its Affiliates, licensees and its sublicensees, in each case maintained in accordance with GAAP, consistently applied.

Where such Product is sold as a Combination Product, the Net Sales for such Combination Product shall be adjusted by multiplying the actual Net Sales of the Combination Product by the fraction A/(A+B) where A is the actual average of the invoice price (on a per unit basis) of such Product when sold in stand-alone form, and B is the sum of the actual average of the invoice prices (on a per unit basis) of the other product or product component that is part of the Combination Product, if such other active product or product component is sold separately. If the other product or product component is not sold separately, then the Net Sales of such Product as a part of the Combination Product shall be as reasonably determined by Purchaser acting in good faith based on the respective values of the components of such Combination Product; *provided that*, if Seller reasonably disputes such determination by Purchaser in good faith and the parties cannot reach agreement with respect to such determination, then such dispute will be resolved as follows: upon the written request of either party to the other party, the parties shall refer such dispute for resolution to an independent third party expert agreed upon by the parties within thirty (30) days of such non-requesting party receiving such written request. Such independent third party expert will have extensive experience with respect to the commercialization of pharmaceutical products and extensive knowledge of pricing and industry trends in the pharmaceutical industry (or who has such other similar credentials as agreed by the parties), and unless otherwise agreed by the parties, must not be a current or former employee, contractor, agent or consultant of either party or its Affiliates. The requesting party will promptly engage such expert and the parties will share the out-of-pocket costs incurred in connection with the engagement of such expert equally. Within thirty (30) days of the engagement of such expert by the disputing party, such expert will deliver its written decision to the parties (including a detailed report as to such expert's rationale for such decision), and such decision will be binding on the parties. Notwithstanding any provision in this Agreement to the contrary, (A) if a Product is sold for co-administration with another product or product component that is not a Product, then Purchaser (or its applicable Affiliate or licensee) will not discount, or disproportionately apply deductions to Net Sales to the invoice price of such Product, by a greater percentage than the percentage at which the invoice price of the other (co-administered) product or product components are discounted; and (B) if a Product is sold as a Combination Product, then Purchaser or its applicable Affiliate or licensee will not discount (or disproportionately apply deductions to Net Sales to) the invoice price of such Product included in such Combination Product by a greater percentage than the percentage at which the invoice price of the other products or product components in such Combination Product are discounted.

"Non-Assignable Asset" shall have the meaning specified in Section 1.4(a).

"Operational Know-How" shall have the meaning specified in Section 8.5(a).

"Order" shall mean any: (a) temporary, preliminary or permanent order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, stipulation, subpoena, writ, penalty or award that is or has been issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Authority or any arbitrator or arbitration panel; or (b) Contract with any Governmental Authority that is or has been entered into in connection with any Proceeding.

"Patents" shall mean all United States and foreign patents and utility models and applications therefor (including provisional applications) and all reissues, divisions, re-examinations, revisions, additions, renewals, extensions, confirmations, registrations, provisionals, continuations and continuations-in-part thereof, any confirmation patent or registration patent or patent of addition based on any such patent, patent term extensions, and supplemental protection certificates or requests for continued examinations and foreign counterparts thereof.

"Permits" shall have the meaning specified in the definition of "Governmental Approval".

"Permitted Encumbrance" shall mean (1) statutory Encumbrances for Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established by the Seller Entities in accordance with GAAP; (2) mechanics', materialmen's, architects', warehousemen's, landlords' and other like statutory Encumbrances arising or incurred in the ordinary course of business, either securing payments not yet due or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been set aside; (3) such Encumbrances as do not materially affect the use or value of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties; (4) licenses and other grants in Intellectual Property Rights; (5) zoning, building codes and other land use laws; and (6) Encumbrances resulting from the action or inaction of Purchaser or any of its Affiliates.

"Person" shall mean any individual, Entity or Governmental Authority.

"Personal Data" means any information of or about a natural person, the Processing of which is protected by applicable Legal Requirements.

"Post-Closing Consideration" shall have the meaning specified in Section 2.1.

"Post-Closing Tax Period" shall mean any Tax period beginning after the Closing Date or, in the case of any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" shall mean any Tax period ending on or before the Closing Date or, in the case of any Straddle Period, the portion of such Straddle Period ending on the end of the Closing Date.

"Prior Company Counsel" shall mean Ropes & Gray LLP and any other legal counsel from time to time retained by the Seller Entities prior to the Closing.

"Privacy and Information Security Requirements" means, to the extent applicable to the Seller Entities, all Legal Requirements governing the Processing of Personal Data, including, to the extent applicable to the Seller Entities, the European Union General Data Protection Regulation 2016/679 ("GDPR") and all other laws supplementing, amending or replacing the GDPR, the Gramm-Leach-Bliley Act, 113 Stat. 1338 (as amended), and the Federal Trade Commission Act, 15 U.S.C. §§ 41-58 (as amended).

"Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any Governmental Authority.

"Process" (or "Processing" or "Processes" or "Processed") means the collection, use, storage, processing, recording, distribution, transfer, import, export, protection (including security measures), disposal or disclosure or other activity regarding data (whether electronically or in any other form or medium).

"Product" shall mean and include any and all preparations, kits, articles of manufacture, compositions of matter, materials, compounds, components and products which are, or which contain or comprise the Compound known as "IPI-145" or "Duvelisib" or "INK1197" (as such Compound is further described in Schedule A-1 to the Seller Disclosure Schedule), including any and all of its various chemical forms, including acids, bases, salts, metabolites, esters, isomers, enantiomers, pro-drug forms, hydrates, solvates, polymorphs and degradants thereof, in each case, that has substantially the same pharmacological effect, in crystal, powder or other form, and including (a) any preparations, kits, articles of manufacture, compositions of matter, materials, compounds, components and products which contain two or more active pharmaceutical ingredients, at least one of which is a Compound referenced above, and (b) all formulations and modes of administration and dosage forms of any of the foregoing. Without limiting the foregoing, "Product" shall include, for clarity, any and all of the foregoing currently referred to or marketed by any of the Seller Entities as "COPIKTRA" in all formulations, modes of administration and dosage forms thereof and all such combination products, in each case, whether currently approved or currently in development, including in development in Clinical Trials, and including those referred to as: "DYNAMO", "DUO" (including any related to the "DUO Extension Study"), "Rollover", "Contempo", "Fresco", "Synchrony", "Dynamo+R".

"Product License Payments" shall have the meaning specified in Section 3.1(c).

"Purchase Price" shall have the meaning specified in Section 2.1.

"Purchase Price Allocation" shall have the meaning specified in Section 11.1.

"Purchased Assets" shall have the meaning specified in Section 1.1.

"Purchased Inventory" shall have the meaning specified in Section 1.1(a).

"Purchaser" shall have the meaning specified in the Preamble.

"Purchaser Assignment and Assumption Agreements" shall have the meaning specified in Section 4.2(b).

"Purchaser Damages" shall have the meaning specified in Section 13.1.

"Purchaser Indemnified Persons" shall have the meaning specified in Section 13.1.

"Purchaser Material Adverse Effect" shall mean any event, change or effect that, when taken individually or together with all other such events, changes or effects, would reasonably be expected to have, individually or in the aggregate, (a) a material adverse effect on the ability of Purchaser to consummate the Transactions contemplated hereby or (b) cause a material delay in the ability of Purchaser to consummate the Transactions contemplated hereby.

"Purchaser's Fundamental Representations" shall have the meaning specified in Section 13.3.

"Purchaser's Indemnification Cap" shall have the meaning specified in Section 13.5(b).

"Purchaser's Indemnification Deductible" shall have the meaning specified in Section 13.5(b).

"Registered Intellectual Property Rights" shall mean all: (i) Patents and pending Patent applications; (ii) registered Trademarks and pending applications to register Trademarks; (iii) Copyright registrations and pending applications to register Copyrights; and (iv) domain names and the registrations thereof.

"Regulatory Application" means an application submitted to a Governmental Authority that issues Regulatory Approvals.

"Regulatory Approval" shall have the meaning specified in the definition of "Governmental Approval".

"Regulatory Authority" shall mean any Governmental Authority that has jurisdiction over the approval, clearance, marketing, manufacture, sale and distribution of biopharmaceutical products in a country or territory, including the FDA, the European Commission and the competent authorities of the EU Member States, and MHLW.

