UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **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 No. 0-14710

XOMA Corporation
(Exact name of registrant as specified in its charter)

Delaware	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2200 Powell Street, Suite 310 Emeryville, California	**94608**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (510) 204-7200

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

Title of each class:	**Trading symbol(s):**	**Name of each exchange on which registered:**
Common Stock, $0.0075 par value	XOMA	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 2, 2020, the registrant had 11,022,143 shares of common stock, $0.0075 par value per share, outstanding.

XOMA CORPORATION

FORM 10-Q

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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

XOMA CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

	September 30, 2020 (unaudited)	December 31, 2019 (Note 1)
ASSETS		
Current assets:		
Cash	$ 45,725	$ 56,688
Trade and other receivables, net	222	2,933
Income tax receivable	1,526	—
Prepaid expenses and other current assets	671	352
Total current assets	48,144	59,973
Property and equipment, net	24	34
Operating lease right-of-use assets	398	510
Long-term royalty receivables	34,375	34,375
Equity securities	2,572	681
Other assets	215	151
Total assets	$ 85,728	$ 95,724
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 450	$ 614
Accrued and other liabilities	466	945
Contingent consideration under royalty purchase agreements	75	75
Operating lease liabilities	175	163
Unearned revenue recognized under units-of-revenue method	1,409	1,096
Contract liabilities	798	798
Current portion of long-term debt	8,962	5,184
Total current liabilities	12,335	8,875
Unearned revenue recognized under units-of-revenue method – long-term	13,952	15,317
Long-term debt	20,990	27,093
Long-term operating lease liabilities	275	408
Other liabilities – long-term	134	43
Total liabilities	47,686	51,736
Commitments and Contingencies (Note 10)		
Stockholders' equity:		
Convertible preferred stock, $0.05 par value, 1,000,000 shares authorized, 5,003 and 6,256 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 11,022,143 and 9,758,583 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	83	73
Additional paid-in capital	1,241,711	1,238,299
Accumulated deficit	(1,203,752)	(1,194,384)
Total stockholders' equity	38,042	43,988
Total liabilities and stockholders' equity	$ 85,728	$ 95,724

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

(Note 1) The consolidated balance sheet as of December 31, 2019 has been derived from the audited consolidated financial statements as of that date included in the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

XOMA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(unaudited)
(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenues:				
Revenue from contracts with customers	$ 200	$ 8,525	$ 753	$ 17,176
Revenue recognized under units-of-revenue method	357	330	1,051	772
Total revenues	557	8,855	1,804	17,948
Operating expenses:				
Research and development	34	143	134	1,123
General and administrative	3,212	5,821	13,126	16,709
Total operating expenses	3,246	5,964	13,260	17,832
(Loss) income from operations	(2,689)	2,891	(11,456)	116
Other income (expense), net:				
Interest expense	(434)	(484)	(1,484)	(1,336)
Other income, net	2,046	771	2,046	3,559
(Loss) income before income tax	(1,077)	3,178	(10,894)	2,339
Income tax benefit	—	—	1,526	—
Net (loss) income and comprehensive (loss) income	$ (1,077)	$ 3,178	$ (9,368)	$ 2,339
Net (loss) income and comprehensive (loss) income available to common stockholders, basic	$ (1,077)	$ 1,851	$ (9,368)	$ 1,362
Net (loss) income and comprehensive (loss) income available to common stockholders, diluted	$ (1,077)	$ 1,911	$ (9,368)	$ 1,403
Basic net (loss) income per share available to common stockholders	$ (0.10)	$ 0.21	$ (0.89)	$ 0.16
Diluted net (loss) income per share available to common stockholders	$ (0.10)	$ 0.20	$ (0.89)	$ 0.15
Weighted average shares used in computing basic net (loss) income per share available to common stockholders	11,019	8,731	10,537	8,721
Weighted average shares used in computing diluted net (loss) income per share available to common stockholders	11,019	9,441	10,537	9,379

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

XOMA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(unaudited)
(in thousands)

	Nine Months Ended September 30, 2020						
	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance, December 31, 2019	6	$ —	9,759	$ 73	$ 1,238,299	$ (1,194,384)	$ 43,988
Issuance of common stock related to 401(k) contribution	—	—	3	—	88	—	88
Stock-based compensation expense	—	—	—	—	1,788	—	1,788
Disgorgement of stockholder's short-swing profits	—	—	—	—	13	—	13
Net loss and comprehensive loss	—	—	—	—	—	(4,758)	(4,758)
Balance, March 31, 2020	6	—	9,762	73	1,240,188	(1,199,142)	41,119
Exercise of stock options	—	—	2	—	10	—	10
Issuance of common stock related to ESPP	—	—	1	—	26	—	26
Issuance of common stock related to Series Y preferred stock conversion	(1)	—	1,253	10	(10)		—
Stock-based compensation expense	—	—	—	—	773	—	773
Net loss and comprehensive loss	—	—	—	—	—	(3,533)	(3,533)
Balance, June 30, 2020	5	—	11,018	83	1,240,987	(1,202,675)	38,395
Exercise of stock options	—	—	4	—	16	—	16
Stock-based compensation expense	—	—	—	—	708	—	708
Net loss and comprehensive loss	—	—	—	—	—	(1,077)	(1,077)
Balance, September 30, 2020	5	$ —	11,022	$ 83	$ 1,241,711	$ (1,203,752)	$ 38,042

	Nine Months Ended September 30, 2019						
	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance, December 31, 2018	6	$ —	8,691	$ 65	$ 1,211,122	$ (1,192,402)	$ 18,785
Exercise of stock options	—	—	24	—	115	—	115
Issuance of common stock related to 401(k) contribution	—	—	7	—	102	—	102
Vesting of restricted stock units	—	—	2	—	—	—	—
Stock-based compensation expense	—	—	—	—	1,728	—	1,728
Issuance of common stock	—	—	—	—	66	—	66
Net income and comprehensive income	—	—	—	—	—	3,233	3,233
Balance, March 31, 2019	6	—	8,724	65	1,213,133	(1,189,169)	24,029
Exercise of stock options	—	—	2	—	8	—	8
Issuance of common stock related to ESPP	—	—	2	—	16	—	16
Stock-based compensation expense	—	—	—	—	1,011	—	1,011
Net loss and comprehensive loss	—	—	—	—	—	(4,072)	(4,072)
Balance, June 30, 2019	6	—	8,728	65	1,214,168	(1,193,241)	20,992
Exercise of stock options	—	—	24	—	122	—	122
Stock-based compensation expense	—	—	—	—	1,494	—	1,494
Net income and comprehensive income	—	—	—	—	—	3,178	3,178
Balance, September 30, 2019	6	$ —	8,752	$ 65	$ 1,215,784	$ (1,190,063)	$ 25,786

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

XOMA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(in thousands)

	Nine Months Ended September 30,	
	2020	**2019**
Cash flows from operating activities:		
Net (loss) income	$ (9,368)	$ 2,339
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Stock-based compensation expense	3,269	4,233
Common stock contribution to 401(k)	88	102
Depreciation and amortization	19	19
Amortization of debt issuance costs, debt discount and final payment on debt	546	390
Provision for bad debt	1,409	—
Non-cash lease expense	112	1,464
Change in fair value of equity securities	(1,891)	(481)
Changes in assets and liabilities:		
Trade and other receivables, net	1,302	(2,358)
Income tax receivable	(1,526)	—
Prepaid expenses and other assets	(319)	(265)
Accounts payable and accrued liabilities	(464)	232
Unearned revenue recognized under units-of-revenue method	(1,052)	(772)
Operating lease liabilities	(120)	(1,634)
Other liabilities	409	594
Net cash (used in) provided by operating activities	(7,586)	3,863
Cash flows from investing activities:		
Purchase of property and equipment	(9)	—
Payments related to purchase of royalty rights	—	(19,300)
Net cash used in investing activities	(9)	(19,300)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net of issuance costs	26	17
Proceeds from exercise of options	42	776
Proceeds from issuance of long-term debt	—	9,500
Payment of stock issuance costs	(231)	(377)
Principal payments – debt	(3,188)	—
Principal payments – finance lease	(14)	(11)
Proceeds from disgorgement of stockholder's short-swing profits	13	—
Taxes paid related to net share settlement of equity awards	(16)	(504)
Net cash (used in) provided by financing activities	(3,368)	9,401
Net decrease in cash	(10,963)	(6,036)
Cash at the beginning of the period	56,688	45,780
Cash at the end of the period	$ 45,725	$ 39,744
Supplemental Cash Flow Information:		
Cash paid for interest	$ 546	$ 357
Non-cash investing and financing activities:		
Interest added to principal balance on long-term debt	$ 317	$ 376
Issuance of common stock warrant under SVB loan	$ —	$ 66
Estimated fair value of contingent consideration under the royalty purchase agreements	$ —	$ 75

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

XOMA CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. Description of Business

XOMA Corporation (referred to as "XOMA" or the "Company"), a Delaware corporation, is a biotech royalty aggregator with a sizable portfolio of economic rights to future potential milestone and royalty payments associated with partnered pre-commercial therapeutic candidates. The Company's portfolio was built through licensing its proprietary products and platforms from its legacy discovery and development business, combined with acquisitions of rights to future milestones and royalties that the Company has made since the royalty aggregator business model was implemented in 2017. The Company expects that most of its future revenue will be based on payments the Company may receive for milestones and royalties related to these programs.

Liquidity and Financial Condition

The Company has incurred significant operating losses and negative cash flows from operations since its inception. As of September 30, 2020, the Company had cash of $45.7 million. Based on the Company's current cash balance and its ability to control discretionary spending, such as royalty acquisitions, the Company has evaluated and concluded its financial condition is sufficient to fund its planned operations and commitments and contractual obligations for a period of at least one year following the date that these condensed consolidated financial statements are issued.

2. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions among consolidated entities were eliminated upon consolidation. The unaudited condensed consolidated financial statements were prepared in accordance with generally accepted accounting principles ("GAAP") in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. As permitted under those rules certain footnotes or other financial information can be condensed or omitted. These financial statements and related disclosures have been prepared with the assumption that users of the interim financial information have read or have access to the audited consolidated financial statements for the preceding fiscal year. Accordingly, these statements should be read in conjunction with the audited consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed with the U.S. Securities and Exchange Commission ("SEC") on March 10, 2020.

These financial statements have been prepared on the same basis as the Company's annual consolidated financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments that are necessary for a fair statement of the Company's consolidated financial information. The interim results of operations are not necessarily indicative of the results that may be expected for the full year.

Use of Estimates

The preparation of financial statements in conformity with GAAP in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an ongoing basis, management evaluates its estimates including, but not limited to, those related to revenue recognition, revenue recognized under units-of-revenue method, royalty receivables, equity securities, operating lease right-of-use assets and liabilities, legal contingencies, contingent considerations under royalty purchase agreements, stock-based compensation and income taxes. The Company bases its estimates on historical experience and on various other market-specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of

which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources.

Actual results may differ significantly from these estimates, such as the Company's billing under government contracts and amortization of the payments received from HealthCare Royalty Partners II, L.P. ("HCRP"). Under the Company's contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), the Company billed using NIH's provisional rates and thus is subject to future audits at the discretion of NIAID's contracting office. In October of 2019, NIH notified the Company that it engaged KPMG to perform an audit of the Company's incurred cost submissions for 2013, 2014 and 2015. This audit is not complete and may result in an adjustment to revenue previously reported which potentially could be material. In addition, under the contracts with HCRP, the amortization for the reporting period is calculated based on the payments expected to be made by the licensees to HCRP over the term of the arrangement. Any changes to the estimated payments by the licensees to HCRP can result in a material adjustment to revenue previously reported.

The worldwide spread of the COVID-19 pandemic has resulted in a global slowdown of economic activity which has led to delays and could result in further delays or terminations of some clinical trials underlying the Company's royalty purchase agreements. Estimates and assumptions about future events and their effects cannot be determined with certainty and therefore require the exercise of judgment. These estimates may change, as new events occur and additional information is obtained, and are recognized in the condensed consolidated financial statements as soon as they become known. Actual results could differ from those estimates and any such differences may be material to the Company's financial statements.

Revenue Recognition

The Company recognizes revenue from all contracts with customers according to Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. 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.

To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (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 Company satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that 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 based on relative fair values, when (or as) the performance obligation is satisfied.

The Company recognizes revenue from its license and collaboration arrangements and royalties. The terms of the arrangements generally include payment to the Company of one or more of the following: non-refundable, upfront license fees, development, regulatory and commercial milestone payments, and royalties on net sales of licensed products.

License of intellectual property

If the license to the Company's intellectual property is determined to be distinct from the other 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. For licenses that are bundled with other promises, such as transfer of related materials, process and know-how, the Company utilizes judgement 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. Under the Company's license agreements, the nature of the combined performance obligation is the granting of licenses to the customers as the other promises are not separately

identifiable in the context of the arrangement. Since the Company grants the license to a customer as it exists at the point of transfer, and is not involved in any future development or commercialization of the products related to the license, the nature of the license is a right to use the Company's intellectual property as transferred. As such, the Company recognizes revenue related to the combined performance obligation upon completion of the delivery of the related materials, process and know-how (i.e., at a point in time).

Milestone payments

At the inception of each arrangement that includes development and regulatory milestone payments, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price. ASC 606 suggests two alternatives to use when estimating the amount of variable consideration: the expected value method and the most likely amount method. Under the expected value method, an entity considers the sum of probability-weighted amounts in a range of possible consideration amounts. Under the most likely amount method, an entity considers the single most likely amount in a range of possible consideration amounts. The Company uses the most likely amount method for development and regulatory milestone payments.

If it is probable that a significant cumulative 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 transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis. The Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, the Company re-evaluates the probability or achievement of each such milestone and any related constraint, and if necessary, adjusts its estimates of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue and earnings in the period of adjustment.

Royalties

For arrangements that include sales-based royalties, including milestone payments based on the 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).

Upfront payments and fees are recorded as deferred revenue upon receipt or when due and may require deferral of revenue recognition to a future period until the Company performs its obligations under these arrangements. Amounts payable to the Company are recorded as accounts receivable when the Company's right to consideration is unconditional. The Company does not assess whether a contract has a significant financing component if the expectation at contract inception is such that the period between payment by the customer and the transfer of the promised goods or services to the customer will be one year or less.

Sale of Future Revenue Streams

The Company has sold its rights to receive certain milestones and royalties on product sales. In the circumstance where the Company has sold its rights to future milestones and royalties under a license agreement and also maintains limited continuing involvement in the arrangement (but not significant continuing involvement in the generation of the cash flows that are due to the purchaser), the Company defers recognition of the proceeds it receives for the sale of milestone or royalty streams and recognizes such unearned revenue as revenue under units-of-revenue method over the life of the underlying license agreement. Under the units-of-revenue method, amortization for a reporting period is calculated by computing a ratio of the proceeds received from the purchaser to the total payments expected to be made to the purchaser over the term of the agreement, and then applying that ratio to the period's cash payment.

Estimating the total payments expected to be received by the purchaser over the term of such arrangements requires management to use subjective estimates and assumptions. Changes to the Company's estimate of the payments expected to be made to the purchaser over the term of such arrangements could have a material effect on the amount of revenues recognized in any particular period.

Stock-Based Compensation

The Company recognizes compensation expense for all stock-based payment awards made to the Company's employees, consultants and directors that are expected to vest based on estimated fair values. The valuation of stock option awards is determined at the date of grant using the Black-Scholes Option Pricing Model (the "Black-Scholes Model"). The Black-Scholes Model requires inputs such as the expected term of the option, expected volatility and risk-free interest rate. To establish an estimate of expected term, the Company considers the vesting period and contractual period of the award and its historical experience of stock option exercises, post-vesting cancellations and volatility. The estimate of expected volatility is based on the Company's historical volatility. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues corresponding to the expected term of the award. The Company records forfeitures when they occur.

The Company records compensation expense for service-based awards on a straight-line basis over the requisite service period, which is generally the vesting period of the award, or to the date on which retirement eligibility is achieved, if shorter.

Equity Securities

The Company received shares of common stock from Rezolute, Inc. ("Rezolute") (Note 4). Equity investments in Rezolute are classified in the condensed consolidated balance sheets as equity securities. The equity securities are measured at fair value, with changes in fair value recorded in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive (loss) income at each reporting period. The Company remeasures its equity investments at each reporting period until such time that the investment is sold or disposed of. If the Company sells an investment, any realized gains and losses on the sale of the securities will be recognized in the condensed consolidated statement of operations and comprehensive (loss) income in the period of sale.

Purchase of Rights to Future Milestones and Royalties

The Company has purchased rights to receive a portion of certain future developmental, regulatory and commercial sales milestones, royalties and option fees on sales of products currently in clinical development. The Company acquired such rights from various entities and recorded the amount paid for these rights as long-term royalty receivables (Note 5). In addition, the Company may be obligated to make contingent payments related to certain product development milestones, fees upon exercise of options related to future license products and sales-based milestones. The contingent payments are evaluated whether they are freestanding instruments or embedded derivatives. If freestanding instruments, the contingent payments are measured at fair value at the inception of the arrangement, subject to remeasurement to fair value each reporting period. Any changes in the estimated fair value is recorded in the condensed consolidated statement of operations and comprehensive (loss) income.

The Company accounts for milestone and royalty rights related to developmental pipeline products on a non-accrual basis using the cost recovery method. These developmental pipeline products are non-commercialized, non-approved products that require Food and Drug Administration ("FDA") or other regulatory approval, and thus have uncertain cash flows. The Company is not yet able to reliably forecast future cash flows given their pre-commercial stages of development. The related receivable balance is classified as noncurrent since no payments are probable to be received in the near term. Under the cost recovery method, any milestone or royalty payment received is recorded as a direct reduction of the recorded receivable balance. When the recorded receivable balance has been fully collected, any additional amounts collected are recognized as revenue.

The Company reviews any impairment indicators and changes in expected recoverability of the long-term royalty receivable asset at least quarterly. If expected future cash flows discounted to the current period are less than the carrying value of the asset, the Company will record impairment. The impairment will be recognized by reducing the financial asset to an amount that represents the present value of the most recent estimate of future cash flows. No impairment indicators were identified, and no impairment was recorded as of September 30, 2020 and December 31, 2019.

Leases

The Company entered into a lease agreement for its corporate headquarters in Emeryville, California and under its legacy business held leases for office and laboratory facilities in Berkeley, California. In connection with a series of restructuring events in 2017 and 2018, the Company completely vacated its leased facilities in Berkeley, California and subleased the space in the vacated buildings. In December 2019, the Company terminated its legacy operating leases in Berkeley, California and was fully released from any further payment obligations. As a result of the lease terminations the Company was also released from all financial obligations under its sublease agreements. The Company continues to lease its headquarters office space in Emeryville, California.

The Company determines the initial classification and measurement of its right-of-use assets and lease liabilities at the lease commencement date and thereafter if modified. The lease term includes any renewal options and termination options that the Company is reasonably certain to exercise. The present value of lease payments is determined by using the interest rate implicit in the lease, if that rate is readily determinable; otherwise, the Company uses its incremental borrowing rate. The incremental borrowing rate is determined by using the rate of interest that the Company would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment. The Company built its incremental borrowing rate starting with the interest rate on its fully collateralized debt and then adjusted it for lease term length.

Rent expense for operating leases is recognized on a straight-line basis, unless the right-of-use asset has been impaired, over the reasonably assured lease term based on the total lease payments and is included in operating expenses in the condensed consolidated statements of operations and comprehensive (loss) income.

If an operating lease were to reflect impairment, the Company will recognize the amortization of the right-of-use asset on a straight-line basis over the remaining lease term with rent expense still included in operating expenses in the condensed consolidated statements of operations and comprehensive (loss) income.

For all leases, rent payments that are based on a fixed index or rate at the lease commencement date are included in the measurement of lease assets and lease liabilities at the lease commencement date.

The Company has elected the practical expedient to not separate lease and non-lease components. The Company's non-lease components are primarily related to property maintenance, which varies based on future outcomes, and thus is recognized in rent expense when incurred.

Prior Period Reclassifications

Within the condensed consolidated statement of cash flows, the Company separately presented the non-cash lease expense and changes in operating lease liabilities for the prior period to conform with current period presentation.

Net (Loss) Income per Share Attributable to Common Stockholders

Basic net (loss) income per share attributable to common stockholders is based on the weighted average number of shares of common stock outstanding during the period. Net (loss) income attributable to common stockholders consists of net (loss) income, as adjusted for any convertible preferred stock deemed dividends related to beneficial conversion features on this instrument at issuance. During periods of income, the Company allocates participating securities a proportional share of net income, after deduction of any deemed dividends on preferred stock, determined by dividing total weighted average participating securities by the sum of the total weighted average number of common stock and participating securities (the "two-class method"). The Company's convertible preferred stock participates in any dividends declared by the Company on its common stock and are therefore considered to be participating securities. For the three and nine months ended September 30, 2020 and 2019, the Company did not declare any dividends.

During periods of loss, the Company allocates no loss to participating securities because they have no contractual obligation to share in the losses of the Company. Diluted net (loss) income per share attributable to common stockholders is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed

conversion of preferred stock, and the exercise of certain stock options, RSUs, and warrants for common stock. The calculation of diluted loss per share attributable to common stockholders requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of any outstanding options, RSUs or warrants and the presumed exercise of such securities are dilutive to loss per share attributable to common stockholders for the period. Adjustments to the denominator are required to reflect the related dilutive shares.

Trade and other receivables, net

Trade and other receivables, net consist mainly of credit extended to the Company's customers in the normal course of business and are reported net of an allowance for doubtful accounts. Trade and other receivables are recorded upon triggering events specified in the agreement. Trade receivables under ASC 606 are recorded separately from contract assets when only the passage of time is required before consideration is due. The Company reviews its customer accounts on a periodic basis and records bad debt expense for specific amounts the Company evaluates as uncollectible. Past due status is determined based upon contractual terms. Amounts are written off at the point when collection attempts have been exhausted. Management estimates uncollectible amounts considering such factors as current economic conditions and historic and anticipated customer performance. This estimate can fluctuate due to changes in economic, industry, or specific customer conditions that may require adjustment to the allowance recorded by the Company. Management has included amounts believed to be uncollectible in the allowance for doubtful accounts. Any increases to allowance for doubtful accounts are charged to operating expenses. The Company recorded $1.4 million in allowance for doubtful accounts for the three months ended March 31, 2020 related to Rezolute's license agreement (Note 4). The Company evaluated the accounts receivable and determined there was no further activity in allowance for doubtful accounts for the second and third quarters in 2020. The previously reserved accounts receivable from Rezolute was accelerated and collected in October 2020, as discussed in Note 14, Subsequent Events.

The following table shows the activity in the allowance for doubtful accounts from continuing operations for the nine months ended September 30, 2020 (in thousands):

	Nine Months Ended September 30, 2020
Beginning balance	$ —
Charged to operating expenses	1,409
Ending balance	$ 1,409

Concentration of Risk

Cash and receivables are financial instruments which potentially subject the Company to concentrations of credit risk, as well as liquidity risk.

The Company monitors the creditworthiness of its customers to which it grants credit terms in the normal course of business but does not generally require collateral on receivables. For the three months ended September 30, 2020, two partners represented 64% and 36% of total revenues. For the nine months ended September 30, 2020,three partners represented 58%, 28% and 11% of total revenues. For the three months ended September 30, 2019, two partners represented 68% and 28% of total revenues. For the nine months ended September 30, 2019, two partners represented 78% and 14% of total revenues. As of September 30, 2020 and as of December 31, 2019, one partner represented 100% of the trade receivables, net balance.

Comprehensive (Loss) Income

Comprehensive (loss) income is comprised of two components: net (loss) income and other comprehensive (loss) income. Other comprehensive (loss) income refers to gains and losses that under U.S. GAAP are recorded as an element of stockholders' equity but are excluded from net (loss) income. The Company did not record any transactions within other comprehensive (loss) income in the periods presented and, therefore, the net (loss) income and comprehensive (loss) income were the same for all periods presented.

Accounting Pronouncements Recently Adopted

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-13, *Fair Value Measurement (Topic 820) ("ASU 2018-13")*, which modifies, removes and adds certain disclosure requirements on fair value measurements based on the FASB *Concepts Statement, Conceptual Framework for Financial Reporting—Chapter 8: Notes to Financial Statements*. The ASU is effective for the Company's interim and annual reporting periods during the year ending December 31, 2020, and all annual and interim reporting period thereafter. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of ASU 2018-13. An entity is permitted to early adopt any removed or modified disclosures upon issuance of ASU 2018-13 and delay adoption of the additional disclosures until their effective date. The Company early adopted the guidance related to removal of disclosures upon issuance of this ASU and adopted the deferred provisions as permitted under the ASU in the first quarter of 2020. The adoption of ASU 2018-13 did not have a material impact on the Company's condensed consolidated financial statements.

In November 2018, the FASB issued ASU 2018-18, Collaborative Arrangements (Topic 808) "Clarifying the Interaction between Topic 808 and Topic 606," which requires transactions in collaborative arrangements to be accounted for under ASC 606 if the counterparty is a customer for a good or service that is a distinct unit of account. The new standard also precludes an entity from presenting consideration from transactions with a collaborator that is not a customer together with revenue recognized from contracts with customers. The ASU is effective for the Company's interim and annual reporting periods during the year ending December 31, 2020, and all annual and interim reporting period thereafter. Early adoption is permitted, but no earlier than an entity's adoption date of Topic 606. This ASU requires retrospective adoption to the date the Company adopted ASC 606, January 1, 2018, by recognizing a cumulative-effect adjustment to the opening balance of retained earnings of the earliest annual period presented. The Company may elect to apply the ASU retrospectively either to all contracts or only to contracts that are not completed at the date it initially applied ASC 606. The Company adopted ASU 2018-18 as of January 1, 2020. The adoption of ASU 2018-18 did not have a material impact on the Company's condensed consolidated financial statements.

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. ASU 2016-13 replaced 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. ASU 2016-13 requires use of a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. Adoption of the standard requires using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date to align existing credit loss methodology with the new standard. ASU 2016-13 will be effective for all entities except public companies that are not smaller reporting companies for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, using a modified retrospective approach. Early adoption is permitted. The Company plans to adopt ASU 2016-13 and related updates as of January 1, 2023. The Company is currently evaluating the impact of adopting this new accounting guidance on its condensed consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes.* The amendments in ASU 2019-12 are intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. ASU 2019-12 is effective for the Company beginning January 1, 2021 with early adoption permitted. The Company is evaluating the impact of adopting this new accounting guidance on its condensed consolidated financial statements.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting.* These amendments provide temporary optional guidance to ease the potential burden in accounting for reference rate reform. The ASU provides optional expedients and exceptions for

applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued. It is intended to help stakeholders during the global market-wide reference rate transition period. The guidance is effective for all entities as of March 12, 2020 through December 31, 2022 and can be adopted as of any date from the beginning of an interim period that includes or is subsequent to March 12, 2020. The Company is evaluating the impact of adopting this new accounting guidance on its condensed consolidated financial statements.

3. Condensed Consolidated Financial Statements Details

Equity Securities

As of September 30, 2020 and December 31, 2019, equity securities consisted of an investment in Rezolute's common stock of $2.6 million and $0.7 million, respectively (Note 4). For the three and nine months ended September 30, 2020 the Company recognized gains of $2.0 million and $1.9 million, respectively, due to the change in fair value of its investment in Rezolute's common stock in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive (loss) income. The Company recognized a loss of $0.3 million and a gain of $0.5 million for the three and nine months ended September 30, 2019.

Accrued and Other Liabilities

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

	September 30, 2020	December 31, 2019
Accrued legal and accounting fees	$ 202	$ 256
Accrued payroll and other benefits	154	231
Interest payable	51	69
Accrued incentive compensation	26	332
Other	33	57
Total	$ 466	$ 945

Net (Loss) Income Per Share Attributable to Common Stockholders

The following is a reconciliation of the numerator (net loss or income) and the denominator (number of shares) used in the calculation of basic and diluted net (loss) income per share attributable to common stockholders (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Numerator				
Net (loss) income	$ (1,077)	$ 3,178	$ (9,368)	$ 2,339
Less: Allocation of undistributed earnings to participating securities	—	(1,327)	—	(977)
Net (loss) income available to common stockholders, basic	(1,077)	1,851	(9,368)	1,362
Add: Adjustments to undistributed earnings allocated to participating securities	—	60	—	41
Net (loss) income available to common stockholders, diluted	$ (1,077)	$ 1,911	$ (9,368)	$ 1,403
Denominator				
Weighted average shares used in computing basic net (loss) income per share available to common stockholders	11,019	8,731	10,537	8,721
Effect of dilutive stock options	—	708	—	657
Effect of dilutive warrants	—	2	—	1
Weighted average shares used in computing diluted net (loss) income per share available to common stockholders	11,019	9,441	10,537	9,379
Basic net (loss) income per share of common stock	$ (0.10)	$ 0.21	$ (0.89)	$ 0.16
Diluted net (loss) income per share of common stock	$ (0.10)	$ 0.20	$ (0.89)	$ 0.15

Potentially dilutive securities are excluded from the calculation of diluted net (loss) income per share available to common stockholders if their inclusion is anti-dilutive.

The following table shows the weighted-average outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net (loss) income per share attributable to common stockholders (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Convertible preferred stock	5,003	—	5,483	—
Common stock options	931	893	611	926
Warrants for common stock	19	15	21	15
Total	5,953	908	6,115	941

4. Licensing and Other Arrangements

Novartis – Gevokizumab (VPM087) and IL-1 Beta

On August 24, 2017, the Company and Novartis Pharma AG ("Novartis") entered into a license agreement (the "XOMA-052 License Agreement") under which the Company granted to Novartis an exclusive, worldwide, royalty-bearing license to gevokizumab ("VPM087"), a novel anti-Interleukin-1 ("IL-1") beta allosteric monoclonal antibody and related know-how and patents (altogether, the "XOMA IP"). Under the terms of the XOMA-052 License Agreement, Novartis is solely responsible for the development and commercialization of VPM087 and products containing VPM087.

On August 24, 2017, pursuant to a separate agreement (the "IL-1 Target License Agreement"), the Company granted to Novartis non-exclusive licenses to its intellectual property covering the use of IL-1 beta targeting antibodies in the treatment and prevention of cardiovascular disease and other diseases and conditions, and an option to obtain an exclusive license (the "Exclusivity Option") to such intellectual property for the treatment and prevention of cardiovascular disease.

Under the XOMA-052 License Agreement, the Company received total consideration of $30.0 million for the license and rights granted to Novartis. Of the total consideration, $15.7 million was paid in cash and $14.3 million (equal to €12.0 million) was paid by Novartis Institutes for BioMedical Research, Inc. ("NIBR"), on behalf of the Company, to settle the Company's outstanding debt with Les Laboratories Servier ("Servier") (the "Servier Loan"). In addition, NIBR extended the maturity date on the Company's debt to Novartis. The Company also received $5.0 million cash related to the sale of 539,131 shares of the Company's common stock, at a purchase price of $9.2742 per share. The fair market value of the common stock issued to Novartis was $4.8 million, based on the closing stock price of $8.93 per share on August 24, 2017, resulting in a $0.2 million premium paid to the Company.

Based on the achievement of pre-specified criteria, the Company is eligible to receive up to $438.0 million in development, regulatory and commercial milestones under the XOMA-052 License Agreement. The Company is also eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and range from the high single digits to mid-teens. Under the IL-1 Target License Agreement, the Company received an upfront cash payment of $10.0 million and is eligible to receive low single-digit royalties on canakinumab sales in cardiovascular indications covered by the Company's patents. Should Novartis exercise the Exclusivity Option, the royalties on canakinumab sales will increase to the mid-single digits.

Unless terminated earlier, the XOMA-052 License Agreement and IL-1 Target License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis' royalty obligations end. The two agreements contain customary termination rights relating to material breach by either party. Novartis also has a unilateral right to terminate the XOMA-052 License Agreement on a product-by-product and country-by-country basis or in its entirety on six months' prior written notice to the Company. Under the IL-1 Target License Agreement, Novartis has a unilateral right to terminate the agreement on a product-by-product and country-by-country basis or in its entirety upon a prior written notice.

The XOMA-052 License Agreement and IL-1 Target License Agreement were accounted for as one arrangement because they were entered into at the same time in contemplation of each other. The Company concluded that there are multiple promised goods and services under the combined arrangement, including the transfer of license to IL-1 beta targeting antibodies, and the transfer of license, know-how, process, materials and inventory related to the VPM087 antibody, which were determined to represent two distinct performance obligations. The Company determined that the Exclusivity Option is not an option with material right because the upfront payments to the Company were not negotiated to provide an incremental discount for the future additional royalties upon exercise of the Exclusivity Option. Therefore, the Company concluded that the Exclusivity Option is not a performance obligation. The additional royalties will be recognized as revenue when, and if, Novartis exercises its option because the Company has no further performance obligations at that point.

At the inception of the arrangement, the Company determined that the transaction price under the arrangement was $40.2 million, which consisted of the $25.7 million upfront cash payments, the $14.3 million Servier Loan payoff and the $0.2 million premium on the sale of the common stock. The transaction price was allocated to the two performance obligations based on their standalone selling prices. The Company determined that the nature of the two performance obligations is the right to use the licenses as they exist at the point of transfer, which occurred when the transfer of materials, process and know-how, and filings to regulatory authority were completed. During the year ended December 31, 2017, the Company recognized the entire transaction price of $40.2 million as revenue upon completion of the delivery of the licenses and related materials, process and know-how and filings to regulatory authority.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the

development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2020. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Novartis and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of September 30, 2020 and December 31, 2019, there wereno contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.No revenue was recognized for the three and nine months ended September 30, 2020 and 2019.

Novartis International – Anti-TGFβ Antibody (NIS793)

On September 30, 2015, the Company and Novartis International Pharmaceutical Ltd. ("Novartis International") entered into a license agreement (the "License Agreement") under which the Company granted Novartis International an exclusive, world-wide, royalty-bearing license to the Company's anti-transforming growth factor beta ("TGFβ") antibody program (now "NIS793"). Under the terms of the License Agreement, Novartis International has worldwide rights to NIS793 and is responsible for the development and commercialization of antibodies and products containing antibodies arising from NIS793. Unless terminated earlier, the License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis International's royalty obligations end. The License Agreement contains customary termination rights relating to material breach by either party. Novartis International also has a unilateral right to terminate the License Agreement on an antibody-by-antibody and country-by-country basis or in its entirety on one hundred eighty days' notice.

The Company concluded that there are multiple promised goods and services under the License Agreement, including the transfer of license, regulatory services and transfer of materials, process and know-how, which were determined to represent one combined performance obligation. The Company recognized the entire upfront payment of $37.0 million as revenue in the consolidated statement of comprehensive loss in 2015 as it had completed its performance obligations as of December 31, 2015.

During the year ended December 31, 2017, Novartis International achieved a clinical development milestone pursuant to the License Agreement, and as a result, the Company earned a $10.0 million milestone payment which was recognized as license fees in the consolidated statement of operations and comprehensive income. The Company is eligible to receive up to a total of $470.0 million in development, regulatory and commercial milestones under the anti-TGFB antibody agreement.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the remaining development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2020. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Novartis and therefore, have also been excluded from the transaction price. At the end of each quarter, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

The Company is also eligible to receive royalties on sales of licensed products, which are tiered based on sales levels and range from a mid-single digit percentage rate to up to a low double-digit percentage rate. Novartis International's obligation to pay royalties with respect to a particular product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or ten years from the date of the first commercial sale of the product in that country.