"Regulatory Documentation" means, with respect to any Product or any component thereof, all INDs, NDAs, and other Regulatory Applications submitted to any Regulatory

Authority, copies of Regulatory Approvals and other Governmental Approvals, regulatory materials, drug dossiers, master files (including Drug Master Files, as defined in 21 C.F.R. §314.420 and any non-United States equivalents), and any other reports, records, regulatory correspondence, meeting minutes, telephone logs, and other materials relating to Regulatory Approval of such Product or any component thereof (including any underlying safety and effectiveness data whether or not submitted to any Regulatory Authority), or required to research, develop (including Clinical Trials), manufacture or commercialize such Product or any component thereof, including any information that relates to pharmacology, toxicology, chemistry, manufacturing and controls data, batch records, safety and efficacy, and any safety database required to be maintained for Regulatory Authorities.

"Regulatory Milestone Event" shall have the meaning specified in Section 3.1(a).

"Regulatory Milestone Payment" shall have the meaning specified in Section 3.1(a).

"Representatives" shall mean officers, directors, employees and Affiliates.

"Restricted Business" shall have the meaning specified in Section 8.7.

"Restricted Information" shall have the meaning specified in Section 8.5(a).

"Royalty Payments" shall have the meaning specified in Section 3.2(a).

"Royalty Rate" shall have the meaning specified in Section 3.2(a).

"Royalty Term" shall mean, with respect to the Product in a given country in the Royalty Territory, the period beginning upon the date of the First Commercial Sale of such Product in such country and ending on the later of (a) the tenth anniversary of such date or (b) the expiration of all Valid Claims of the Patents included in the Seller Intellectual Property that cover or claim such Product.

"Royalty Territory" shall mean the United States (including its territories), the European Union, and the United Kingdom of Great Britain and Northern Ireland.

"Sales Milestone Payment" shall have the meaning specified in Section 3.1(b).

"SEC" shall have the meaning specified in Section 3.8(c).

"SEC Financial Statements" shall have the meaning specified in Section 8.1(b).

"Select Intellectual Property Representations" shall mean those representations and warranties of Seller set forth in (i) Section 5.8(b) and (ii) Section 5.8(c).

"Seller" shall have the meaning specified in the Preamble.

"Seller Damages" shall have the meaning specified in Section 13.2.

"Seller Disclosure Schedule" shall have the meaning specified in Article 5.

"Seller Entities" shall have the meaning specified in the Recitals. Notwithstanding the foregoing, the "Seller Entities" shall be deemed to include any other Affiliates of Seller that own or hold any right, title or interest in, to or under any of the Purchased Assets.

"Seller Indemnified Persons" shall have the meaning specified in Section 13.2.

"Seller Intellectual Property" shall mean (i) the Seller Registered Intellectual Property Rights and (ii) all other Intellectual Property Rights owned or purported to be owned by any of the Seller Entities and used or held for use in the operation of, or otherwise relating to, the Business or any of the Products; *provided, however* that the Seller Intellectual Property shall not include U.S. provisional patent application no. 63/005,969.

"Seller Marks" shall mean (i) the VERASTEM brand, (ii) any Seller Entities' corporate names, corporate service marks, corporate logos, or other "house brands" and (iii) any Trademark (in word or design form) that is listed on Schedule 1.2(a)(iv) or otherwise contains in whole or in part, or is derived from or is confusingly similar to any of the foregoing but, in each case, excluding the Trademarks listed on Schedule 5.8(d).

"Seller Registered Intellectual Property Rights" shall mean the Registered Intellectual Property Rights owned or purported to be owned by Seller or any of its Affiliates used or held for use in the operation of, or otherwise relating to, the Business or any of the Products, including the Registered Intellectual Property Rights listed or required to be listed on Schedule 5.8(d)(i).

"Seller Regulatory Approvals" means any and all (i) Regulatory Approvals and (ii) Regulatory Applications, in either case that are (A) owned or otherwise controlled by Seller or any of its Affiliates on the Closing Date and (B) related to the Business.

"Seller Subsidiary" shall have the meaning specified in the Recitals.

"Seller Taxes" shall mean: (i) all Taxes imposed on any Seller Entity for any taxable period, (ii) all Taxes related to the Purchased Assets, the Business, or the Assumed Liabilities that are attributable to any Pre-Closing Tax Period (calculated for any Straddle Period in accordance with Section 11.3), (iii) all Transfer Taxes for which the Seller is responsible pursuant to Section 11.2, and (iv) all Taxes imposed on Purchaser or any of its Affiliates as a transferee or successor of any Seller Entity.

"Seller's Fundamental Representations" shall have the meaning specified in Section 10.1(a).

"Seller's Indemnification Cap" shall have the meaning specified in Section 13.5(a).

"Seller's Indemnification Deductible" shall have the meaning specified in Section 13.5(a).

"Seller's knowledge" and similar phrases shall mean the actual knowledge of Brian Stuglik, Rob Gagnon, Daniel Paterson and Cathy Carew.

"Senior Secured Collateral Agent" means ATHYRIUM OPPORTUNITIES III ACQUISITION LP, a Delaware limited partnership, in its capacity as Collateral Agent for the Senior Secured Note Purchasers.

"Senior Secured Note Purchase Agreement" shall mean that certain Note Purchase Agreement, dated as of March 1, 2019, by and among the Purchaser, the guarantors from time to time party thereto, the Senior Secured Note Purchasers and the Senior Secured Collateral Agent, as amended by that certain Amendment Number One and Waiver to Note Purchase Agreement, dated as of May 28, 2020, and that certain Amendment Number Two to Note Purchase Agreement dated as of the date hereof, and as further amended, restated, supplemented or otherwise modified prior to the date hereof.

"Senior Secured Note Purchasers" means the "Purchasers" as defined in the Senior Secured Note Purchase Agreement.

"Shared Contracts" shall mean all Contracts listed on Schedule 1.5, which Contracts relate in part, but not primarily, to the Business. For clarity, the Material License Agreements are not Shared Contracts.

"Solvent" shall mean: (a) the fair, salable value of Seller's tangible assets is in excess of the total amount of its liabilities (including, for purposes of this definition, all liabilities, whether or not reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and whether direct or indirect, fixed or contingent, secured or unsecured and disputed or undisputed); (b) Seller is able to pay its debts or obligations in the ordinary course as they mature; and (c) Seller has capital sufficient to carry on the operation of its businesses.

"Straddle Period" shall have the meaning specified in Section 11.3(b).

"Sublicense Revenue Payments" shall mean any and all consideration received by Purchaser or its Affiliates specifically for a license or sublicense of rights granted with respect to Copiktra, including license or distribution fees, milestone or option payments, or license maintenance fees.

"Subsidiary" shall mean, with respect to any Person, any Entity in which such Person has a fifty percent (50%) or greater interest.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") shall mean all forms of taxation imposed by any Tax Authority, including all national, state or local taxes (including income, value added, occupation, real and personal property, social security, gross receipts, sales, use, ad valorem, franchise, profits, license, withholding, payroll, employment, excise, severance, occupation, premium or windfall profit taxes, escheat or unclaimed property, stamp duty, customs and other import or export duties, estimated and other taxes), assessments, charges, or similar amounts imposed by any Tax Authority, together with any interest, penalties and additions to tax imposed with respect thereto or imposed in connection with any failure to properly file a Tax Return.

"Tax Authority" shall mean a Governmental Authority responsible for the imposition, assessment or collection of any Tax (domestic or foreign).

"Tax Return" shall mean any report, return, statement, declaration, notice, certificate or other document filed or required to be filed with any Tax Authority in connection with the determination, assessment, collection or payment of any Tax.

"Territory" shall mean worldwide.

"Third Sales Milestone" shall have the meaning specified in Section 3.1(b).

"Total Net Sales" shall have the meaning specified in Section 3.1(b).

"Trade Secrets and Know-How" shall mean and include the following and all trade secret and other intellectual property rights in or to the following: technical information, know-how, data, materials, proprietary information and confidential information, including processing, manufacturing and marketing information, developments, inventions (whether patentable or unpatentable and whether or not reduced to practice), discoveries, processes, methods, practices, ideas, improvements, related papers, invention disclosures, blueprints, drawings, research data and results, flowcharts, diagrams, diagrams, protocols, studies, chemical compositions, formulae, diaries, notebooks, specifications, designs, methods of manufacture, processing techniques, data, databases and data collections, data processing techniques, compilations of information, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals, expertise and other technology applicable to formulations, compositions or products or to their manufacture, development, registration, use or marketing or to methods of assaying or testing them or processes for their manufacture, formulations containing them or compositions incorporating or comprising them, and including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, nonclinical and clinical data, regulatory data and filings, instructions, processes, formulae, expertise and information, reports, documentation, notes, and other materials relevant to the research, development, manufacture, use, importation, offering for sale or sale of, or which may be useful in studying, testing, developing, producing or formulating, products, or intermediates for the synthesis thereof, and all claims and rights related thereto.

"Trademark Assignment" shall have the meaning specified in Section 4.2(c).

"Trademarks" shall mean any and all trademarks, service marks, trade dress, logos, product names, brand names, sub-brand names, slogans, trade names, including all common law trademark rights, and all applications and registrations for any of the foregoing, and all goodwill associated with any of the foregoing throughout the world.

"Transaction(s)" shall mean, collectively, the transactions contemplated by this Agreement.

"Transaction Agreements" shall mean this Agreement and the General Assignment and Bill of Sale, the Purchaser Assignment and Assumption Agreements, the IP Assignment, the Patent Assignment, the Trademark Assignment and the Transition Services Agreement.

"Transfer Taxes" shall mean all federal, state, local or foreign sales, use, transfer, real property transfer, mortgage recording, stamp duty, value-added or similar Taxes that may be imposed in connection with the Transaction.

"Treasury Regulation" shall mean the regulations promulgated under the Code by the United States Treasury and Internal Revenue Service.

"Unaudited Financial Statements" shall have the meaning specified in Section 8.1(b).

"Up-Front Purchase Price" shall have the meaning specified in Section 2.1.

"US PTCL Approval" shall have the meaning specified in Section 3.1(a).

"Usage Guidelines" shall have the meaning specified in Section 7.10(b).

"Valid Claim" means a claim of any (i) issued Patent that has not expired, lapsed, or been finally canceled or abandoned, been dedicated to the public or disclaimed or been held unenforceable, invalid or permanently canceled by a court or administrative agency of competent jurisdiction in an order or decision from which no appeal can be taken or from which no appeal was taken in the time permitted, including through opposition, re-examination, reissue or disclaimer or (ii) pending Patent application that has not been finally abandoned, finally rejected or expired (after the earlier of exhaustion of all appeals actually taken or the expiration of the time allowed for all appeals); *provided*, *however*, that if a claim of a pending Patent application has not issued within five (5) years after the earliest effective priority filing date for the Patent application from which such claim takes priority, such claim shall not constitute a Valid Claim for the purposes of this Agreement unless and until a Patent issues for such claim.

"VAT" shall mean (i) value added tax as provided for in the Value Added Tax Act 1994 of the United Kingdom and legislation supplemental thereto, TVA or any other system of value added tax as provided for in Council Directive 2006/112/EC applied in any Member State of the European Union and (ii) any other similar turnover, goods and services, consumption, sales or purchase, tax or duty levied by any other jurisdiction whether central, regional or local.

"Worker Notification Law" shall have the meaning specified in Section 1.3(c).

Exchange Agreement

November 6, 2020

Verastem, Inc.
117 Kendrick Street
Suite 500
Needham, MA 02494

Re: Verastem, Inc.'s Exchange of 5.00% Convertible Senior Notes due 2048

Ladies and Gentlemen:

The undersigned investor (the "**Investor**") hereby agrees to exchange (the "**Exchange**"), with Verastem, Inc., a Delaware corporation (the "**Company**"), the aggregate principal amount of the Company's 5.00% Convertible Senior Notes due 2048, CUSIP 92337C AA2 (the "**Old Notes**") set forth in Exhibit A hereto that it beneficially owns for the Company's new 5.00% Series 2 Convertible Senior Notes due 2048 (the "**New Notes**") having an aggregate principal amount equal to the principal amount of such Old Notes to be exchanged.

The Old Notes were issued pursuant to that certain Indenture (the "**2018 Indenture**") and First Supplemental Indenture (collectively, the "**Existing Indenture**"), each dated as of October 17, 2018, between the Company, as issuer, and Wilmington Trust, National Association, as trustee (in such capacity, the "**Trustee**"). The New Notes will be issued pursuant to the 2018 Indenture and a Second Supplemental Indenture dated as of the Closing Date (as defined below) (collectively, the "**Indenture**") between the Company, as issuer, and the Trustee, substantially in the forms set forth as Exhibit D hereto.

The Investor understands that the Exchange is being made without registration under the Securities Act of 1933, as amended (the "**Securities Act**"), or any securities laws of any state of the United States or of any other jurisdiction, and that the New Notes are only being offered to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act), and the Company hereby confirms that the offer and sale of the New Notes are exempt from registration under the Securities Act.

1. Agreement to Exchange. Subject to the terms and conditions of this Exchange Agreement, the Investor hereby agrees to exchange an aggregate principal amount of the Old Notes set forth on Exhibit A hereto for the New Notes.

The Exchange will occur in accordance with the procedures set forth in Section 3 hereof.

2. The Closing. The closing of the Exchange (the "**Closing**") will take place at the offices of Ropes & Gray LLP, 1211 6th Ave, New York, NY 10036, at 10:00 a.m., New York City time, on the later of (A) November 13, 2020; (B) such date as the conditions to Closing set forth in Section 6 are satisfied or waived; and (C) such other time and place as the Company and the Investor may agree (such later date, the "**Closing Date**").

3. Exchange. Subject to the terms and conditions of this Exchange Agreement, the Investor hereby sells, assigns and transfers to, or upon the order of, the Company, all right, title and interest in such portion of the Old Notes as indicated on Exhibit A hereto, waives any and all other rights with respect to such Old Notes and the Existing Indenture and releases and discharges the Company from any and all claims the Investor and the Accounts may now have, or may have in the future, arising out of, or related to, such Old Notes, including, without limitation, any claims arising from any existing or past defaults under the Existing Indenture, or any claims that the Investor is entitled to receive additional interest with respect to the Old Notes.

At or prior to 9:30 a.m., New York City time, on the Closing Date, the Investor agrees to direct the eligible participant of The Depository Trust Company ("**DTC**") through which it holds a beneficial interest in the Old Notes to submit a withdrawal instruction through DTC's Deposits and Withdrawal at Custodian ("**DWAC**") program to the Trustee), for the aggregate principal amount of the Old Notes to be exchanged pursuant to this Exchange Agreement (the "**DWAC Withdrawal**").

DTC will act as securities depositary for the New Notes. At or prior to 9:30 a.m. New York City time on the Closing Date, the Investor agrees to direct an eligible DTC participant to submit a deposit instruction (the "**New Notes DWAC Deposit**") through DTC's DWAC program to the Trustee, for the aggregate principal amount of New Notes that it is entitled to receive pursuant to this Exchange Agreement, or comply with such other settlement procedures mutually agreed in writing by the Investor and the Company. The New Notes will not be delivered until a valid DWAC Withdrawal of the Old Notes has been received and accepted by the Trustee. If the Closing does not occur, any Old Notes submitted for DWAC Withdrawal will be returned to the DTC participant that submitted the withdrawal instruction in accordance with the procedures of DTC. **The Investor acknowledges that each of the DWAC Withdrawal and the New Notes DWAC Deposit must be posted on the Closing Date and that if it is posted before the Closing Date, then it will expire unaccepted and must be resubmitted on the Closing Date.**

For the convenience of the Investor, attached hereto as Exhibit B is a summary of the delivery instructions that must be followed to settle the Exchange through DTC.

On the Closing Date, subject to satisfaction of the conditions precedent specified in this Exchange Agreement, and the prior receipt of a valid DWAC Withdrawal conforming with the aggregate principal amount of the Old Notes to be exchanged by the Investor and a valid New Notes DWAC Deposit conforming with the aggregate principal amount of the New Notes to be issued to the Investor in the Exchange, the Company hereby agrees to execute such New Notes, and direct the Trustee to authenticate and, by acceptance of the New Notes DWAC Deposit, deliver, such New Notes (or comply with such other settlement procedures mutually agreed in writing by the Company and the Trustee), in each case to the DTC account specified on Exhibit A to this Exchange Agreement.