As of September 30, 2020 and December 31, 2019, there wereno contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.No revenue was recognized for the three and nine months ended September 30, 2020 and 2019.

On October 21, 2020, Novartis International achieved a clinical development milestone pursuant to the License Agreement and the Company earned a $25.0 million milestone payment as a result, as discussed in Note 14, Subsequent Events.

Rezolute

On December 6, 2017, the Company entered into a license agreement with Rezolute pursuant to which the Company granted an exclusive global license to Rezolute to develop and commercialize X358 (now "RZ358") for all indications. The Company and Rezolute also entered into a common stock purchase agreement pursuant to which Rezolute agreed to issue to the Company, as consideration for receiving the license for RZ358, a certain number of its common stock related to its future financing activities.

Under the terms of the license agreement, Rezolute is responsible for all development, regulatory, manufacturing and commercialization activities associated with RZ358 and is required to make certain development, regulatory and commercial milestone payments to the Company of up to $232.0 million in the aggregate based on the achievement of pre-specified criteria. Under the license agreement, the Company is also eligible to receive royalties ranging from the high single digits to the mid-teens based upon annual net sales of any commercial product incorporating RZ358. Rezolute is obligated to take customary steps to advance RZ358, including using diligent efforts to commence the next clinical study for RZ358 by a certain deadline and to meet certain spending requirements on an annual basis for the program until a marketing approval application for RZ358 is accepted by the FDA. Rezolute's obligation to pay royalties with respect to a particular RZ358 product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or twelve years from the date of the first commercial sale of the product in that country.

Under the terms of the license agreement, the Company is eligible to receive a low single digit royalty on sales of Rezolute's other non-RZ358 products from its current programs. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of twelve years from the date of the first commercial sale of the product in that country or for so long as Rezolute or its licensee is selling such product in such country (the "Royalty Term"), provided that any such licensee royalty will terminate upon the termination of the licensee's obligation to make payments to Rezolute based on sales of such product in such country. Rezolute's future royalty obligations will be reduced by 20% at any time during the Royalty Term that a valid XOMA patent claim is not outstanding.

Rezolute had an option through June 1, 2019 to obtain an exclusive license for their choice of one of the Company's preclinical monoclonal antibody fragments, including X129 (the "Additional Product Option"), in exchange for a $1.0 million upfront option fee and additional clinical, regulatory and commercial milestone payments to the Company of up to $237.0 million in the aggregate based on the achievement of pre-specified criteria as well as royalties ranging from the high single digits to the mid-teens based on annual net sales. On June 1, 2019, Rezolute's right to the Additional Product Option expired unexercised.

The license agreement contains customary termination rights relating to material breach by either party. Rezolute also has a unilateral right to terminate the license agreement in its entirety on ninety days' notice at any time. The Company has the right to terminate the license agreement if Rezolute challenges the licensed patents.

Under the license agreement and common stock purchase agreement,no consideration was exchanged upon execution of the arrangement. In consideration for receiving the license for RZ358, Rezolute agreed to issue shares of its common stock and pay cash to the Company upon the occurrence of Rezolute's financing activities and the amounts to be paid to be based on the timing of those activities.

Rezolute License Agreement - First Amendment

In March 2018, the Company and Rezolute amended the license agreement and common stock purchase agreement. Pursuant to the as-amended terms of the license agreement and common stock purchase agreement, the Company was eligible to receive $6.0 million in cash, $8.5 million of Rezolute's common stock, and 7,000,000 shares of Rezolute's common stock, contingent on the completion of Rezolute's financing activities. Further, in the event that

Rezolute did not complete a financing that raised at least $20.0 million in aggregate gross proceeds ("Qualified Financing") by March 31, 2019 (the "2019 Closing"), the Company would have received an additional number of shares of Rezolute's common stock equal to $8.5 million divided by the weighted average of the closing bid and ask prices or the average closing prices of Rezolute's common stock on the ten-day trading period prior to March 31, 2019. Finally, in the event that Rezolute was unable to complete a Qualified Financing by March 31, 2020, the Company would have been eligible to receive $15.0 million in cash in order for Rezolute to maintain the license. Under the common stock purchase agreement, Rezolute granted the Company the right and option to sell the greater of (i) 5,000,000 shares of common stock or (ii) one third of the aggregate shares held by the Company upon failure by Rezolute to list its shares of its common stock on the Nasdaq Stock Market or a similar national exchange on or prior to December 31, 2018.

During the three months ended March 31, 2018, the Company completed the delivery of the license and related materials, product data/filing, process and know-how to Rezolute. However, the Company determined that it was not probable that the Company would collect substantially all of the consideration to which it was entitled in exchange for the goods and services transferred to Rezolute. Therefore, the Company determined no contract existed as of March 31, 2018 and no revenue was recognized during the three months ended March 31, 2018 under the arrangement.

Rezolute completed the Interim Financing Closing and the Initial Closing financing activities, as defined in the common stock purchase agreement, during the first and second quarter of 2018, respectively. As a result, XOMA received 8,093,010 shares of Rezolute's common stock and cash of $0.5 million in April 2018. Under the license agreement, XOMA was also entitled to receive $0.3 million of reimbursable technology transfer expenses from Rezolute. The Company concluded that the payment associated with the Initial Closing represented substantially all consideration for the delivered license and technology to Rezolute. Therefore, the Company determined that a contract existed between Rezolute and XOMA under ASC 606 on April 3, 2018.

The license agreement and common stock purchase agreement were accounted for asone arrangement because they were entered into at the same time in contemplation of each other. The Company concluded that there were multiple promised goods and services under the combined arrangement, including the license to RZ358, the transfer of RZ358 materials and product data/filing, and the transfer of process and know-how related to RZ358, which were determined to represent one combined performance obligation. The Company determined that the Additional Product Option was not an option with material right because there was no upfront consideration to the Company that would result to an incremental discount for the future opt in payments. Therefore, the Company concluded that the Additional Product Option was not a performance obligation. On June 1, 2019, Rezolute's right to the Additional Product Option expired unexercised.

On April 3, 2018, the Company determined that the transaction price under the arrangement was $1.8 million, which consisted of the 8,093,010 shares of Rezolute's common stock valued at $1.0 million, $0.5 million in cash, and reimbursable technology transfer expenses of $0.3 million. During the year ended December 31, 2018, the Company recognized the entire transaction price of $1.8 million as revenue upon completion of the delivery of the licenses and related materials, product data/filing, process and know-how. The change in fair value of Rezolute's common stock after the contract inception date was due to the form of the consideration and therefore, not included in the transaction price pursuant to the accounting guidance. The Company accounts for the change in the fair value of its investment in Rezolute's common stock in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive (loss) income.

The Company concluded that the development and regulatory milestone payments are solely dependent on Rezolute's performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of the inception of the arrangement. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Rezolute and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether the estimate of variable consideration is constrained and update the estimated transaction price accordingly.

Rezolute License Agreement - Second Amendment

On January 7, 2019, the Company and Rezolute further amended the license agreement and common stock purchase agreement. The parties agreed to replace the issuance of common stock valued at $8.5 million to XOMA upon closing of a Qualified Financing with a requirement that Rezolute make five future cash payments to XOMA totaling $8.5 million through September 2020 (the "Future Cash Payments"). The amendment also provides for early payment of the Future Cash Payments (only until the $8.5 million is reached) by making cash payments to XOMA equal to 15% of the net proceeds of each future financing following the closing of the Qualified Financing, with such payments to be credited against any remaining unpaid Future Cash Payments in reverse order of their future payment date. In addition, the license agreement amendment revised the amount Rezolute is required to expend on development of RZ358 and related licensed products, revised provisions with respect to Rezolute's diligence efforts in conducting clinical studies and eliminated XOMA's right to appoint a member to Rezolute's board of directors.

The common stock purchase agreement was amended to remove certain provisions related to the issuance of equity to XOMA in accordance with the new provisions regarding the Future Cash Payments in the license agreement. Lastly, the common stock purchase agreement was amended to provide the Company the right and option to sell up to 5,000,000 shares of Rezolute's common stock currently held by XOMA back to Rezolute upon failure by Rezolute to list its shares of its common stock on the Nasdaq Stock Market or a similar national exchange on or prior to December 31, 2019. As of December 31, 2019, Rezolute failed to list its shares of common stock on the Nasdaq Stock Market or a similar exchange. Up to 2,500,000 shares may be sold back to Rezolute during calendar year 2020.

On January 30, 2019, Rezolute closed a preferred stock financing for gross proceeds of $25.0 million, which triggered the Qualified Financing event defined under the amended common stock purchase agreement resulting in cash consideration due to XOMA of $5.5 million. In addition, the Company received from Rezolute a reimbursable technology transfer expense of $0.3 million. The cash consideration and technology reimbursement were received in February 2019.

As of March 31, 2019, Rezolute completed all financing activities, as defined in the license agreement and common stock purchase agreement, and the Company is eligible to receive $8.5 million in Future Cash Payments through September 2020 (in addition to any clinical, regulatory and annual net sales milestone payments and royalties). The Company concluded that the Future Cash Payments are dependent on Rezolute's ability to raise additional capital through future financing activities. The Company applied the variable consideration constraint to the Future Cash Payments and determined that it was probable that a significant revenue reversal would not occur in future periods for only $2.5 million of the total amount as of March 31, 2019 and recognized $2.5 million revenue in that quarter.

In July and August 2019, Rezolute received additional cash through two common stock financing events, which triggered early payment of $3.4 million of the unrecognized $6.0 million of total Future Cash Payments. In addition, the Company received the $1.5 million payment due September 30, 2019, resulting in a total of $4.9 million cash received from Rezolute in the third quarter of 2019. The Company re-assessed the outstanding $3.6 million of Future Cash Payments and determined that a significant revenue reversal was not probable due to Rezolute's recent common stock financing events. Therefore, in the third quarter of 2019, the Company recognized $6.0 million as revenue related to the remaining Future Cash Payments. In the fourth quarter of 2019, the Company received the scheduled $1.0 million Future Cash Payment from Rezolute.

Rezolute License Agreement - Third Amendment

On March 31, 2020, the Company and Rezolute further amended the license agreement to extend the payment schedule for the remaining $2.6 million in Future Cash Payments. The amendment to the payment terms was in response to Rezolute's need to preserve cash as a result of the COVID-19 pandemic and was agreed to by the Company. The extended payment schedule did not impact the total amount due, but instead, spread the $2.6 million into seven quarterly payments to be paid through September 30, 2021. The amended license agreement requires that in the event Rezolute completes a Qualified Financing at any time between March 31, 2020 and the date of the final payment, Rezolute shall pay all amounts outstanding within fifteen days following the closing of the Qualified Financing.

In the first quarter of 2020, the Company received the scheduled $0.4 million Future Cash Payment from Rezolute. The Company evaluated Rezolute's cash position as of March 31, 2020, including the estimated impact of the COVID-19 pandemic, and determined payments scheduled beyond September 30, 2020 were unlikely to be collected unless Rezolute is able to obtain additional funding, which had not occurred as of March 31, 2020. Therefore, for the three months ended March 31, 2020, the Company recorded $1.4 million in bad debt expense related to the Future Cash Payments. The Company received the scheduled $0.4 million and $0.4 million Future Cash Payments from Rezolute in the second and third quarters of 2020, respectively. The Company reassessed the collectability of the outstanding receivables and determined that the bad debt allowance of $1.4 million remained appropriate as of September 30, 2020, as the Company assessed that the financing was not probable as of the balance sheet date and as such the Company continued to have an incurred loss with respect to the collection of the remaining receivable. On October 9, 2020, Rezolute completed a Qualified Financing, which resulted in acceleration of the remaining receivables balance and the Company received the entire $1.4 million in October 2020, as discussed in Note 14, Subsequent Events.

As of September 30, 2020 and December 31, 2019, there wereno contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.No revenue was recognized for the three and nine months ended September 30, 2020.

The Company reassessed the development and regulatory milestones and concluded that such variable consideration is fully constrained and excluded from the transaction price as of September 30, 2020 and December 31, 2019.

Janssen Biotech

The Company and Janssen Biotech, Inc. ("Janssen") were parties to a license agreement which was terminated in 2017. In August 2019, the Company and Janssen entered into a new agreement pursuant to which the Company granted a non-exclusive license to Janssen to develop and commercialize certain drug candidates under the XOMA patents and know-how. Under the new agreement, Janssen made a one-time payment of $2.5 million to XOMA. Additionally, for each drug candidate, the Company is entitled to receive milestone payments of up to $3.0 million upon Janssen's achievement of certain clinical development and regulatory approval events. Upon commercialization, the Company is eligible to receive 0.75% royalty on net sales of each product. Janssen's obligation to pay royalties with respect to a particular product and country will continue until the eighth-year and sixth-month anniversary of the first commercial sale of the product in such country. The new agreement will remain in effect unless terminated by mutual written agreement of the parties.

The Company concluded that the new agreement should be accounted for separately from any prior arrangements with Janssen and that the license grant is the only performance obligation under the new agreement. The Company recognized the entire one-time payment of $2.5 million as revenue in the consolidated statement of comprehensive loss for the year ended December 31, 2019 as it had completed its performance obligation.

The Company concluded that the development and regulatory milestone payments are solely dependent on Janssen's performance and achievement of specified events and thus it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2020. Any consideration related to royalties will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Janssen and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of September 30, 2020, there wereno contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. Revenue of $0.2 million was recognized for the three and nine months ended September 30, 2020.

Zydus

On March 3, 2020, the Company and Cadila Healthcare Limited ("Zydus") entered into a license agreement (the "Zydus Agreement") under which the Company granted Zydus an exclusive royalty-bearing license to the Company's anti-interleukin-2 ("IL-2") monoclonal antibody, including mAb19, for Zydus to develop and commercialize drug candidates in India, Brazil, Mexico and certain other emerging markets. The Company retains rights in all other territories, subject to a Zydus right of first negotiation. Under the terms of the Zydus Agreement, Zydus is responsible for the development and commercialization of IL-2 based immune-oncology drug candidates. XOMA is entitled to receive up to $0.5 million development and regulatory milestone payments, up to $23.5 million commercial milestone payments, and mid-single digit to low teens royalties from Zydus. The Company is also eligible to share out-licensing revenue received by Zydus should Zydus (sub)license to third parties, which are tiered based on clinical trial stage and range from a low to mid double-digit percentage rate. Unless terminated earlier, the License Agreement will remain in effect, on a product-by-product basis, until all payment obligations end. The Zydus Agreement contains customary termination rights relating to material breach by either party. Zydus also has a unilateral right to terminate the agreement upon required written notice in advance if certain conditions are met.

The Company concluded that there is one performance obligation, and it had not completed its performance obligation. The development and regulatory milestone payments are solely dependent on Zydus' performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2020. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Zydus and therefore, have also been excluded from the transaction price. Out-licensing revenue sharing will be recognized if and when Zydus receives or earns its out-licensing revenue. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of September 30, 2020, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. No revenue was recognized for the three and nine months ended September 30, 2020.

NIAID

Prior to the sale of the Company's biodefense business, the Company performed services under a $64.8 million multiple-year contract funded with federal funds from NIAID (Contract No. HHSN272200800028C), for development of anti-botulinum antibody product candidates. The contract work was being performed on a cost-plus fixed fee basis over a three-year period. The Company recognized revenue under the arrangement as the services were performed on a proportional performance basis. Consistent with the Company's other contracts with the U.S. government, invoices were provisional until finalized. The Company operated under provisional rates from 2010 through 2014, subject to adjustment based on actual rates upon agreement with the government. In 2014, upon completion of NIAID's review of hours and external expenses, XOMA agreed to exclude certain hours and external expenses resulting in a $0.4 million receivable and $0.8 million deferred revenue balances. In October of 2019, NIH, which includes NIAID, notified the Company that it engaged KPMG to perform an audit of the Company's incurred cost submissions for 2013, 2014 and 2015. This audit is not complete and may result in an adjustment to revenue previously reported which potentially could be material. As of December 31, 2017, the Company wrote off the $0.4 million receivable from NIAID as the likelihood of collection was remote. The Company classified $0.8 million as contract liabilities on the condensed consolidated balance sheets as of September 30, 2020 and December 31, 2019.

Sale of Future Revenue Streams

On December 21, 2016, the Company entered into two Royalty Interest Acquisition Agreements (together, the "Royalty Sale Agreements") with HCRP. Under the first Royalty Sale Agreement, the Company sold its right to receive milestone payments and royalties on future sales of products subject to a License Agreement, dated August 18, 2005, between XOMA and Wyeth Pharmaceuticals (subsequently acquired by Pfizer, Inc. ("Pfizer")) for an upfront cash

payment of $6.5 million, plus potential additional payments totaling $4.0 million in the event three specified net sales milestones were met in 2017, 2018 and 2019. Based on actual sales, 2017, 2018, and 2019 sales milestones were not achieved. Under the second Royalty Sale Agreement entered into in December 2016, the Company sold its right to receive royalties under an Amended and Restated License Agreement dated October 27, 2006 between XOMA and Dyax Corp. for a cash payment of $11.5 million.

The Company classified the proceeds received from HCRP as unearned revenue, to be recognized as revenue under units-of-revenue method over the life of the license agreements because of the Company's limited continuing involvement in the Acquisition Agreements. Such limited continuing involvement is related to the Company's undertaking to cooperate with HCRP in the event of litigation or a dispute related to the license agreements. Because the transaction was structured as a non-cancellable sale, the Company does not have significant continuing involvement in the generation of the cash flows due to HCRP and there are no guaranteed rates of return to HCRP, the Company recorded the total proceeds of $18.0 million as unearned revenue recognized under units-of-revenue method. The Company allocated the total proceeds between the two Royalty Sale Agreements based on the relative fair value of expected payments to be made to HCRP under the license agreements. The unearned revenue is being recognized as revenue over the life of the underlying license agreements under the "units-of-revenue" method. Under this method, amortization for a reporting period is calculated by computing a ratio of the allocated proceeds received from HCRP to the payments expected to be made by the licensees to HCRP over the term of the Acquisition Agreements, and then applying that ratio to the period's cash payment. During the third quarter of 2018, the Shire product underlying the Dyax Corp. license agreement was approved, and the Company began recognizing revenue under the units-of-revenue method due to sales of the approved product.

The Company recognized $0.4 million and $1.1 million as revenue under units-of-revenue method under these arrangements during the three and nine months ended September 30, 2020, respectively. The Company recognized $0.3 million and $0.8 million as revenue under units-of-revenue method under these arrangements during the three and nine months ended September 30, 2019, respectively.

As of September 30, 2020, the Company classified $1.4 million and $14.0 million as current and non-current unearned revenue recognized under units-of-revenue method, respectively. As of December 31, 2019, the current and non-current portion of the remaining unearned revenue recognized under units-of-revenue method was $1.1 million and $15.3 million, respectively.

5. Royalty Purchase Agreements

Royalty Purchase Agreement with Agenus, Inc.

On September 20, 2018, the Company entered into a Royalty Purchase Agreement (the "Agenus Royalty Purchase Agreement") with Agenus, Inc., and certain affiliates (collectively, "Agenus"). Under the Agenus Royalty Purchase Agreement, the Company purchased from Agenus the right to receive 33% of the future royalties on six Incyte immuno-oncology assets, currently in development, due to Agenus from Incyte Europe Sarl ("Incyte") (net of certain royalties payable by Agenus to a third party) and 10% of all future developmental, regulatory and commercial milestones related to these assets. However, the Company did not have a right to the expected near-term milestone associated with the entry of INCAGN2390 (anti-TIM-3) into its Phase 1 clinical trial. The future royalties due to Agenus from Incyte are based on low-single to mid-teen digit percentage of applicable net sales.

In addition, the Company purchased from Agenus the right to receive 33% of the future royalties on MK-4830, an immuno-oncology product currently in clinical development, due to Agenus from Merck Sharp & Dohme Corp. ("Merck") and 10% of all future developmental, regulatory and commercial milestones related to this asset. The future royalties due to Agenus from Merck are based on low single digit percentage of applicable net sales. Pursuant to the Agenus Royalty Purchase Agreement, the Company's share in future potential development, regulatory and commercial milestones is up to $59.5 million. There is no limit on the amount of future royalties on sales that the Company may receive under the agreements.

Under the terms of the Royalty Purchase Agreement, the Company paid Agenus $15.0 million. The Company financed $7.5 million of the purchase price with a term loan under its Loan and Security Agreement with Silicon Valley Bank ("SVB") (Note 8).

At the inception of the agreement, the Company recorded $15.0 million as long-term royalty receivables in the condensed consolidated balance sheets. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of September 30, 2020.

Royalty Purchase Agreement with Bioasis Technologies, Inc.

On February 25, 2019, the Company entered into a Royalty Purchase Agreement (the "Bioasis Royalty Purchase Agreement") with Bioasis Technologies, Inc. and certain affiliates (collectively "Bioasis"). Under the Bioasis Royalty Purchase Agreement, the Company purchased potential future milestone and royalty rights from Bioasis for product candidates that are being developed pursuant to a license agreement between Bioasis and Prothena Biosciences Limited. In addition, the Company was granted options to purchase a 1% royalty right on the next two license agreements entered into between Bioasis and third-party licensees subject to certain payments and conditions as well as a right of first negotiation on subsequent Bioasis license agreements with third parties. Upon exercise of the option related to the second license agreement executed by Bioasis, the Company may be obligated to pay up to $0.3 million per licensed product. Upon exercise of the option related to the third license agreement executed by Bioasis, the Company may be obligated to pay up to $0.4 million per licensed product. The Company exercised its option under the Bioasis Royalty Purchase Agreement and entered into a second royalty purchase agreement with Bioasis on November 2, 2020, as discussed in Note 14, Subsequent Events.

Under the terms of the Bioasis Royalty Purchase Agreement, the Company paid $0.3 million and will make contingent future cash payments of up to $0.2 million to Bioasis as the licensed product candidates reach certain development milestones (the "Bioasis Contingent Consideration").

At the inception of the agreement, the Company recorded $0.4 million as long-term royalty receivables in its condensed consolidated balance sheet, including the estimated fair value of the Bioasis Contingent Consideration of $0.1 million. Future changes in the estimated fair value of the contingent consideration will be recognized in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive (loss) income. As of September 30, 2020, there was no change in the fair value of the contingent consideration from its initial value and no amounts were paid during the three and nine months ended September 30, 2020. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of September 30, 2020.

Royalty Purchase Agreement with Aronora, Inc.

On April 7, 2019, the Company entered into a Royalty Purchase Agreement (the "Aronora Royalty Purchase Agreement") with Aronora, Inc. ("Aronora"), which closed on June 26, 2019. Under the Aronora Royalty Purchase Agreement, the Company purchased from Aronora the right to receive future royalties and a portion of upfront, milestone, and option payments (the "Non-Royalties") related to five anti-thrombotic hematology drug candidates. Three candidates are subject to Aronora's collaboration with Bayer Pharma AG ("Bayer") (the "Bayer Products"), including one which is subject to an exclusive license option by Bayer. The Company will receive 100% of future royalties and 10% of future Non-Royalties from these Bayer Products. The other two candidates are unpartnered (the "non-Bayer Products") for which the Company will receive low-single digit percentage of net sales and 10% of Non-Royalties. The future payment percentage for Non-Royalties will be reduced from 10% to 5% upon the Company's receipt of two times the total cumulative amount of consideration paid by the Company to Aronora. In July 2020, Bayer elected to not exercise its option on the third Bayer Product and that product is now subject to the same economics as the non-Bayer Products.

Under the terms of the Aronora Royalty Purchase Agreement, the Company paid Aronora a $6.0 million upfront payment at the close of the transaction. The Company financed $3.0 million of the upfront payment with a term loan under its Loan and Security Agreement with SVB (Note 8). The Company was required to make a contingent future cash payment of $1.0 million for each of the three Bayer Products that were active on September 1, 2019 (up to a total of $3.0 million, the "Aronora Contingent Consideration"). Pursuant to the Aronora Royalty Purchase Agreement, if the Company receives $ 250.0 million in cumulative royalties on net sales per product, the Company will be required to pay associated tiered milestone payments to Aronora in an aggregate amount of up to $ 85.0 million per product (the "Royalty Milestones"). The Royalty Milestones are paid based upon various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. Royalties per product in excess of $250.0 million are retained by the Company.

At the inception of the agreement, the Company recorded $9.0 million as long-term royalty receivables in its condensed consolidated balance sheet, including the estimated fair value of the Aronora Contingent Consideration of $ 3.0 million. In September 2019, the Company paid the $3.0 million contingent consideration to Aronora. As the Company receives royalties from Aronora for a product, the Company will recognize the liability for future Royalty Milestones for such product when probable and estimable. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of September 30, 2020.

Royalty Purchase Agreement with Palobiofarma, S.L.

On September 26, 2019, the Company entered into a Royalty Purchase Agreement (the "Palo Royalty Purchase Agreement") with Palobiofarma, S.L. ("Palo"), a company organized and existing under the laws of Spain. Pursuant to the Palo Royalty Purchase Agreement, the Company acquired the rights to potential royalty payments in low single digit percentages of aggregate Net Sales (as defined in the Palo Royalty Purchase Agreement) associated with six drug candidates in various clinical development stages, targeting the adenosine pathway with potential applications in solid tumors, non-Hodgkin's lymphoma, asthma/chronic obstructive pulmonary disease, inflammatory bowel disease, idiopathic pulmonary fibrosis, lung cancer, psoriasis and nonalcoholic steatohepatitis and other indications (the "Palo Licensed Products") that are being developed by Palo. Novartis (the "Licensee") is a development partner on NIR178, one of the Palo Licensed Products, and such NIR178 is being developed pursuant to a license agreement between Palo and the Licensee.

Under the terms of the Palo Royalty Purchase Agreement, the Company paid Palo a $10.0 million payment at the close of the transaction which occurred simultaneously upon parties' entrance in the Palo Royalty Purchase Agreement on September 26, 2019. The Company financed $5.0 million of the payment with a term loan under its Loan and Security Agreement with SVB (Note 8).

At the inception of the agreement, the Company recorded $10.0 million as long-term royalty receivables in its condensed consolidated balance sheet. The Company continues to assess that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to royalties received until the investment has been fully collected. The Company performed its quarterly impairment assessment and no impairment indicators were identified. Accordingly, no impairment was recorded as of September 30, 2020.

There was no change in the acquired royalty rights during the nine months ended September 30, 2020.

6. Fair Value Measurements

The Company records its financial assets and liabilities at fair value. The carrying amounts of certain of the Company's financial instruments, including cash, trade receivables, net and accounts payable, approximate their fair value due to their short maturities. Fair value is defined as the exchange price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The accounting

guidance for fair value establishes a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs used in valuation techniques. The accounting standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value, which are the following:

Level 1 – Observable inputs, such as quoted prices in active markets for identical assets or liabilities.

Level 2 – Observable inputs, either directly or indirectly, other than quoted prices in active markets for identical assets or liabilities, such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities; therefore, requiring an entity to develop its own valuation techniques and assumptions.

The following tables set forth the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as follows (in thousands):

	Fair Value Measurements at September 30, 2020 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Equity securities	$ —	$ —	$ 2,572	$ 2,572
Liabilities:				
Contingent consideration	$ —	$ —	$ 75	$ 75

	Fair Value Measurements at December 31, 2019 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Equity securities	$	$	$ 681	$ 681
Liabilities:				
Contingent consideration	$ —	$ —	$ 75	$ 75

During the three and nine months ended September 30, 2020, there wereno transfers between Level 1, Level 2, or Level 3 assets reported at fair value on a recurring basis.

Equity Securities

The following table provides a summary of changes in the estimated fair value of the Company's Level 3 financial assets for the nine months ended September 30, 2020 (in thousands):

	Nine Months Ended September 30, 2020
Balance at December 31, 2019	$ 681
Change in fair value	1,891
Balance at September 30, 2020	$ 2,572

The equity securities consisted of an investment in Rezolute's common stock and are classified as long-term assets on the condensed consolidated balance sheets as of September 30, 2020 and December 31, 2019. The equity

securities are revalued each reporting period with changes in fair value recorded in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive (loss) income.

As of September 30, 2020, the Company and its valuation specialist valued the equity securities using the closing price for Rezolute's common stock traded on the over-the-counter exchange and adjusted for an illiquidity discount. The inputs used to calculate the illiquidity discount are based on observable and unobservable estimates and judgments and therefore is classified as a Level 3 fair value measurement. As the Company has the right and option to sell up to 5,000,000 shares of Rezolute's common stock back to Rezolute after December 31, 2019 (Note 4), the fair value of the equity securities was determined by dividing the total shares of Rezolute's common stock held by the Company into two tranches based on the estimated time to a potential liquidity event.

The estimated fair value of the equity securities was calculated based on the following assumptions as of September 30, 2020 and December 31, 2019:

	September 30, 2020	December 31, 2019
Closing common stock price on the Over-the-counter (OTC) exchange	$ 0.43	$ 0.12
Tranche 1:		
Discount for lack of marketability	12 %	13 %
Estimated time to liquidity of shares	0.25 year	0.25 year
Tranche 2:		
Discount for lack of marketability	33 %	33 %
Estimated time to liquidity of shares	1.25 year	1.5 years

Changes in any of the assumptions related to the unobservable inputs identified above may change the fair value of the equity securities.

Contingent Consideration

The estimated fair value of the contingent consideration liability at the inception of the Bioasis Royalty Purchase Agreement represents the future consideration that is contingent upon the achievement of specified development milestones for a product candidate. The fair value measurement is based on significant Level 3 inputs such as anticipated timelines and probability of achieving development milestones of each licensed product candidate. Changes in the fair value of the liability for contingent consideration will be recorded in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive (loss) income until settlement. As of September 30, 2020, there were no changes in the estimated fair value of the contingent consideration from its initial value of $0.1 million.

Debt

The estimated fair value of the Company's outstanding debt is estimated using the net present value of the payments, discounted at an interest rate that is consistent with market interest rates, which is a Level 2 input. The carrying amount and the estimated fair value of the Company's outstanding long-term debt at September 30, 2020 and December 31, 2019, are as follows (in thousands):

	September 30, 2020		December 31, 2019	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Novartis note	$ 16,220	$ 16,217	$ 15,903	$ 15,713
SVB Loans	13,732	13,722	16,374	16,048
Total	$ 29,952	$ 29,939	$ 32,277	$ 31,761

7. Lease Agreements

The Company leases one facility in Emeryville, California under an operating lease that expires in February 2023. The Emeryville lease contains an option to early terminate the lease by notifying the landlord on or before February 1, 2020, which expired unexercised. The lease also contains an option to extend the lease for an additional term, however, the Company is not reasonably certain to exercise this option.

The Company also previously leased two facilities in Berkeley, California under operating leases that had remaining lease terms until 2021 and 2023. On December 18, 2019, the Company entered into a Lease Termination Agreement ("the Lease Termination") with each of the 7th Street Properties II ("7th Street LP") and 7th Street Property General Partnership ("7th Street GP") to early terminate the Company's two operating leases in Berkeley, California. As a result of the lease terminations the Company was also released from all financial obligations under its sublease agreements. The Company agreed to pay an early termination fee of $1.6 million in total and recognized a loss on lease termination of $0.4 million for the year ended December 31, 2019, which was included in other income (expense), net in the consolidated statements of operations and comprehensive loss.

The following table summarizes maturity of the Company's operating lease liabilities as of September 30, 2020 (in thousands):

Undiscounted lease payments	Operating Leases
2020 (excluding nine months ended September 30, 2020)	$ 47
2021	196
2022	202
2023	35
Thereafter	—
Total undiscounted lease payments	480
Present value adjustment	(30)
Total net lease liabilities	$ 450

The following table summarizes the cost components of the Company's operating leases for the three and nine months ended September 30, 2020 and 2019 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Lease costs:				
Operating lease cost	$ 44	$ 595	$ 133	$ 1,805
Variable lease cost [1]	2	375	5	1,346
Total lease costs	$ 46	$ 970	$ 138	$ 3,151

(1) Under the terms of the lease agreements, the Company is also responsible for certain variable lease payments that are not included in the measurement of the lease liability. Variable lease payments include non-lease components such as common area maintenance fees.

The following information represents supplemental disclosure for the statement of cash flows related to operating leases (in thousands):

	Nine Months Ended September 30,	
	2020	2019
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows under operating leases	$ 141	$ 1,975

The present value assumptions used in calculating the present value of the lease payments as of September 30, 2020 and December 31, 2019 were as follows:

	September 30, 2020	December 31, 2019
Weighted-average remaining lease term		
Operating leases	2.42 years	3.17 years
Weighted-average discount rate		
Operating leases	5.51 %	5.51 %

Sublease Agreements

In December 2019, the Company's rights and obligations under its sublease arrangements transferred to 7th Street LP and 7th Street GP, and the Company was released from all financial obligations under its sublease agreements. Upon termination, the Company recognized a loss on lease termination of $0.4 million in other income (expense).

No sublease income was recognized for the three and nine months ended September 30, 2020 due to the termination of the sublease agreements in 2019. For the three and nine months ended September 30, 2019, the Company recognized $0.8 million and $2.4 million of sublease income under these sublease agreements in other income (expense).

8. Long-Term Debt and Other Financings

Silicon Valley Bank Loan Agreement

On May 7, 2018 (the "Effective Date"), the Company executed a Loan and Security Agreement (the "Loan Agreement") with SVB. Under the Loan Agreement, upon the Company's request, SVB may make advances (each, a "Term Loan Advance") available to the Company up to $20.0 million (the "Term Loan"). The Company was allowed to borrow advances under the Term Loan from the Effective Date until the earlier of March 31, 2019 or an event of default (the "Draw Period"). In March 2019, the Draw Period was extended from March 31, 2019 to March 31, 2020. As of March 31, 2020, the Loan Agreement has not been amended to extend the Draw Period further. In the event of a default related to the Note Agreement with Novartis, SVB's obligation to make any credit extensions to the Company under the Loan Agreement will immediately terminate. The interest rate will be calculated at a rate equal to the greater of (i) 4.75%, or (ii) 0.25% plus the prime rate as reported from time to time in The Wall Street Journal.

Payments under the Loan Agreement are interest only until the first anniversary of the funding date of each Term Loan Advance. The interest-only period will be followed by equal monthly payments of principal and interest over 24 months. Each Term Loan Advance will mature at the earlier of (i) the 23 months following the applicable term loan amortization date for each such Term Loan Advance (ii) March 1, 2023, or (iii) 30 days prior to the earliest maturity of any portion of the Company's loan with Novartis (the "Loan Maturity Date"). After repayment, no Term Loan Advance (or any portion thereof) may be reborrowed.

The entire principal balance, including a final payment fee equal to 8.5% of the principal, will be due and payable on the Loan Maturity Date. If the Company prepays the Term Loan Advance prior to the Loan Maturity Date, it will pay SVB a prepayment premium, based on a prepayment fee equal to 3.00% of the amount prepaid, if the prepayment occurs on or before the first anniversary of the Effective Date, 2.00% of the amount prepaid, if the prepayment occurs after the first anniversary of the Effective Date but prior to the second anniversary of the Effective Date, and 1.00% of the amount prepaid if the prepayment occurs after the second anniversary of the Effective Date. In the event of a default, a default interest rate of an additional 4% may be applied to the outstanding payments due to SVB, and SVB may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

The Company's obligations under the Loan Agreement are secured by a security interest in substantially all of its assets, other than its intellectual property. The Loan Agreement includes customary affirmative and restrictive covenants,

but does not include any financial maintenance covenants, and also includes standard events of default, including payment defaults.

In connection with the Loan Agreement, the Company issued a warrant to SVB which is exercisable in whole or in part for up to an aggregate of 6,332 shares of common stock with an exercise price of $23.69 per share (the "Warrant"). The Warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company. The fair value of the Warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $ 0.1 million. In addition, the Company incurred debt issuance costs of $0.2 million in connection with the Loan Agreement.

On March 4, 2019, the Loan Agreement was amended to extend the Draw Period from March 31, 2019 to March 31, 2020. In connection with the amendment, the Company issued a second warrant to SVB which is exercisable in whole or in part for up to an aggregate of 4,845 shares of common stock with an exercise price of $14.71 per share. The fair value of the second warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $0.1 million.

As of September 30, 2020, both warrants are outstanding. In addition, both warrants may be exercised on a cashless basis and are exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company.

In September 2018, the Company borrowed advances of $7.5 million under the Loan Agreement in connection with the Agenus Royalty Purchase Agreement (Note 5). The Company recorded a discount of $0.3 million against the debt, which is being amortized to interest expense over the term of the Term Loan Advance using the effective interest method.

During the year ended December 31, 2019, the Company borrowed advances totaling $9.5 million under the Loan Agreement in connection with the Aronora Royalty Purchase Agreement, Palo Royalty Purchase Agreement and payment of the Aronora Contingent Consideration (Note 5). The Company recorded a discount of $45,000 against the debt, which is being amortized to interest expense over the term of the Term Loan Advance using the effective interest method.

The Company recorded $0.2 and $0.5 million of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three and nine months ended September 30, 2020, respectively. The Company recorded $ 0.2 million and $0.4 million of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three and nine months ended September 30, 2019, respectively.

As of September 30, 2020, the carrying value of the debt under the Loan Agreement was $13.8 million. Of this amount, $9.0 million is classified as current portion of long-term debt and $4.8 million is classified as long-term debt on the condensed consolidated balance sheet. As of December 31, 2019, the carrying value of the debt under the Loan Agreement was $ 16.4 million. Of this amount, $5.2 million was classified as current portion of long-term debt and $11.2 million was classified as long-term debt on the condensed consolidated balance sheet.

Novartis Note

In May 2005, the Company executed a secured note agreement (the "Note Agreement") with Novartis, which was due and payable in full in June 2015. Under the Note Agreement, the Company borrowed semi-annually to fund up to 75% of the Company's research and development and commercialization costs under its collaboration arrangement with Novartis, not to exceed $50.0 million in aggregate principal amount. Interest on the principal amount of the loan accrues at six-month LIBOR plus 2%, which was equal to 2.41% at September 30, 2020, and the interest rate resets in June and December annually. Accrued interest is payable semi-annually in June and December of each year or, at the Company's election, the semi-annual interest payments may be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50.0 million. The Company has made this election for all interest payments. Loans under the Note Agreement are secured by the Company's interest in its collaboration with Novartis, including any payments owed to it thereunder.

On September 30, 2015, concurrent with the execution of a license agreement with Novartis International as discussed in Note 4, XOMA and NIBR, who assumed the rights to the note from Novartis Vaccines Diagnostics, Inc. executed an amendment to the Note Agreement (the "Secured Note Amendment") under which the parties extended the maturity date of the note from September 30, 2015 to September 30, 2020, and eliminated the mandatory prepayment previously required to be made with certain proceeds of pre-tax profits and royalties. In addition, upon achievement of a specified development and regulatory milestone, the then-outstanding principal amount of the note will be reduced by $7.3 million rather than the Company receiving such amount as a cash payment.

On September 22, 2017, in connection with the XOMA-052 License Agreement with Novartis, the Company and NIBR executed an amendment to the Secured Note Amendment under which the parties further extended the maturity date of the Secured Note Amendment from September 30, 2020 to September 30, 2022.

As of September 30, 2020 and December 31, 2019, the outstanding principal balance under the Secured Note Amendment was $16.2 million and $15.9 million, respectively, and was included in long-term debt in the accompanying condensed consolidated balance sheets. On October 21, 2020, Novartis International achieved a clinical development milestone pursuant to the License Agreement and the Company earned a $25.0 million milestone payment as a result, of which $7.3 million will be recognized as a reduction to the debt obligation to Novartis, as discussed in Note 14, Subsequent Events.

Payments of Long-Term Debt

Aggregate future principal, final payment fees and discounts of the Company's long-term debt as of September 30, 2020, are as follows (in thousands):

	September 30, 2020
2020 (excluding nine months ended September 30, 2020)	$ 2,270
2021	8,534
2022	21,200
Thereafter	—
Total payments	32,004
Less: interest, final payment fees, discount and issuance costs	(2,052)
Total payments, net of interest, final payment fees, discount and issuance costs	29,952
Less: current portion of long-term debt	(8,962)
Long-term debt	$ 20,990

Interest Expense

Amortization of debt issuance costs and discounts are included in interest expense. Interest expense in the condensed consolidated statements of operations and comprehensive (loss) income relates to the following debt instruments (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
SVB loans	$ 334	$ 314	$ 1,073	$ 791
Novartis note	100	168	409	540
Other	—	2	2	5
Total interest expense	$ 434	$ 484	$ 1,484	$ 1,336

9. Common Stock Warrants

As of September 30, 2020 and December 31, 2019, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	September 30, 2020	December 31, 2019
February 2015	February 2020	Stockholders' equity	$ 66.20	—	9,063
February 2016	February 2021	Stockholders' equity	$ 15.40	8,249	8,249
May 2018	May 2028	Stockholders' equity	$ 23.69	6,332	6,332
March 2019	March 2029	Stockholders' equity	$ 14.71	4,845	4,845
				19,426	28,489

10. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company has committed to make potential future milestone payments and legal fees to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and commercial milestones by the Company's licensees. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $7.6 million (assuming one product per contract meets all milestones events) have not been recorded on the accompanying condensed consolidated balance sheets. The Company is unable to determine precisely when and if payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties.

Contingent Consideration

Pursuant to the Company's royalty purchase agreement with Bioasis the Company has committed to pay the Bioasis Contingent Consideration. The Company recorded $0.1 million for the Bioasis Contingent Consideration which represents the estimated fair value of these potential future payments at the inception of the agreements. The contingent consideration is remeasured at fair value at each reporting period, with changes in fair value recorded in other income (expense), net. As of September 30, 2020, there were no changes in the estimated fair value of the contingent consideration from its initial value. The liability for future Aronora Royalty Milestones will be recorded when the amounts by product are estimable and probable. As of September 30, 2020, none of these Aronora Royalty Milestones were assessed to be probable and as such, no liability was recorded on the condensed consolidated balance sheet.

11. Stock-based Compensation

The Company may grant qualified and non-qualified stock options, RSUs, common stock and other stock-based awards under various plans to directors, officers, employees and other individuals. Stock options are granted at exercise prices of not less than the fair market value of the Company's common stock on the date of grant. Additionally, the Company has an Employee Stock Purchase Plan ("ESPP") that allows employees to purchase Company shares at a purchase price equal to 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last day of the offering period.

Stock Options

Stock options generally vest monthly over three years for employees and one year for directors. Stock options held by employees who qualify for retirement age (defined as employees that are a minimum of 55 years of age and the sum of their age plus years of full-time employment with the Company exceeds 70 years) vest on the earlier of scheduled vest date or the date of retirement.

There were no stock options granted during the three months ended September 30, 2020. The fair value of the stock options granted during the three months ended September 30, 2019 and nine months ended September 30, 2020 and 2019, was estimated based on the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Dividend yield	n/a	0 %	0 %	0 %
Expected volatility	n/a	101 %	100 %	103 %
Risk-free interest rate	n/a	1.71 %	0.77 %	2.49 %
Expected term	n/a	5.47 years	5.66 years	5.60 years

Stock option activity for the nine months ended September 30, 2020, was as follows:

	Number of shares	Weighted Average Exercise Price Per Share	Weighted Average Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at beginning of year	1,839,623	$ 20.42	6.88	$ 26,829
Granted	187,811	21.12		
Exercised	(6,000)	4.28		
Forfeited, expired or cancelled	(18,655)	141.47		
Outstanding at end of period	2,002,779	$ 19.41	6.50	$ 14,864
Exercisable at end of period	1,659,679	$ 19.64	6.02	$ 14,167

The aggregate intrinsic value of stock options exercised during the nine months ended September 30, 2020 and 2019 was $0.1 million and $0.6 million, respectively.

The weighted-average grant-date fair value per share of the options granted during the nine months ended September 30, 2020 and 2019 was $16.22 and $11.45, respectively.

As of September 30, 2020, $3.3 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 1.59 years.

Performance-Based Stock Options

Stock-based compensation expense associated with the corporate performance-based stock options is recognized if the performance condition is considered probable of achievement using management's best estimates. In 2017, the Company granted performance-based stock options with vesting criteria related to performance in 2017, 2018, and 2019. In 2019, the Company had 41,250 shares remaining related to outstanding performance-based stock options with a grant date fair value of $0.2 million that had vesting criteria based solely on the achievement of fiscal year 2019 corporate goals as set by the Compensation Committee of the Company's Board of Directors. For the year ended December 31, 2019, the Company determined that all remaining performance criteria were achieved and therefore the related expense of $0.2 million was recognized for the year ended December 31, 2019. After December 31, 2019, no performance-based stock options were outstanding and there was no unrecognized compensation cost related to performance-based stock options.

Stock-based Compensation Expense

The following table shows total stock-based compensation expense for stock options and ESPP in the condensed consolidated statements of operations and comprehensive (loss) income (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Research and development	$ —	$ 66	$ —	$ 174
General and administrative	708	1,428	3,269	4,059
Total stock-based compensation expense	$ 708	$ 1,494	$ 3,269	$ 4,233

12. Capital Stock

Rights Offering 2019

On December 2, 2019, the Company commenced a rights offering to raise up to $22.0 million through the distribution of subscription rights to holders of its common stock, Series X preferred stock and Series Y preferred stock (the "2019 Rights Offering"). In December 2019, the Company sold a total of 1,000,000 shares of common stock under the 2019 Rights Offering for aggregate gross proceeds of $22.0 million. Total offering costs of $0.2 million were offset against the proceeds from the sale of common stock, for total net proceeds of $21.8 million.

The 2019 Rights Offering was fully backstopped by Biotechnology Value Fund, L.P. ("BVF") pursuant to the terms of an Investment Agreement between the Company and BVF (the "Investment Agreement"). In total, BVF purchased 845,463 shares of common stock and the Company will pay approximately $18,000 for BVF's reasonable legal fees and expenses in connection with the Investment Agreement and the 2019 Rights Offering. One of the Company's Directors, Matthew Perry, is the President of BVF. Each share of common stock has a stated value of $22.00 per share.

In February 2020, BVF elected to increase the beneficial ownership limitation of the Series Y preferred stock to 50%, which became effective on April 11, 2020. On April 15, 2020, BVF converted all of their shares of Series Y preferred stock into common stock. As of September 30, 2020, BVF owned approximately 37.9% of the Company's total outstanding shares of common stock, and if all of the Series X convertible preferred shares were converted, BVF would own 57.3% of the Company's total outstanding shares of common stock. Due to its significant equity ownership, BVF is considered a related party of the Company.

Preferred Stock

The Company sold directly to BVF 5,003 shares of Series X convertible preferred stock in 2017 and 1,252.772 shares of Series Y preferred stock in 2018. There were 5,003 shares of Series X convertible preferred stock and no shares of Series Y convertible preferred stock outstanding as of September 30, 2020, after BVF converted all Series Y preferred stock into common stock on April 15, 2020. The Series X and Series Y convertible preferred stock have the following characteristics, which are set forth in Certificates of Designation of Preferences, Rights and Limitations filed with the Delaware Secretary of State.

Dividends— Holders of convertible preferred stock are entitled to receive dividends on shares of convertible preferred stock equal (on an as if converted to common stock basis) to and in the same form as dividends actually paid on the Company's common stock.

Liquidation Rights— In the event of the Company's liquidation, dissolution or winding up, holders of convertible preferred stock will participate, on a pro-rata basis, with any distribution of proceeds to holders of common stock.

Conversion— Each share of Series X and Series Y is convertible into 1,000 shares of registered common stock based on a conversion price of $4.03 per share and $13.00 per share of common stock, respectively.

Voting Rights— Convertible preferred stock will generally have no voting rights, except as required by law and except that the consent of the holders of the outstanding convertible preferred stock will be required to amend the terms and to issue additional shares of the preferred stock.

Classification— The Company evaluated the convertible preferred stock for liability or equity classification under the applicable accounting guidance and determined that equity treatment was appropriate because the convertible preferred stock did not meet the definition of the liability instruments defined thereunder for convertible instruments. Specifically, the convertible preferred shares are not mandatorily redeemable and do not embody an obligation to buy back the shares outside of the Company's control in a manner that could require the transfer of assets. Additionally, the Company determined that the convertible preferred stock would be recorded as permanent equity, not temporary equity, given that they are not redeemable for cash or other assets (i) on a fixed or determinable date, (ii) at the option of the holder, and (iii) upon the occurrence of an event that is not solely within control of the Company. The Company has also evaluated the embedded conversion and contingent redemption features within the convertible preferred stock in accordance with the accounting guidance for derivatives and determined that bifurcation is not required for any embedded feature.

Beneficial Conversion Feature— The fair value of the common stock into which the Series X convertible preferred stock is convertible exceeded the allocated purchase price of the Series X convertible preferred stock by $5.6 million on the date of issuance, as such the Company recorded a deemed dividend. The Company recognized the resulting beneficial conversion feature as a deemed dividend equal to the number of shares of Series X convertible preferred stock sold on February 16, 2017 multiplied by the difference between the fair value of the common stock and the Series X convertible preferred stock effective conversion price per share on that date. The dividend was reflected as a one-time, non-cash, deemed dividend to the holders of Series X convertible preferred stock on the date of issuance, which is the date the stock first became convertible. There was no beneficial conversion feature associated with the issuance of Series Y convertible preferred stock.

2018 ATM Agreement

On December 18, 2018, the Company entered into an At The Market Issuance Sales Agreement (the "2018 ATM Agreement") with H.C. Wainwright & Co., LLC ("HCW"), under which the Company may offer and sell from time to time at its sole discretion shares of its common stock through HCW as its sales agent, in an aggregate amount not to exceed $30.0 million. HCW may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. The Company will pay HCW a commission of up to 3% of the gross proceeds of any shares of common stock sold under the 2018 ATM Agreement. No shares have been sold under the 2018 ATM Agreement since the agreement was executed.

13. Income Taxes

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security ("CARES") Act was enacted and signed into law. The CARES Act includes a number of income tax changes, including, but not limited to (1) permitting NOL carrybacks to offset 100% of taxable income for taxable years beginning before 2021, (2) accelerating AMT tax refunds, (3) temporarily increasing the allowable business interest deduction from 30% to 50% of adjusted taxable income, and (4) providing a technical correction for depreciation as relates to qualified improvement property.

The Company recorded an income tax benefit of $1.5 million for the nine months ended September 30, 2020 as a result of the CARES Act, which was enacted on March 27, 2020. The CARES Act permits the Company to carry back losses from 2018 to offset its income in 2017 resulting in an income tax receivable. The Company continues to maintain a full valuation allowance against its remaining net deferred tax assets.

The Company has a total of $5.5 million of gross unrecognized tax benefits, none of which would affect the effective tax rate upon realization. The Company currently has a full valuation allowance against its U.S. net deferred tax assets, which would impact the timing of the effective tax rate benefit should any of these uncertain tax positions be favorably settled in the future.

The Company does not expect its unrecognized tax benefits to change significantly over the next twelve months. The Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. Through September 30, 2020, the Company has not accrued interest or penalties related to uncertain tax positions.

14. Subsequent Events

On October 9, 2020, Rezolute completed a private placement of its equity securities with gross proceeds of $11.0 million, which is considered a Qualified Financing event under the Third Amendment. The Qualified Financing resulted in acceleration of the remaining receivables of $1.4 million due from Rezolute, and the Company received the entire amount in October 2020. The Company reassessed the collectability of the outstanding receivables and determined that the bad debt allowance of $1.4 million remained appropriate as of September 30, 2020, as the Company assessed that the financing was not probable as of the balance sheet date and as such the Company continued to have an incurred loss with respect to the collection of the remaining receivable. The Company will recognize the $1.4 million as a reversal of bad debt expense in the fourth quarter of 2020.

On October 21, 2020, NIS793, an anti-TGFβ monoclonal antibody, licensed from the Company to Novartis International under the License Agreement, advanced to the Phase 2 development stage. As a result of the advancement, Novartis International achieved a clinical development milestone pursuant to the License Agreement, and the Company earned a $25.0 million milestone payment. As specified under the terms the License Agreement, the Company will receive $17.7 million in cash and the remaining balance of $7.3 million will be recognized as a reduction to the Company's debt obligation to Novartis. The Company will record $25.0 million as revenue from contracts with customers in the consolidated statement of operations and comprehensive income (loss) in the fourth quarter of 2020.

On November 2, 2020, the Company exercised its option previously granted under the Bioasis Royalty Purchase Agreement and entered into another Royalty Purchase Agreement (the "Second Bioasis Royalty Purchase Agreement") with Bioasis. Under the Second Bioasis Royalty Purchase Agreement, the Company purchased potential future milestone and other payments, and royalty rights from Bioasis for product candidates that are being developed pursuant to a Research Collaboration and License Agreement between Bioasis and Chiesi Farmaceutici S.p.A. ("Chiesi"). The Company paid Bioasis $1.2 million upon closing of the Second Bioasis Royalty Purchase Agreement for the purchased rights.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995, which are subject to the "safe harbor" created by those sections. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to them. In some cases you can identify forward-looking statements by words such as "may," "will," "should," "could," "would," "expects," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential," "intend" and similar expressions intended to identify forward-looking statements. Examples of these statements include, but are not limited to, statements regarding: our future operating expenses, our future losses, the success of our strategy as a royalty aggregator, extent to which our issued and pending patents may protect our products and technology, the potential of our existing product candidates to lead to the development of commercial products, our ability to receive potential milestone or royalty payments under license and collaboration agreements and the timing of receipt of those payments, and the impact of the recent and evolving COVID-19 pandemic. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for our licensees engaged in the development of new products in a regulated market. Among other things: our product candidates subject to our out-license agreements are still being developed, and our licensees' may require substantial funds to continue development which may not be available; we may not be successful in entering into out-license agreements for our product candidates; if our therapeutic product candidates do not receive regulatory approval, our third-party licensees will not be able to manufacture and market them; products or technologies of other companies may render some or all of our product candidates noncompetitive or obsolete; we do not know whether there will be, or will continue to be, a viable market for the products in which we have an ownership or royalty interest; even once approved, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be voluntarily taken off the market; we and our licensees are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of our product candidates and could subject us to significant fines and penalties; and certain of our technologies are in-licensed from third parties, so our capabilities using them are restricted and subject to additional risks. These and other risks, including those related to current economic and financial market conditions, are contained principally in Part II, Item 1A of this Quarterly Report on Form 10-Q and our other filings with the SEC. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from those we expect. Except as required by law, we assume no obligation to update these forward-looking statements, whether as a result of new information, future events or otherwise.

The following discussion and analysis should be read in conjunction with the unaudited financial statements and notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with the audited consolidated financial statements and related notes thereto included as part of our Annual Report on Form 10-K for the year ended December 31, 2019.

Overview

We are a biotech royalty aggregator with a sizable portfolio of economic rights to future potential milestone and royalty payments associated with partnered pre-commercial therapeutic candidates. Our portfolio was built through licensing our proprietary products and platforms from our legacy discovery and development business, combined with acquisitions of rights to future milestones and royalties that we have made since our royalty aggregator business model was implemented in 2017. We expect that most of our future revenue will be based on payments we may receive for milestones and royalties related to these programs.

Recent Business Developments

Novartis

In October 2020, NIS793, an anti-TGFβ monoclonal antibody, that we licensed to Novartis International Pharmaceutical Ltd. ("Novartis International") under the September, 2015 License Agreement (the "License Agreement"), advanced to the Phase 2 development stage. As a result of the advancement, Novartis International achieved a clinical development milestone pursuant to the License Agreement, and we earned a $25.0 million milestone payment. As specified under the terms the License Agreement, we will receive $17.7 million in cash and the remaining balance of $7.3 million will be recognized as a reduction to our debt obligation to Novartis.

Rezolute

In December 2017, we entered into a license and common stock purchase agreement with Rezolute, which was amended on March 30, 2018 and further amended on January 7, 2019. The license agreement was amended to eliminate the requirement that equity securities be issued to us upon the closing of the Qualified Financing (as defined in the license agreement) and to replace it with a requirement that Rezolute: (1) make five cash payments to us totaling $8.5 million following the closing of a Qualified Financing on or before specified staggered future dates through September 2020 (the "Future Cash Payments"); and (2) provide for early payment of the Future Cash Payments (only until $8.5 million is reached) by making cash payments to us equal to 15% of the net proceeds of each future financing following the closing of the Qualified Financing, with such payments to be credited against any remaining unpaid Future Cash Payments in reverse order of their future payment date. The common stock purchase agreement was amended to remove certain provisions related to the issuance of equity to us in accordance with the new provisions regarding the Future Cash Payments in the license agreement.

On March 31, 2020, we and Rezolute further amended the license agreement to extend the payment schedule for the remaining $2.6 million in Future Cash Payments. The amendment to the payment terms was in response to Rezolute's need to preserve cash as a result of the COVID-19 pandemic and was agreed to by us. The revised payment schedule did not impact the total amount due, but instead, spread the $2.6 million into seven quarterly payments to be paid through September 30, 2021. The amended license agreement requires that in the event Rezolute completes a Qualified Financing at any time between March 31, 2020 and the date of the final payment, Rezolute shall pay all amounts outstanding within fifteen days following the closing of the Qualified Financing.

In the first quarter of 2020, we received the scheduled $0.4 million Future Cash Payment from Rezolute. We evaluated Rezolute's cash position as of March 31, 2020, including the estimated impact of the COVID-19 pandemic, and determined payments scheduled beyond September 30, 2020 were unlikely to be collected unless Rezolute is able to obtain additional funding, which had not occurred as of March 31, 2020. Therefore, for the three months ended March 31, 2020, we recorded $1.4 million in bad debt expense related to the Future Cash Payments. We received the scheduled $0.4 million and $0.4 million Future Cash Payments from Rezolute in the second and third quarters of 2020, respectively.

On October 9, 2020, Rezolute completed a private placement of its equity securities with gross proceeds of $41.0 million, which is considered a Qualified Financing event under the Third Amendment. The Qualified Financing resulted in acceleration of the remaining receivables of $1.4 million due from Rezolute, and we received the entire amount in October 2020.

Bioasis

In November 2020, we exercised our option previously granted under the Bioasis Royalty Purchase Agreement and entered into another Royalty Purchase Agreement (the "Second Bioasis Royalty Purchase Agreement") with Bioasis. Under the Second Bioasis Royalty Purchase Agreement, we purchased potential future milestone and other payments, and royalty rights from Bioasis for product candidates that are being developed pursuant to a Research Collaboration and License Agreement between Bioasis and Chiesi Farmaceutici S.p.A. ("Chiesi"). We paid Bioasis $1.2 million upon closing of the Second Bioasis Royalty Purchase Agreement for the purchased rights.

Zydus

In March 2020, we entered into a license agreement (the "Zydus Agreement") with Cadila Healthcare Limited ("Zydus") under which we granted Zydus an exclusive royalty-bearing license to our anti-interleukin-2 ("IL-2") monoclonal antibody, including mAb19, for Zydus to develop and commercialize drug candidates in India, Brazil, Mexico and certain other emerging markets. We retain rights in all other territories, subject to a Zydus right of first negotiation. Under the terms of the Zydus Agreement, Zydus is responsible for the development and commercialization of IL-2 based immune-oncology drug candidates. XOMA is entitled to receive up to $0.5 million in development and regulatory milestone payments, up to $23.5 million in commercial milestone payments, and mid-single digit to low teens royalties from Zydus. We are also eligible to share out-licensing revenue received by Zydus should Zydus (sub)license to third parties, which are tiered based on clinical trial stage and range from a low to mid double-digit percentage rate.

COVID-19

The worldwide spread of the COVID-19 pandemic continues to pose risks to our business as clinical trials industry-wide have slowed. Our business is dependent on the continued development and commercialization efforts of our licensees and our royalty agreement counterparties. We have been monitoring and continue to monitor our portfolio programs for potential delays in underlying research programs and elections of our partners to continue or cease development. Delays in clinical trials and underlying research programs may lead to delayed revenue from milestones from our licensees or, if certain research programs are discontinued, we may recognize impairment charges for our royalty receivables. COVID-19 may impact our underlying programs in a variety of ways which are unknown in length and scope at this time.

Critical Accounting Policies

Critical accounting policies are those that require significant judgment and/or estimates by management at the time that the financial statements are prepared such that materially different results might have been reported if other assumptions had been made. We consider certain accounting policies including those related to revenue recognition, stock-based compensation, the sale of future royalty streams, the purchase of rights to future milestones and royalties and leases to be critical policies. There have been no significant changes in our critical accounting policies during the nine months ended September 30, 2020, as compared with those previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 10, 2020.

Our significant accounting policies are included in "Part I - Item 1 – Condensed Consolidated Financial Statements - Note 2 – Basis of Presentation and Significant Accounting Policies."

Results of Operations

Revenues

Total revenues for the three and nine months ended September 30, 2020 and 2019, were as follows (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Revenue from contracts with customers	$ 200	$ 8,525	$ (8,325)	$ 753	$ 17,176	$ (16,423)
Revenue recognized under units-of-revenue method	357	330	27	1,051	772	279
Total revenues	$ 557	$ 8,855	$ (8,298)	$ 1,804	$ 17,948	$ (16,144)

Revenue from Contracts with Customers

Revenue from contracts with customers includes upfront fees, milestone payments and royalties related to the out-licensing of our product candidates and technologies. The decrease for the three months ended September 30, 2020, as compared to the same period in 2019, was primarily due to $6.0 million recognized under the Rezolute agreement and $2.5 million recognized under the Janssen license agreement in the third quarter of 2019. The decrease for the nine months ended September 30, 2020, as compared to the same period in 2019, was primarily due to $8.0 million and $6.0 million of license fee revenue recognized under our license agreement with Rezolute in the first and third quarters of 2019, respectively, and $2.5 million of revenue recognized under our license agreement with Janssen in the third quarter of 2019.

The generation of future revenues related to licenses, milestones, and royalties is dependent on the achievement of milestones or product sales by our existing licensees. Due to the anticipated impact of COVID-19 on clinical trial activities of our licensees, potential milestone payments may be delayed.

Revenue recognized under units-of-revenue method

Revenues recognized under the units-of-revenue method include the amortization of unearned revenue from the sale of royalty interests to HealthCare Royalty Partners II, L.P ("HCRP") in 2016. The increase in revenues for the three and nine months ended September 30, 2020, as compared to the same periods in 2019, was primarily due to the increase in sales of products underlying the agreements with HCRP.

Research and Development Expenses

Research and development ("R&D") expenses were $34,000 and $0.1 million for the three and nine months ended September 30, 2020, respectively, compared with $0.1 million and $1.1 million for the same periods in 2019. The decrease of $0.1 million for the three months ended September 30, 2020, compared to the same period of 2019, was due to a $0.1 million decrease in salary and related expenses as a result of the recategorization of employees to department codes mapped to general and administrative expenses. The decrease of $1.0 million for the nine months ended September 30, 2020, compared to the same period of 2019, was primarily due to a $0.5 million decrease in license fee expenses and a $0.4 million decrease in salary and related expenses.

We expect our R&D spending during the remainder of 2020 to be lower than 2019 levels due to the focus on our royalty aggregator business model.

General and Administrative Expenses

General and administrative ("G&A") expenses include salaries and related personnel costs, professional fees, and facilities costs. G&A expenses were $3.2 million and $13.1 million for the three and nine months ended September 30, 2020, respectively, compared with $5.8 million and $16.7 million for the same periods in 2019. The decrease of $2.6 million for the three months ended September 30, 2020, as compared to the same periods of 2019, was primarily due to a $1.3 million decrease in salary and related expenses and a $0.9 million decrease in facilities costs. The decrease of $3.6 million for the nine months ended September 30, 2020, as compared to the same period of 2019, was primarily due to a $3.0 million decrease in facilities costs and a $1.6 million decrease in salary and related expenses, partially offset by a $1.4 million increase in bad debt expense.

We expect to continue recognizing savings in facilities costs related to our legacy leases throughout the remainder of 2020, and in light of recent developments of COVID-19, we are evaluating the reduction of certain discretionary costs for the remainder of 2020. We do not anticipate any reduction to headcount, but we do expect to recognize a slight decrease in salaries and related personnel costs due to the termination of our Chief Business Officer in August of 2019. Finally, we expect to continue to actively evaluate potential acquisitions of milestone and royalty rights, which may result in an increase in related professional fees.

Other Income (Expense)

Interest Expense

Amortization of debt issuance costs and discounts are included in interest expense. Interest expense is shown below for the three and nine months ended September 30, 2020 and 2019 (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
SVB loans	$ 334	$ 314	$ 20	$ 1,073	$ 791	$ 282
Novartis note	100	168	(68)	409	540	(131)
Other	—	2	(2)	2	5	(3)
Total interest expense	$ 434	$ 484	$ (50)	$ 1,484	$ 1,336	$ 148

The increase in interest expense for the nine months ended September 30, 2020 as compared with the same period of 2019 is primarily due to the increase in the outstanding loan balance with SVB. If market interest rates increase in the near term, or if we elect to obtain additional financing, our interest expense may increase.

Other Income (Expense), Net

The following table shows the activity in other income (expense), net for the three and nine months ended September 30, 2020 and 2019 (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Other income, net						
Change in fair value of equity securities	$ 2,041	$ (265)	$ 2,306	$ 1,891	$ 481	$ 1,410
Sublease income	—	827	(827)	—	2,354	(2,354)
Other	5	209	(204)	155	724	(569)
Total other income, net	$ 2,046	$ 771	$ 1,275	$ 2,046	$ 3,559	$ (1,513)

As a result of the early termination of our legacy leases in December 2019, we are no longer party to any subleases, resulting in a decrease in sublease income for the three and nine months ended September 30, 2020 as compared with the same periods of 2019.

We own equity securities consisting of shares of Rezolute's common stock which are remeasured at fair value at each reporting period. During the nine months ended September 30, 2020 and 2019 we remeasured the fair value of the equity securities and recognized gains of $1.9 million and $0.5 million, respectively.

Provision for Income Taxes

We recorded an income tax benefit of $1.5 million for the nine months ended September 30, 2020 as a result of the CARES Act, which was enacted on March 27, 2020. The CARES Act permits us to carry back losses from 2018 to offset income in 2017 resulting in an income tax receivable. We continue to maintain a full valuation allowance against our remaining net deferred tax assets.

Liquidity and Capital Resources

The following table summarizes our cash, working capital and cash flow activities for each of the periods presented (in thousands):

	September 30, 2020	December 31, 2019	Change
Cash	$ 45,725	$ 56,688	$ (10,963)
Working capital	$ 35,809	$ 51,098	$ (15,289)

	Nine Months Ended September 30,		
	2020	2019	Change
Net cash (used in) provided by operating activities	$ (7,586)	$ 3,863	$ (11,449)
Net cash used in investing activities	(9)	$ (19,300)	19,291
Net cash (used in) provided by financing activities	(3,368)	9,401	(12,769)
Net decrease in cash	$ (10,963)	$ (6,036)	$ (4,927)

Cash (Used in) Provided by Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2020 of $7.6 million was primarily due to the $9.4 million net loss incurred, partially offset by stock-based compensation expense of $3.3 million. The net cash provided by operating activities in 2019 of $3.9 million was primarily due to the $5.5 million cash receipts under the license and common stock purchase agreement with Rezolute in January 2019.

Cash Used in Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2020 of $9,000 was due to the purchase of property and equipment. Net cash used in investing activities for the nine months ended September 30, 2019 was due to the purchases of milestone and royalty rights of $19.3 million in connection with the Bioasis Royalty Purchase Agreement, the Aronora Royalty Purchase Agreement, and the Palo Royalty Purchase Agreement executed in 2019.

Cash (Used in) Provided by Financing Activities

Net cash used in financing activities for the nine months ended September 30, 2020 of $3.4 million was primarily related to principal payments of debt.

Net cash provided by financing activities for the nine months ended September 30, 2019 of $9.4 million was primarily related to proceeds received under the SVB Loan Agreement of $9.5 million.

Silicon Valley Bank Loan Agreement

Under our Loan Agreement with SVB, upon our request, SVB may make advances available to us up to $20.0 million. In March 2019, we and SVB amended the Loan Agreement to extend the draw period from March 31, 2019 to March 31, 2020. Our draw period lapsed on March 31, 2020 with no further extension. In connection with the amendment in March 2019, we issued a second warrant to SVB which is exercisable in whole or in part for up to an aggregate of 4,845 shares of common stock with an exercise price of $14.71 per share. The warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of XOMA. As of September 30, 2020, we had an outstanding principal balance of $14.3 million under the Loan Agreement, and a net carrying value of $13.8 million, $9.0 million of which was classified as current portion of long-term debt.

2018 ATM Agreement

On December 18, 2018, we entered into an At The Market Issuance Sales Agreement (the "2018 ATM Agreement") with H.C. Wainwright & Co., LLC ("HCW"), under which we may offer and sell from time to time at our

sole discretion shares of our common stock through HCW as our sales agent, in an aggregate amount not to exceed $30.0 million. HCW may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. We are required to pay HCW a commission of up to 3% of the gross proceeds of any shares of common stock sold under the 2018 ATM Agreement. We have not sold any shares of common stock under the 2018 ATM Agreement.

* * *

We have incurred significant operating losses since our inception and have an accumulated deficit of $1.2 billion as of September 30, 2020. As of September 30, 2020, we had $45.7 million in cash, which we anticipate will enable us to maintain our operations for a period of at least 12 months following the filing date of this report.

We have taken and continue to take steps to manage our resources by reducing and/or deferring certain discretionary expenditures to mitigate the adverse impact of the COVID-19 pandemic. Future impacts of COVID-19 may require further actions to improve our cash position, which may include reducing or delaying acquisitions of additional royalty and milestone rights or obtaining additional funds through debt arrangements, under the 2018 ATM Agreement, or other equity issuances. Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. In addition, our ability to raise additional funds may be adversely impacted by deteriorating global economic conditions and the recent disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic.

Changes in Commitments and Contingencies

Our commitments and contingencies were reported in our Annual Report on Form 10-K for the year ended December 31, 2019, as filed with the SEC. There have been no material changes from the commitment and contingencies previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2019.