If (x) the Trustee is unable to locate the DWAC Withdrawal or (y) the Trustee is unable to locate the New Notes DWAC Deposit or (z) such DWAC Withdrawal does not conform to the Old Notes to be exchanged in the Exchange or such New Notes DWAC Deposit does not conform to the New Notes to be issued in the Exchange, then the Company will promptly notify the Investor. If, because of the occurrence of an event described in clause (x), (y) or (z) of the preceding

sentence, the New Notes are not delivered on the Closing Date, then such New Notes will be paid or delivered, as applicable, on the first business day following the Closing Date (or as soon as reasonably practicable thereafter) on which all applicable conditions set forth in clauses (x), (y) or (z) of the first sentence of this paragraph have been cured.

All questions as to the form of all documents and the validity and acceptance of the Old Notes will be determined by the Company, in its reasonable discretion, which determination will be final and binding.

All authority herein conferred or agreed to be conferred in this Exchange Agreement will survive the dissolution of the Investor, and any representation, warranty, undertaking and obligation of the Investor hereunder will be binding upon the trustees in bankruptcy, legal representatives, successors and assigns of the Investor.

4. Representations, Warranties and Covenants of the Company. The Company represents and warrants to the Investor and covenants that:

(a) The Company is duly formed, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as it is currently being conducted and to own its assets. The Company has full power and authority to consummate the Exchange and to enter into this Exchange Agreement and perform all of its obligations hereunder.

(b) Upon the Company's delivery of the New Notes to the Investor pursuant to the Exchange, such New Notes will be free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, title retention agreements, options, preemptive rights, equity or other adverse claims thereto (collectively, "**Liens**") created by the Company.

(c) Each New Note to be issued pursuant to this Exchange Agreement has been duly authorized by the Company and, when issued, authenticated and delivered in the manner provided for in the Indenture and in this Exchange Agreement, will be validly issued, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity, and will be entitled to the benefits of the Indenture.

(d) The Indenture has been duly authorized by the Company and, when duly authorized, executed and delivered in accordance with its terms by the Trustee, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity.

(e) The Exchange and the other transactions contemplated hereby will not (A) contravene any law, rule or regulation binding on the Company or any subsidiary thereof or any judgment or order of any court or arbitrator or governmental or regulatory authority applicable to the Company or any such subsidiary, (B) constitute a breach or violation or result in a default under any loan agreement, mortgage, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it is bound or (C) constitute a breach or violation or result in a default under the organizational documents of the Company or any subsidiary thereof, except, in the case of clauses (A) and (B) above, for such contraventions, conflicts, violations or defaults that would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on the business, properties, management, financial position, prospects, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under this Exchange Agreement.

(f) No consent, approval, authorization, order, license, registration or qualification of or with any court or governmental or regulatory authority is required for the execution, delivery and performance by the Company of its obligations under this Exchange Agreement, the Indenture and the New Notes and the consummation of the transactions contemplated by this Exchange Agreement, the Indenture and the New Notes, except such as have been obtained or made (or will, at the Closing, have been obtained or made) by the Company.

(g) This Exchange Agreement has been duly authorized, executed and delivered by the Company.

(h) Subject to the terms of the Indenture, the New Notes will be convertible into shares of the Company's common stock, par value $0.0001 per share (the "**Common Stock**"). The Company has duly authorized and reserved a number of shares of Common Stock for issuance upon conversion of the New Notes equal to the maximum number of such shares issuable upon conversion (the "**Conversion Shares**"), and, when such Conversion Shares are issued upon conversion of the New Notes in accordance with the terms of the New Notes and the Indenture, such Conversion Shares will be validly issued, fully paid and non-assessable, and the issuance of any such Conversion Shares will not be subject to any preemptive or similar rights.

(i) At or before the Closing, the Company will have submitted to the Nasdaq Stock Market an Application for Listing of Additional Shares with respect to the Conversion Shares. The Company will use its commercially reasonable efforts to maintain the listing of the Conversion Shares on the Nasdaq Global Market for so long as the Common Stock is then so listed.

(j) Neither the Company nor any of its "affiliates" (as defined in Rule 144 under the Securities Act ("**Rule 144**")) has at any point beneficially owned or held any interest in any of the Old Notes subsequent to their issuance. Assuming the accuracy of the representations and warranties of the Investor, (A) the issuance of the New Notes in exchange for the Old Notes pursuant to this Exchange Agreement is exempt from the registration requirements of the Securities Act; (B) when issued pursuant to this Exchange Agreement, the New Notes will not be "restricted securities" (as defined in Rule 144) and will be freely transferable by any Investor that is not, at such time or at any time during the immediately preceding three months, an "affiliate" (as defined in Rule 144) and (C) based on applicable laws and regulations as of the Closing Date,

if and when issued in accordance with the Indenture, the Conversion Shares will not be "restricted securities" (as defined in Rule 144) and will be freely transferable by any Investor that is not, at such time or at any time during the immediately preceding three months, an "affiliate" (as defined in Rule 144) of the Company. When issued pursuant to this Exchange Agreement, the New Notes will each be issued with an "unrestricted" CUSIP number.

(k) Assuming the accuracy of the representations and warranties of the Investor it is not necessary to qualify the Indenture under the Trust Indenture Act of 1939, as amended, in connection with the Exchange.

(l) The Company is not and, after giving effect to the transactions contemplated by this Exchange Agreement, will not be required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Securities and Exchange Commission ("**SEC**") thereunder.

(m) The Covered SEC Filings (as defined below), taken as a whole, do not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As used herein, "**Covered SEC Filings**" means each of the following documents, in the form they have been filed with the SEC and including any amendments thereto filed with the SEC: (w) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019; (x) the Company's Quarterly Reports on Form 0-Q for the fiscal quarters ended March 31, 2020, and June 30, 2020; (y) those portions of the Company's April 8, 2020 Proxy Statement on Schedule 14A that are incorporated by reference into the Annual Report on Form 10-K referred to in clause (w) above; and (z) the Company's Current Reports on Form 8-K (excluding any Current Reports or portions thereof that are furnished, and not filed, pursuant to Item 2.02 or Item 7.01 of Form 8-K, and any related exhibits) filed with the SEC after December 31, 2019.

(n) No event or development has occurred, or condition exists, as a result of which the Company is required to file with the SEC a Current Report on Form 8-K, or an amendment to any Covered SEC Filing which, in each case, has not been so filed.

(o) At the Closing, the Company will deliver to the Investor a legal opinion of Ropes & Gray LLP in customary form regarding the Exchange, the Indenture and the New Notes.

5. Representations and Warranties of the Investor. The Investor hereby represents and warrants to and covenants with the Company that:

(a) The Investor is a corporation, limited partnership, limited liability company or other entity, as the case may be, duly formed, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) The Investor has full power and authority to exchange, sell, assign and transfer the Old Notes to be exchanged hereby and to enter into this Exchange Agreement and perform all obligations required to be performed by the Investor.

(c) When the Old Notes are exchanged pursuant to this Exchange Agreement, the Company will acquire good, marketable and unencumbered title to the Old Notes, free and clear of all Liens created by the Investor.

(d) The Exchange will not (A) contravene any law, rule or regulation binding on the Investor or any investment guideline or restriction applicable to the Investor, or (B) constitute a breach or violation or result in a default under the organizational documents of the Investor or any material loan agreement, mortgage, lease or other agreement or instrument to which the Investor is a party or by which it is bound.

(e) The Investor is a resident of the jurisdiction set forth on Exhibit A attached to the Exchange Agreement.

(f) The Investor will comply with all applicable laws and regulations in effect in any jurisdiction in which the Investor acquires any New Notes pursuant to the Exchange and will obtain any consent, approval or permission required for such purchases, acquisitions or sales under the laws and regulations of any jurisdiction to which the Investor is subject or in which the Investor acquires any New Notes pursuant to the Exchange.

(g) The Investor acknowledges that no person has been authorized to give any information or to make any representation concerning the Company or the Exchange other than as contained in this Exchange Agreement and the Covered SEC Filings. The Company takes no responsibility for, and provides no assurance as to the reliability of, any other information that others may provide to the Investor.

(h) The Investor understands and accepts that the New Notes to be acquired in the Exchange involve risks. The Investor has such knowledge, skill and experience in business, financial and investment matters that such person is capable of evaluating the merits and risks of the Exchange and an investment in the New Notes. With the assistance of the Investor's own professional advisors, to the extent that the Investor has deemed appropriate, the Investor has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the New Notes and the consequences of the Exchange and this Exchange Agreement. The Investor has considered the suitability of the New Notes as an investment in light of its own circumstances and financial condition, and each of the Investor is able to bear the risks associated with an investment in the New Notes.