Off-balance Sheet Arrangements

We have not engaged in any off-balance sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Controls and Procedures

We have established disclosure controls and procedures, as defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act. Our Chief Executive Officer and our Chief Financial Officer have concluded, based on the evaluation of the effectiveness of our disclosure controls and procedures by our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, as of the end of the period covered by this report, that our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control

There have been no changes in our internal controls over financial reporting as defined in Rule 13a-15(f) under the Exchange Act during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting. While COVID-19 has resulted in our staff operating remotely, our established internal control structure is not impacted. As we continue to monitor and adapt to the changing environment due to COVID-19 and the related possibility of a cybersecurity impact, including a security breach or cyber-attack, we will continue to evaluate our internal controls over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None.

ITEM 1A. RISK FACTORS

This Quarterly Report on Form 10-Q contains forward-looking information based on our current expectations. Because our actual results may differ materially from any forward-looking statements made by or on behalf of us, this section includes a discussion of important factors that could affect our actual future results, including our revenues, expenses, operating results, cash flows, net (loss) income and (loss) income per share. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. You should carefully consider these risk factors, together with all of the other information included in this Quarterly Report on Form 10-Q as well as our other publicly available filings with the U.S. Securities and Exchange Commission, or SEC.

We have marked with an asterisk (*) those risks described below that reflect substantive changes from, or additions to, the risks described in our Annual Report on Form 10-K for the year ended December 31, 2019.

Risks Related to our Royalty Aggregator Strategy

The COVID-19 pandemic has adversely impacted and could materially and adversely impact in the future our licensees or royalty-agreement counterparties, which could cause delays or elimination of our receipts of potential milestones and royalties under our licensing or royalty and milestone acquisition arrangements.*

In March 2020, COVID-19, the disease caused by a novel strain of coronavirus, was declared a pandemic by the World Health Organization. The pandemic has severely affected global economic activity and resulted in the implementation of significant governmental measures, including lockdowns, closures, quarantines and travel bans, intended to control the spread of the virus.

The COVID-19 pandemic has adversely impacted and could materially and adversely impact in the future our licensees or royalty-agreement counterparties, which could cause delays, suspensions or cancellations of their drug development efforts including, without limitation, their clinical trials which would correspondingly delay, suspend or negate the timing of our potential receipts of milestones and royalties under our out-licensing or royalty acquisition agreements. The disruptions to our licensees or royalty purchase agreement counterparties could include, without limitation:

- delays or difficulties in recruiting and enrolling new patients in their clinical trials;
- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as their clinical trial sites and hospital staff supporting the conduct of their clinical trials;

- interruption of key clinical trial activities, such as clinical trial site monitoring, due to limitations on travel imposed or recommended by federal or state governments, employers and others;

- limitations in employee resources that would otherwise be focused on the conduct of their clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people;

- interruption in global shipping that may affect the transport of clinical trial supplies and materials, such as the investigational drug product used in their clinical trials;

- delays in receiving approval from the U.S. Food and Drug Administration ("FDA"), the European Medicines Agency ("EMA") and other U.S. and foreign federal, state and local regulatory authorities to initiate their planned clinical trials;

- changes in FDA, state and local regulation (and those of their foreign counterparts if applicable) as part of a response to the COVID-19 pandemic which may change the ways in which clinical trials are conducted or discontinue clinical trials altogether;

- delays in necessary interactions with regulators, ethics committees and other important agencies and contractors due to limitations in employee resources or forced furlough of government employees;

- delay in the timing of other interactions with the FDA due to absenteeism by federal employees or by the diversion of their efforts and attention to approval of other therapeutics or other activities related to COVID-19; and

- refusal of the FDA to accept data from clinical trials in affected geographies outside the United States or of foreign regulatory authorities to accept data from clinical trials in affected areas outside their applicable countries.

The extent to which the COVID-19 pandemic continues to impact our business and prospects and the overall economies of the United States and other countries will depend on numerous evolving factors, which are highly uncertain and cannot be predicted with confidence, such as the duration and scope of the pandemic, travel restrictions and social distancing in the United States and other countries, business closures or business disruptions and the effectiveness of actions taken in the United States and other countries to contain and treat the disease.

The COVID-19 pandemic continues to pose risks to our business, including at our headquarters in Emeryville, California, which has in the past been subject to local and statewide "stay-at-home" orders issued by Alameda County and the Governor of the State of California, as well as the business or operations of our partners and other third parties with whom we conduct business.*

The COVID-19 pandemic has resulted in extended travel and other continued restrictions in order to reduce the spread of the disease, including a California executive order, San Francisco Bay Area orders and several other state and local orders across the country, which, among other things, direct individuals to continue to shelter at their places of residence, direct businesses and governmental agencies to cease non-essential operations at physical locations, prohibit certain non-essential gatherings, and order cessation of non-essential travel. The evolving effects of the COVID-19 pandemic and government measures taken in response have had a significant impact, both direct and indirect, on businesses and commerce, as significant reductions in business related activities have occurred, supply chains have been disrupted, and manufacturing and clinical development activities have been curtailed or suspended.

In response to these public health directives and orders, we previously implemented a work-from-home policy for all employees. We have been able to maintain our operations and productivity thus far; however, prolonged working remotely may negatively impact productivity, disrupt our business and delay our timelines, the magnitude of which will

depend, in part, on the length and severity of the restrictions and other limitations on our ability to conduct our business in the ordinary course.

In addition, quarantines, stay-at-home, executive and similar government orders, shutdowns or other restrictions on the conduct of business operations continue to impact personnel at third-party clinical testing sites, manufacturing facilities, or the availability or cost of materials, which could disrupt our licensees' and royalty purchase agreement counterparties' supply chains.

The spread of COVID-19, which has caused a broad impact globally, may materially affect us economically. While the evolving economic impacts brought by, and the duration of, COVID-19 may be difficult to assess or predict, it has already significantly disrupted global financial markets, and may limit our ability to access capital, which could in the future negatively affect our liquidity. A recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock.

The evolving effects of the COVID-19 pandemic have already resulted in significant disruption of global financial markets. While several of our partners have experienced delays due to the COVID-19 pandemic, we do not yet know the full extent of potential delays or impacts on our business, clinical trials, healthcare systems or the global economy as a whole. However, the effects could continue to have an impact on our operations and could have a material adverse effect on our business, financial condition, results of operations and prospects in future periods.

Our acquisitions of potential future royalty and/or milestone payments may not produce anticipated revenues and/or may be negatively affected by a default or bankruptcy of the licensor(s) or licensee(s) under the applicable license agreement(s) covering such potential royalties and/or milestones, and if such transactions are secured by collateral, we may be, or may become, under-secured by the collateral or such collateral may lose value and we will not be able to recuperate our capital expenditures associated with the acquisition.*

We are engaged in a continual review of opportunities to acquire future royalties, milestones and other payments related to drug development and sales as part of our royalty aggregator strategy or to acquire companies that hold royalty assets. Generally, at any time, we seek to have acquisition opportunities in various stages of active review, including, for example, our engagement of consultants and advisors to analyze particular opportunities, technical, financial and other confidential information, submission of indications of interest and involvement as a bidder in competitive auctions. Many potential acquisition targets do not meet our criteria, and for those that do, we may face significant competition for these acquisitions from other royalty buyers and enterprises. Competition for future asset acquisition opportunities in our markets could increase the price we pay for such assets and could reduce the number of potential acquisition targets. The success of our acquisitions is based on our ability to make accurate assumptions regarding the valuation, timing and amount of potential future royalty and milestone payments as well as the viability of the underlying technology and intellectual property. The failure of any of these acquisitions to produce anticipated revenues may materially and adversely affect our financial condition and results of operations.

Some of these acquisitions may expose us to credit risk in the event of a default by or bankruptcy of the licensor(s) or licensee(s) that are parties to the applicable license agreement(s) covering the potential milestone and royalty streams being acquired. In addition, the impact of COVID-19 on the capital markets may limit our licensees' or royalty-agreement counterparties' ability to access additional funding. While we generally try to structure our receipt of potential milestone and royalty payments to minimize the risk associated with such a default or bankruptcy, there can be no assurance that any such default or bankruptcy will not adversely affect our ability to receive future potential royalty and/or milestone payments. To mitigate this risk, on occasion, we may obtain a security interest as collateral in such royalty, milestone and other payments. Our credit risk in respect of such counterparty may be exacerbated when the collateral held by us cannot be realized upon or is liquidated at prices sufficient to recover the full amount we are due pursuant to the terms of the particular assets. This could occur in circumstances where the original collateral was not sufficient to cover a complete loss (e.g., our interests were only partially secured) or may result from the deterioration in value of the collateral, so that, in either such case, we are unable to recuperate our full capital outlay. Any such losses resulting therefrom could materially and adversely affect our financial condition and results of operations.

Many of our potential royalty acquisitions may be associated with drug products that are in clinical development and have not yet been commercialized. To the extent that such products are not successfully developed and commercialized, our financial condition and results of operations may be negatively impacted. Acquisitions of potential royalties associated with development stage biopharmaceutical product candidates are subject to a number of uncertainties.*

As part of our royalty aggregator strategy, we may continue to purchase future potential milestone and royalty streams associated with drug products which are in clinical development and have not yet received marketing approval by any regulatory authority or been commercialized. There can be no assurance that the FDA, the EMA or other regulatory authorities will approve such products or that such products will be brought to market timely or at all, or that the market will be receptive to such products. To the extent that any such drug products are not successfully developed and subsequently commercialized, the value of our acquired potential milestone and royalty streams will be negatively affected. The ultimate success of our royalty aggregator strategy will depend on our ability to properly identify and acquire high quality products and the ability of the applicable counterparty to innovate, develop and commercialize their products, in increasingly competitive and highly regulated markets. Their inability to do so would negatively affect our ability to receive royalty and/or milestone payments. In addition, we are dependent, to a large extent, on third parties to enforce certain rights for our benefit, such as protection of a patent estate, adequate reporting and other protections, and their failure to do so would presumably negatively impact our financial condition and results of operations.

If the FDA, the EMA or other regulatory authority approves a development-stage product candidate that generates our royalty, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with the product, including adverse events of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market.

In addition, the developers of these development-stage product candidates may not be able to raise additional capital to continue their discovery, development and commercialization activities, which may cause them to delay, reduce the scope of, or eliminate one or more of their clinical trials or research and development programs. If other product developers introduce and market products that are more effective, safer or less expensive than the relevant products that generate our royalties, or if such developers introduce their products prior to the competing products underlying our royalties, such products may not achieve commercial success and thereby result in a loss for us.

Further, the developers of such products may not have sales, marketing or distribution capabilities. If no sales, marketing or distribution arrangements can be made on acceptable terms or at all, the affected product may not be able to be successfully commercialized, which will result in a loss for us. Losses from such assets could have a material adverse effect on our business, financial condition and results of operations.

We intend to continue, and may increase, this strategy of acquiring development-stage product candidates. While we believe that we can readily evaluate and gain conviction about the likelihood of a development-stage product candidate's approval and achieving significant sales, there can be no assurance that our assumptions will prove correct, that regulatory authorities will approve such development-stage product candidates, that such development-stage product candidates will be brought to market timely or at all, or that such products will achieve commercial success.

Biopharmaceutical products are subject to sales risks.*

Biopharmaceutical product sales may be lower than expected due to a number of reasons, including pricing pressures, insufficient demand, product competition, failure of clinical trials, lack of market acceptance, obsolescence, loss of patent protection, the impact of the COVID-19 global pandemic or other factors and development-stage product candidates may fail to reach the market. Unexpected side effects, safety or efficacy concerns can arise with respect to a product, leading to product recalls, withdrawals or declining sales. As a result, payments of our future potential milestones and/or royalties may be reduced or cease. In addition, these potential payments may be delayed, causing our near-term financial performance to be weaker than expected.

Biopharmaceutical products are subject to substantial competition.*

The biopharmaceutical industry is a highly competitive and rapidly evolving industry. The length of any product's commercial life cannot be predicted with certainty. There can be no assurance that one or more products on which we are entitled to a royalty will not be rendered obsolete or non-competitive by new products or improvements on which we are not entitled to a royalty, either by the current marketer of such products or by another marketer. Current marketers of products may undertake these development efforts in order to improve their products or to avoid paying our royalty. Adverse competition, obsolescence or governmental and regulatory action or healthcare policy changes could significantly affect the revenues, including royalty-related revenues, of the products which generate our royalties.

Competitive factors affecting the market position and success of each product include:

- effectiveness;
- safety and side effect profile;
- price, including third-party insurance reimbursement policies;
- timing and introduction of the product;
- effectiveness of marketing strategy and execution;
- governmental regulation;
- availability of lower-cost generics and/or biosimilars;
- treatment innovations that eliminate or minimize the need for a product; and
- product liability claims.

Biopharmaceutical products that have the potential to generate future milestones and royalties for us may be rendered obsolete or non-competitive by new products, including generics and/or biosimilars, improvements on existing products or governmental or regulatory action. In addition, as biopharmaceutical companies increasingly devote significant resources to innovate next-generation products and therapies using gene editing and new curative modalities, such as cell and gene therapy, products on which we have a milestone or royalty rights may become obsolete. These developments could have a material adverse effect on the sales of the biopharmaceutical products that have potential to generate our milestones and royalties, and consequently could materially adversely affect our business, financial condition and results of operations.

We depend on our licensees and royalty-agreement counterparties for the determination of royalty and milestone payments. While we typically have primary or back-up rights to audit our licensees and royalty-agreement counterparties, the independent auditors may have difficulty determining the correct royalty calculation, we may not be able to detect errors and payment calculations may call for retroactive adjustments. We may have to exercise legal remedies, if available, to resolve any disputes resulting from the audit.

The royalty and milestone payments we may receive are dependent on our licensees' achievement of regulatory and developmental milestones and product sales. Each licensee's calculation of the royalty payments is subject to and dependent upon the adequacy and accuracy of its sales and accounting functions, and errors may occur from time to time in the calculations made by a licensee and/or a licensee may fail to report the achievement of royalties or milestones in whole or in part. Our license and royalty agreements typically provide us the primary or back-up right to audit the calculations and sales data for the associated royalty payments; however, such audits may occur many months following our recognition of the royalty revenue, may require us to adjust our royalty revenues in later periods and may require expense on the part of the Company. Further, our licensees and royalty-agreement counterparties may be uncooperative or have insufficient records, which may complicate and delay the audit process.

Although we intend to regularly exercise our royalty audit rights as necessary and to the extent available, we rely in the first instance on our licensees and royalty-agreement counterparties to accurately report the achievement of milestones and royalty sales and calculate and pay applicable milestones and royalties and, upon exercise of such royalty and other audit rights, we rely on licensees' and royalty-agreement counterparties' cooperation in performing such audits. In the absence of such cooperation, we may be forced to incur expenses to exercise legal remedies, if available, to enforce our agreements.

The lack of liquidity of our acquisitions of future potential milestones and royalties may adversely affect our business and, if we need to sell any of our acquired assets, we may not be able to do so at a favorable price, if at all. As a result, we may suffer losses.

We generally acquire milestone and royalty rights that have limited secondary resale markets and may be subject to transfer restrictions. The illiquidity of most of our milestone and royalty receivable assets may make it difficult for us to dispose of them at a favorable price if at all and, as a result, we may suffer losses if we are required to dispose of any or all such assets in a forced liquidation or otherwise. In addition, if we liquidate all or a portion of our potential future milestone and/or purchased royalty stream interests quickly or relating to a forced liquidation, we may realize significantly less than the value at which we had previously recorded these interests.

Our royalty aggregator strategy may require that we register with the SEC as an "investment company" in accordance with the Investment Company Act of 1940.

The rules and interpretations of the SEC and the courts, relating to the definition of "investment company" are very complex. While we currently intend to conduct our operations so that we will not be an investment company under applicable SEC interpretations, we can provide no assurance that the SEC would not take the position that the Company would be required to register under the Investment Company Act of 1940 (the "'40 Act") and comply with the '40 Act's registration and reporting requirements, capital structure requirements, affiliate transaction restrictions, conflict of interest rules, requirements for disinterested directors, and other substantive provisions. We monitor our assets and income for compliance under the '40 Act and seek to conduct our business activities to ensure that we do not fall within its definitions of "investment company" or qualify under one of the exemptions or exclusions provided by the '40 Act and corresponding SEC regulations. If we were to become an "investment company" and be subject to the restrictions of the '40 Act, those restrictions would likely require significant changes in the way we do business and add significant administrative burdens to our operations. To ensure that we do not fall within the '40 Act, we may need to take various actions which we might otherwise not pursue. These actions may include restructuring the Company and/or modifying our mixture of assets and income or a liquidation of certain of our assets.

Risks Related to our Financial Results and Capital Requirements

We have sustained losses in the past, and we expect to sustain losses in the foreseeable future.

We have incurred significant operating losses and negative cash flows from operations since our inception. We had net losses of $2.0 million and $13.3 million for the years ended December 31, 2019 and December 31, 2018, respectively. As of September 30, 2020, we had an accumulated deficit of $1.2 billion. We do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

To date, we have financed our operations primarily through the sale of equity securities and debt and royalty interests, and payments received under our collaboration and licensing arrangements. The size of our future net losses will depend, in part, on the rate of our future expenditures and our and our partners' ability to generate revenues. If our partners' product candidates are not successfully developed or commercialized by our licensees, or if revenues are insufficient following regulatory approval, we will not achieve profitability and our business may fail. Our ability to achieve profitability is dependent in large part on the success of our and our licensees' ability to license product candidates, and the success of our licensees' development programs, both of which are uncertain. Our success is also dependent on our licensees obtaining regulatory approval to market product candidates which may not materialize or prove to be successful.

Our royalty aggregator strategy may require us to raise additional funds to acquire milestone and royalty interests; we cannot be certain that funds will be available or available at an acceptable cost of capital, and if they are not available, we may be unsuccessful in acquiring milestone and royalty interests to sustain the business in the future.*

We may need to commit substantial funds to continue our business, and we may not be able to obtain sufficient funds on acceptable terms, if at all. Any additional debt financing or additional equity that we raise may contain terms that are not favorable to us and/or result in dilution to our stockholders, including pursuant to our 2018 ATM Agreement. If we raise additional funds through licensing arrangements with third parties, we may be required to relinquish some rights to our technologies or our product candidates, grant licenses on terms that are not favorable to us or enter into a license arrangement for a product candidate at an earlier stage of development or for a lesser amount than we might otherwise choose.

If adequate funds are not available on a timely basis, we may:

- reduce or eliminate royalty aggregation efforts;
- further reduce our capital or operating expenditures;
- curtail our spending on protecting our intellectual property; or
- take other actions which may adversely affect our financial condition or results of operations.

Changes in the potential royalty acquisition market, including its structure and participants, or a reduction in the growth of the biopharmaceutical industry, could lead to diminished opportunities for us to acquire potential royalties, fewer potential royalties (or potential royalties of significant scale) being available, or increased competition for potential royalties. Even if we continue to acquire potential royalties and they become actual royalties, they may not generate a meaningful return for a period of several years, if at all, due to the price we pay for such royalties or other factors relating to the underlying products. As a result, we may not be able to continue to acquire potential milestones and royalties as we have in the past, or at all.

We have significantly restructured our business and revised our business plan and there are no assurances that we will be able to successfully implement our revised business plan or successfully operate as a royalty aggregator.

We have historically been focused on discovering and developing innovative therapeutics derived from our unique platform of antibody technologies. We have now become a royalty aggregator where we focus on expanding our pipeline of fully-funded programs by out-licensing our internally developed product candidates and acquiring potential milestone and royalty revenue streams on additional third-party drug product candidates. Our strategy is based on a number of factors and assumptions, some of which are not within our control, such as the actions of third parties. There can be no assurance that we will be able to successfully execute all or any elements of our strategy, or that our ability to successfully execute our strategy will be unaffected by external factors. If we are unsuccessful in acquiring potential milestone and royalty revenue streams on additional drug product candidates, or those acquisitions do not perform to our expectations, our financial performance and balance sheet could be adversely affected.

We may not fully realize the expected benefits of our cost-saving initiatives.

Maintaining a low corporate cost structure is a key element of our current business strategy. If we experience unanticipated inefficiencies caused by our reduced headcount, we may be unable to fully execute our new strategy. In addition, we may incur expenses in excess of what we anticipate. Any of these outcomes could prevent us from meeting our strategic objectives and could adversely impact our results of operations and financial condition.

We use leverage in connection with our capital deployment, which magnifies the potential for loss if the potential royalties acquired or generated through out-licensing agreements do not generate sufficient income to us.*

We use borrowed funds to finance a portion of our deployed capital. The use of leverage creates an opportunity for an increased return but also increases the risk of loss if our assets do not generate sufficient income to us. The interest expense and other costs incurred in connection with such borrowings may not be covered by the future potential income from our assets. In addition, leverage may inhibit our operating flexibility and reduce cash flow available for dividends to our shareholders (if ever contemplated).

The level of our indebtedness could limit our ability to respond to changing business conditions. The various agreements relating to our borrowings may impose operating and financial restrictions on us which could affect the number and size of the potential milestones and royalties that we may pursue. Therefore, no assurance can be given that we will be able to take advantage of favorable conditions or opportunities as a result of any restrictive covenants under our indebtedness. There can also be no assurance that additional debt financing, either to replace or increase existing debt financing, will be available when needed or, if available, will be obtainable on terms that are commercially reasonable.

Additional risks related to our leverage include:

- our potential future milestones and royalties are used as collateral for our borrowings;
- in the event of a default under any of our secured borrowings, one or more of our creditors or their assignees could obtain control of our future potential milestones and royalties and, in the event of a distressed sale, these creditors could dispose of these royalties for significantly less value than we could realize for them;
- we may have to comply with various financial covenants in future agreements that govern our debt, including requirements to maintain certain leverage ratios and coverage ratios, which may affect our ability to achieve our business objectives;
- our ability to pay dividends to our shareholders (if ever contemplated) may be restricted;
- to the extent that interest rates at which we borrow increase, our borrowing costs will increase, and our leveraging strategy will become more costly, which could lead to diminished net profits; and
- because our debt utilizes LIBOR as a factor in determining the applicable interest rate, the expected discontinuation and transition away from LIBOR may increase the cost of servicing our debt, lead to higher borrowing costs and have an adverse effect on our results of operations and cash flows.

Information available to us about the biopharmaceutical products underlying the potential royalties we buy may be limited and therefore our ability to analyze each product and its potential future cash flow may be similarly limited.*

We may have limited information concerning the products generating the future potential royalties we are evaluating for acquisition. Often, the information we have regarding products following our acquisition of a potential royalty may be limited to the information that is available in the public domain. Therefore, there may be material information that relates to such products that we would like to know but do not have and may not be able to obtain. For example, we do not always know the results of studies conducted by marketers of the products of others or the nature or amount of any complaints from doctors or users of such products. In addition, the market data that we obtain independently may also prove to be incomplete or incorrect. Due to these and other factors, the actual potential cash flow from a potential royalty may be significantly lower than our estimates.

Our future income is dependent upon numerous potential milestone and royalty-specific assumptions and, if these assumptions prove not to be accurate, we may not achieve our expected rates of returns.*

Our business model is based on multiple-year internal and external forecasts regarding potential product sales and numerous product-specific assumptions in connection with each potential milestone and royalty acquisition, including where we have limited information regarding the product. There can be no assurance that the assumptions underlying our financial models, including those regarding potential product sales or competition, patent expirations or license terminations for the products underlying our portfolio, are accurate. These assumptions involve a significant element of subjective judgment and may be and in the past have been adversely affected by post-acquisition changes in market conditions and other factors affecting the underlying product. Our assumptions regarding the financial stability or operational or marketing capabilities of the partner obligated to pay us potential royalties may also prove to be incorrect. Due to these and other factors, the assets in our current portfolio or future assets may not generate our projected returns or in the time periods we expect. This could negatively impact our results of operation for a given period.

Reductions or declines in income from potential milestones and royalties, or significant reductions in potential milestone or royalty payments compared to expectations, or impairments in the value of potential milestones and royalties acquired could have a material adverse effect our financial condition and results of operations.*

The duration of a royalty usually varies on a country-by-country basis and can be based on a number of factors, such as patent expiration dates, regulatory exclusivity, years from first commercial sale of the patent-protected product, the entry of competing generic or biosimilar products, or other terms set out in the contracts governing the royalty. It is common for royalty durations to expire earlier or later than anticipated due to unforeseen positive or negative developments over time, including with respect to the granting of patents and patent term extensions, the invalidation of patents, claims of patent misuse, litigation between the party controlling the patents and third party challengers of the patents, the ability of third parties to design around or circumvent valid patents, the granting of regulatory exclusivity periods or extensions, timing for the arrival of generic or biosimilar competitor products, changes to legal or regulatory regimes affecting intellectual property rights or the regulation of pharmaceutical products, product life cycles, and industry consolidations. If an unexpected shortening of a potential royalty term were to occur, it could result in a reduction in a decline in potential income from milestones and royalties, a significant reduction in potential milestones and royalty payments compared to expectations, or a permanent impairment of such potential milestones and royalty payments.

A large percentage of the calculated net present value of our portfolio is represented by a limited number of products. The failure of any one of these products to move forward in clinical development or commercialization may have a material adverse effect on our financial condition and results of operation.*

Our asset portfolio may not be fully diversified by product, geographic region or other criteria. Any significant deterioration in the amount or likelihood of receipt of potential cash flows from the top products in our asset portfolio could have a material adverse effect on our business, financial condition and results of operations. In addition, should the payor of any future potential milestones or royalties decline to pay such potential milestones and royalties for any reason, such failure may result in a material adverse effect on our financial condition and results of operation.

Risks Related to Our Reliance on Third Parties

We rely heavily on license and collaboration relationships, and any disputes or litigation with our partners or termination or breach of any of the related agreements could reduce the financial resources available to us, including our ability to receive milestone payments and future potential royalty and other revenues. License or collaboration agreements relating to products may, in some instances, be unilaterally terminated or disputes may arise which may affect our potential milestones, royalties and other payments.*

License or collaboration agreements relating to the products generating our future milestones and royalties and other payment rights may be terminated, which may adversely affect sales of such products and therefore the potential payments we may receive. For example, under certain license or collaboration agreements, marketers may retain the right to unilaterally terminate the agreements. When the last patent covering a product expires or is otherwise invalidated in a country, a marketer may be economically motivated to terminate the applicable license or collaboration agreement, either in whole or with respect to such country, in order to terminate its payment and other obligations. In the event of such a termination, a licensor (which may be us in the case of our out-licensed products) or collaborator may no longer receive all of the payments it expected to receive from the applicable licensee or collaborator and may also be unable to find

another company to continue developing and commercializing the product on the same or similar terms as those under the license or collaboration agreement that has been terminated.

In addition, license or collaboration agreements may fail to provide significant protection for the applicable licensor (which may be us in the case of our out-licensed products) or collaborator in case of the applicable licensee's or collaborator's failure to perform or in the event of disputes. License and collaboration agreements which relate to the products underlying our potential future milestones, royalties and other payment rights, are complex and certain provisions in such agreements may be susceptible to multiple interpretations. Disputes may arise regarding intellectual property, royalty terms, payment rights or other contractual terms subject to a license or collaboration agreement, including:

- the scope or duration of rights granted under the license or collaboration agreement and other interpretative issues;
- the amounts of royalties, milestones or other payments due under the license or collaboration agreement;
- the sublicensing of patent or other rights under our license or collaboration relationships;
- the diligence obligations under the license or collaboration agreement and what activities satisfy such diligence obligations:
- the inventorship and ownership of inventions and know-how resulting from the joint creation or use of intellectual property by us or our partners; and
- the priority of invention of patented technology.

The resolution of any contract interpretation disagreement that may arise could narrow what the licensor (which may be us in the case of our out-licensed products) or collaborator believes to be the scope of its rights to the relevant intellectual property or technology, or decrease the licensee's or collaborator's financial or other obligations under the relevant agreement, any of which could in turn impact the value of our potential royalties, milestones and other payments and have a material adverse effect on our business, financial condition, results of operations and prospects. If a marketer were to default on its obligations under a license or collaboration agreement, the licensor's or collaborator's remedy may be limited either to terminating certain licenses or collaborations related to certain countries or to generally terminate the license or collaboration agreement with respect to such country. In such cases, we may not have the right to seek to enforce the rights of the licensor or collaborator (if not us) and we may be required to rely on the resources and willingness of the licensor or collaborator (if not us) to enforce its rights against the applicable licensee or collaborator. In any of these situations, if the expected upfront, milestone, royalty or other payments under the license or collaboration agreements do not materialize, this could result in a significant loss to us and materially adversely affect our business, financial condition and results of operations. At any given time, the Company may be engaged in discussions with its licensees or collaborators regarding the interpretation of the payment and other provisions relating to products as to which we have milestones and potential royalty or other payment rights. Should any such discussions result in a disagreement regarding a particular product that cannot be resolved satisfactorily to us, we may end up being paid less than anticipated on such product should it successfully progress through clinical development and be approved for commercialization. Should our milestone and future potential royalty or other payment interests be reduced or eliminated as result of any such disagreement, it could have an adverse effect on our business, financial condition, results of operation and prospects.

Our existing collaborations may not continue or be successful, and we may be unable to enter into future collaborative arrangements to develop and commercialize our unpartnered assets. Generally, our current collaborative partners also have the right to terminate their collaborations at will or under specified circumstances. If any of our collaborative partners breach or terminate their agreements with us or otherwise fail to conduct their collaborative activities successfully (for example, by not making required payments when due, or at all or failing to engage in commercially reasonable efforts to develop products if required), our product development under these agreements will be delayed or terminated.

Our licensees rely on third parties to provide services in connection with our product candidate development and manufacturing programs. The inadequate performance by or loss of any of these service providers could affect our licensees' product candidate development.

Third parties provide services in connection with preclinical and clinical development programs, including *in vitro* and *in vivo* studies, assay and reagent development, immunohistochemistry, toxicology, pharmacokinetics, clinical trial support, manufacturing and other outsourced activities. If these service providers do not adequately perform the services for which we or our licensees have contracted, or cease to continue operations, and we are not able to find a replacement provider quickly or we lose information or items associated with our drug product candidates, our or our licensees' development programs and receipt of any potential resulting income may be delayed.

Agreements with other third parties, many of which are significant to our business, expose us to numerous risks.

Because our licensees, suppliers and contractors are independent third parties, they may be subject to different risks than we are and have significant discretion in, and different criteria for, determining the efforts and resources they will apply related to their agreements with us. If these licensees, suppliers and contractors do not successfully perform the functions for which they are responsible, we may not have the capabilities, resources or rights to do so on our own.

We do not know whether we or our licensees will successfully develop and market any of the products that are or may become the subject of any of our licensing arrangements. In addition, third-party arrangements such as ours also increase uncertainties in the related decision-making processes and resulting progress under the arrangements, as we and our licensees may reach different conclusions, or support different paths forward, based on the same information, particularly when large amounts of technical data are involved.

Under our contract with NIAID, a part of the National Institute of Health ("NIH"), we invoiced using NIH provisional rates, and these are subject to future audits at the discretion of NIAID's contracting office. In October of 2019, NIH notified us that it engaged KPMG LLP ("KPMG") to perform an audit of our Incurred Cost Submissions for 2013, 2014 and 2015 and the audit is still in progress. This audit may result in an adjustment to revenue previously reported, which potentially could be material. In addition, under the contracts with HCRP, the amortization for the reporting period is calculated based on the payments expected to be made by the licensees to HCRP over the term of the arrangement. Any changes to the estimated payments by the licensees to HCRP can result in a material adjustment to revenue previously reported.

Failure of our licensees' product candidates to meet current Good Manufacturing Practices standards may subject our licensees to delays in regulatory approval and penalties for noncompliance.

Our licensees may rely on third party manufacturers and such contract manufacturers are required to produce clinical product candidates under current Good Manufacturing Practices ("cGMP") to meet acceptable standards for use in clinical trials and for commercial sale, as applicable. If such standards change, the ability of contract manufacturers to produce our and our licensees' drug product candidates on the schedule required for our clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with our licensees or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of our licensees' product candidates.

Contract manufacturers are subject to pre-approval inspections and periodic unannounced inspections by the FDA and corresponding state and foreign authorities to ensure strict compliance with cGMP and other applicable government regulations and corresponding foreign standards. We do not have control over a third-party manufacturer's compliance with these regulations and standards. Any difficulties or delays in contractors' manufacturing and supply of our licensees' product candidates or any failure of our licensees' contractors to maintain compliance with the applicable regulations and standards could increase costs, reduce revenue, make our licensees postpone or cancel clinical trials, prevent or delay regulatory approval by the FDA and corresponding state and foreign authorities, prevent the import and/or export of our licensees' product candidates, or cause any of our licensees' product candidates that may be approved for commercial sale to be recalled or withdrawn.

Certain of our technologies are in-licensed from third parties, so our and our licensees' capabilities using them are restricted and subject to additional risks.

We have licensed technologies from third parties. These technologies include phage display technologies licensed to us in connection with our bacterial cell expression technology licensing program and antibody products. However, our and our licensees' use of these technologies is limited by certain contractual provisions in the licenses relating to them, and although we have obtained numerous licenses, intellectual property rights in the area of phage display are particularly complex. If we are unable to maintain our licenses, patents or other intellectual property, we could lose important protections that are material to continuing our operations and for future prospects. Our licensors also may seek to terminate our license, which could cause us and our licensees to lose the right to use the licensed intellectual property and adversely affect our and our licensees' ability to commercialize our technologies, products or services.

Because many of the companies with which we do business also are in the biotechnology sector, the volatility of that sector can affect us indirectly as well as directly.

The same factors that affect us directly also can adversely affect us indirectly by affecting the ability of our partners and others with whom we do business to meet their obligations to us and reduce our ability to realize the value of the consideration provided to us by these other companies in connection with their licensing of our products.

Risks Related to an Investment in Our Common Stock

Our share price may be volatile, and there may not be an active trading market for our common stock.

There can be no assurance that the market price of our common stock will not decline below its present market price or that there will be an active trading market for our common stock. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common stock price. We have experienced significant volatility in the price of our common stock. From January 1, 2020, through November 2, 2020, the share price of our common stock has ranged from a high of $28.78 to a low of $14.14. Additionally, we have one significant holder of our stock that could affect the liquidity of our stock and have a significant negative impact on our stock price if the holder were to quickly sell their ownership position.

Our results of operations and liquidity needs could be materially negatively affected by market fluctuations or an economic downturn.

Our results of operations could be materially negatively affected by economic conditions generally, both in the United States and elsewhere around the world. Concerns over inflation, energy costs, geopolitical issues, the availability and cost of credit, and the U.S. financial markets have in the past contributed to, and may continue in the future contribute to, increased volatility and diminished expectations for the economy and the markets. Domestic and international equity markets periodically experience heightened volatility and turmoil. These events may have an adverse effect on us. In the event of a market downturn, our results of operations could be adversely affected by those factors in many ways, including making it more difficult for us to raise funds if necessary, and our stock price may decline.

We may issue additional equity securities and thereby materially and adversely affect the price of our common stock. In addition, under certain circumstances each share of outstanding preferred stock could be converted into 1,000 shares of common stock which could cause a substantial dilution to our earnings per share and a change in the majority voting control of our Company, if enough of such preferred shares are converted to common shares.*

We expect that significant additional capital will be needed in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in such a manner as we determine from time to time, including pursuant to our 2018 ATM Agreement. If we sell common stock, convertible securities or other equity securities in more than one transaction, investors may be materially diluted by subsequent sales. These sales may also result in material dilution to our existing stockholders, and new investors could

gain rights superior to our existing stockholders. If we issue additional equity securities, the price of our common stock may be materially and adversely affected.

We are authorized to issue, without stockholder approval, 1,000,000 shares of preferred stock, of which 5,003 shares of Series X preferred stock were issued and outstanding as of September 30, 2020. Each share of Series X preferred stock is convertible into 1,000 shares of registered common stock. The total number of shares of common stock issuable upon conversion of all issued Series X preferred stock would be 5,003,000 shares. Each share is convertible at the option of the holder at any time, provided that the holder will be prohibited from converting into common stock if, as a result of such conversion, the holder, together with its affiliates, would beneficially own a number of shares above a conversion blocker, which was initially set at 19.99% of our total common stock then issued and outstanding immediately following the conversion of such shares. A holder of Series X preferred shares may elect to increase or decrease the conversion blocker above or below 19.99% on 61 days' notice, provided the conversion blocker does not exceed the limits under Nasdaq Marketplace Rule 5635(b), to the extent then applicable. If holders of our Series X convertible preferred stock elect to convert their preferred shares into common stock such conversion would dilute our currently outstanding common stock both in number and in earnings per share. BVF (and its affiliates), as current holders of all shares of our Series X preferred stock, would, if they converted all such shares to common stock, obtain majority voting control of the Company. In February 2020, Biotechnology Value Fund, L.P. ("BVF"), the holders of Series Y convertible preferred shares, elected to increase the beneficial ownership limitation to 50% and on April 15, 2020, BVF converted all of their shares of Series Y preferred stock into 1,252,772 shares of common stock. As of September 30, 2020, BVF owned approximately 37.9% of our total outstanding shares of common stock, and if all of the Series X convertible preferred shares were converted, BVF would own 57.3% of our total outstanding shares of common stock.

In addition, funding from collaboration partners and others has in the past and may in the future involve issuance by us of our common stock. We cannot be certain how the purchase price of such shares, the relevant market price or premium, if any, will be determined or when such determinations will be made.

Any issuance by us of equity securities, whether through an underwritten public offering, an at the market offering, a private placement, in connection with a collaboration or otherwise could result in dilution in the value of our issued and outstanding shares, and a decrease in the trading price of our common stock.

We may sell additional equity or debt securities to fund our operations, which may result in dilution to our stockholders and impose restrictions on our business.

In order to raise additional funds to support our operations, we may sell additional equity or convertible debt securities, which would result in dilution to our stockholders and/or debt securities which may impose restrictive covenants that would adversely impact our business. The sale of additional equity or convertible debt securities could result in the issuance of additional shares of our capital stock and dilution to all of our stockholders. The incurrence of indebtedness would result in increased fixed payment obligations and could also result in certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. If we are unable to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected and we may not be able to meet our debt service obligations.

Our organizational documents contain provisions that may prevent transactions that could be beneficial to our stockholders and may insulate our management from removal.

Our charter and by-laws:

- require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings; and

- authorize our Board of Directors to issue up to 1,000,000 shares of preferred stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), that may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from merging or combining with us.

These provisions of our organizational documents and the DGCL, alone or in combination with each other, may discourage transactions involving actual or potential changes of control, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of common stock, could limit the ability of stockholders to approve transactions that they may deem to be in their best interests, and could make it considerably more difficult for a potential acquirer to replace management.

As a public company in the United States, we are subject to the Sarbanes-Oxley Act. We have determined our disclosure controls and procedures and our internal control over financial reporting are effective. We can provide no assurance that we will, at all times, in the future be able to report that our internal controls over financial reporting are effective.

Companies that file reports with the SEC, including us, are subject to the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX"). Section 404 requires management to establish and maintain a system of internal control over financial reporting, and annual reports on Form 10-K filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), must contain a report from management assessing the effectiveness of our internal control over financial reporting. Ensuring we have adequate internal financial and accounting controls and procedures in place to produce accurate financial statements on a timely basis is a time-consuming effort that needs to be re-evaluated frequently. Failure on our part to have effective internal financial and accounting controls would cause our financial reporting to be unreliable, could have a material adverse effect on our business, operating results, and financial condition, and could cause the trading price of our common stock to fall.

We incur significant costs as a result of operating as a public company, which may adversely affect our operating results and financial condition.

As a public company, we incur significant accounting, legal and other expenses, including costs associated with our public company reporting requirements. We also anticipate that we will continue to incur costs associated with corporate governance requirements, including requirements and rules under SOX and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") among other rules and regulations implemented by the SEC, as well as listing requirements of Nasdaq. Furthermore, these laws and regulations could make it difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these requirements could also make it difficult for us to attract and retain qualified persons to serve on our Board of Directors, our Board Committees or as executive officers.

New laws and regulations as well as changes to existing laws and regulations affecting public companies, including the provisions of SOX and Dodd-Frank and rules adopted by the SEC and Nasdaq, will likely result in increased costs to us as we respond to their requirements. We continue to invest resources to comply with evolving laws and regulations, and this investment may result in increased general and administrative expense.

Our ability to use our net operating loss carry-forwards and other tax attributes will be substantially limited by Section 382 of the U.S. Internal Revenue Code.

Under the federal income tax law, federal net operating losses incurred in 2020 and in future years may be carried forward indefinitely, but the deductibility of such federal net operating losses is limited. It is uncertain if and to what extent various states will conform to the federal tax law. In addition, Section 382 of the U.S. Internal Revenue Code of 1986, as amended, and corresponding provisions of state law, generally limit the ability of a corporation that undergoes an

"ownership change" to utilize its net operating loss carry-forwards ("NOLs") and certain other tax attributes against any taxable income in taxable periods after the ownership change. The amount of taxable income in each taxable year after the ownership change that may be offset by pre-change NOLs and certain other pre-change tax attributes is generally equal to the product of (a) the fair market value of the corporation's outstanding shares (or, in the case of a foreign corporation, the fair market value of items treated as connected with the conduct of a trade or business in the United States) immediately prior to the ownership change and (b) the long-term tax exempt rate (i.e., a rate of interest established by the U.S. Internal Revenue Service that fluctuates from month to month). In general, an "ownership change" occurs whenever the percentage of the shares of a corporation owned, directly or indirectly, by "5-percent shareholders" (within the meaning of Section 382 of the Internal Revenue Code) increases by more than 50 percentage points over the lowest percentage of the shares of such corporation owned, directly or indirectly, by such "5-percent shareholders" at any time over the preceding three years.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), we experienced ownership changes in 2009 and 2012, which substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. In February 16, 2017, we completed an equity financing for net proceeds of $24.8 million which triggered an additional ownership change under Section 382 that significantly impacted the availability of our tax attributes against future income. Further, due to the existence of a net unrealized built-in loss at the ownership change date, Section 382 further limits our ability to fully utilize the tax deductions associated with certain of our assets, including depreciation and amortization deductions recognized during the 60-month period following the ownership change ending in 2022. Although these deductions will occur in the post-change period, Section 382 treats the deductions as pre-change losses subject to the annual 382 limitation. As of September 30, 2020, we have excluded the NOLs and research and development credits that will expire as a result of the annual limitations. To the extent that we do not utilize our carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will also expire unused.

Risks Related to the Development and Commercialization of our Current and Future Product Candidates

We may not be able to successfully identify and acquire and/or in-license other products, product candidates, programs or companies to grow and diversify our business, and, even if we are able to do so, we may not be able to successfully manage the risks associated with integrating any such products, product candidates, programs or companies into our business or we may otherwise fail to realize the anticipated benefits of these licenses or acquisitions.

To grow and diversify our business, we plan to continue our business development efforts to identify and seek to acquire and/or in-license potential milestone and royalty streams or companies. Future growth through acquisition or in-licensing will depend upon the availability of suitable products, product candidates, programs or companies for acquisition or in-licensing on acceptable prices, terms and conditions. Even if appropriate opportunities are available, we may not be able to acquire rights to them on acceptable terms, or at all. The competition to acquire or in-license rights to promising products, product candidates, programs and companies is fierce, and many of our competitors are large, multinational pharmaceutical and biotechnology companies with considerably more financial, development and commercialization resources, personnel, and experience than we have. In order to compete successfully in the current business climate, we may have to pay higher prices for assets than may have been paid historically, which may make it more difficult for us to realize an adequate return on any acquisition.

Even if we are able to successfully identify and acquire or in-license new products, product candidates, programs or companies, we may not be able to successfully manage the risks associated with integrating any products, product candidates, programs or companies into our business or the risks arising from anticipated and unanticipated problems in connection with an acquisition or in-licensing. Further, while we seek to mitigate risks and liabilities of potential acquisitions through, among other things, due diligence, there may be risks and liabilities that such due diligence efforts fail to discover, that are not disclosed to us, or that we inadequately assess. Any failure in identifying and managing these risks and uncertainties effectively would have a material adverse effect on our business. In any event, we may not be able to realize the anticipated benefits of any acquisition or in-licensing for a variety of reasons, including the possibility that a product candidate fails to advance to clinical development, proves not to be safe or effective in clinical trials, or that a product fails to reach its forecasted commercial potential or that the integration of a product, product candidate, program

or company gives rise to unforeseen difficulties and expenditures. Any failure in identifying and managing these risks and uncertainties would have a material adverse effect on our business.

We may not be successful in entering into out-license agreements for our product candidates, which may adversely affect our liquidity and business.

We intend to pursue a strategy to out-license all of our product candidates in order to provide for potential payments, funding and/or royalties on future product sales. The out-license agreements may be structured to share in the proceeds received by a licensee as a result of further development or commercialization of the product candidates. We may not be successful in entering into out-licensing agreements with favorable terms as a result of factors, many of which are outside of our control. These factors include:

- research and spending priorities of potential licensing partners;
- willingness of, and the resources available to, pharmaceutical and biotechnology companies to in-license product candidates to fill their clinical pipelines; or
- our inability to generate proof-of-concept data and to agree with a potential partner on the value of our product candidates, or on the related terms.

If we are unable to enter into out-licensing agreements for our product candidates and realize license, milestone and/or royalty fees when anticipated, it may adversely affect our liquidity, which in turn may harm our business.

If our licensees' therapeutic product candidates do not receive regulatory approval, our licensees will be unable to market them.

Our licensees' product candidates cannot be manufactured and marketed in the United States or any other countries without required regulatory approvals. The U.S. government and governments of other countries extensively regulate many aspects of our product candidates, including:

- clinical development and testing;
- manufacturing;
- labeling;
- storage;
- record keeping;
- promotion and marketing; and
- importing and exporting.

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act.

Initiation of clinical trials requires approval by health authorities. Clinical trials involve the administration of the investigational new drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials must be conducted in accordance with FDA and International Conference on Harmonization Good Clinical Practices and the European Clinical Trials Directive, as applicable, under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Other national, foreign and local regulations also may apply. The developer of the drug must provide information relating to the characterization and

controls of the product before administration to the patients participating in the clinical trials. This requires developing approved assays of the product to test before administration to the patient and during the conduct of the trial. In addition, developers of pharmaceutical products must provide periodic data regarding clinical trials to the FDA and other health authorities, and these health authorities may issue a clinical hold upon a trial if they do not believe, or cannot confirm, that the trial can be conducted without unreasonable risk to the trial participants.

The results of the preclinical studies and clinical testing, together with chemistry, manufacturing and controls information, are submitted to the FDA and other health authorities in the form of a New Drug Application ("NDA") for a drug, and in the form of a Biologic License Application ("BLA") for a biological product, requesting approval to commence commercial sales. In responding to an NDA or BLA, the FDA or foreign health authorities may grant marketing approvals, request additional information or further research, or deny the application if they determine the application does not satisfy regulatory approval criteria. Regulatory approval of an NDA, BLA, or supplement is never guaranteed. The approval process can take several years, is extremely expensive and can vary substantially based upon the type, complexity, and novelty of the products involved, as well as the target indications. Our licensees ultimately may not be able to obtain approval in a timely fashion or at all.

The FDA and foreign health authorities have substantial discretion in the drug and biologics approval processes. Despite the time and expense incurred, failure can occur at any stage, and our potential development partners could encounter problems that cause abandonment of clinical trials or cause them to repeat or perform additional preclinical, clinical or manufacturing-related studies.

Changes in the regulatory approval policy during the development period, changes in, or the enactment of additional regulations or statutes, or changes in regulatory review for a submitted product application may cause delays in the approval or rejection of an application.

The FDA and other regulatory agencies have substantial discretion in both the product approval process and manufacturing facility approval process, and as a result of this discretion and uncertainties about outcomes of testing, we cannot predict at what point, or whether, the FDA or other regulatory agencies will be satisfied with our licensees' submissions or whether the FDA or other regulatory agencies will raise questions that may be material and delay or preclude product approval or manufacturing facility approval. In light of this discretion and the complexities of the scientific, medical and regulatory environment, our or our licensees' interpretation or understanding of the FDA's or other regulatory agencies' requirements, guidelines or expectations may prove incorrect, which also could delay further or increase the cost of the approval process.

Our licensees and potential milestone and royalty providers face uncertain results of clinical trials of product candidates.

Drug development has inherent risk, and our licensees and potential milestone and royalty providers are required to demonstrate through adequate and well-controlled clinical trials that product candidates are effective, with a favorable benefit-risk profile for use in their target profiles before they can seek regulatory approvals for commercial use. It is possible we or our licensees may never receive regulatory approval for any licensed product candidates. Even if a product candidate receives regulatory approval, the resulting product may not gain market acceptance among physicians, patients, healthcare payors and the medical community.

Our licensees' product candidates require significant additional research and development, extensive preclinical studies and clinical trials and regulatory approval prior to any commercial sales. This process is lengthy and expensive, often taking a number of years. As clinical results frequently are susceptible to varying interpretations that may delay, limit or prevent regulatory approvals, the length of time necessary to complete clinical trials and to submit an application for marketing approval for a final decision by a regulatory authority varies significantly. As a result, it is uncertain whether:

- our licensees' future filings will be delayed;
- our licensees' preclinical studies will be successful;

- our licensees will be successful in generating viable product candidates;
- we will be successful in finding collaboration and licensing partners to advance our product candidates on our behalf;
- our licensees will be able to provide necessary data;
- results of future clinical trials by our licensees will justify further development; or
- our licensees ultimately will achieve regulatory approval for our product candidates.

The timing of the commencement, continuation and completion of clinical trials by our licensees may be subject to significant delays relating to various causes, including failure to complete preclinical testing and earlier-stage clinical trials in a timely manner, inability to engage contract research organizations and other service providers, scheduling conflicts with participating clinicians and clinical institutions, changes in key personnel at clinical institutions, difficulties in identifying and enrolling patients who meet trial eligibility criteria and shortages of available drug supply. In addition, since we license our product candidates to others to fund and conduct clinical trials, we have limited control over how quickly and efficiently such licensees advance those trials. Patient enrollment is a function of many factors, including the size of the patient population, the proximity of patients to clinical sites, the concentration of patients in specialist centers, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments. Regardless of the initial size or relative complexity of a clinical trial, the costs of such trial may be higher than expected due to increases in duration or size of the trial, changes in the protocol under which the trial is being conducted, additional or special requirements of one or more of the healthcare centers where the trial is being conducted, or changes in the regulatory requirements applicable to the trial or in the standards or guidelines for approval of the product candidate being tested or for other unforeseen reasons.

In addition, our licensees may conduct clinical trials in foreign countries, which may subject them to further delays and expenses as a result of increased drug shipment costs, additional regulatory requirements and the engagement of foreign clinical research organizations, and may expose us and our licensees to risks associated with foreign currency transactions to make contract payments denominated in the foreign currency where the trial is being conducted.

New products and technologies of other companies may render some or all of our licensees' product candidates noncompetitive or obsolete.

New developments by others may render our licensees' product candidates or technologies obsolete or uncompetitive. Technologies developed and utilized by the biotechnology and pharmaceutical industries are changing continuously and substantially. Competition in antibody-based technologies is intense and is expected to increase in the future as a number of established biotechnology firms and large chemical and pharmaceutical companies advance in these fields. Many of these competitors may be able to develop products and processes competitive with or superior to our and our licensees for many reasons, including that they may have:

- significantly greater financial resources;
- larger research and development staffs;
- entered into arrangements with, or acquired, biotechnology companies to enhance their capabilities; or
- extensive experience in preclinical testing and human clinical trials.

These factors may enable others to develop products and processes competitive with or superior to our own or those of our licensees. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore,

many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later. As a result, we and our licensees may not be able to track development of competitive products, particularly at the early stages.

Positive developments in connection with a potentially competing product may have an adverse impact on our future potential for receiving revenue derived from development milestones and royalties. For example, if another product is perceived to have a competitive advantage, or another product's failure is perceived to increase the likelihood that our licensed product will fail, our licensees may halt development of our licensed product candidates.

Our licensees may be unable to price our products effectively or obtain coverage and adequate reimbursement for sales of our products, which would prevent our licensees' products from becoming profitable and negatively affect the royalties we may receive.

If our third-party licensees succeed in bringing our product candidates to the market, they may not be considered cost effective, and reimbursement to the patient may not be available or may not be sufficient to allow our licensees to sell the products on a competitive basis. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of coverage and adequate reimbursement from third-party payors, such as government and private insurance plans. Significant uncertainty exists as to the coverage and reimbursement status of any products for which our licensees may obtain regulatory approval. Even if coverage is available, the associated reimbursement rate may not be adequate for us and our licensees to cover related costs. Additionally, coverage and reimbursement policies for drug products can differ significantly from payor to payor as there is no uniform policy of coverage and reimbursement for drug products among third-party payors in the United States. Therefore, the process of obtaining coverage and reimbursement is often time-consuming and costly.

Third-party payors are increasingly challenging the prices charged for pharmaceutical products and services. Our business is affected by the efforts of government and third-party payors to contain or reduce the cost of healthcare through various means. In the United States, there have been and will continue to be a number of federal and state proposals to implement government controls on pricing.

In addition, the emphasis on managed care in the United States has increased and will continue to increase the pressure on the pricing of pharmaceutical products. We cannot predict whether any legislative or regulatory proposals will be adopted or the effect these proposals or managed care efforts may have on our or our licensees' businesses.

We do not know whether there will be, or will continue to be, a viable market for the product candidates in which we have an ownership or royalty interest.

Even if product candidates in which we have an interest receive approval in the future, they may not be accepted in the marketplace. In addition, our licensees may experience difficulties in launching new products, many of which are novel and based on technologies that are unfamiliar to the healthcare community. We have no assurance healthcare providers and patients will accept such products, if developed. Similarly, physicians may not accept a product if they believe other products to be more effective or more cost effective or are more comfortable prescribing other products.

Furthermore, government agencies, as well as private organizations involved in healthcare, from time to time publish guidelines or recommendations to healthcare providers and patients. Such guidelines or recommendations can be very influential and may adversely affect product usage directly (for example, by recommending a decreased dosage of a product in conjunction with a concomitant therapy) or indirectly (for example, by recommending a competitive product over our product). Consequently, we do not know if physicians or patients will adopt or use our products for their approved indications.

Even approved and marketed products are subject to risks relating to changes in the market for such products. Introduction or increased availability of generic or biosimilar versions of products can alter the market acceptance of branded products. In addition, unforeseen safety issues may arise at any time, regardless of the length of time a product has been on the market.

We are exposed to an increased risk of product liability claims.

The testing, marketing and sales of medical products entails an inherent risk of allegations of product liability. In the past, we were party to product liability claims filed against Genentech Inc. and, even though Genentech agreed to indemnify us in connection with these matters and these matters have been settled, there can be no assurance other product liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities. In the event of one or more large, unforeseen awards of damages against us, our product liability insurance may not provide adequate coverage. A significant product liability claim for which we were not covered by insurance or indemnified by a third party would have to be paid from cash or other assets, which could have an adverse effect on our business and the value of our common stock. To the extent we have sufficient insurance coverage, such a claim would presumably result in higher subsequent insurance rates. In addition, product liability claims can have various other ramifications, including loss of future sales opportunities, increased costs associated with replacing products, a negative impact on our goodwill and reputation, and divert our management's attention from our business, each of which could also adversely affect our business and operating results.

If we and our partners are unable to protect our intellectual property, in particular our patent protection for our principal products, product candidates and processes, and prevent the use of the covered subject matter by third parties, our licensees' ability to compete in the market will be harmed, and we may not realize our profit potential.

We rely on patent protection, as well as a combination of copyright, trade secret, and trademark laws to protect our proprietary technology and prevent others from duplicating our products or product candidates. However, these means may afford only limited protection and may not:

- prevent our competitors from duplicating our products;
- prevent our competitors from gaining access to our proprietary information and technology; or
- permit us to gain or maintain a competitive advantage.

Because of the length of time and the expense associated with bringing new products to the marketplace, we and our partners hold and are in the process of applying for a number of patents in the United States and abroad to protect our product candidates and important processes and also have obtained or have the right to obtain exclusive licenses to certain patents and applications filed by others. However, the mere issuance of a patent is not conclusive as to its validity or its enforceability.

The U.S. Federal Courts, the U.S. Patent & Trademark Office or equivalent national courts or patent offices elsewhere may invalidate our patents or find them unenforceable. The America Invents Act introduced post-grant review procedures subjecting U.S. patents to post-grant review procedures similar to European oppositions. U.S. patents owned or licensed by us or our licensees may therefore be subject to post-grant review procedures, as well as other forms of review and re-examination. A decision in such proceedings adverse to our interests could result in the loss of valuable patent rights, which would have a material adverse effect on our business. In addition, the laws of foreign countries may not protect our intellectual property rights effectively or to the same extent as the laws of the United States.

If our intellectual property rights are not protected adequately, our licensees may not be able to commercialize our technologies or products, and our competitors could commercialize our technologies or products, which could result in a decrease in our licensees' sales and market share that would harm our business and operating results. Specifically, the patent position of biotechnology companies generally is highly uncertain and involves complex legal and factual questions. The legal standards governing the validity of biotechnology patents are in transition, and current defenses as to issued biotechnology patents may not be adequate or available in the future. Accordingly, there is uncertainty as to:

- whether any pending or future patent applications held by us or our partners will result in an issued patent, or whether issued patents will provide meaningful protection against competitors or competitive technologies;

- whether competitors will be able to design around our or our partners' patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our patents and patent applications; or

- the extent to which our or our partners' product candidates could infringe on the intellectual property rights of others, which may lead to costly litigation, result in the payment of substantial damages or royalties, and prevent our licensees from using our technology or product candidates.

If certain patents issued to others are upheld or if certain patent applications filed by others are issued and upheld, our licensees may require licenses from others to develop and commercialize certain potential products incorporating our technology or we may become involved in litigation to determine the proprietary rights of others. These licenses, if required, may not be available on acceptable terms, and any such litigation will presumably be costly and may have other adverse effects on our business, such as inhibiting our licensees' ability to compete in the marketplace and absorbing significant management time.

Due to the uncertainties regarding biotechnology patents, we also have relied and will continue to rely upon trade secrets, know-how and continuing technological advancement to develop and maintain our competitive position. Our employees and contractors are typically required to sign confidentiality agreements under which they agree not to use or disclose any of our proprietary information. Research and development contracts and relationships between us and our scientific consultants and potential licensees provide access to aspects of our know-how that are protected generally under confidentiality agreements. These confidentiality agreements may be breached or may not be enforced by a court. To the extent proprietary information is divulged to competitors or to the public generally, such disclosure may adversely affect our licensees' ability to develop or commercialize our products by giving others a competitive advantage or by undermining our patent position.

Litigation regarding intellectual property and/or the enforcement of our contractual rights against licensees and third parties can be costly and expose us to risks of counterclaims against us.

We may be required to engage in litigation or other proceedings to protect our intellectual property and/or enforce our contractual rights against former or current licensees or third parties, including third-party collaborators of such licensees. The cost to us of this litigation, even if resolved in our favor, could be substantial and parties to such litigation may be able to sustain the cost of such litigation and proceedings more effectively than we can if they have substantially greater resources than us. Such litigation and any negotiations leading up to it also could divert management's attention and resources. If this litigation is resolved against us, we may lose the value associated with contract rights contained in our arrangements with licensees and third parties, our patents may be declared invalid, and we could be held liable for significant damages. While it is our current plan to pursue, on a selective basis, potential material contractual breaches against licensees and third-parties (including third-party collaborators of licensees) and/or infringement of our intellectual property rights or technology, there can be no assurance that any such enforcement actions will be successful, or if successful, the timing of such success or that we will have sufficient capital to prosecute any such actions to a successful conclusion.

In addition, we may be subject to claims that we, or our licensees, are infringing other parties' patents. If such claims are resolved against us, we or our licensees may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we obtain a license from the other party. Such license may not be available on reasonable terms or at all, thus preventing us, or our licensees, from using these products, processes or services and adversely affecting our potential future revenue.

Uncertainties resulting from our participation in intellectual property litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. There could also be public announcements of the results of hearings, motions or interim proceedings or developments. If securities analysts or investors perceive these results to be negative, the perceived value of the drug product candidates as to which we hold future potential milestone or royalty interests, or intellectual property could be diminished. Accordingly, the market price of our common stock may decline. Uncertainties resulting from the initiation and continuation of intellectual property litigation or other proceedings could have a material adverse effect of our business, financial condition and results of operation.

Risks Related to Employees, Location, Data Integrity, and Litigation

The loss or COVID-19 related absence of any of our personnel, including our Chief Executive Officer or Chief Financial Officer, could delay or prevent achieving our objectives.*

Our business efforts could be adversely affected by the loss or COVID-19 related absence of one or more key members of our staff, including our executive officers: James R. Neal, our Chief Executive Officer and Thomas Burns, our Senior Vice President, Finance and Chief Financial Officer. We currently do not have key person insurance on any of our employees.

Because we are a small biopharmaceutical focused company with limited resources, we may not be able to attract and retain qualified personnel.

We had 11 employees as of November 2, 2020. We may require additional experienced executive, accounting, legal, administrative and other personnel from time to time in the future. There is intense competition for the services of these personnel, especially in California. Moreover, we expect that the high cost of living in the San Francisco Bay Area, where our headquarters is located, may impair our ability to attract and retain employees in the future. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our business may suffer, and we may be unable to implement our current initiatives or grow effectively.

We rely and will continue to rely on outsourcing arrangements for many of our activities, including financial reporting and accounting and human resources.

Due to our small number of employees, we rely, and expect to continue to rely, on outsourcing arrangements for a significant portion of our activities, including financial reporting and accounting and human resources, as well as for certain of our functions as a public company. We may have limited control over these third parties, and we cannot guarantee that they will perform their obligations in an effective and timely manner.

Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with applicable regulations, provide accurate information to regulatory authorities, comply with federal and state fraud and abuse laws and regulations, report financial information or data accurately or disclose unauthorized activities to us. In particular, the health care industry is subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. It is not always possible to identify and deter employee misconduct, 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 these laws 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, including the imposition of significant fines or other sanctions.

Calamities, power shortages or power interruptions at our Emeryville headquarters could disrupt our business and adversely affect our operations.

Our corporate headquarters is located in Emeryville, California. This location is in an area of seismic activity near active earthquake faults. Any earthquake, tsunami, terrorist attack, fire, power shortage or other calamity affecting our facilities may disrupt our business and could have material adverse effect on our results of operations.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our current and any future licensees, suppliers, contractors and consultants are vulnerable to damage from cyberattacks, computer viruses,

unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. We could experience failures in our information systems and computer servers, which could be the result of a cyberattacks and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs and other business operations. The loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Similarly, we rely on third parties to manufacture our product candidates, and conduct clinical trials of our product candidates, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of any of our product candidates could be delayed or otherwise adversely affected.

Data breaches and cyberattacks could compromise our intellectual property or other sensitive information and cause significant damage to our business and reputation.*

In the ordinary course of our business, we maintain sensitive data on our networks, including our intellectual property and proprietary or confidential business information relating to our business and that of our customers and business partners. The secure maintenance of this information is critical to our business and reputation. We believe companies have been increasingly subject to a wide variety of security incidents, cyberattacks and other attempts to gain unauthorized access. These threats can come from a variety of sources, all ranging in sophistication from an individual hacker to a state-sponsored attack. Cyber threats may be generic, or they may be custom-crafted against our information systems. Cyberattacks have become more prevalent and much harder to detect and defend against. Our network and storage applications may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions. It is often difficult to anticipate or immediately detect such incidents and the damage caused by such incidents. These data breaches and any unauthorized access or disclosure of our information or intellectual property could compromise our intellectual property and expose sensitive business information. A data security breach could also lead to public exposure of personal information of our clinical trial patients, customers and others which could expose us to liability under federal or state privacy laws. Cyberattacks can result in the theft of proprietary information which could be used to compete against us and could cause us to incur significant remediation costs, result in product development delays, disrupt key business operations and divert attention of management and key information technology resources. These incidents could also subject us to liability, expose us to significant expense and cause significant harm to our reputation and business.

U.S. and international authorities have been warning businesses of increased cybersecurity threats from actors seeking to exploit the COVID-19 pandemic. Moreover, failure to maintain effective internal accounting controls related to data security breaches and cybersecurity in general could impact our ability to produce timely and accurate financial statements and could subject us to regulatory scrutiny. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures that are intended to protect our data security and information technology systems, such measures may not prevent such events.

Significant disruptions of information technology systems, including cloud-based systems, or breaches of data security could adversely affect our business.

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including cloud-based systems, to support business processes as well as internal and external communications. Our computer systems, and those of our partners and contractors, are potentially vulnerable to breakdown, malicious intrusion and computer viruses that may result in the impairment of key business processes. Such disruptions and breaches of security could have a material adverse effect on our business, financial condition and results of operations.

In addition, our data security and information technology systems, as well as those of our partners and contractors, are potentially vulnerable to data security breaches, whether by employees or others, that may expose sensitive data or

personal information to unauthorized persons. Effective May 25, 2018, the European Union ("EU") implemented the General Data Protection Regulation ("GDPR") a broad data protection framework that expands the scope of current EU data protection law to non-European Union entities that process, or control the processing of, the personal information of EU subjects, including clinical trial data. The GDPR allows for the imposition of fines and/or corrective action on entities that improperly use or disclose the personal information of EU subjects, including through a data security breach.

Also, in June 2018, the State of California enacted the California Consumer Privacy Act of 2018 ("CCPA"), which became effective in January 2020. The CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents. The CCPA includes a framework with potentially severe statutory damages and private rights of action. The CCPA requires covered companies to provide new disclosures to California consumers (as that word is broadly defined in the CCPA), provide such consumers new ways to opt-out of certain sales of personal information, and allow for a new cause of action for data breaches. It remains unclear how the CCPA will be interpreted, but as currently written, it will likely impact our business activities and exemplifies the vulnerability of our business to not only cyber threats but also the evolving regulatory environment related to personal data. As we expand our operations, the CCPA may increase our compliance costs and potential liability. Some observers have noted that the CCPA could mark the beginning of a trend toward more stringent privacy legislation in the United States. Other states are beginning to pass similar laws. Accordingly, data security breaches experienced by us, our partners or contractors could lead to significant fines, required corrective action, the loss of trade secrets or other intellectual property, public disclosure of sensitive clinical or commercial data, and the exposure of personally identifiable information (including sensitive personal information) of our employees, partners, and others. A data security breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including personally identifiable information or protected health information, could result in fines, increased costs or loss of revenue as a result of:

- harm to our reputation;
- fines imposed on us by regulatory authorities;
- additional compliance obligations under federal, state or foreign laws;
- requirements for mandatory corrective action to be taken by us; and
- requirements to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data.

If we are unable to prevent such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events. We expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the EU and other jurisdictions, such as the CCPA, which has been characterized as the first "GDPR-like" privacy statute enacted in the United States because it mirrors a number of the key provisions in the GDPR. We cannot presently determine the impact such laws, regulations and standards will have on our business. In any event, it is possible that governmental authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law involving applicable healthcare or privacy laws, including the GDPR, in light of the lack of applicable precedent and regulations.

Shareholder and private lawsuits, and potential similar or related lawsuits, could result in substantial damages, divert management's time and attention from our business, and have a material adverse effect on our results of operations.

Securities-related class action and shareholder derivative litigation has often been brought against companies, including many biotechnology companies, which experience volatility in the market price of their securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies often experience significant stock price volatility in connection with their product development programs.

It is possible that suits will be filed, or allegations received from stockholders, naming us and/or our officers and directors as defendants. These potential lawsuits are subject to inherent uncertainties, and the actual defense and disposition costs will depend upon many unknown factors. The outcome of these lawsuits is uncertain. We could be forced to expend significant resources in the defense of these suits, and we may not prevail. In addition, we may incur substantial legal fees and costs in connection with these lawsuits. It is possible that we could, in the future, incur judgments or enter into settlements of claims for monetary damages. A decision adverse to our interests on these actions could result in the payment of substantial damages, or possibly fines, and could have a material adverse effect on our cash flow, results of operations and financial position.

Monitoring, initiating and defending against legal actions, including any currently pending litigation, are time-consuming for our management, are likely to be expensive and may detract from our ability to fully focus our internal resources on our business activities. The outcome of litigation is always uncertain, and in some cases could include judgments against us that require us to pay damages, enjoin us from certain activities, or otherwise affect our legal or contractual rights, which could have a significant adverse effect on our business. In addition, the inherent uncertainty of any future litigation could lead to increased volatility in our stock price and a decrease in the value of an investment in our common stock.

Risks Related to Government Regulation

Even after FDA approval, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn, or it may be removed voluntarily from the market.

Even if our licensees receive regulatory approval for our product candidates, our licensees will be subject to ongoing regulatory oversight and review by the FDA and other regulatory entities. The FDA, the EMA, or another regulatory agency may impose, as a condition of the approval, ongoing requirements for post-approval studies or post-approval obligations, including additional research and development and clinical trials, and the FDA, EMA or other regulatory agency subsequently may withdraw approval based on these additional trials or obligations.

Even for approved products, the FDA, EMA or other regulatory agency may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and production of such product. In addition, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping for our products are subject to extensive regulatory requirements.

Furthermore, marketing approval of a product may be withdrawn by the FDA, the EMA or another regulatory agency or such product may be withdrawn voluntarily by our partners based, for example, on subsequently arising safety concerns. The FDA, EMA and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

Healthcare reform measures and other statutory or regulatory changes could adversely affect our business.

The United States and some foreign jurisdictions have enacted or are considering a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our licensees' ability to sell our products and any products as to which we own milestone and royalty interests, if approved, profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative

initiatives. For example, in March 2010, the United States Congress enacted the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the ACA, which substantially changed the way healthcare is financed by both governmental and private insurers, and continues to significantly impact the United States pharmaceutical industry. There remain judicial and Congressional challenges to certain aspects of the ACA, as well as efforts by the Trump administration to repeal or replace certain aspects of the ACA. Since January 2017, President Trump has signed two Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been signed into law. The Tax Cuts and Jobs Act of 2017, or Tax Act, included a provision which repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate." In addition, the 2020 federal spending package permanently eliminates, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, also eliminates the health insurer tax. In addition, the ACA has also been subject to judicial challenge. On December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. Additionally, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the Supreme Court of the United States granted the petitions for writ of certiorari to review this case. Pending review, the ACA remains in effect, but is unclear how this decision, future decisions, subsequent appeals, and other efforts to repeal and replace the ACA will impact the ACA and our and our licensees' businesses.