(i) The Investor confirms that it is not relying on any statement (written or oral), representation or warranty made by, or on behalf of, the Company or any of its affiliates as investment, tax or other advice or as a recommendation to participate in the Exchange and receive the New Notes in exchange for Old Notes. The Investor confirms that it has read the Indenture relating to the New Notes and has not relied on any statement (written or oral) of the Company or any of its affiliates as to the terms of the New Notes. Neither the Company nor any of its affiliates is acting or has acted as an advisor to the Investor in deciding whether to participate in the Exchange and to exchange Old Notes for the New Notes.

(j) The Investor confirms that none of the Company or any of its affiliates have (A) given any guarantee or representation as to the potential success, return, effect or benefit (either

legal, regulatory, tax, financial, accounting or otherwise) of an investment in the New Notes; or (B) made any representation to the Investor regarding the legality of an investment in the New Notes under applicable investment guidelines, laws or regulations. In deciding to participate in the Exchange, the Investor is not relying on the advice or recommendations of the Company or any of its affiliates, and has made its own independent decision that the terms of the Exchange and the investment in the New Notes are suitable and appropriate for it.

(k) The Investor is familiar with the business and financial condition and operations of the Company and has had the opportunity to conduct its own investigation of the Company and the New Notes. The Investor has had access to and reviewed the Covered SEC Filings and such other information concerning the Company and the New Notes it deems necessary to enable it to make an informed investment decision concerning the Exchange. The Investor has been offered the opportunity to ask questions of the Company and received answers thereto, as it deems necessary to enable it to make an informed investment decision concerning the Exchange.

(l) The Investor understands that no federal, state, local or foreign agency has passed upon the merits or risks of an investment in the New Notes or made any recommendation or endorsement, or made any finding or determination concerning the fairness or advisability, of such investment or the consequences of the Exchange and this Exchange Agreement.

(m) The Investor is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act. The Investor agrees to furnish any additional information requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the Exchange.

(n) The Investor is not directly, or indirectly through one or more intermediaries, controlling or controlled by, or under direct or indirect common control with, the Company and is not, and has not been for the immediately preceding three months, an "affiliate" (within the meaning of Rule 144 under the Securities Act) of the Company.

(o) The Investor understands that the offer and sale of the New Notes have not been registered under the Securities Act or any state securities laws by reason of specific exemptions under the provisions thereof that depend in part upon the the accuracy of the other representations made by the Investor in this Exchange Agreement. The Investor understands that the Company and its affiliates are relying upon the representations and agreements contained in this Exchange Agreement (and any supplemental information) for the purpose of determining whether the Exchange meets the requirements for such exemptions.

(p) The Investor acknowledges that the terms of the Exchange have been mutually negotiated between the Investor and the Company.

(q) The Investor will, upon request, execute and deliver any additional documents, information or certifications that the Company, the Trustee or the Trustee may reasonably request to complete the Exchange.

(r) The Investor understands that, unless the Investor notifies the Company in writing to the contrary at or before the Closing, each of the Investor's representations and warranties, on

behalf of itself, contained in this Exchange Agreement will be deemed to have been reaffirmed and confirmed as of the Closing, taking into account all information received by the Investor.

(s) The Investor was given a meaningful opportunity to negotiate the terms of the Exchange.

(t) The Investor's participation in the Exchange was not conditioned by the Company on the Investor exchange of a minimum principal amount of Old Notes for the New Notes.

(u) The Investor had a sufficient amount of time to consider whether to participate in the Exchange, and neither the Company nor any of its affiliates or agents, has placed any pressure on the Investor to respond to the opportunity to participate in the Exchange.

(v) No later than one (1) business day after the date hereof, the Investor agrees to deliver to the Company settlement instructions substantially in the form of Exhibit A attached to the Exchange Agreement.

(w) The Investor acknowledges and agrees that it has not transacted, and will not transact, in any securities of the Company, including, but not limited to, any hedging transactions, from the time the Investor was first contacted by the Company with respect to the transactions contemplated by this Exchange Agreement until after the Release Time (as defined in Section 7 herein). Solely for purposes of this Section 5(w), subject to the Investor's compliance with its obligations under U.S. federal securities laws and the Investor's internal policies, (a) "Investor" will not include any employees or affiliates of the Investor that are effectively walled off by appropriate "Fire Wall" information barriers approved by the Investor's legal or compliance department, and (b) the foregoing representations and covenants of this Section 5(w) will not apply to any transaction by or on behalf of an account that was effected without the advice or participation of, or such account's receipt of information regarding the transactions contemplated hereby provided by, the Investor.

(x) If the Investor is exchanging any Old Notes or acquiring any of the New Notes as a fiduciary or agent for one or more accounts, it represents that it has (A) the requisite investment discretion with respect to each such account necessary to effect the Exchange, (B) full power to make the foregoing representations, warranties and covenants on behalf of such account; and (C) contractual authority with respect to each such account.

(y) The Investor acknowledges and agrees that no public market exists for the New Notes and that there is no assurance that a public market will ever develop for the New Notes.

6. Conditions to Obligations of the Investor and the Company. The obligations of the Investor to deliver (or cause to be delivered) the Old Notes and of the Company to deliver the New Notes are subject to the satisfaction at or prior to the Closing of the following conditions precedent: the representations, warranties and covenants of the Company contained in Section 4 hereof and of the Investor contained in Section 5 hereof are true and correct as of the Closing in all respects with the same effect as though such representations and warranties had been made as of the Closing, and all covenants therein to be performed at or before the Closing have been performed. The obligation of the Company to deliver the New Notes is further subject to the conditions precedent set forth in Section 3 hereof and the prior receipt by the Company of a valid DWAC Withdrawal

and New Notes DWAC Deposit, in each case conforming to the requirements set forth in this Exchange Agreement.

7. Covenant and Acknowledgment of the Company. The Company hereby agrees to publicly disclose at or before 9:30 a.m., New York City time, on the first business day after the date hereof (such time and date, the "**Release Time**"), the exchange of the Old Notes contemplated by this Exchange Agreement and similar exchange agreements in a press release or Current Report on Form 8-K. The Company hereby acknowledges and agrees that, at the Release Time, it will have disclosed all information that constitutes material non-public information, if any, with respect to the Exchange or otherwise communicated by the Company to the Investor in connection with the Exchange.

8. Waiver, Amendment. Neither this Exchange Agreement nor any provisions hereof may be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom any waiver, change, discharge or termination is sought.

9. Assignability. Neither this Exchange Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof will be assignable by either the Company, on the one hand, or the Investor, on the other hand, without the prior written consent of the other party.

10. Taxation. The Investor acknowledges that, if it is a United States person for U.S. federal income tax purposes, either (i) the Company must be provided with a correct taxpayer identification number ("**TIN**") (generally a person's social security or federal employer identification number) and certain other information on a properly completed and executed Internal Revenue Service ("**IRS**") Form W-9, which is provided herein on Exhibit C attached to the Exchange Agreement, or (ii) another basis for exemption from backup withholding must be established. The Investor further acknowledges that, if ti is not a United States person for U.S. federal income tax purposes, the Company must be provided the appropriate properly completed and executed IRS Form W-8, attesting to that non-U.S. Investor's foreign status and certain other information, including information establishing an exemption from withholding under Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended. The Investor further acknowledges that the Investor may be subject to 30% U.S. federal withholding or 24% U.S. federal backup withholding on certain payments made to the Investor unless the Investor properly establishes an exemption from, or a reduced rate of, such withholding or backup withholding.

11. Waiver of Jury Trial. EACH OF THE COMPANY AND THE INVESTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS EXCHANGE AGREEMENT.

12. Governing Law. This Exchange Agreement will be governed by and construed in accordance with the laws of the State of New York.

13. Section and Other Headings. The section and other headings contained in this Exchange Agreement are for reference purposes only and will not affect the meaning or interpretation of this Exchange Agreement.

14. Counterparts. This Exchange Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which together will be deemed to be one and the same agreement. Delivery of an executed signature page to this Exchange Agreement by facsimile or other electronic transmission (including pdf format) will be effective as delivery of a manually executed counterpart hereof.

15. Notices. All notices and other communications to the Company provided for herein will be in writing and will be deemed to have been duly given if delivered personally or sent by nationally recognized overnight courier service or by registered or certified mail, return receipt requested, postage prepaid to the following addresses (or such other address as either party may have hereafter specified by notice in writing to the other): (a) if to the Company, Verastem, Inc., 117 Kendrick Street, Suite 500, Needham, MA 02494, Attention: Chief Financial Officer; and (b) if to the Investor, the address provided on the signature page below.