An expansion in the government's role in the U.S. healthcare industry may cause general downward pressure on the prices of prescription drug products, lower reimbursements for providers, and reduced product utilization, any of which could adversely affect our business and results of operations. Moreover, there has been heightened governmental scrutiny in the United States of pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. We cannot know what form any such new legislation may take or the market's perception of how such legislation would affect us. Any reduction in reimbursement from government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent our licensees from being able to generate revenue, attain profitability, develop, or commercialize our current product candidates and those for which we may receive regulatory approval in the future.

We and our licensees are subject to various state and federal healthcare-related laws and regulations that may impact the commercialization of our product candidates or third-party product candidates for which we possess milestone or royalty rights or could subject us to significant fines and penalties.

Our operations may be directly or indirectly subject to various state and federal healthcare laws, including the federal Anti-Kickback Statute, the federal False Claims Act and state and federal data privacy and security laws. These laws may impact, among other things, the commercial operations for any of our product candidates that may be approved for commercial sale.

The federal Anti-Kickback Statute prohibits, among other things, persons and entities from knowingly and willfully soliciting, offering, receiving or providing any remuneration, directly or indirectly, in cash or in kind, in exchange for or to induce either the referral of an individual for, or the furnishing or arranging for the purchase, lease, or order of a good or service for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. The ACA modified the federal Anti-Kickback Statute's intent requirement so that a person or entity no longer needs to have actual knowledge of the statute or the specific intent to violate it to have committed a violation. In addition, several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback

Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry.

The federal false claims laws, including the False Claims Act, and civil monetary penalties laws prohibit, among other things, persons and entities from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Certain suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individual, commonly known as a "whistleblower," may share in any amounts paid by the entity to the government in fines or settlement. The filing of qui tam actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend and/or settle a False Claims Act action.

The Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") created new federal criminal statutes that prohibit, among other things, executing a scheme to defraud any healthcare benefit program, including a private payor, or falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of, or payment for, health care benefits, items or services.

HIPAA, as amended by the Health Information Technology and Clinical Health Act, and its implementing regulations, also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information by entities subject to the law, such as certain healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates that perform certain functions or activities that involve the use or disclosure of protected health information on their behalf.

Many states also have adopted laws similar to each of the federal laws described above, some of which apply to healthcare items or services reimbursed by any source, not only federal healthcare programs, such as the Medicare and Medicaid programs. In addition, some states have laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government. Additionally, certain state and local laws require the registration of pharmaceutical sales representatives, restrict payments that may be made to healthcare providers and other potential referral sources, and require manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers. Further, some states have laws governing the privacy and security of health information in certain circumstances, many of which are not preempted by HIPAA and differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws, and the narrowness of the statutory exceptions and regulatory safe harbors available, it is possible that some of our or our licensees' business activities could be subject to challenge under one or more of such laws.

If we or our licensees are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare laws, we or our licensees may be subject to penalties, including significant civil, criminal, and administrative penalties, damages, fines, disgorgement, imprisonment, integrity oversight and reporting obligations, reputational harm, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our or our licensees' operations, any of which could have a material adverse effect on our business and results of operations. In addition, we and our licensees may be subject to certain analogous foreign laws and violations of such laws could result in significant penalties.

As we or our licensees do more business internationally, we will be subject to additional political, economic and regulatory uncertainties.

We or our licensees may not be able to operate successfully in any foreign market. We believe that because the pharmaceutical industry is global in nature, international activities will be a significant part of future business activities and when and if we or our licensees are able to generate income, a substantial portion of that income will be derived from product sales and other activities outside the United States. Foreign regulatory agencies often establish standards different from those in the United States, and an inability to obtain foreign regulatory approvals on a timely basis could put us at a

competitive disadvantage or make it uneconomical to proceed with a product or product candidate's development. International sales may be limited or disrupted by many factors, including without limitation:

- imposition of government controls;
- export license requirements;
- political or economic instability;
- trade restrictions;
- changes in tariffs;
- restrictions on repatriating profits;
- exchange rate fluctuations; and
- withholding and other taxation.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
3.1	Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	01/03/2012
3.2	Certificate of Amendment of Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/31/2012
3.3	Certificate of Amendment of Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/28/2014
3.4	Certificate of Amendment to the Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	10/18/2016
3.5	Certificate of Designation of Preferences, Rights and Limitations of Series X Convertible Preferred Stock	8-K	000-14710	3.1	02/16/2017
3.6	Certificate of Designation of Preferences, Rights and Limitations of Series Y Convertible Preferred Stock	8-K	000-14710	3.1	12/13/2018
3.7	By-laws of XOMA Corporation	8-K	000-14710	3.2	01/03/2012
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Form of Warrant (February 2016 Warrant)	10-Q	000-14710	4.9	05/04/2016
4.4	Form of Warrant (May 2018 Warrant)	10-Q	000-14710	4.6	08/07/2018
4.5	Form of Warrant (March 2019 Warrant)	10-Q	000-14710	4.7	05/06/2019
10.1+#	License Agreement between the Company and Novartis International Pharmaceutical Ltd., dated September 30, 2015 (this exhibit was previously filed under confidential treatment request as Exhibit 10.2 to Form 10-Q filed November 6, 2015)				
10.2+#	Amendment to Amended and Restated Research, Development and Commercialization Agreement, between the Company and Novartis Vaccine and Diagnostics, Inc., dated September 30, 2015 (this exhibit was previously filed under confidential treatment request as Exhibit 10.4 to Form 10-Q filed November 6, 2015)				
31.1+	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
31.2+	Certification of Chief Financial Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				
32.1+	Certification of Chief Executive Officer and Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350)(1)				
101.INS+	XBRL Instance Document				
101.SCH+	XBRL Taxonomy Extension Schema Document				
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB+	XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

+ Filed herewith

Portions of this exhibit (indicated by asterisks) have been omitted as the Registrant has determined that (i) the omitted information is not material and (ii) the omitted information would likely cause competitive harm to the Registrant if publicly disclosed.

(1) This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

XOMA Corporation

Date: November 5, 2020

By: /s/ JAMES R. NEAL
James R. Neal
Chief Executive Officer (principal executive officer) and Director

Date: November 5, 2020

By: /s/ THOMAS BURNS
Thomas Burns
Senior Vice President, Finance and Chief Financial Officer (principal financial and principal accounting officer)

Exhibit 10.1

Execution Version

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT HAVE BEEN OMITTED AND REPLACED WITH "[***]". SUCH IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF DISCLOSED.

LICENSE AGREEMENT

by and between

XOMA (US) LLC

and

NOVARTIS INTERNATIONAL PHARMACEUTICAL LTD.

TABLE OF CONTENTS

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

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(continued)

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List of Exhibits and Schedules

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

LICENSE AGREEMENT

This LICENSE AGREEMENT (the "Agreement") is entered into and made effective as of the 30th day of September, 2015 (the "Effective Date") by and between XOMA (US) LLC, a limited liability company organized under the laws of Delaware having offices at 2910 Seventh Street, Berkeley, California ("XOMA"), and Novartis International Pharmaceutical Ltd., a company organized under the laws of Bermuda having offices at 131 Front Street, Hamilton, HM 12, Bermuda ("Novartis"). XOMA and Novartis are each referred to herein by name or as a "Party" or, collectively, as the "Parties."

RECITALS

WHEREAS, XOMA possesses proprietary technology and intellectual property, development and supply rights with respect to various Licensed Antibodies and Products (as defined below); and XOMA has been pursuing the research and development of various Licensed Antibodies and Products;

WHEREAS, Novartis possesses expertise in the manufacture, development and commercialization of human therapeutic products; and

WHEREAS, the Parties desire that XOMA grant Novartis exclusive rights and that Novartis be solely responsible for the further Development and Commercialization of Licensed Antibodies and Products in the Field in the Territory (each, as defined below), in exchange for certain milestones and royalties to be paid to XOMA, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following terms will have the meanings set forth in this Article 1 unless context dictates otherwise:

"Accounting Standards" means, with respect to XOMA, U.S. GAAP, and means, with respect to Novartis, IFRS, in each case, as generally and consistently applied throughout the Party's organization. Each Party shall promptly notify the other in the event that it changes the Accounting Standards pursuant to which its records are maintained, provided, however, that each Party may only use internationally recognized accounting principles (e.g. IFRS, U.S. GAAP, etc).

"Acquiror IP" means, in connection with a Change of Control of XOMA, any Patents and/or Know-How owned or controlled by a Third-Party acquiror of XOMA immediately prior to the date of the Change of Control or thereafter other than the XOMA IP existing immediately prior to such date.

"Affiliate" means any Person that directly or indirectly controls or is controlled by or is under common control with a Party. For the purpose of this definition, "control," "controls" or "controlled" means ownership (directly or through one or more Affiliates) of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors (in the case of a corporation) or fifty percent (50%) or more of the equity interests (in the case of any other type of legal entity), status as a general partner in any partnership, any other arrangement whereby a Person controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity or the ability to cause the direction of the management or policies of a corporation or other entity. The Parties acknowledge that in the case of certain entities organized under the Laws of certain countries, the maximum percentage ownership permitted by Law for a foreign investor may be less than fifty percent (50%), and that in such case such lower percentage shall be substituted in the preceding sentence; provided, that such foreign investor has the power to direct the management and policies of such entity.

"AIA Proceedings" means post-issuance patent challenges and other proceedings under the U.S. Leahy-Smith America Invents Act ("AIA").

"Antibody" means a polypeptide that (a) is an antibody or is a part of an antibody, modified or unmodified, having at least one complementarity determining region (CDR) and which retains the ability to specifically bind antigen and can include an antigen-binding heavy chain, light chain, heavy chain-light chain dimer, Fab fragment, F(ab')2 fragment, dAb, or an Fv fragment, including a single chain Fv (scFv), and (b) binds to the Target with an in vitro affinity [*].

"Biosimilar" means any product for which Regulatory Approval is sought under (a) the U.S. Biologics Price Competition and Innovation Act of 2009 (or any amendment or successor statute thereto) referencing a Product, or (b) any certification under a similar statutory or regulatory requirement in any non-United States country in the Territory, in each case where the applicant for such Regulatory Approval claims that a XOMA Patent Covering any Product is invalid or that infringement will not arise from the development, manufacture or commercialization of such product by a Third Party. A product shall not be considered to be a Biosimilar if (i) Novartis or any of its Affiliates or sublicensees was involved in the Development of such product, or (ii) such product is commercialized by any sublicensee of Novartis or any of its Affiliates or by any Person who obtained such product in a chain of distribution that included Novartis or any of its Affiliates or sublicensees).

"BLA" means a Biologics License Application filed with the FDA in the United States with respect to a Product, as defined in Title 21 of the U.S. Code of Federal Regulations, Section 601.2 et. seq., or a comparable filing for Regulatory Approval in a jurisdiction other than the United States.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks are authorized or required to be closed, as the case may be, at the location where the respective activity is to be performed.

"Calendar Quarter" means a period of three (3) consecutive months ending on the last day of March, June, September, or December, respectively.

"Calendar Year" means a period of twelve (12) consecutive months beginning on January 1 and ending on December 31.

"cGCP" means current Good Clinical Practices as defined in U.S. Regulations 21 CFR § 50, 54, 56, 312 and 314, and applicable ICH standards as each may be amended from time to time.

"cGLP" means current Good Laboratory Practices as defined in U.S. Regulations 21 CFR § 58 and applicable FDA then-current laboratory review and inspection requirements, as each may be amended from time to time.

"cGMP" means current Good Manufacturing Practices pursuant to U.S. Regulations 21 C.F.R. §211, et seq., and applicable ICH standards as each may be amended from time to time.

"Change of Control" means, with respect to a Party: (a) completion of a merger, reorganization, amalgamation, arrangement, share exchange, consolidation, tender or exchange offer, private purchase, business combination, recapitalization or other transaction involving a Party as a result of which the stockholders of such Party immediately preceding such transaction hold less than fifty percent (50%) of the outstanding shares, or less than fifty percent (50%) of the outstanding voting power, respectively, of the ultimate company or entity resulting from such transaction immediately after consummation thereof (including a company or entity which as a result of such transaction owns the then-outstanding securities of a Party or all or substantially all of a Party's assets, either directly or through one or more subsidiaries); (b) the adoption of a plan relating to the liquidation or dissolution of a Party, other than in connection with a corporate reorganization (without limitation of clause (a), above); (c) the sale or disposition to a Third Party of all or substantially all the assets of a Party (determined on a consolidated basis); or (d) the sale or disposition to a Third Party of assets or businesses that constitute fifty percent (50%) or more of the total revenue or assets of a Party (determined on a consolidated basis). The entity(ies) gaining control of such Party pursuant to a transaction described in the preceding sentence are referred to herein as the "Acquiror".

"Combination Product" means any pharmaceutical product (in any formulation) containing one or more active pharmaceutical ingredients in addition to a Licensed Antibody.

"Commercialization" and "Commercialize" means all activities undertaken relating to the marketing, promotion (including advertising, detailing, sponsored product or continuing medical education), use, offering for sale, importing for sale, exporting for sale, distribution and sale of a Product and the commercial manufacturing of a Product, as well as, in each case, maintaining Regulatory Approvals necessary or useful to undertake such activities.

"Commercially Reasonable Efforts" means the expenditure of those efforts and resources used consistent with the usual practice of Novartis in reasonably and diligently pursuing Development or Commercialization of other similar pharmaceutical products proprietary to Novartis with similar market and economic potential and at a similar stage in Development or product life, taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, the likelihood of regulatory approval given the regulatory structure involved, [*], and all other

Commercially Relevant Factors. It is anticipated that the level of effort may change over time, reflecting changes in the status of a Licensed Antibody or Product, as applicable.

"Commercially Relevant Factors" means, with respect to a Licensed Antibody or Product, all relevant factors that may affect the Development, Regulatory Approval or Commercialization of such Licensed Antibody or Product, including (as applicable): safety, efficacy, quality or stability; product profile (including product modality, category and mechanism of action); stage of Development or life cycle status; Development, Regulatory Approval, manufacturing, and Commercialization costs and risk; feasibility and cost of manufacture; the likelihood of obtaining Regulatory Approvals (including satisfactory price approvals) and the timing of such approvals; the current guidance and requirements for Regulatory Approval and the current and projected regulatory status, including expectations for post-approval commitments; labeling or anticipated labeling; the then-current competitive environment and the likely competitive environment at the time of projected entry into the market; past performance; present and future market potential; existing or projected pricing, sales, reimbursement and profitability; pricing or reimbursement changes in relevant countries; proprietary position, strength and duration of patent protection and anticipated exclusivity; and such Party's [*].

"Control", "Controls" or "Controlled" means, with respect to any Know-How, Patents, proprietary information or trade secrets, or other intellectual property rights (collectively, "Rights"), the legal authority or right (whether by ownership, license or otherwise) of a Party to grant a license or a sublicense of or under such Rights to the other Party, or to otherwise disclose such proprietary information or trade secrets to the other Party, without breaching the terms of any agreement with a Third Party, or misappropriating the proprietary information or trade secrets of a Third Party.

"Cover", "Covering" or "Covered" means, with respect to a product, composition, technology, process or method, that, in the absence of ownership of or a license granted under a Valid Claim, the manufacture, use, offer for sale, sale or importation of such product or composition, or the practice of such technology, process or method, would infringe such Valid Claim (or, in the case of a Valid Claim that has not yet issued, would infringe such Valid Claim if it were to issue as then being prosecuted in good faith).

"Deliver" or "Delivery" means the dispatch of the Inventory by XOMA pursuant to this Agreement.

"Develop" or "Development" means all research, discovery, pre-clinical development, clinical development, and regulatory activities with respect to Licensed Antibodies and Products, including optimization, non-clinical testing, pharmacology studies, toxicology studies, formulation, chemical analysis, bioanalytical analysis, material performance studies (such as measurements of stability, physical form, dissolution, or visual or spectroscopic analysis, and the like), manufacturing process development and scale-up (including with respect to active pharmaceutical ingredient and drug product production), quality assurance and quality control, technical support, pharmacokinetic studies, clinical studies, regulatory affairs activities, and manufacturing, use and importation in support of such activities, in each case to the extent required

or useful to obtain any Regulatory Approvals from the FDA or any other applicable Regulatory Authority.

"Dollars" or "$" means the legal tender of the U.S.

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

"Executive Officers" means XOMA's Chief Executive Officer (or his designee) and the President of Novartis Institutes for Biomedical Research, Inc. ("NIBR"), an Affiliate of Novartis, (or his designee).

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

"Field" means [*] indications and uses, including [*] indications and therapeutic uses.

"First Commercial Sale" means, with respect to a Product, the first arm's length sale to a Third Party for use or consumption of any such Product in a country.

"GAAP" means United States generally accepted accounting principles consistently applied by the applicable Person.

"ICH" means the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use.

"Indication" means the specific human disease or condition for which a Product has received Regulatory Approval, the approved label claim of which identifies such Indication; provided, that during the Development of a Licensed Antibody or Product (prior to Regulatory Approval), the Indication(s) for such Licensed Antibody or Product shall be the Indication(s) that are targeted by such Development efforts, as reflected in the applicable development plan and clinical trial protocols.

"IND" means (a) an Investigational New Drug Application as defined in the U.S. Food, Drug & Cosmetics Act and applicable regulations promulgated thereunder by the FDA; (b) a Clinical Trial Authorization filed with EU member states; or (c) the equivalent application to the equivalent Regulatory Authority in any other regulatory jurisdiction, the filing of which is necessary to initiate or conduct clinical testing of an investigational new drug in humans in such jurisdiction.

"IFRS" means International Financial Reporting Standards, as amended from time to time.

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

physical and analytical, safety, quality control, manufacturing, preclinical and clinical data, instructions, processes, formulae, expertise and information, regulatory filings and copies thereof, relevant to the development, manufacture, use or commercialization of and/or which may be useful in studying, testing, development, production or formulation of products, or intermediates for the synthesis thereof.

"Law" or "Laws" means all laws, statutes, rules, regulations, orders, judgments, or ordinances having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision.

"Licensed Antibody" means (a) any Antibody [*], or (b) any Antibody for which Novartis' Development, manufacture or Commercialization would infringe any XOMA IP but for the license granted to Novartis under this Agreement.

"[*]" means, with respect to any [*], the following has occurred: [*] or [*].

"[*]" means [*].

"Net Sales" means the net sales on behalf of Novartis and any of its Affiliates or sublicensees (each, a "Selling Party") for any Product sold to Third Parties other than sublicensees in bona fide, arms-length transactions, [*]. The deductions booked on an accrual basis [*] to calculate the recorded net sales from gross sales include[*]:

(a) normal trade and cash discounts;

(b) amounts repaid or credited by reasons of defects, rejections, recalls or returns;

(c) rebates and chargebacks to customers and Third Parties (including Medicare, Medicaid, Managed Healthcare and similar types of rebates);

(d) any amounts recorded in gross revenue associated with goods provided to customers for free;

(e) amounts provided or credited to customers through coupons and other discount programs;

(f) delayed ship order credits, discounts or payments related to the impact of price increases between purchase and shipping dates;

(h) [*]; and

(i) [*].

In the case of any sale or other disposal of a Product between or among Novartis and its Affiliates or sublicensees, for resale, Net Sales shall be calculated only on the value charged or invoiced on the first arm's-length sale thereafter to a Third Party. In the case of any sale which is not invoiced or is delivered before invoice, Net Sales shall be calculated at the time [*]. In the

case of any sale or other disposal for value, such as barter or counter-trade, of any Product, or part thereof, other than in an arm's length transaction exclusively for money, Net Sales shall be calculated on the value of the non-cash consideration received or the fair market price (if higher) of a Product in the country of sale or disposal.

In the event a Product is sold as a Combination Product, the Net Sales of a Product, for the purposes of determining royalty payments, shall be determined by multiplying the Net Sales of the Combination Product by the fraction, A/(A+B) where A is the weighted (by sales volume) average sale price in a particular country of a Product containing the Licensed Antibody as the sole active ingredient when sold separately in finished form and B is the weighted average sale price in that country of the product(s) containing the other component(s) as the sole active ingredient(s) when sold separately in finished form. Regarding prices comprised in the weighted average price when sold separately referred to above, if these are available for different dosages from the dosages of Licensed Antibody and other active ingredient components that are included in the Combination Product, then [*] in calculating the royalty-bearing Net Sales of the Combination Product. In the event that such weighted average sale price cannot be determined for both a Product and the other product(s) in combination, the calculation of Net Sales for purposes of determining royalty payments shall be [*].

For the avoidance of doubt, sales between Novartis, its Affiliates, sublicensees and designees shall not be considered Net Sales (unless such Person is the end user of a Product), which shall be calculated on Net Sales of Novartis, its Affiliates, sublicensees and designees to independent Third Party customers.

"Patent" means (a) all patents and patent applications in any country or supranational jurisdiction in the Territory, (b) any substitutions, divisionals, continuations, continuations-in-part, provisional applications, reissues, renewals, registrations, confirmations, re-examinations, extensions, supplementary protection certificates and the like of any such patents or patent applications, and (c) foreign counterparts of any of the foregoing.

"Person" means any individual, partnership, joint venture, limited liability company, corporation, firm, trust, association, unincorporated organization, governmental authority or agency, or any other entity not specifically listed herein.

"Phase I Clinical Trial" means a clinical study of an investigational product in human subjects with the primary objective of characterizing its safety, tolerability, and pharmacokinetics for future studies. The investigational product can be administered to patients as a single agent or in combination with other investigational or marketed agents and shall be deemed commenced when the first patient in such study has received his or her initial dose of a product.

"Phase II Clinical Trial" means a clinical study of an investigational product in patients with the primary objective of characterizing efficacy as well as generating more detailed safety, tolerability, and pharmacokinetics information. The investigational product can be administered to patients as a single agent or in combination with other investigational or marketed agents and shall be deemed commenced when the first patient in such study has received his or her initial dose of a product. Any clinical study conducted under a protocol which identifies such study as a "Phase

II" study (but excluding any study identified as a "Phase I/II" study unless such study otherwise satisfies the criteria in the first sentence of this definition) shall be deemed to be a Phase II Clinical Trial.

"Phase III Clinical Trial" means a clinical study of an investigational product in patients with the primary objective of confirming with statistical significance the efficacy and safety with the aim to obtain Regulatory Approval in any country as described in 21 C.F.R. 312.21(c), or a comparable clinical study prescribed by the relevant Regulatory Authority in a country other than the United States. The investigational product can be administered to patients as a single agent or in combination with other investigational or marketed agents and shall be deemed commenced when the first patient in such study has received his or her initial dose of a product. Any clinical study conducted under a protocol which identifies such study as a "Phase III" or "pivotal" study shall be deemed to be a Phase III Clinical Trial.

"Product" means any pharmaceutical product containing a Licensed Antibody (alone or with other active ingredients), in all forms, presentations, formulations, methods of administration and dosage forms.

"Prosecution and Maintenance" or "Prosecute and Maintain" means, with regard to a Patent, the preparation, filing, prosecution and maintenance of such Patent, as well as re-examinations, reissues, appeals, and requests for patent term adjustments and patent term extensions with respect to such Patent, together with the initiation or defense of interferences, the initiation or defense of oppositions and other similar proceedings with respect to the particular Patent, and any appeals therefrom, and any AIA Proceedings. For clarification, "Prosecution and Maintenance" or "Prosecute and Maintain" shall not include any other enforcement actions taken with respect to a Patent.

"Regulatory Approval" means, with respect to a Product in any country or jurisdiction, any approval (including where required, pricing and reimbursement approvals), registration, license or authorization from a Regulatory Authority in a country or other jurisdiction that is necessary to market and sell such Product in such country or jurisdiction.

"Regulatory Authority" means any governmental agency or authority responsible for granting Regulatory Approvals for Products, including the FDA, EMA and any corresponding national or regional regulatory authorities.

"Regulatory Materials" means regulatory applications, notifications, and registrations for Regulatory Approvals or other submissions made to or with a Regulatory Authority, together with all related correspondence to or from such Regulatory Authority, that are necessary or reasonably desirable in order to Develop or Commercialize a Product in a particular country, territory or possession in the Territory. Regulatory Materials include INDs, and BLAs, and amendments and supplements to any of the foregoing, and applications for pricing approvals.

"Target" means transforming growth factor beta 1 (TGFβ1), [*].

"Territory" means all countries of the world.

"Third Party" means any Person other than XOMA or Novartis that is not an Affiliate of XOMA or of Novartis.

"United States" or "U.S." means the United States of America and all of its territories and possessions.

"[*]" means (a) [*], and (b) [*].

"[*]" means the [*].

"Valid Claim" means a claim of (a) an issued Patent or (b) pending application for a Patent, in each case, that has not expired, lapsed, been cancelled or abandoned, or been dedicated to the public, disclaimed, or held unenforceable, invalid, or cancelled by a court or administrative agency of competent jurisdiction in an order or decision from which no appeal has been or can be taken, including through opposition, reexamination, reissue or disclaimer. An unissued claim in a pending Patent application shall only be deemed a Valid Claim to the extent such claim has not been pending for more than [*], provided that if such a claim ceases to be a Valid Claim by reason of the foregoing, then such claim shall again be deemed a Valid Claim in the event such claim subsequently issues within such Patent application.

"XOMA Background Patents" means any Patents, other than the XOMA Core Patents and any Patents that are part of any Acquiror IP, that are Controlled by XOMA or its Affiliates [*]. [*] included in the XOMA Background Patents.

"XOMA Core Patents" means the Patents listed in **EXHIBIT A-2** and all Patents claiming priority thereto.

"XOMA IP" means XOMA Know-How and XOMA Patents, but excluding all Acquiror IP.

"XOMA Know-How" means Know-How that is Controlled by XOMA or its Affiliates [*] for the Development, manufacture or Commercialization of Antibodies, Licensed Antibodies and/or Products, but excluding any Know-How that is part of any Acquiror IP.

"XOMA Patents" means the XOMA Core Patents and XOMA Background Patents.

"XOMA Regulatory Materials" means all Regulatory Materials and Regulatory Approvals owned or Controlled by XOMA or its Affiliates relating to Licensed Antibodies or Products in the Territory, whether as of the Effective Date or during the Term.

1.1 Additional Definitions. Each of the following definitions is set forth in the section of this Agreement indicated below:

Definition:	**Section**:
Abandonment	5.2.2
Act	5.7.1

Definition:	**Section**:
Agreement	Preamble
Auditor	4.7.2
Bankruptcy Code	3.3.1
BPCIA	5.7.2
Claims	8.1
Competing Infringing Activities	5.5
[*]	3.1.3(b)
Confidential Information	6.1
Development and Regulatory Milestone	4.2
Development and Regulatory Milestone Payment	4.2
Disclosing Party	6.1
[*]	3.1.3(b)
Effective Date	Preamble
Enforcing Party	5.5
Existing Confidentiality Agreement	6.1
Future IP	5.1.2
Indemnified Party	8.3.1
Indemnifying Party	8.3.1
Inventory	7.2(l)
Loans	4.2.4
Losses	8.1
NIBR	Definition of "Executive Officers" in Article 1
Note	4.2.4
Note Holder	4.2.4
Novartis	Preamble
Novartis Indemnitees	8.2
Novartis Patents	5.1.2
Novartis Products	5.1.2
Novartis Product IP	9.4.4(c)
Novartis Product-Related IP	9.4.4(d)
NVDI	4.2.4
Party or Parties	Preamble
Payment Breach	9.2.1
Process	2.5.2
Product Marks	5.8
[*]	5.2.1(b)
[*]	9.4.11
Receiving Party	6.1
[*]	4.3.2(e)
Royalty Term	4.3.2(a)
Sales & Royalty Report	4.4.2

Definition:	**Section**:
Selling Party	Definition of "Net Sales" in Article 1
[*]	9.4.11
Term	9.1
Trade Control Laws	11.6
XOMA	Preamble
XOMA Indemnitees	8.1
[*]	4.3.2(d)
[*]	4.3.2(d)

ARTICLE 2
DEVELOPMENT AND COMMERCIALIZATION

2 . 1 Development and Commercialization. Novartis shall, at its own costs and expense, undertake the following itself, or through its Affiliates or sublicensees:

2.1.1 Use Commercially Reasonable Efforts to Develop [*], including [*];

2.1.2 Where such Development efforts are successful, use Commercially Reasonable Efforts to seek to obtain Regulatory Approval [*] for such Products in such Indications; and

2.1.3 If Regulatory Approval is obtained, use Commercially Reasonable Efforts to (a) launch each such Product, and (b) further Commercialize each such Product.

Subject to compliance with the foregoing in Sections 2.1.1, 2.1.2 and 2.1.3, the Development and Commercialization of Licensed Antibodies and/or Products (as applicable) [*].

2.2 Regulatory; Manufacturing.

2.2.1 Novartis shall (a) determine the regulatory plans and strategies for the Licensed Antibodies and Products, (b) (either itself or through its Affiliates or sublicensees) make all Regulatory Filings with respect to the Products, and (c) be responsible for obtaining and maintaining Regulatory Approvals throughout the Territory in the name of Novartis or its Affiliates or sublicensees.

2.2.2 XOMA shall reasonably cooperate with and provide assistance to Novartis in connection with filings to any Regulatory Authority relating to the Licensed Antibodies and Products, including by executing any required documents, providing reasonable access to personnel and providing Novartis with copies of all reasonably required documentation. [*] associated with such cooperation and assistance to the extent such activities are conducted during the ninety (90) days following the Effective Date [*].

2.2.3 Novartis or its designated sublicensee(s) will be solely responsible for the manufacture and supply of the Licensed Antibodies and Products being Developed or Commercialized under this Agreement.

2.3 Reporting. Commencing in January 2016 and annually thereafter, Novartis shall provide XOMA with written reports detailing the activities of Novartis, its Affiliates and sublicensees with respect to the Development of (and, if applicable, pre-commercial launch activities for) Products in the Field in the Territory, both as to activities conducted during the prior Calendar Year and planned activities, in sufficient depth to enable XOMA to reasonably assess Novartis' compliance with Section 2.1. Novartis shall discuss with XOMA such report in a time and manner as mutually agreed by the Parties.

2.4 Subcontracting. Novartis shall have the right to engage Affiliates or Third Party subcontractors to perform certain of its obligations under this Agreement, subject to ensuring such Affiliates' and subcontractors' compliance with the Agreement. Novartis shall remain directly liable for any breach of this Agreement attributable to any act or omission of any Novartis Affiliate, subcontractor or sublicensee.

2.5 Transfer of Materials, Process and Know-How. Within ninety (90) days after the Effective Date:

2.5.1 XOMA shall, [*], transfer to Novartis the entire Inventory. [*] such Inventory under this Agreement [*]. XOMA shall transfer, and shall cause its contractors to transfer, the Inventory in accordance with all applicable Laws. The Inventory shall be provided "AS-IS", and XOMA expressly disclaims all representations and warranties with respect thereto, excepting only as to title and the right to transfer the Inventory to Novartis.

2.5.2 XOMA shall cooperate reasonably in good faith with Novartis to bring about and complete a smooth and orderly transition of the manufacture of each Licensed Antibody and Product existing as the Effective Date, including the Process for such Licensed Antibody and Product, to Novartis or to one Third Party or Affiliate of Novartis designated by Novartis. "Process" means, with respect to a Licensed Antibody or Product, [*], and [*], and [*], which [*] and [*] for the manufacture of such Licensed Antibody or Product. In support of the foregoing, upon request of Novartis, XOMA shall provide such technology transfer support services as described below to Novartis or to one Third Party or Affiliate of Novartis, as follows:

(a) During such ninety (90)-day period, XOMA shall use commercially reasonable efforts to ensure that Novartis has access to [*] and [*], including [*] and [*] the Process.

(b) During such ninety (90)-day period, Novartis and the [*] shall [*], [*] and [*] the Process.

(c) Each Party shall [*] in connection with the transfer of the Process, and in the case of [*], for clarity, [*] and [*] or [*]. Notwithstanding the foregoing, to the extent [*] with respect to [*] such ninety (90)-day period, [*] in connection therewith.

2.5.3 Without limiting the foregoing in Sections 2.5.1 and 2.5.2, or being limited thereby, XOMA shall use commercially reasonable efforts during such ninety (90) day period, to [*] and [*] or [*], including [*] that include [*] and [*] and [*], and [*] and [*] as described herein.

XOMA shall also use commercially reasonable efforts to [*] and [*] and [*] in connection with this Agreement, including in relation to any of the foregoing [*] as contemplated hereunder. Such activities shall be [*] to the extent performed during such ninety (90)-day period, and [*].

2.5.4 Notwithstanding any other provision of this Section 2.5, XOMA [*], or (b) [*] or [*], in each case in connection with [*] or [*]. XOMA shall use commercially reasonable efforts to [*] and provided that [*]. Such [*] during such ninety (90)-day period and [*].

2.5.5 All Know-How and documentation to be transferred to Novartis hereunder shall be provided in electronic form.

ARTICLE 3
LICENSE GRANTS

3.1 License Grants; [*].

3.1.1 License Grants. XOMA hereby grants to Novartis and its Affiliates an exclusive (even as to XOMA and its Affiliates) license, under the XOMA IP and XOMA Regulatory Materials to Develop, manufacture and Commercialize the Licensed Antibodies and Products for the Field in the Territory, including to conduct any and all medical affairs activities with respect thereto. The foregoing license set forth in this Section 3.1.1 shall bear royalties as set forth in Section 4.3.

3.1.2 Sublicensing. The license grant in Section 3.1.1 includes the right to grant and authorize sublicenses in multiple tiers, provided that: (a) Novartis shall require that each sublicensee comply with all applicable provisions of this Agreement; (b) Novartis shall remain directly responsible for each sublicensee's performance in connection with this Agreement; and (c) Novartis shall, [*] such sublicensee.

3.1.3 [*].

(a) [*] agrees that, during the Term of the Agreement, [*] or [*] (including [*]) with respect to [*].

(b) If [*] and if [*], then [*] shall [*] or [*] in connection with [*], and [*] will either (i) [*], provided that [*] or [*] in connection with [*] (and [*] shall be maintained and updated from time to time to [*]), or (ii) [*]. [*] during [*] shall [*] set forth in subsection (a). [*], as used in this subsection (b), means the [*] without [*] or [*].

3.2 Rights Retained by the Parties. For purposes of clarity, each Party retains all rights under the Know-How and Patents Controlled by such Party not expressly granted to the other Party pursuant to this Agreement; further, XOMA retains a non-exclusive, limited right under the XOMA IP solely in order to perform its obligations under this Agreement for the benefit of Novartis. Novartis shall not, and shall not permit any of its Affiliates or sublicensees to, practice or use any of the XOMA Patents or XOMA Know-How outside of the scope of the license granted under Section 3.1.1.