16. Binding Effect. The provisions of this Exchange Agreement will be binding upon and accrue to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

17. Notification of Changes. The Investor hereby covenants and agrees to notify the Company upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant of the Investor, made on behalf of itself, contained in this Exchange Agreement to be false or incorrect.

18. Severability. If any term or provision of this Exchange Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Exchange Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS*]

IN WITNESS WHEREOF, the undersigned has executed this Exchange Agreement as of the date first written above.

Investor:

Highbridge Tactical Credit Master Fund, L.P.
By: Highbridge Capital Management, LLC, as Trading Manager

By: /s/ Jonathan Segal
Name: Jonathan Segal
Title:

Investor Address:
Telephone:

Country (and, if applicable, State) of Residence:

Taxpayer Identification Number:

[*Signature Page to Exchange Agreement*]

VERASTEM, INC.

By: /s/ Robert Gagnon
Name: Robert Gagnon
Title: Chief Business and Financial Officer

[*Signature Page to Exchange Agreement*]

EXHIBIT A

Investor Information

Legal Name of Investor: Highbridge Tactical Credit Master Fund, L.P.

Aggregate principal amount of Old Notes to be exchanged (**must be a multiple of $1,000**): $28,000,000.00

Investor's Address: _____

_____

_____

_____

_____

Telephone: _____

_____

Country (and, if applicable, State) of Residence: Cayman Islands

Taxpayer Identification Number: _____

_____

Account for Old Notes	Account for New Notes
DTC Participant Number: _____	DTC Participant Number: _____
DTC Participant Name: _____	DTC Participant Name: _____
DTC Participant Phone Number: _____	DTC Participant Phone Number: _____
DTC Participant Contact Email: _____	DTC Participant Contact Email: _____
	Account # at DTC Participant: _____

EXHIBIT B

Exchange Procedures

NOTICE TO INVESTOR

Attached are Investor Exchange Procedures for the settlement of the exchange (the "**Exchange**") of 5.00% Convertible Senior Notes due 2048, CUSIP 92337C AA2 (the "**Old Notes**") of Verastem, Inc. (the "**Company**") for the Company's 5.00% Series 2 Convertible Senior Notes due 2048 (the "**New Notes**"), pursuant to the Exchange Agreement, dated as of November 6, 2020, between you and the Company, which is expected to occur on November 13, 2020. To ensure timely settlement, please follow the instructions for the Exchange as set forth on the following page.

Your failure to comply with the attached instructions may delay your receipt of the New Notes.

Thank you.

Delivery of the Old Notes

You must direct the eligible DTC participant through which you hold a beneficial interest in the Old Notes to post **on November 13, 2020, no later than 9:30 a.m., New York City time**, withdrawal instructions through DTC via DWAC for the aggregate principal amount of Old Notes (CUSIP #92337C AA2) set forth in Exhibit B.1 of the Exchange Agreement to be exchanged. **It is important that this instruction be submitted and the DWAC posted on November 13, 2020; if it is posted before November 13, 2020, then it will expire unaccepted and will need to be re-posted on November 13, 2020.**

To receive the New Notes

You must direct your eligible DTC participant through which you wish to hold a beneficial interest in the New Notes to post **on November 13, 2020, no later than 9:30 a.m., New York City time**, a deposit instruction through DTC via DWAC for the aggregate principal amount of New Notes to which you are entitled pursuant to the Exchange. **It is important that this instruction be submitted and the DWAC posted on November 13, 2020; if it is posted before November 13, 2020, then it will expire unaccepted and will need to be re-posted on November 13, 2020**.

Closing

On November 13, 2020, after the Company receives your Old Notes and your delivery instructions as set forth above, and subject to the satisfaction of the conditions to Closing as set forth in your Exchange Agreement, the Company will deliver the New Notes in accordance with the delivery instructions above.

Exhibit C

Under U.S. federal income tax law, a holder who exchanges Old Notes for the New Notes generally must provide such holder's correct taxpayer identification number ("**TIN**") on IRS Form W-9 (attached hereto) or otherwise establish a basis for exemption from backup withholding. A TIN is generally an individual holder's social security number or a holder's employer identification number. If the correct TIN is not provided, the holder may be subject to a $50 penalty imposed by the IRS. In addition, certain payments made to holders may be subject to U.S. backup withholding tax (currently set at 24% of the payment). If a holder is required to provide a TIN but does not have the TIN, the holder should consult its tax advisor regarding how to obtain a TIN. Certain holders are not subject to these backup withholding and reporting requirements. Non-U.S. Holders generally may establish their status as exempt recipients from backup withholding by submitting a properly completed applicable IRS Form W-8 (available from the Company or the IRS at www.irs.gov), signed, under penalties of perjury, attesting to such holder's exempt foreign status. U.S. backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained provided that the required information is timely furnished to the IRS. Holders are urged to consult their tax advisors regarding how to complete the appropriate forms and to determine whether they are exempt from backup withholding or other withholding taxes.

Exhibit 31.1

CERTIFICATIONS

I, Brian M. Stuglik, 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/ BRIAN M. STUGLIK

Brian M. Stuglik
Chief Executive Officer
(Principal executive officer)

Date: November 9, 2020

Exhibit 31.2

CERTIFICATIONS

I, Robert Gagnon, 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 GAGNON

Robert Gagnon
Chief Business and Financial Officer
(Principal financial and accounting officer)

Date: November 9, 2020

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 September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Brian M. Stuglik, 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/ BRIAN M. STUGLIK

Brian M. Stuglik
Chief Executive Officer
(Principal executive officer)

Date: November 9, 2020

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 September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Gagnon, Chief Business and Financial 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 GAGNON

Robert Gagnon
Chief Business and Financial Officer
(Principal financial and accounting officer)

Date: November 9, 2020

Verastem Oncology Reports Third Quarter 2020 Financial Results and Highlights Recent Company Progress

Announced Positive Updated Data from Ongoing Investigator-Initiated Phase 1/2 FRAME Study Evaluating VS-6766 and Defactinib Combination in Patients with Low-Grade Serous Ovarian Cancer

On Track to Commence Company-Sponsored Phase 2 Registration-Directed Trials by Year-End 2020 in Both Low-Grade Serous Ovarian Cancer and KRAS Mutant Non-Small Cell Lung Cancer

Strong Balance Sheet with Cash, Cash Equivalents and Investments Totaling $205.7 Million; Strategic Sale of COPIKTRA® (duvelisib) Provides Cash Runway Until at Least 2024

BOSTON, MA – November 9, 2020 – Verastem, Inc. (Nasdaq:VSTM) (also known as Verastem Oncology), a biopharmaceutical company committed to advancing new medicines for patients battling cancer, today reported financial results for the three months ending September 30, 2020, and provided an overview of recent corporate highlights.

"The third quarter of 2020 was marked most notably by the sale of the COPIKTRA (duvelisib) franchise to Secura Bio in a deal valued at up to $311 million, plus royalties. This strategic transaction allows us to focus our resources and efforts on advancing the VS-6766 and defactinib combination program in KRAS mutant solid tumors and provides us with a cash runway until at least 2024," said Brian Stuglik, Chief Executive Officer of Verastem Oncology. "Looking ahead to the remainder of the year, we remain on track to commence two new company-sponsored, registration-directed Phase 2 clinical trials by year end, one in low-grade serous ovarian cancer (LGSOC) and one in KRAS mutant non-small cell lung cancer (NSCLC)."

Third Quarter 2020 and Recent Highlights

- ***Presented Updated Data from the Phase 1/2 FRAME Study in Patients with LGSOC.*** In mid-September, Verastem reported positive updated results from the ongoing investigator-initiated Phase 1/2 FRAME study coinciding with a virtual oral presentation by Dr. Udai Banerji, Institute of Cancer Research and The Royal Marsden, at the 2nd Annual RAS-Targeted Drug Development (RTDD) Summit. The FRAME study is evaluating VS-6766, Verastem's RAF/MEK inhibitor, in combination with defactinib, its FAK inhibitor, in patients with LGSOC. The results demonstrated that the novel, intermittent, combination dosing schedule used in the FRAME study continues to show encouraging clinical activity, durability and a favorable safety profile in patients with KRAS mutant LGSOC, including patients who had previously progressed following treatment with a MEK inhibitor.

- ***New Data Published in The Lancet Oncology Supports Potential of VS-6766.*** An investigator-initiated Phase 1 study evaluating the intermittent dosing schedule of VS-6766 was published in the November issue of *The Lancet Oncology*. Tolerability and antitumor activity were observed across various cancers with RAS/RAF/MEK pathway mutations. The dose escalation study was the first to evaluate a dual RAF/MEK inhibitor using innovative intermittent dosing schedules in patients harboring RAS/RAF pathway mutations.

- ***On Track to Commence Phase 2 Registration-Directed Trials in Lead Indications This Year.*** Following a meeting with the U.S. Food and Drug Administration (FDA), Verastem reported that the FDA is supportive of its adaptive study design for the planned Phase 2 registration-directed trial evaluating VS-6766 and defactinib in patients with recurrent LGSOC. Verastem expects to commence registration-directed clinical trials in both recurrent LGSOC and KRAS mutant non-small cell lung cancer by the end of 2020. Assuming a positive outcome from these registration-directed trials, Verastem expects to submit New Drug Applications to the FDA requesting accelerated approval for VS-6766 alone or in combination with defactinib in both LGSOC and KRAS mutant NSCLC.

- ***Closed COPIKTRA Sale to Secura Bio in a Deal Totaling $311 Million, Plus Royalties.*** Verastem recently announced the closing of a strategic transaction selling global commercial and development rights to COPIKTRA in all oncology indications to Secura Bio, Inc. The transaction, which carries a total deal value of up to $311 million, plus royalties, provides Verastem with a cash runway until at least 2024 and will allow the Company to focus its resources and efforts on the clinical development of VS-6766 and defactinib in KRAS mutant solid tumors.

- ***Presented New Preclinical Research Demonstrating Synergy and Tumor Regression with VS-6766 in Combination with G12C Inhibitors.*** In a virtual poster presentation, also at the RTDD Summit, Verastem highlighted new preclinical research where VS-6766 showed synergy with KRAS-G12C inhibitors in reducing cancer cell viability across a panel of KRAS-G12C mutant NSCLC and colorectal cancer (CRC) cell lines. This enhanced cellular anti-cancer activity of the combination correlated with deeper and more durable inhibition of ERK pathway signaling compared to G12C inhibition alone. The anti-tumor effects of VS-6766 were stronger than the effects of trametinib at a comparable dose.

Third Quarter 2020 Financial Results

Total Revenue for the three months ending September 30, 2020 (2020 Quarter) was $78.6 million, compared to $9.0 million for the three months ending September 30, 2019 (2019 Quarter).

Sale of COPIKTRA license and related assets revenue for the 2020 Quarter was $70.0 million, compared to $0.0 for the 2019 Quarter. The 2020 Quarter was comprised of a $70.0 million upfront payment recognized as part of the COPIKTRA sale to Secura Bio Inc.

License and collaboration revenue for the 2020 Quarter was $2.8 million, compared to $5.0 million for the 2019 Quarter. The 2019 Quarter included a $5.0 million upfront payment received pursuant to a license and collaboration agreement executed between Verastem Oncology and Sanofi in July 2019. The 2020 Quarter was primarily comprised of $2.5 million for Sanofi achieving two development milestones under the license and collaboration agreement.

Net product revenue for the 2020 Quarter was $5.8 million, compared to $4.0 million for the 2019 Quarter.

Cost of sales as a result of the sale of COPIKTRA license and related assets for the 2020 Quarter was $31.2 million, compared to $0.0 million for the 2019 Quarter. The 2020 Quarter comprised of the intangible asset, certain duvelisib inventory, net duvelisib contract prepaid balances and certain manufacturing equipment for the amounts of $19.2 million, $6.0 million, $5.8 million, and $0.2 million, respectively, delivered to Secura Bio Inc. as part of the COPIKTRA sale.

Total research and development (R&D) and selling, general and administrative (SG&A) expenses for the 2020 Quarter were $31.6 million, compared to $34.4 million for the 2019 Quarter.

R&D expense for the 2020 Quarter was $11.0 million, compared to $12.2 million for the 2019 Quarter. The decrease of $1.2 million, or 10%, was primarily related to a decrease in contract research organization costs and lower employee related expense.

SG&A expense for the 2020 Quarter was $20.6 million, compared to $22.2 million for the 2019 Quarter. The decrease of $1.6 million, or 7%, primarily resulted from the company's shift in strategic direction which led to lower commercial program and employee related expense. The 2020 Quarter includes $3.5 million of nonrecurring transaction expenses directly attributable to the COPIKTRA sale to Secura Bio Inc.

Net income (loss) for the 2020 Quarter was $13.1 million, or $0.08 per share (basic and diluted), compared to $(30.1) million, or $(0.41) per share (basic and diluted), for the 2019 Quarter.

For the 2020 Quarter, non-GAAP adjusted net income was $18.8 million, or $0.11 per share (diluted), compared to non-GAAP adjusted net loss of $26.2 million, or $0.35 per share (diluted), for the 2019 Quarter. Please refer to the GAAP to Non-GAAP Reconciliation attached to this press release.

Verastem Oncology ended the third quarter of 2020 with cash, cash equivalents and short-term investments of $205.7 million.

Financial Guidance and Outlook

With the proceeds from the sale of COPIKTRA, Verastem has a cash runway until at least 2024 to deliver on the current programs for VS-6766 and defactinib, including clinical and regulatory milestones and development in LGSOC and KRAS mutant NSCLC. Verastem expects its 2020 operating expenses to be approximately 40% lower than its 2019 operating expenses. As a result of its new strategic direction and operating plans, along with the sale of the COPIKTRA franchise during the third quarter 2020 and associated transition activities, the Company expects total operating expenses for the full year 2020 to be in the range of $80 million to $90 million. Beginning in 2021 Verastem expects its annual operating expenses to be approximately $50 million.

Use of Non-GAAP Financial Measures

To supplement Verastem Oncology's condensed consolidated financial statements, which are prepared and presented in accordance with generally accepted accounting principles in the United States (GAAP), the Company uses the following non-GAAP financial measures in this press release: non-GAAP adjusted net loss and non-GAAP net loss per share. These non-GAAP financial measures exclude certain amounts or expenses from the corresponding financial measures determined in accordance with GAAP. Management believes this non-GAAP information is useful for investors, taken in conjunction with the Company's GAAP financial statements, because it provides greater transparency and period-over-period comparability with respect to the Company's operating performance and can enhance investors' ability to identify operating trends in the Company's business. Management uses these measures, among other factors, to assess and analyze operational results and trends and to make financial and operational decisions. Non-GAAP information is not prepared under a comprehensive set of accounting rules and should only be used to supplement an understanding of the Company's operating results as reported under GAAP, not in isolation or as a substitute for, or superior to, financial information prepared and presented in accordance with GAAP. In addition, these non-GAAP financial measures are unlikely to be comparable with non-GAAP information provided by other companies. The determination of the amounts that are excluded from non-GAAP financial measures is a matter of management judgment and depends upon, among other factors, the nature of the underlying expense or income amounts. Reconciliations between these non-GAAP financial measures and the most

comparable GAAP financial measures for the three months ended March 31, 2020 and 2019 are included in the tables accompanying this press release after the unaudited condensed consolidated financial statements.

About VS-6766

VS-6766 (formerly known as CH5126766, CKI27 and RO5126766) is a unique inhibitor of the RAF/MEK signaling pathway. In contrast to other MEK inhibitors in development, VS-6766 blocks both MEK kinase activity and the ability of RAF to phosphorylate MEK. This unique mechanism allows VS-6766 to block MEK signaling without the compensatory activation of MEK that appears to limit the efficacy of other inhibitors.

About Defactinib

Defactinib (VS-6063) is an oral small molecule inhibitor of FAK and PYK2 that is currently being evaluated as a potential combination therapy for various solid tumors. The Company has received Orphan Drug designation for defactinib in ovarian cancer and mesothelioma in the US, EU and Australia. Preclinical research by Verastem Oncology scientists and collaborators at world-renowned research institutions has described the effect of FAK inhibition to enhance immune response by decreasing immuno-suppressive cells, increasing cytotoxic T cells, and reducing stromal density, which allows tumor-killing immune cells to enter the tumor.[i,ii]

About the VS-6766/Defactinib Combination

RAS mutant tumors are present in ~30% of all human cancers, have historically presented a difficult treatment challenge and are often associated with significantly worse prognosis. Challenges associated with identifying new treatment options for these types of cancers include resistance to single agents, identifying tolerable combination regimens with MEK inhibitors and new RAS inhibitors in development addressing only a minority of all RAS mutated cancers.