3.3 Rights in Bankruptcy.

3.3.1 The Parties agree that this Agreement constitutes an executory contract under Section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") for the license of "intellectual property" as defined under Section 101 of the Bankruptcy Code and constitutes a license of "intellectual property" for purposes of any similar laws in any other country in the Territory. The Parties further agree that Novartis, as licensee of such rights under this Agreement, will retain and may fully exercise all of its protections, rights and elections under the Bankruptcy Code, including, but not limited to, Section 365 (n) of the Bankruptcy Code, and any similar laws in any other country in the Territory. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against XOMA under the Bankruptcy Code and any similar laws in any other country in the Territory, Novartis will be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, and the same, if not already in its possession, will be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon its written request therefor, unless XOMA elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (i) above, following the rejection of this Agreement by or on behalf of XOMA upon written request therefor by Novartis.

3.3.2 All rights, powers and remedies of Novartis provided for in this Section 3.3 are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including under the Bankruptcy Code and any similar laws in any other country in the Territory). Novartis, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under the Bankruptcy Code). The Parties agree that they intend the following Novartis rights to extend to the maximum extent permitted by law, including for purposes of the Bankruptcy Code: (a) the right of access to any XOMA IP (including all embodiments thereof), or any Third Party with whom XOMA contracts to perform an obligation of XOMA under this Agreement which is necessary for the Development, registration, manufacture and/or Commercialization of Products in the Territory; (b) the right to contract directly with any Third Party described in (a) to complete the contracted work; and (c) the right to cure any breach of or default under any such agreement with a Third Party and set off the costs thereof against amounts payable to XOMA under this Agreement.

3.4 [*]. If requested by Novartis, XOMA shall cooperate reasonably with Novartis [*] to [*]. [*] associated with such [*] shall [*] and shall [*].

ARTICLE 4
FINANCIAL TERMS

4.1 Upfront Fee. In partial consideration for the licenses granted to Novartis hereunder, Novartis shall pay XOMA a non-refundable, non-creditable payment of Thirty-Seven Million Dollars (US$37,000,000) within thirty (30) days after receipt of invoice in the form of **EXHIBIT B**.

4.2 Development and Regulatory Milestone Payments. In further consideration of the licenses granted to Novartis hereunder, upon achievement of each of the milestone events relating to the Development or Regulatory Approval of a Licensed Antibody or Product, as applicable, set forth in the table immediately below (each, a "Development and Regulatory Milestone"), Novartis shall pay the corresponding [*] milestone payment (each, a "Development and Regulatory Milestone Payment") to XOMA as set forth in the following:

Milestone Number	Development and Regulatory Milestone	Development and Regulatory Milestone Payment(s)
1	[*]	US$[*]
2	[*]	US$[*]*
3	[*]	US$[*]
4	[*]	[*]: US$[*] [*]: US$[*]
5	[*]	[*]: US$[*] [*]: US$[*]
6	[*]	[*]: US$[*] [*]: US$[*]

* [*]

4.2.1 For clarity: (a) the aggregate of all Development and Regulatory Milestone Payments made under this Agreement shall not exceed [*]; (b) [*] Development and Regulatory Milestone Payment shall be [*] for the [*] Development and Regulatory Milestone; (c) Development and Regulatory Milestones may be achieved [*] or [*] that [*] Development and Regulatory Milestone; and (d) [*] refers to [*] (for clarity, [*] would be considered [*], but [*] would not be considered [*]).

4.2.2 If Development and Regulatory Milestone number 1 is not achieved, then, effective upon achievement of the first of any of Development and Regulatory Milestone numbers 2, 3, 4 and 5, Development and Regulatory Milestone number 1 shall also be considered achieved. If Development and Regulatory Milestone number 2 is not achieved, then, effective upon achievement of the first of any of Development and Regulatory Milestone numbers 3, 4 and 5, Development and Regulatory Milestone number 2 shall also be considered achieved. If Development and Regulatory Milestone number 3 is not achieved, then, effective upon the achievement of the first of any of Development and Regulatory Milestone numbers 4 and 5, Development and Regulatory Milestone number 3 shall also be considered achieved.

4.2.3 Within [*] following the achievement of a Development and Regulatory Milestone (including where a Development and Regulatory Milestone is considered achieved pursuant to Section 4.2.2), Novartis shall send a notice of such achievement in writing to XOMA.

Upon receipt of a notice of achievement of such Development and Regulatory Milestone, [*] with respect to the corresponding Development and Regulatory Milestone Payment. Novartis shall pay to XOMA such Development and Regulatory Milestone Payment within [*] after [*].

4.2.4 Upon delivery by Novartis to XOMA of written notice of achievement of Development and Regulatory Milestone Number 2, the amount of the Loans (as defined in the Note (as hereafter defined)) then outstanding under that certain Secured Note Agreement, dated May 26, 2005, as amended (as amended, restated, superseded or otherwise modified from time to time, the "Note"), between XOMA and Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation) ("NVDI"), which was assigned by NVDI to NIBR with XOMA's consent immediately prior to the execution of this Agreement, shall be reduced by US$7,300,000 and Novartis shall cause the then-current Note holder ("Note Holder") to record such reduction of the Note in its records. In the event that the outstanding principal amount of the Note, together with all accrued and unpaid interest thereon, is less than $7,300,000 upon the date of delivery by Novartis to XOMA of written notice of achievement of Development and Regulatory Milestone Number 2, then the Development and Regulatory Milestone Number 2 payment shall be increased in an amount equal to the difference between (x) US$7,300,000 and (y) the then-outstanding principal amount of the Note, together with all accrued and unpaid interest thereon.

4.3 Product Royalties.

4.3.1 Product Royalties. On a Product-by-Product basis, Novartis shall pay royalties on the Net Sales of each Product in the Territory, in all Indications in the Field, at the following rates, during the Royalty Term:

Aggregate Net Sales of a Product in any Calendar Year during the Royalty Term	**Royalty Rate**
Portion of Net Sales of such Product up to US$[*]	[*]%
Portion of Net Sales of such Product above US$[*] and up to and including US$[*]	[*]%
Portion of Net Sales of such Product above US$[*] and up to and including US$[*]	[*]%
Portion of Net Sales of such Product above US$[*] and up to and including US$[*]	[*]%
Portion of Net Sales of such Product above US$[*]	[*]%

4.3.2 Royalty Term and Adjustments.

(a) Novartis' royalty obligations to XOMA under this Section 4.3 shall commence on a Product-by-Product and country-by-country basis on the date of First Commercial Sale of such Product by Novartis, its Affiliates or sublicensees to a Third Party in the relevant

country and shall expire on a Product-by-Product and country-by-country basis upon the later of the following (the "Royalty Term"), as applicable:

(i) the expiration in such country of the last-to-expire Valid Claim in the XOMA Core Patents Covering such Product; and

(ii) ten (10) years after First Commercial Sale of such Product in the relevant country in the Territory.

(b) Notwithstanding anything in this Agreement to the contrary, and [*] provided for under this Agreement, for Net Sales of a Product in any country in which [*] such Product, during the Royalty Term the associated royalties pursuant to Section 4.3.1 shall be [*] from what otherwise would be payable by Novartis to XOMA under this Agreement. Further, [*] for a Product in a country in the Territory, [*] under this Agreement with respect to such Product in such country shall [*], which shall [*] this Agreement.

(c) If an event of [*] for a Product in any country has occurred, then so long as either (i) [*] such Product in such country, or (ii) [*] such Product in such country, then the Royalty Rate applicable to Net Sales of such Product in such country in accordance with in Section 4.3.1 shall be [*].

(d) Notwithstanding anything to the contrary in this Agreement, [*] responsible for the payment of [*] and other payment obligations, if any, [*] in connection with (i) any [*] which [*] and [*] under this Agreement, or (ii) which relate to [*] relating to any [*], (collectively, the "[*]"). All such payments in respect of [*] shall be made promptly [*] in accordance with [*] (collectively, [*] after each such payment has been made. For clarity, any payment obligations that may arise pursuant to Section [*] with respect to the [*] shall not be deemed to be a [*].

(e) In the event that [*] or [*] or [*] or [*], including [*] (collectively, "[*]"), [*] and [*] or otherwise and [*] with respect to [*] (including [*]) by [*]; *provided that* to the extent (if at all) [*] provides [*] having [*] any [*] under this Agreement, [*] hereunder shall be [*] as reasonably [*] under this Agreement.

(f) In the event that [*] or [*] in connection with the [*] under this Agreement, [*] and [*] or otherwise and [*] with respect to [*] (including [*]) by [*]; *provided that* to the extent (if at all) [*] provides [*] having [*] any [*] under this Agreement, [*] hereunder shall be [*] as reasonably [*] under this Agreement.

(g) Subject to, and without prejudice to, [*], in no event shall [*] such that the royalty payments due to XOMA from Novartis under Section 4.3 [*]. [*] with respect to a particular Product in a particular country [*] shall be [*] royalty payment amounts due to XOMA [*] that [*], provided further that [*] for such Product in such country, [*] with respect to any [*] any [*] hereunder.

4.4 Reports; Royalty Payments.

4.4.1 Until the expiration of Novartis' royalty payment obligations under this Article 4, Novartis agrees to make written reports to XOMA within [*] after the end of each Calendar Quarter covering sales of Product on a country-by-country basis in the Territory by Novartis, its Affiliates and sublicensees during such Calendar Quarter.

4.4.2 Each such written report ("Sales & Royalty Report") shall, with respect to each country, provide:

(a) number of units sold for the Products;

(b) the Net Sales for the Products; and

(c) the calculation of the royalty payment due on such Net Sales in the Territory pursuant to this Article 4.

4.4.3 Following receipt of each such Sales & Royalty Report, [*], Novartis shall make the royalty payment due to be paid to XOMA under Article 4 for the Calendar Quarter covered by such report.

4.5 Sales Milestone Payment. In addition to the payments referenced in Sections 4.1 through 4.4 above, Novartis shall pay XOMA the following sales milestone payments following the first respective Calendar Quarter in which the total Net Sales of all Products in the Territory first reach or exceed the thresholds specified in the table below for the Calendar Year in which such Calendar Quarter occurs. Following XOMA's receipt of a Sales & Royalty Report for a Calendar Quarter of a Calendar Year, if a sales milestone payment has been achieved, [*] Novartis shall pay XOMA the associated milestone payment within [*]. In the interest of clarity, (a) XOMA may earn more than one payment pursuant to this Section 4.5. in a given year (e.g., if total Net Sales of all Products in the Territory are US$[*] in a Calendar Year, and no previous sales milestone had been achieved under this Section 4.5, then all four (4) sales milestones would be achieved, and all four (4) associated milestone payments would be earned, in such Calendar Year), and (b) the aggregate of all payments made pursuant to this Section 4.5 shall not exceed US$[*].

Sales milestone	Associated milestone payment
Annual Net Sales first reach US$[*]	US$[*]
Annual Net Sales first reach US$[*]	US$[*]
Annual Net Sales first reach US$[*]	US$[*]
Annual Net Sales first reach US$[*]	US$[*]

4 . 6 Methods of Payments. All payments due from Novartis to XOMA under this Agreement shall be paid in Dollars by Novartis via wire transfer to a bank designated in writing in advance by XOMA. Any payment which falls due on a date which is not a Business Day in the location from which the payment will be made may be made on the next succeeding Business Day in such location.

4.7 Accounting.

4.7.1 Novartis shall keep complete, true and accurate books and records in accordance with its Accounting Standards in relation to this Agreement, including, in relation to Net Sales and royalties. Novartis shall keep such books and records for at least [*] years following the Calendar Quarter to which they pertain.

4.7.2 XOMA may, upon written notice to Novartis, appoint an internationally-recognized independent accounting firm (which firm is reasonably acceptable to Novartis, such acceptance not to be unreasonably delayed or conditioned) (the "Auditor") to inspect the relevant reports, statements, records or books of accounts (as applicable) of Novartis and/or its Affiliates to verify the accuracy of any Sales & Royalty Report. Before beginning its audit, the Auditor shall execute an undertaking reasonably acceptable to Novartis on customary terms by which the Auditor shall keep confidential all information reviewed during such audit. The Auditor shall have the right to disclose to XOMA its conclusions regarding any payments owed under this Agreement.

4.7.3 Novartis and its Affiliates shall make their records available for inspection by such Auditor during regular business hours at such place or places where such records are customarily kept, upon receipt of reasonable advance notice from XOMA. The records shall be reviewed solely to verify the accuracy of the Sales & Royalty Reports. [*]. In addition, XOMA shall only be entitled to audit the relevant books and records of Novartis relating to a Sales & Royalty Report for a period of [*] calendar years after receipt of the applicable Sales & Royalty Report. XOMA agrees to hold in strict confidence all information received and all information learned in the course of any audit or inspection, except to the extent necessary to enforce its rights under this Agreement or if disclosure is required by law, regulation or judicial order.

4.7.4 The Auditor shall provide its audit report and basis for any determination to Novartis at the time such report is provided to XOMA, before it is considered final. Novartis shall have the right to request a further determination by such Auditor as to matters which Novartis disputes within [*] following receipt of such report. Novartis will provide XOMA and the Auditor with a reasonably detailed statement of the grounds upon which it disputes any findings in the audit report and the Auditor shall undertake to complete such further determination within [*] after the dispute notice is provided, which determination shall be limited to the disputed matters. Any matter that remains unresolved shall be resolved in accordance with the dispute resolution procedures contained in Section 11.1.

4.7.5 In the event that the final result of the inspection reveals an undisputed underpayment or overpayment by Novartis, the underpaid or overpaid amount shall be settled promptly.

4.7.6 XOMA shall pay for such audits, as well as its own expenses associated with enforcing its rights with respect to any payments hereunder, except that in the event there is any upward adjustment in aggregate amounts payable for any year shown by such audit of more than [*] of the amount paid, Novartis shall pay for such audit.

4.8 Currency. All payments under this Agreement shall be payable in US Dollars. When conversion of payments from any foreign currency is required to be undertaken by Novartis, the US Dollar equivalent shall be calculated using Novartis' then-current standard exchange rate methodology as applied in its external reporting.

4.9 Late Payments. Any undisputed amount owed by Novartis to XOMA under this Agreement that is not paid on or before [*] the date such payment is due shall bear interest at a rate per annum equal to the lesser of (a) the thirty (30)-day United States dollar LIBOR rate in effect on the date that payment was due, as published by The Financial Times after such payment is due, plus [*], or (b) the highest rate permitted by applicable Law, in either case calculated on the number of days such payments are paid after such payments are due and compounded monthly; provided, that the foregoing shall not accrue on undisputed amounts that were paid after the due date as a result of mistaken XOMA actions (e.g., if a payment is late as a result of XOMA providing an incorrect account for receipt of payment).

4.10 Taxes.

4.10.1 Except as otherwise provided in this Section 4.10, each Party shall be responsible for any tax obligations of its own due to this Agreement, including but not limited to income tax and capital gains tax, and neither Party shall have any obligation towards the other Party in the event that the other Party fails to fully comply with its tax obligations.

4.10.2 All transfer, VAT, GST, documentary, sales, use, stamp, registration and other such taxes, and any conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated hereby, if any, shall be [*]. Novartis shall prepare and timely file all tax returns required to be filed in respect of any such taxes. The Parties shall reasonably cooperate in accordance with Applicable Laws to minimize any such transfer taxes payable in connection with this Agreement.

4.10.3 Subject to Section 4.10.4, if any taxes are required to be withheld by Novartis, Novartis will: (a) deduct such taxes from the payment made to XOMA; (b) timely pay the taxes to the proper taxing authority; (c) promptly send proof of payment to XOMA; and (d) reasonably assist XOMA in its efforts to obtain a credit for such tax payment. Each Party agrees to reasonably assist the other Party in lawfully claiming exemptions from and/or minimizing such deductions or withholdings under double taxation laws or similar circumstances.

4.10.4 Notwithstanding anything to the contrary in this Agreement, if Novartis assigns or transfers some or all of its rights and obligations to any Person and if, as a result of such action, the withholding or deduction of tax required by applicable Law with respect to payments under this Agreement is increased, then any amount payable under this Agreement shall be

increased to take into account such withheld taxes as may be necessary so that, after making all required withholdings (including withholdings on the withheld amounts), XOMA receives an amount equal to the sum it would have received had no such increased withholding been made.

4.10.5 For all tax purposes, both Parties agree to report the transactions contemplated by this Agreement in a manner consistent with its terms and to not take any position inconsistent therewith in any tax return, refund claim, litigation, or otherwise.

4.11 No Guarantee. XOMA and Novartis acknowledge and agree that nothing in this Agreement shall be construed as representing an estimate or projection of anticipated sales of any Product, and that the milestones and Net Sales levels set forth in this Agreement or that have otherwise been discussed by the Parties are merely intended to define the milestone payments and royalty obligations to XOMA in the event such milestones or Net Sales levels are achieved. Neither Party provides any representation, warranty or guarantee that the Development of any Product will be successful, that Regulatory Approval for any Product will be obtained, or that any other particular results will be achieved with respect to the Commercialization of any Product hereunder.

4.12 Costs. In addition to the specific costs to be assumed by each of XOMA and Novartis as described herein, each Party will be responsible for all costs that it incurs in exercising its rights and meeting its obligations under this Agreement, except as expressly set forth otherwise in this Agreement.

4.13 Set-off. If an Event of Default (as defined in the Note) shall have occurred and be continuing, and all amounts thereunder have become due and payable in accordance with Section 5(b) of the Note, Novartis may elect to deduct from any upfront fees, milestone payments and royalty payments to be made by it to XOMA under this Agreement and pay to Note Holder any amounts then due and payable by XOMA to Note Holder under the Note. Any such election shall be confirmed by prompt written notice to XOMA delivered in accordance with Section 11.5, which notice shall describe (a) the Event of Default that has occurred and is continuing and (b) provide an accounting for any and all amounts being deducted. Novartis acknowledges that XOMA has granted a security interest to Note Holder in XOMA's interest in all upfront fees, milestone payments, and royalty payments that may become due to XOMA pursuant to this Agreement.

ARTICLE 5
OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

5.1 Ownership.

5.1.1 Pre-Existing Patents and Know-How. XOMA shall retain all of its right, title and interest in, to and under the XOMA IP, and Novartis shall retain all of its rights, title and interest in, to and under the Patents and Know-How owned by it, except in each case to the extent that any such rights or licenses are expressly granted by one Party to the other Party under this Agreement.

5.1.2 Intellectual Property Arising Under This Agreement. Ownership of all data, Patents and Know-How generated, discovered, developed, invented, conceived or reduced to practice by or on behalf of Novartis, its sublicensees, XOMA (if any), or Affiliates of the Parties, whether solely by any such party or jointly by one or more such parties, in connection with the Development, manufacture and/or Commercialization of the Licensed Antibodies and Products under this Agreement, and all intellectual property rights therein, will be determined in accordance with the U.S. laws of inventorship (collectively, all such data, Patents and Know-How, the "Future IP", and all Patents included in or claiming priority to the foregoing set forth in this Section 5.1.2, the "Novartis Patents"). All Regulatory Approvals for the Licensed Antibodies and Products hereunder shall be made in the name of and owned by Novartis or its Affiliates or sublicensees. The Parties acknowledge and agree that XOMA's interest in the Future IP shall be part of the XOMA IP and subject to the exclusive license granted in Section 3.1.1.

5.1.3 Invention Assignment Agreements.

(a) XOMA hereby covenants to Novartis that all contractors and employees of XOMA and its Affiliates will be under the obligation to assign all right, title and interest in and to such Novartis Patents and their inventions and discoveries relating thereto, whether or not patentable, to XOMA as the sole owner thereof. XOMA shall assign such right, title and interest in the Novartis Patents to Novartis in accordance with Section 5.1.2. For clarity, [*] shall not be deemed to be contractors of XOMA or its Affiliates.

(b) Novartis hereby covenants to XOMA that all contractors and employees of Novartis and its Affiliates and sublicensees will be under the obligation to assign all right, title and interest in and to such Novartis Patents and their inventions and discoveries relating thereto, whether or not patentable, to Novartis as the sole owner thereof.

5.2 Prosecution and Maintenance of Patents.

5.2.1 [*] Patents.

(a) Subject to Section 5.2.2, as between the Parties, [*] shall have the first right (but not the obligation) to Prosecute and Maintain the [*] Patents using outside counsel reasonably acceptable to [*]. [*] shall keep [*] informed as to material developments with respect to the Prosecution and Maintenance of such Patents, including by timely providing copies of all substantive office actions or any other substantive documents that [*] receives from or submits to any patent office, including notice of all interferences, reissues, re-examinations, oppositions or, subject to Section 5.7, requests for patent term extensions and providing [*] a reasonable opportunity to review and comment on all substantive filings and communications with any patent agency regarding any [*] Patent.

(b) Subject to Section 5.2.2, as between the Parties, [*] shall have the first right (but not the obligation) to Prosecute and Maintain the [*] Patents. [*] shall keep [*] informed as to material developments with respect to the Prosecution and Maintenance of the [*] Patents [*], including by providing copies of all substantive office actions or any other substantive documents that such Party receives from or submits to any patent office, including notice of all

interferences, reissues, re-examinations, AIA Proceedings, oppositions or, subject to Section 5.7, requests for patent term extensions.

(c) Each Party shall designate appropriate patent counsel who shall be responsible for communicating and consulting with the other Party's appropriate patent counsel to determine from time to time which [*] Patents should be [*]. Such counsel shall confer within ninety (90) days of the Effective Date to [*] as to which [*] Patents shall be [*] and to determine the timing and process for [*] Patents going forward.

5.2.2 Filing Decision or Prosecution Lapse. If, during the Term, the Party, in exercising its right pursuant to Section 5.2.1 to Prosecute and Maintain a [*] Patent in any country, decides not to file such Patent or intends to allow such Patent to lapse or become abandoned without having first filed a substitute Patent ("Abandonment"), such prosecuting Party shall notify in writing and consult with the other Party regarding such decision or intention at least sixty (60) days prior to the date upon which the subject matter of such Patent shall become unpatentable or such Patent shall lapse or become abandoned, and such other Party shall thereupon have the right (but not the obligation) to assume the Prosecution and Maintenance thereof at its own expense with counsel of its own choice. If [*] assumes the Prosecution and Maintenance of any [*] Patent pursuant to this Section 5.2.2, then such [*] Patent shall thereafter [*] and [*] under this Agreement. and for the avoidance of doubt, where such [*] Patent had been a [*] Patent, then from that time forward it shall [*]. For clarity, (a) [*] shall not be obligated to [*] under this Section 5.2.2 and [*] shall not have the rights set forth in this Section 5.2.2 with respect to [*], and (b) [*] shall not have the rights set forth in this Section 5.2.2 with respect to [*], unless [*].

5.3 Patent Costs. [*] costs and expenses associated with [*] Prosecution and Maintenance activities under Section 5.2.

5.4 Defense of Claims Brought by Third Parties. If a Party becomes aware of, or as of the Effective Date is aware of, any claim that the Development or Commercialization of a Licensed Antibody or Product in or for the Territory infringes or misappropriates the intellectual property rights of any Third Party, such Party shall promptly notify the other Party. In any such instance, the Parties shall as soon as practicable thereafter discuss in good faith regarding the best response to such notice, subject to Article 8, and Novartis shall have the first right (but not the obligation) to defend such claim, at Novartis' cost and expense (subject to any other provision of this Agreement [*], or [*]). If Novartis does not undertake such defense within ninety (90) days of receiving notice of such infringement or misappropriation, then XOMA shall have the right to assume such defense. The Party undertaking such defense, shall keep the other Party reasonably informed of the progress of any such defense, and such other Party shall have the right to participate with counsel of its own choice at its own expense.

5.5 Enforcement. Each Party shall promptly notify the other Party in writing if it reasonably believes that any [*] Patent is infringed by a Third Party with respect to the manufacture, sale, offer for sale, use or importation of a Licensed Antibody or Product in the Territory (collectively, "Competing Infringing Activities"). [*] shall have the sole right, but not the obligation, to enforce [*] Patents with respect to Competing Infringing Activity, or to defend any declaratory judgment action with respect thereto. [*] shall have the sole right, but not

the obligation, to enforce [*] Patents with respect to Competing Infringing Activity, or to defend any declaratory judgment action with respect thereto. The Party initiating or defending any such action under this Section 5.5 (the "Enforcing Party") shall keep the other Party reasonably informed of the progress of any such action, and such other Party shall have the right to participate with counsel of its own choice at its own expense. In any event, the other Party shall reasonably cooperate with the Enforcing Party, including providing information and materials, at the Enforcing Party's request and expense, and joining as a plaintiff to such action to the extent necessary for standing.

5.6 Recovery. Any recovery received as a result of any action under Section 5.4 or 5.5 shall be used first to reimburse the Parties for the costs and expenses (including attorneys' and professional fees) incurred in connection with such Action (and not previously reimbursed), and the remainder of the recovery shall be [*], provided that any such remaining portion of recoveries [*] (including [*] included in such recoveries) shall be [*].

5.7 Patent Term Extensions.

5.7.1 Novartis shall be responsible for determining the strategy for applying for the extension of the term of any patents for which it has responsibility to prosecute, maintain and defend under this Article 5, such as under the "U.S. Drug Price Competition and Patent Term Restoration Act of 1984" (the "Act"), the Supplementary Certificate of Protection of the Member States of the European Union and other similar measures in any other country. If requested by Novartis, and at Novartis' cost, XOMA shall apply for and use its reasonable efforts to obtain such an extension or, should the law require Novartis (or one of its respective Affiliates, subcontractors or sublicensees hereunder) to so apply, XOMA hereby gives permission to Novartis to do so (in which case XOMA agrees to cooperate with Novartis in the exercise of such authorization and shall execute such documents and take such additional action as Novartis may reasonably request in connection therewith). Novartis and XOMA agree to cooperate with one another in obtaining any patent extension hereunder as directed by Novartis.

5.7.2 Novartis shall be responsible for determining the strategy with respect to certifications, notices and patent enforcement procedures regarding patents for which it has responsibility to prosecute, maintain and defend under this Article 5 under the Act and the Biologics Price Competition and Innovation Act of 2009 (the "BPCIA"). XOMA shall cooperate, as reasonably requested by Novartis, in a manner consistent with this Section 5.7. XOMA hereby authorizes Novartis to: (a) provide in any BLA or in connection with the BPCIA, a list of patents (that may include XOMA Patents as required under the BPCIA; (b) except as otherwise provided in this Agreement, exercise any rights exercisable by Novartis as patent owner under the Act or the BPCIA; and (c) exercise any rights that may be exercisable by Novartis as reference product sponsor under the BPCIA, including (1) engaging in the patent resolution provisions of the BPCIA with regard to patents for which it has responsibility to prosecute, maintain and defend under this Article 5; and (2) determining which patents will be the subject of immediate patent infringement action under § 351(l)(6) of the BPCIA; provided, that with respect to Novartis' exercise of rights under the BPCIA, Novartis shall consult with a representative of XOMA designated by XOMA in writing and qualified to receive confidential information pursuant to § 365(l) of the BPCIA with respect to Novartis' exercise of any rights exercisable as reference product sponsor, including providing such representative with timely copies of material correspondence relating to such

matters, providing such representative the opportunity, reasonably in advance of any related Novartis action, to comment thereon and to consult with and consider in good faith the requests and suggestions of XOMA with respect to such matters.

5.7.3 In the event that Novartis desires to apply for an extension of any patents for which XOMA has responsibility to prosecute, maintain and defend under this Article 5 under the Act, the Supplementary Certificate of Protection of the Member States of the European Union or any other similar measures in any other country; or utilize any such patent for purposes of engaging in the patent resolution provisions or bringing a patent infringement action under the BPCIA; the Parties shall meet in good faith to discuss strategy for such activity, provided that XOMA shall not be obligated to agree to the use of any such patent for any such activity.

5.8 Trademarks. Novartis shall have the right to brand the Products using Novartis related trademarks and any other trademarks and trade names it determines appropriate for the Product, which may vary by country or within a country ("Product Marks"). Novartis shall own all rights in the Product Marks and register and maintain the Product Marks in the countries and regions it determines reasonably necessary.

ARTICLE 6
CONFIDENTIALITY

6.1 Confidentiality; Exceptions. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing, the Parties agree that a Party and its Affiliates and representatives (the "Receiving Party") shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement any Know-How or other confidential and proprietary information and materials, patentable or otherwise, in any form (written, oral, photographic, electronic, magnetic, or otherwise) which is disclosed to it by the other Party or its Affiliates or representatives (the "Disclosing Party"), including trade secrets, Know-How, inventions or discoveries, proprietary information, formulae, processes, techniques and information relating to a Party's past, present and future marketing, financial and Development activities of any product or potential product or useful technology of the Disclosing Party and the pricing thereof (collectively, "Confidential Information"), except to the extent that it can be established by the Receiving Party that such Confidential Information:

(a) was in the lawful knowledge and possession of the Receiving Party prior to the time it was disclosed to the Receiving Party, as evidenced by written records kept in the ordinary course of business, or other documentary proof of actual use by the Receiving Party;

(b) was otherwise developed independently by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as evidenced by written records kept in the ordinary course of business, or other documentary proof of actual use by the Receiving Party;

(c) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(d) became generally available to the public or otherwise part of the public domain after its disclosure to the Receiving Party hereunder other than through any act or omission of the Receiving Party in breach of this Agreement; or

(e) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others.

All XOMA Know-How that is specific to the Development and/or manufacture of any Licensed Antibody and the XOMA Regulatory Materials shall be considered Confidential Information of both XOMA and Novartis (it being understood that both XOMA and Novartis will be deemed to be the Disclosing Party with respect thereto and the exceptions in Sections 6.1(a) and (e) shall not apply to XOMA with respect to such XOMA Know-How and the XOMA Regulatory Materials). Subject to and without prejudice to the foregoing, any Confidential Information disclosed by either Party (or their Affiliates) prior to the Effective Date pursuant to the Confidentiality Agreement between XOMA (US) LLC and Novartis Pharmaceuticals Corporation dated June 17, 2015 (the "Existing Confidentiality Agreement") shall be Confidential Information of such Party for all purposes under this Agreement, it being understood and agreed that this Agreement supersedes and replaces the Existing Confidentiality Agreement with respect to such Confidential Information and the rights and obligations of the Parties with respect thereto.

6.2 Authorized Disclosure. Except as expressly provided otherwise in this Agreement, a Receiving Party may use and disclose Confidential Information of the Disclosing Party as follows:

(a) under appropriate confidentiality provisions at least as protective of such Confidential Information as those in this Agreement, as reasonably necessary for performance of its obligations or exercise of rights granted in this Agreement (including the rights to Develop and Commercialize Licensed Antibodies and Products) including in filing or prosecuting patent applications in accordance with Section 5.2, prosecuting or defending litigation, complying with applicable Law (subject to clause (b) below), seeking and obtaining Regulatory Approval, conducting non-clinical activities or clinical trials, preparing and submitting INDs to Regulatory Authorities, and marketing Products, in each case in accordance with this Agreement;

(b) to the extent disclosure is required by Law; provided, that if a Receiving Party is required by Law to make any such disclosure of a Disclosing Party's Confidential Information it will, where legally permitted and practicable, give reasonable advance notice to the Disclosing Party of such disclosure requirement, afford the Disclosing Party an opportunity to secure, and, if requested by the Disclosing Party, reasonably cooperate with the Disclosing Party to, secure confidential treatment of such Confidential Information required to be disclosed, and disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose as advised by the Receiving Party's legal counsel;

(c) in communication with actual or potential investors, lenders, acquirers, merger partners, consultants, professional advisors, collaborators, donors, or funding sources as reasonably necessary, and (with respect to XOMA) with its licensors as necessary to

satisfy its reporting obligations with respect to a Licensed Antibody or Product, in each case under appropriate confidentiality provisions substantially equivalent to those of this Agreement; or

(d) to the extent mutually agreed to in writing by the Parties.

6.3 Disclosure of Agreement.

6.3.1 Disclosure of Agreement Terms.

(a) Except to the extent required by Law or any securities exchange or governmental authority or any tax authority to which any Party is subject or submits or as otherwise permitted in accordance with this Section 6.3, neither Party shall make any public announcements concerning the terms of this Agreement or otherwise disclose the terms of this Agreement to any Third Party without the prior written consent of the other, which shall not be unreasonably withheld, conditioned or delayed. Each Party agrees to provide to the other Party a copy of any public announcement regarding this Agreement or the subject matter hereof, as practicable under the circumstances, reasonably prior to its scheduled release. Each Party shall have the right to expeditiously review and recommend changes to any such announcement by the other Party, and, except as otherwise required by securities exchange listing requirements or applicable Law, approve such announcement and the Party whose announcement has been reviewed shall remove any Confidential Information of the reviewing Party.

(b) Notwithstanding the foregoing, to the extent information regarding this Agreement has already been publicly disclosed, either Party may subsequently disclose the same information to the public without the consent of the other Party. Each Party shall also be permitted to disclose the terms of this Agreement, in each case on a need to know basis under appropriate confidentiality provisions substantially equivalent to those of this Agreement, to its actual or potential investors, lenders, acquirers, merger partners, consultants, professional advisors, donors, or funding sources. Novartis may, in the ordinary course of business without XOMA's consent, inform its customers, suppliers and business contacts that Novartis has obtained the right under this Agreement to sell Products in the Territory.

(c) Each Party shall give the other Party a reasonable opportunity to review those portions of all filings with the United States Securities and Exchange Commission (or any stock exchange, including Nasdaq, or any similar regulatory agency in any country other than the U.S.) describing the terms of this Agreement (including any filings of this Agreement) prior to submission of such filings, and shall give due consideration to any reasonable comments by the non-filing Party relating to such filing, including the provisions of this Agreement for which confidential treatment should be sought.

6.4 Remedies. Each Party shall be entitled to seek, in addition to any other right or remedy it may have, at Law or in equity, a temporary injunction or other injunctive relief, without the posting of any bond or other security, enjoining or restraining the other Party from any violation or threatened violation of this Article 6.

6.5 Publications. XOMA shall not make any public disclosure (whether written, electronic, oral or otherwise) relating to any Licensed Antibody or Product without the prior written consent of Novartis; provided, that the foregoing shall not apply to information which is in the public domain or any public disclosure required by law or governmental regulation or by the rules of any recognized stock exchange. For the avoidance of doubt, Novartis, any of its Affiliates or sublicensees may, without any required consents from XOMA, (a) issue press releases, disclosures, and other public statements as it deems appropriate in connection with the Development and Commercialization of Licensed Antibodies or Products under or in connection with this Agreement, and (b) publish or have published information about clinical trials related to the Licensed Antibodies or Products, including the results of such clinical trials; *provided however* if Novartis plans to issue a press release that in its judgment contains material adverse information regarding this Agreement in its entirety or a Product or Licensed Antibody under this Agreement, then Novartis shall use commercially reasonable efforts to provide XOMA with reasonable prior notice of such press release.

6.6 Clinical Trial Register. Each Party agrees that each clinical study and each nonclinical study with respect to a Licensed Antibody or Product that is required to be posted pursuant to applicable Law or applicable industry codes, including the PhRMA Code or the equivalent industry code of practice, on clinicaltrials.gov or any other similar registry shall be so posted. Unless otherwise agreed upon by the Parties (and as permitted by applicable Law or applicable industry codes), Novartis shall be responsible for such posting for the Licensed Antibodies and Products.