The combination of VS-6766 and defactinib has been found to be clinically active in patients with KRAS mt tumors. In an ongoing investigator-initiated Phase 1/2 FRAME study, the combination of VS-6766 and defactinib is being evaluated in patients with LGSOC, KRASmt NSCLC and colorectal cancer (CRC). Updated interim data from this study presented at the 2nd Annual RAS-Targeted Drug Development Summit in September 2020 demonstrated a 56% overall response rate and long duration of therapy among patients with KRAS-G12 mt LGSOC. Based on an observation of higher response rates seen in NSCLC patients with KRAS-G12V mutations in the study, Verastem will also be further exploring the role of VS-6766 and defactinib in KRAS-G12V NSCLC. The FRAME study was expanded in August 2020 to include new cohorts in pancreatic cancer, KRASmt endometrial cancer and KRAS-G12V NSCLC.

About Verastem Oncology

Verastem Oncology (Nasdaq: VSTM) is a development-stage biopharmaceutical company committed to the development and commercialization of new medicines to improve the lives of patients diagnosed with cancer. Our pipeline is focused on novel small molecule drugs that inhibit critical signaling pathways in cancer that promote cancer cell survival and tumor growth, including RAF/MEK inhibition and focal adhesion kinase (FAK) inhibition. For more information, please visit www.verastem.com.

Forward-Looking Statements Notice

This press release includes forward-looking statements about Verastem Oncology's strategy, future plans and prospects, including statements related to the potential clinical value of the RAF/MEK/FAK combination and the timing of commencing registration-directed trials for the RAF/MEK/FAK combination. The words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue," "can," "promising" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statement.

Applicable risks and uncertainties include the risks and uncertainties, among other things, regarding: the success in the development and potential commercialization of our product candidates, including defactinib in combination with VS-6766; the occurrence of adverse safety events and/or unexpected concerns that may arise from additional data or analysis or result in unmanageable safety profiles as compared to their levels of efficacy; our ability to obtain, maintain and enforce patent and other intellectual property protection for our product candidates; the scope, timing, and outcome of any legal proceedings; decisions by regulatory authorities regarding labeling and other matters that could affect the availability or commercial potential of our product candidates; whether preclinical testing of our product candidates and preliminary or interim data from clinical trials will be predictive of the results or success of ongoing or later clinical trials; that the timing, scope and rate of reimbursement for our product candidates is uncertain; that third-party payors (including government agencies) may not reimburse; that there may be competitive developments affecting our product candidates; that data may not be available when expected; that enrollment of clinical trials may take longer than expected; that our product candidates will experience manufacturing or supply interruptions or failures; that we will be unable to successfully initiate or complete the clinical development and eventual commercialization of our product candidates; that the development and commercialization of our product candidates will take longer or cost more than planned; that we or Chugai Pharmaceutical Co., Ltd. will fail to fully perform under the VS-6766 license agreement; that we may not have sufficient cash to fund our contemplated operations; that we may be unable to make additional draws under our debt facility or obtain adequate financing in the future through product licensing, co-promotional arrangements, public or private equity, debt financing or otherwise; that we will be unable to execute on our partnering strategies for defactinib in combination with VS-6766; that we will not pursue or submit regulatory filings for our product candidates; and that our product candidates will not receive regulatory approval, become commercially successful products, or result in new treatment options being offered to patients.

Other risks and uncertainties include those identified under the heading "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 as filed with the Securities and Exchange Commission (SEC) on March 11, 2020 and in any subsequent filings with the SEC. The forward-looking statements contained in this press release reflect Verastem Oncology's views as of the date hereof, and the Company does not assume and specifically disclaims any obligation to update any forward-looking statements whether as a result of new information, future events or otherwise, except as required by law.

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Verastem, Inc.
Condensed Consolidated Balance Sheets
(in thousands)
(unaudited)

	September 30, 2020	December 31, 2019
Cash, cash equivalents, & investments	$ 170,470	$ 75,506
Accounts receivable, net	5,685	2,524
Inventory	—	3,096
Restricted cash, prepaid expenses and other current assets	12,400	3,835
Property and equipment, net	497	947
Intangible assets, net	—	20,008
Right-of-use asset, net	2,820	3,077
Restricted cash and other assets	25,898	36,053
Total assets	**$ 217,770**	**$ 145,046**
Current Liabilities	$ 37,678	$ 29,890
Long-term debt	26,397	35,067
Convertible senior notes	20,841	68,556
Lease Liability, long-term	3,081	3,489
Other liabilities	—	870
Stockholders' equity	129,773	7,174
Total liabilities and stockholders' equity	**$ 217,770**	**$ 145,046**

Verastem, Inc.
Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)
(unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2020	**2019**	**2020**	**2019**
Revenue:				
Product revenue, net	$ 5,829	$ 4,032	$ 15,098	$ 8,722
License and collaboration revenue	2,818	5,000	2,912	5,118
Sale of COPIKTRA license and related assets revenue	70,000	—	70,000	—
Total revenue	78,647	9,032	88,010	13,840
Operating expenses:				
Cost of sales - product	866	371	1,753	906
Cost of sales - intangible amortization	8	392	793	1,177
Cost of sales – sale of COPIKTRA license and related assets	31,187	—	31,187	—
Research and development	10,955	12,219	31,223	33,322
Selling, general and administrative	20,614	22,153	55,660	77,484
Total operating expenses	63,630	35,135	120,616	112,889
Income (Loss) from operations	15,017	(26,103)	(32,606)	(99,049)
Other expense	—	—	(1,313)	—
Interest income	19	1,005	497	3,770
Interest expense	(1,898)	(5,041)	(14,440)	(15,156)
Net income (loss)	$ 13,138	$ (30,139)	$ (47,862)	$ (110,435)
Net income (loss) per share—basic	$ 0.08	$ (0.41)	$ (0.32)	$ (1.49)
Net income (loss) per share—diluted	$ 0.08	$ (0.41)	$ (0.32)	$ (1.49)
Weighted average common shares outstanding used in computing:				
Net income (loss) per share – basic	169,510	74,228	147,766	73,988
Net income (loss) per share - diluted	169,760	74,228	147,766	73,988

Verastem, Inc.
Reconciliation of GAAP to Non-GAAP Financial Information
(in thousands, except per share amounts)
(unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2020	**2019**	**2020**	**2019**
Net income (loss) Reconciliation				
Net income (loss) (GAAP basis)	$ 13,138	$ (30,139)	$ (47,862)	$ (110,435)
Adjust:				
Amortization of acquired intangible asset	8	392	793	1,177
Stock-based compensation expense	2,156	1,915	5,185	7,228
Non-cash interest, net	506	1,611	9,765	4,426
Severance and Other	2,993	40	4,781	2,034
Change in fair value of derivative	—	—	1,313	—
Chugai license payment	—	—	3,000	—
Adjusted Net income (loss) (non-GAAP basis)	$ 18,801	$ (26,181)	$ (23,025)	$ (95,570)
Reconciliation of Net Loss Per Share				
Net income (loss) per share – diluted (GAAP Basis)	$ 0.08	$ (0.41)	$ (0.32)	$ (1.49)
Adjust per diluted share				
Amortization of acquired intangible asset	—	0.01	—	0.01
Stock-based compensation expense	0.01	0.03	0.03	0.10
Non-cash interest, net	—	0.02	0.07	0.06
Severance and Other	0.02	—	0.03	0.03
Change in fair value of derivative	—	—	0.01	—
Chugai license payment	—	—	0.02	—
Adjusted Net income(loss) per share – diluted (non-GAAP Basis)	$ 0.11	$ (0.35)	$ (0.16)	$ (1.29)
Weighted average common shares outstanding used in computing net loss per share—diluted	169,760	74,228	147,766	73,988

References

[i] Gerber D. et al. Phase 2 study of the focal adhesion kinase inhibitor defactinib (VS-6063) in previously treated advanced KRAS mutant non-small cell lung cancer. Lung Cancer 2020: 139:60-67.

[ii] Chénard-Poirier, M. et al. Results from the biomarker-driven basket trial of RO5126766 (CH5127566), a potent RAF/MEK inhibitor, in RAS- or RAF-mutated malignancies including multiple myeloma. Journal of Clinical Oncology 2017: 35. 10.1200/JCO.2017.35.15_suppl.2506.