ARTICLE 7
REPRESENTATIONS; WARRANTIES; COVENANTS

7.1 Representations and Warranties of Both Parties. Each Party hereby represents and warrants to the other Party, as of the Effective Date, that:

(a) Such Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;

(b) Such Party has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder;

(c) This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with the terms hereof;

(d) The execution, delivery and performance of this Agreement by such Party does not conflict with any agreement or any provision thereof, or any instrument or understanding, oral or written, to which it is a party or by which it is bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party;

(e) No government authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any applicable Laws currently in effect, is or will be necessary for, or in connection with, the transaction contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements except as may be required to conduct clinical trials or to seek or obtain Regulatory Approvals of the Products; and

(f) It is not debarred or excluded from reimbursement by the FDA (or subject to a similar sanction of EMA or any other Regulatory Authority) or subject of an FDA debarment or exclusion investigation or proceeding (or similar proceeding of EMA or other Regulatory Authority). To its knowledge, it has not (i) employed and has not used a contractor or consultant that has employed, any individual or entity debarred or excluded from reimbursement by the FDA (or subject to a similar sanction of EMA or any other Regulatory Authority), or, (ii) employed any individual who or entity that is the subject of an FDA debarment or exclusion investigation or proceeding (or similar proceeding of EMA or other Regulatory Authority), in each case in the conduct of any Development of the Products.

7.2 Representations and Warranties of XOMA. XOMA hereby represents and warrants to Novartis that (except as set forth in the schedules of disclosures attached hereto as **SCHEDULE 1**) as of the Effective Date:

(a) The Patents listed in **EXHIBIT A** comprise a complete and accurate list of all Patents existing as of the Effective Date Controlled by XOMA that [*] exists as of the Effective Date, and with respect to which [*] (provided that [*] with respect to [*] solely to the extent of [*]);

(b) XOMA has the right to use and disclose and to enable Novartis to use and disclose (in each case under conditions of confidentiality consistent with Section 6.2) the XOMA Know-How and XOMA Regulatory Materials, and XOMA has the right to grant all rights and licenses it purports to grant to Novartis with respect to the XOMA IP, the XOMA Regulatory Materials and the Licensed Antibodies and Products under this Agreement, free and clear of all liens, claims, security interests or encumbrances of any kind;

(c) XOMA has not granted any right or license to any Third Party that conflicts or interferes with or limits the scope of any of the rights or licenses granted to Novartis hereunder, [*];

(d) (i) Neither XOMA nor its Affiliates has received any written notice of any claim that any Patent or Know-How owned or controlled by a Third Party would be or is infringed or misappropriated by the manufacture, use, sale, offer for sale or importation of the Licensed Antibodies or Products in the form that they exist as of the Effective Date and, (ii) to the knowledge of XOMA, the manufacture, use, sale, offer for sale or importation of the Licensed Antibodies and Products in the form that they exist as of the Effective Date and without combination with any other product would not and does not infringe or misappropriate any Patent or Know-How owned or controlled by a Third Party [*];

(e) To the knowledge of XOMA, the issued patents in the XOMA Patents are valid and enforceable without any claims, challenges, oppositions, nullity actions, interferences, inter-partes reexaminations, AIA Proceedings, derivation proceedings, or other proceedings pending or threatened and XOMA has filed and prosecuted patent applications within the XOMA Patents in good faith and complied with all duties of disclosure with respect thereto;

(f) To the knowledge of XOMA, XOMA has not committed any act, or omitted to commit any act, that may cause the XOMA Patents to expire prematurely or be declared invalid or unenforceable;

(g) There are no Patents or Know-How Controlled by XOMA or its Affiliates as of to the Effective Date that, to XOMA's knowledge, are necessary for the manufacture, Development or Commercialization of the Licensed Antibodies and Products as contemplated hereunder, other than the XOMA IP licensed to Novartis hereunder;

(h) There are no contracts or other agreements between XOMA (or its Affiliate) and any Third Parties that relate to the Development, manufacture or Commercialization of the Licensed Antibodies or Products as contemplated hereunder, other than the contracts listed on **SCHEDULE 1** and designated as responsive to Section 7.2(h), and such contracts are in full force and effect, and XOMA has not received or provided any notice of breach or termination with respect to any such contract;

(i) XOMA has not, nor to its knowledge, has any Third Party acting under authority of XOMA, [*] with respect to any Licensed Antibody or Product, or [*] with respect to any Licensed Antibody or Product. XOMA has, and to its knowledge such Third Parties have, [*] with respect to the Licensed Antibodies and Products and [*]. All [*] in compliance with all applicable Law, including, if and as applicable, cGMP, cGCP and cGLP, and all Regulatory Materials submitted to any Regulatory Authority [*];

(j) To XOMA's knowledge as of the Effective Date, [*] concerning the Licensed Antibodies or Products or active pharmaceutical ingredients therein that [*] and [*];

(k) XOMA has not entered into a government funding relationship that would result in rights to any Licensed Antibodies or Product residing in the US Government, National Institutes of Health, National Institute for Drug Abuse or other agency, and the licenses granted hereunder are not subject to overriding obligations to the US Government as set forth in Public Law 96 517 (35 U.S.C. 200 204), as amended, or any similar obligations under the laws of any other country;

(l) Attached as **EXHIBIT C** is a detailed list of, to XOMA's knowledge, any and all quantities and forms of Licensed Antibodies, Products, and all cell banks, bioassay materials, cell lines, Antibodies, sequences and constructs for the expression and production of such Licensed Antibodies, (collectively, the "Inventory") existing as of the Effective Date owned by XOMA, whether in XOMA's possession or in the possession of Third Parties. To the extent that, following the Effective Date, XOMA discovers any omissions with respect to **EXHIBIT C**, XOMA shall promptly provide Novartis with an updated **EXHIBIT C**, and XOMA

shall not be deemed to be in breach of this subsection (l) if such update pertains to additional materials being added to **EXHIBIT C** or removal of not significant quantities of previously listed materials, and in each case such update is provided to Novartis within sixty (60) days of the Effective Date (and in any event within thirty (30) days of such discovery); and

(m) Prior to the Effective Date, XOMA has disclosed to Novartis and provided [*].

7.3 Representations and Warranties of Novartis. Novartis hereby represents and warrants to XOMA that as of the Effective Date, neither Novartis nor any of its Affiliates is [*] that, as [*] for [*], and where [*].

7.4 Covenants of XOMA. XOMA hereby covenants to Novartis that:

7.4.1 XOMA will maintain all XOMA Third Party Agreements, including the XOMA Third Party Agreements set forth on **EXHIBIT D**, in full force and effect during the Term, and will not (a) terminate any XOMA Third Party Agreement, nor (b) amend any XOMA Third Party Agreement, in each case in any manner that adversely effects the rights of Novartis under this Agreement.

7.4.2 XOMA will not grant during the Term, any right or license to any Third Party that conflicts or interferes with or limits the scope of any of the rights or licenses granted to Novartis hereunder.

7.5 Covenants of Novartis. Novartis hereby covenants to XOMA that its and its Affiliates', sublicensees' and representatives' performance in connection with this Agreement shall comply with all applicable Laws.

7.6 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT ANY PATENTS ARE VALID OR ENFORCEABLE, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 8
INDEMNIFICATION

8.1 Indemnification by Novartis. Novartis shall indemnify, defend and hold harmless XOMA and its Affiliates, and its or their respective directors, officers, employees and agents (the "XOMA Indemnitees"), from and against any and all liabilities, damages, losses, costs and expenses, including the reasonable fees of attorneys and other professional Third Parties (collectively, "Losses"), arising out of or resulting from any and all Third Party suits, claims, actions, proceedings or demands ("Claims") brought against any XOMA Indemnitee based upon:

(a) The negligence, recklessness or wrongful intentional acts or omissions of Novartis or its Affiliates and its or their respective directors, officers, employees and agents, in connection with Novartis' performance of its obligations or exercise of its rights under this Agreement;

(b) any breach of any representation or warranty or express covenant made by Novartis under Article 7 or any other provision under this Agreement; or

(c) the Development of the Products that is conducted by or under the authority of Novartis [*], the handling and storage by or on behalf of Novartis of any chemical agents or other molecules for the purpose of conducting such Development by or on behalf of Novartis, and the manufacture, marketing, Commercialization and sale by Novartis, its Affiliates or sublicensees of the Products, including any product liability, personal injury, property damage or other damage, in each case resulting from any of the foregoing activities described in this Section 8.1(c);

in each case, provided that, such indemnity shall not apply to the extent such Losses arise from a cause or event described in clause (a), (b) or (c) of Section 8.2.

8.2 Indemnification by XOMA. XOMA shall indemnify, defend and hold harmless Novartis and its Affiliates, and its or their respective directors, officers, employees and agents (the "Novartis Indemnitees"), from and against any and all Losses, arising out of or resulting from any and all Claims against any Novartis Indemnitee based upon:

(a) the negligence, recklessness or wrongful intentional acts or omissions of XOMA or its Affiliates or its or their respective directors, officers, employees and agents, in connection with XOMA's performance of its obligations or exercise of its rights under this Agreement;

(b) any breach of any representation or warranty or express covenant made by XOMA under Article 7 or any other provision under this Agreement; or

(c) [*] and [*] or [*], including (i) any [*] damage or other damage, and (ii) [*], in each case resulting from any of the foregoing activities described in this Section 8.2(c);

in each case, provided that, such indemnity shall not apply to the extent such Losses arise from a cause or event described in clause (a), (b) or (c) of Section 8.1.

8.3 Procedure.

8.3.1 Notice of Claim. A Person entitled to indemnification under this Article 8 (an "Indemnified Party") shall give prompt written notification to the Party from whom indemnification is sought (the "Indemnifying Party") of the commencement of any action, suit or proceeding relating to a Claim for which indemnification is being sought or, if earlier, upon the assertion of any such Claim (it being understood and agreed, however, that the failure by an Indemnified Party to give notice of a Claim as provided in this Section 8.3 shall not relieve the

Indemnifying Party of its indemnification obligation under this Agreement except and only to the extent that such Indemnifying Party is actually damaged as a result of such failure to give notice).

8.3.2 Assumption of Defense; Participation. Within twenty (20) days after delivery of such notification, the Indemnifying Party may, upon written notice thereof to the Indemnified Party, assume control of the defense of such Claim with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party does not assume control of such defense, the Indemnified Party shall control such defense and, without limiting the Indemnifying Party's indemnification obligations, the Indemnifying Party shall reimburse the Indemnified Party for all costs and expenses, including reasonable attorney fees, incurred by the Indemnified Party in defending itself within thirty (30) days after receipt of any invoice therefor from the Indemnified Party. The Party not controlling such defense may participate therein at its own expense; provided, that if the Indemnifying Party assumes control of such defense and the Indemnified Party in good faith concludes, based on advice from counsel, that the Indemnifying Party and the Indemnified Party have conflicting interests with respect to such Claim, the Indemnifying Party shall be responsible for the reasonable fees and expenses of counsel to the Indemnified Party in connection therewith. The Party controlling such defense shall keep the other Party advised of the status of such action, suit, proceeding or claim and the defense thereof and shall consider recommendations made by the other Party with respect thereto.

8.3.3 Settlements. The Indemnified Party shall not agree to any settlement of such Claim without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, delayed or conditioned. The Indemnifying Party shall not agree to any settlement of such Claim or consent to any judgment in respect thereof that does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, that imposes any liability or obligation on the Indemnified Party or that acknowledges fault by the Indemnified Party without the prior written consent of the Indemnified Party.

8.3.4 Mitigation of Loss. Each Indemnified Party will take and will procure that its Affiliates take all such reasonable steps and actions as are necessary or as the Indemnifying Party may reasonably require in order to mitigate any Claims (or potential losses or damages) under this Article 8. Nothing in this Agreement shall or shall be deemed to relieve any Party of any common law or other duty to mitigate any losses incurred by it.

8.4 SPECIAL, INDIRECT AND OTHER LOSSES. EXCEPT FOR A BREACH OF ARTICLE 6 OR FOR CLAIMS OF A THIRD PARTY THAT ARE SUBJECT TO INDEMNIFICATION UNDER THIS ARTICLE 8, NEITHER NOVARTIS NOR XOMA, NOR ANY OF THEIR RESPECTIVE AFFILIATES OR SUBLICENSEES, WILL BE LIABLE TO THE OTHER PARTY TO THIS AGREEMENT, ITS AFFILIATES OR ANY OF THEIR SUBLICENSEES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR LOST PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), INDEMNITY OR CONTRIBUTION, AND IRRESPECTIVE OF WHETHER THAT PARTY OR ANY REPRESENTATIVE OF THAT PARTY HAS BEEN ADVISED OF,

OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF, ANY SUCH LOSS OR DAMAGE.

8.5 No Exclusion. Neither Party excludes any liability for death or personal injury caused by its negligence or that of its employees, agents or sub-contractors.

ARTICLE 9
TERM AND TERMINATION

9.1 Term; Expiration. This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to this Article 9, shall remain in effect until the expiration of the Royalty Term throughout the Territory (the "Term"). Upon expiration of the Term, all rights and licenses granted to Novartis pursuant to Section 3.1 shall survive, and shall become fully paid-up, perpetual and irrevocable.

9.2 Termination for Cause.

9.2.1 If either Novartis or XOMA is in material breach of any material obligation hereunder, the non-breaching Party may give written notice to the breaching Party specifying the claimed particulars of such breach, and in the event such material breach is not cured within [*] after such notice (or, if such material breach relates to non-payment of monies due (a "Payment Breach"), then [*] after such notice), the non-breaching Party shall have the right thereafter to terminate this Agreement immediately by giving written notice to the breaching Party to such effect; provided, that, except with respect to [*], if [*] and [*] in accordance with [*] and [*], [*]. In the event that arbitration is commenced with respect to any alleged breach hereunder, no purported termination of this Agreement pursuant to this Section 9.2.1 shall take effect until the resolution of such arbitration. Any termination by any Party under this Section and the effects of termination provided herein shall be without prejudice to any damages or other legal or equitable remedies to which it may be entitled.

9.3 Termination by Novartis. Novartis may terminate this Agreement without cause at any time after the Effective Date in its entirety or on a Licensed Antibody-by-Licensed Antibody or country-by-country basis at any time on one hundred eighty (180) days prior written notice.

9.4 Effects of Expiration or Termination. Upon any early termination (but not expiration) of this Agreement in its entirety or termination with respect to a country in the Territory other than any termination by Novartis under Section 9.2.1 due to XOMA's breach:

9.4.1 Program Continuity. The Parties intend that upon any termination of this Agreement, in whole or in part, the transfer from Novartis to XOMA of rights, materials, data and documentation related to the Licensed Antibodies and Products that are the subject of such termination as described below be conducted as expeditiously as is reasonably practicable, with the goal of ensuring an uninterrupted supply of Products to patients (including to patients enrolled in any clinical trials that are in progress as of the date of such termination), and in keeping with sound scientific, clinical and manufacturing practices and all applicable Laws.

9.4.2 License Termination; Cessation of Development and Commercialization by Novartis. All rights and licenses granted to Novartis under this Agreement shall be terminated and of no further force and effect, provided that if such termination is only with respect to a particular Licensed Antibody or country, then such termination shall apply only to such Licensed Antibody and Products containing such Licensed Antibody or with respect to the terminated countries, as applicable. Novartis shall cease its Development (except as set forth in Section 9.4.5) and Commercialization of such Licensed Antibodies and Products and in such countries as applicable, or, in the event of termination of this Agreement in its entirety, throughout the Territory.

9.4.3 Return of Confidential Information and Materials. If this Agreement is terminated in its entirety, Novartis shall promptly return to XOMA all Know-How, data, materials and other Confidential Information made available to Novartis by XOMA under this Agreement.

9.4.4 Licenses. Upon termination of this Agreement in whole or in part, except where Novartis has terminated this Agreement pursuant to Section 9.2, effective upon the date effective date of such termination:

(a) Novartis hereby grants XOMA [*] license under the Novartis Product IP (as defined below) solely to Develop, import, use, make, have made, offer for sale and sell, effective upon termination of this Agreement: (i) if this Agreement is terminated with respect to a particular Licensed Antibody, such Licensed Antibodies and Products containing such Licensed Antibody; (ii) if this Agreement is terminated with respect to a particular country, Licensed Antibodies and Products in such countries; and (iii) if this Agreement is terminated in full, Licensed Antibodies and Products throughout the Territory, subject to [*].

(b) Novartis hereby grants XOMA [*] license under the Novartis Product-Related IP (as defined below) solely in connection with XOMA's practice of its license granted under subsection (a) above, subject to [*].

(c) "Novartis Product IP" means (i) all Novartis Patents that [*] of a Licensed Antibody or Product, and (ii) all Know-How [*] in connection with this Agreement that [*] any Licensed Antibody or Product.

(d) "Novartis Product-Related IP" means (i) all Novartis Patents, other than the Novartis Patents included in the Novartis Product IP, that [*] any Licensed Antibody or Product, and (ii) all Know-How [*] in connection with this Agreement, other than the Know-How included in the Novartis Product IP, that [*] any Licensed Antibody or Product.

(e) XOMA may decline to accept at any time either or both of the licenses set forth in subsections (a) and (b) above upon written notice to Novartis. Novartis shall [*] for any [*] to the extent arising from [*] set forth in [*].

9.4.5 Clinical Development Activities. With respect to any clinical Development activities of Novartis directed to the Products with respect to the terminated countries that are in progress at the time of notice of termination, at XOMA's election prior to the effective date of termination, Novartis shall to the extent not prohibited by applicable Law or any Regulatory

Authority transfer to XOMA any such clinical Development activities, including responsibility for payment of all fees, costs and expenses associated with such clinical Development activities, and forward all interim and final reports and underlying data from such activities to XOMA to enable such clinical Development activities to be transferred to XOMA without interruption. Such transfer shall [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*].

9.4.6 Regulatory Filings. To the extent permitted by applicable Law, and within thirty (30) days of XOMA's request, Novartis will promptly assign to XOMA all Regulatory Approvals and Regulatory Materials submitted and Controlled by Novartis for the Products solely with respect to the terminated countries and/or Products (as applicable). If Novartis is restricted under applicable Law from transferring ownership of any of the foregoing items to XOMA (including in order to continue to conduct any transition activities as contemplated in this Section 9.4, including the conduct of clinical Development activities, if applicable, pursuant to Section 9.4.5 above), Novartis shall grant XOMA (or its designee) an exclusive right of reference or use to such item. Novartis shall, [*], take actions reasonably necessary to effect such transfer or grant of right of reference or use to XOMA, including by making such filings as may be required with Regulatory Authorities and other governmental authorities in the Territory that may be necessary to record such assignment or effect such transfer. Such transfer shall [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*]. All such Regulatory Approval and Regulatory Materials shall be deemed to be XOMA's Confidential Information as of the effective date of such termination and the exceptions in Sections 6.1(a) and (e) shall not apply to Novartis with respect to such Regulatory Approval and Regulatory Filings.

9.4.7 Data. Within thirty (30) days of the effective date of such termination, Novartis shall transfer and assign to XOMA, all data from preclinical, non-clinical and clinical studies conducted by or on behalf of Novartis, its Affiliates or sublicensees relating to any Licensed Antibodies or Products and all pharmacovigilance data (including all adverse event databases) relating to any Licensed Antibodies or Products, which data shall be deemed to be XOMA's Confidential Information as of the effective date of such termination and the exceptions in Sections 6.1(a) and (e) shall not apply to Novartis with respect to such data. At XOMA's request, Novartis shall provide XOMA with assistance with any inquiries and correspondence with Regulatory Authorities relating to any Licensed Antibody or Product for a period of twelve (12) months after such termination. Such transfer shall [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*].

9.4.8 Inventory Transfer. As requested by XOMA, Novartis shall transfer to XOMA or its designee any and all inventory of Licensed Antibodies and Products (including all research materials, final product, bulk drug substance, intermediates, work-in-process, formulation materials, reference standards, drug product clinical reserve samples, packaged retention samples, and the like) then in the possession of Novartis, its Affiliates or sublicensees. Such activities shall [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*].

9.4.9 Patent Prosecution and Enforcement. After the effective date of termination, Novartis shall promptly transfer to XOMA, and XOMA shall thereafter be solely

responsible for, the prosecution and maintenance of the XOMA Patents. Such transfer shall [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*].

9.4.10 Termination Press Releases. In the event of termination of this Agreement for any reason and subject to the provisions of Section 6.3.1, the Parties shall cooperate in good faith to coordinate public disclosure of such termination and the reasons therefor, and shall not, except to the extent required by applicable Law, disclose such information without the prior approval of the other Party. The principles to be observed in such disclosures shall be accuracy, compliance with applicable Law and regulatory guidance documents, and reasonable sensitivity to potential negative investor reaction to such news.

9.4.11 [*] Additional Transition Assistance, and Other Matters. The Parties shall timely [*] that are [*] as well as any additional transition assistance that may be reasonably requested by XOMA (to be undertaken [*] to the extent [*]). [*] may also include [*] relating to the terminated Licensed Products; however, [*]. In the event that, [*] (or such [*] as the Parties may agree), [*] as to any [*] in connection therewith, [*] notice to the other Party [*] pursuant to this Section 9.4.11. Notwithstanding the foregoing, [*], by providing [*] with written notice [*] (or [*] pursuant to the preceding sentence), [*], it being understood that, in such event, [*]; provided that if [*] that are [*], then upon such notice being provided, [*] and shall [*] unless and until [*] that are [*]. Following such notice, the Parties shall [*] and [*], which [*] and [*] and [*], and shall [*]. If the Parties [*], then each Party shall [*] and [*], provided that [*], and [*] under this Section 9.4.11. [*] (or [*], as the case may be), each Party will [*] and [*] for the [*] and [*], [*]. The Parties will also [*] this Agreement, as may be amended at such time. [*], each Party [*]. Neither Party may [*] other than for the sole purpose of [*] or as expressly permitted in this Section 9.4.11; provided that [*] if [*] and [*], in which event [*]. [*] (or, if [*], then [*]), [*] provided [*] consistent with [*] this Agreement. [*]. [*], and [*] or [*]. The Parties shall [*], however, each Party shall [*] under this Section 9.4.11.

9.5 Effects of Termination for Novartis Termination due to XOMA Breach. Upon any early termination of this Agreement in its entirety by Novartis under Section 9.2.1 due to XOMA's breach, then in addition to any other right or remedy Novartis may have, at Law or in equity, then the following Sections shall survive such termination [*].

ARTICLE 10 ACCRUED RIGHTS; SURVIVING PROVISIONS.

10.1.1 Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination, relinquishment or expiration, including the payment obligations under Article 4 hereof, and any and all damages or remedies arising from any breach hereunder. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly indicated to survive termination of this Agreement.

10.1.2 In addition to any other provisions of this Agreement that are elsewhere expressly stated to survive, the provisions of [*] shall survive the termination of this Agreement in its entirety or expiration of this Agreement for any reason, in accordance with their respective terms and conditions, and for the duration stated, and where no duration is stated, shall survive

indefinitely. In addition: (a) [*] shall survive for a period of [*] years after the effective date of termination or expiration of this Agreement, and (b) Section [*] shall survive for a period of [*] years after the effective date of termination or expiration of this Agreement.

ARTICLE 11
MISCELLANEOUS

11.1 Dispute Resolution. If a dispute between the Parties arises under this Agreement, either Party shall have the right to refer such dispute in writing to the respective Executive Officers, and such Executive Officers shall attempt in good faith to resolve such dispute. If the Parties are unable to resolve a given dispute pursuant to the preceding sentence within thirty (30) days after referring such dispute to the Executive Officers, either Party may have the given dispute settled in court pursuant to the remainder of this Section 11.1. Each Party irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement. Each Party agrees to commence any such action, suit or proceeding in the United States District Court for the Southern District of New York or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any such action, suit or proceeding arising out of this Agreement in the United States District Court for the Southern District of New York, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding anything in this Agreement to the contrary, a Party may seek a temporary restraining order or a preliminary injunction from any court of competent jurisdiction, at any time, in order to prevent immediate and irreparable injury, loss, or damage on a provisional basis, pending the resolution of any dispute hereunder, including under this Section 11.1.

11.2 Governing Law. This Agreement and any dispute arising from the performance or breach hereof shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any choice of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any subject matter hereof.

11.3 Assignment. Neither Party may assign this Agreement, in any manner including by operation of law, without the consent of the other Party, except as otherwise provided in this Section 11.3. Either Party may assign this Agreement in whole or in part to any Affiliate without the consent of the other Party. Either Party may also assign this Agreement, without the consent of the other Party, to any successor or Third Party that acquires all or substantially all of the business or assets of the assigning Party to which this Agreement relates, whether by sale, transfer, merger, reorganization, operation of law or otherwise, and Novartis may assign this Agreement to any Third Party in connection with any divestiture undertaken to satisfy an applicable governmental authority or agency; provided, that in each case such assigning Party provides the other Party with written notice of such assignment and the assignee agrees in writing to assume performance of all assigned obligations. The terms of this Agreement shall be binding upon and

shall inure to the benefit of the successors, heirs, administrators and permitted assigns of the Parties. Any purported assignment in violation of this Section 11.3 shall be null and void.

11.4 Force Majeure. No Party shall be held liable or responsible to the other Party nor be deemed to be in default under, or in breach of any provision of, this Agreement for failure or delay in fulfilling or performing any obligation (other than a payment obligation) of this Agreement when such failure or delay is due to force majeure, and without the fault or negligence of the Party so failing or delaying. For purposes of this Agreement, force majeure is defined as causes beyond the reasonable control of the Party, including acts of God; material changes in Law; war; civil commotion; destruction of production facilities or materials by fire, flood, earthquake, explosion or storm; labor disturbances; epidemic; and failure of public utilities or common carriers. In such event XOMA or Novartis, as the case may be, shall immediately notify the other Party of such inability and of the period for which such inability is expected to continue. The Party giving such notice shall thereupon be excused from such of its obligations under this Agreement as it is thereby disabled from performing for so long as it is so disabled for up to a maximum of ninety (90) days, after which time XOMA and Novartis shall promptly meet to discuss in good faith how to best proceed in a manner that maintains and abides by the Agreement. To the extent possible, each Party shall use reasonable efforts to minimize the duration of any force majeure.

11.5 Notices. Any notice or request required or permitted to be given under or in connection with this Agreement shall be given in writing and personally delivered or sent by certified mail (return receipt requested), facsimile transmission (receipt verified), or overnight express courier service (signature required), prepaid, to the Party for which such notice is intended, at the address set forth for such Party below:

If to XOMA:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: Legal Department
Fax: 510-644-2011

With a required copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
Attention: Barbara A. Kosacz
Fax: +1 650 849 7400

If to Novartis:

Novartis International Pharmaceutical Ltd.
131 Front Street

Hamilton HM 12 Bermuda
Attn: General Counsel
Fax: (441) 296-5083

with a required copy to:

Novartis Institutes for BioMedical Research, Inc.
220 Massachusetts Avenue
Cambridge, Massachusetts 02139
Attn: General Counsel
Fax: (617) 871-3354

or to such other address for such Party as it shall have specified by like notice to the other Parties, provided that notices of a change of address shall be effective only upon receipt thereof. If delivered personally or by facsimile transmission, the date of delivery shall be deemed to be the date on which such notice or request was given. If sent by overnight express courier service, the date of delivery shall be deemed to be the next Business Day after such notice or request was deposited with such service. If sent by certified mail, the date of delivery shall be deemed to be the third (3rd) Business Day after such notice or request was deposited with the U.S. Postal Service.

11.6 Export Clause. Each Party acknowledges that the Laws of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Each Party agrees that it will not export or re-export restricted commodities or the technical data of the other Party in any form without the appropriate United States and foreign government licenses. Novartis shall not be required by the terms of this Agreement to be directly or indirectly involved in the provision of goods, services or technical data that may be prohibited by applicable export control, economic sanctions laws and anti-boycott regulations of the United States and other governments ("Trade Control Laws") if performed by Novartis. It shall be in the sole discretion of Novartis to refrain from being directly or indirectly involved in the provision of goods, services or technical data that may be prohibited by applicable Trade Control Laws.

11.7 Waiver. Neither Party may waive or release any of its rights or interests in this Agreement except in writing. The failure of either Party to assert a right hereunder or to insist upon compliance with any term of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. No waiver by either Party of any condition or term in any one or more instances shall be construed as a continuing waiver of such condition or term or of another condition or term.

11.8 Severability. If any provision hereof should be held invalid, illegal or unenforceable in any jurisdiction, the Parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties hereto as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

11.9 Certain Amendments. Simultaneously with the execution of this Agreement, the Parties shall, or shall cause their Affiliates (as may be applicable), to execute (a) an amendment in the form of **EXHIBIT F** to the Note, (b) an amendment in the form of **EXHIBIT G** to the Security Agreement dated May 26, 2005, as amended, between XOMA and NVDI, which was assigned by NVDI to NIBR immediately prior to the execution of this Agreement, and (c) an amendment in the form of **EXHIBIT H** to the Amended and Restated Research, Development and Commercialization Agreement, dated July 1, 2008, as amended, between XOMA and NVDI.

11.10 Entire Agreement. This Agreement, together with the Schedules and Exhibits hereto, set forth all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties and supersede and terminate all prior agreements and understanding between the Parties with respect to the subject matter of this Agreement. In particular, and without limitation, this Agreement supersedes and replaces the Existing Confidentiality Agreement and any and all term sheets relating to the transactions contemplated by this Agreement and exchanged between the Parties prior to the Effective Date. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to the subject matter of this Agreement other than as set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by the respective authorized officers of the Parties.

11.11 Independent Contractors. Nothing herein shall be construed to create any relationship of employer and employee, agent and principal, partnership or joint venture between the Parties. Each Party is an independent contractor. Neither Party shall assume, either directly or indirectly, any liability of or for the other Party. Neither Party shall have the authority to bind or obligate the other Party and neither Party shall represent that it has such authority.

11.12 Headings; Construction; Interpretation. Headings used herein are for convenience only and shall not in any way affect the construction of or be taken into consideration in interpreting this Agreement. The terms of this Agreement represent the results of negotiations between the Parties and their representatives, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and each of the Parties hereto hereby waives the application in connection with the interpretation and construction of this Agreement of any rule of Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Any reference in this Agreement to an Article, Section, subsection, paragraph, clause, Schedule or Exhibit shall be deemed to be a reference to any Article, Section, subsection, paragraph, clause, Schedule or Exhibit, of or to, as the case may be, this Agreement. Except where the context otherwise requires, (a) any reference to any Law refers to such Law as from time to time enacted, repealed or amended or any replacement thereof, (b) the words “herein,” “hereof” and “hereunder,” and words of similar import, refer to this Agreement in its entirety and not to any particular provision hereof, (c) the words “include,” “includes,” and “including,” shall be deemed to be followed by the phrase “but not limited to,” “without limitation” or words of similar import, (d) the word “or” is used in the

inclusive sense (and/or), (e) provisions that refer to Persons acting "under the authority of Novartis" shall include Novartis' Affiliates or sublicensees and those Persons acting "under the authority of XOMA" shall include XOMA's Affiliates or licensees (other than Novartis); conversely, those Persons acting "under the authority of Novartis" shall exclude XOMA, its Affiliates and licensees and those Persons acting "under the authority of XOMA" shall exclude Novartis, its Affiliates and sublicensees; (f) the word "notice" shall require notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (g) words of any gender include the other gender; (h) words using the singular or plural number also include the plural or singular number, respectively; and (i) provisions that require that a Party or the Parties "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing.

11.13 Further Actions. Each Party shall execute, acknowledge and deliver such further instruments, and do all such other acts, as may be necessary or appropriate in order to carry out the expressly stated purposes and the clear intent of this Agreement.

11.14 Parties in Interest; No Third Party Beneficiary Rights. All of the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors, heirs, administrators and permitted assigns. The provisions of this Agreement are for the sole benefit of the Parties and their successors and permitted assigns, and they shall not be construed as conferring any rights to any Third Party (including any third party beneficiary rights).

11.15 Performance by Affiliates. To the extent that this Agreement imposes obligations on Affiliates of a Party, such Party agrees to cause its Affiliates to perform such obligations.

11.16 Extension to Affiliates. Novartis shall have the right to extend the rights and obligations granted in this Agreement to one or more of its Affiliates. All applicable terms and provisions of this Agreement shall apply to any such Affiliate to which this Agreement has been extended to the same extent as such terms and provisions apply to Novartis. Novartis shall remain directly liable for any acts or omissions of its Affiliates, and Novartis hereby expressly waives any requirement that XOMA exhaust any right, power or remedy, or proceed directly against such Affiliate, for any obligation or performance hereunder prior to proceeding directly against Novartis.

11.17 Counterparts. This Agreement may be signed in counterparts, each and every one of which shall be deemed an original, notwithstanding variations in format or file designation which may result from the electronic transmission, storage and printing of copies from separate computers or printers. Facsimile signatures and signatures transmitted via PDF shall be treated as original signatures.

[*Signature page to follow***]**

[*Signature page to License Agreement*]

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

XOMA (US) LLC

By: /s/ Jim R. Neal
Name: Jim R. Neal
Title: VP Business Development

NOVARTIS INTERNATIONAL PHARMACEUTICAL LTD.

By: /s/ H.S. Zivi
Name: H.S. Zivi
Title: Director

By: /s/ Michael Jones
Name: Michael Jones
Title: Director

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT A-1 – [*]

[*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT A-2 - XOMA Core Patents

[*]

]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT B – Form of Novartis Invoice

Sender's Logo

Street
Town, Country
Phone and Fax Nr.

INVOICE
INVOICE DATE:
__ _____ 20__

INVOICE No.: XXXX

Bill To:

For:
[Product X Royalties 1st Quarter 20__**]**
[(or Milestone for event Y)]

P.O. Box HM 2899
Hamilton, HM LX, Bermuda
Attn: Simon Zivi/Laurieann Chaikowsky

And via fax to no. +1 441 296 5083

DESCRIPTION [*Please specify the event for which the invoice is due]*	**AMOUNT (USD)**
Product X [royalties] [January – March 20__] calculated based on Novartis provided [sales & royalty report] (see attached worksheet) [(Or milestone payment for event Y, according to paragraph XY of agreement ZZZZ dated ……)] Novartis Contract Code **Please remit by wire transfer within [[___] days] to:** Receiving Bank - …….. Swift Code - …….. ABA Number - …….. Credit Account - …….. Beneficiary - ……..	US$ 000'000.00
TOTAL	000'000,00

If you have any questions concerning this invoice, contact ……
or e-mail to ……..
VAT -Reg. No. Xxxxxxxxxx (if applicable)

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT C – Inventory

[*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT D – XOMA Third Party Agreements

[*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT E – [*]

[*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT F – Form of Amendment to the Note

{Filed as Exhibit 10.3 to the Quarterly Report}

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT G – Form of Amendment to the Security Agreement

AMENDMENT TO SECURITY AGREEMENT

THIS AMENDMENT TO SECURITY AGREEMENT (this "Amendment"), dated as of September 30, 2015, is entered into between XOMA (US) LLC, a Delaware limited liability company (the "Company") and Novartis Institutes for BioMedical Research, Inc., a Delaware corporation ("NIBR").

RECITALS

A. The Company and NIBR are parties to that certain Security Agreement dated as of May 26, 2005, as amended (as amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), and that certain Secured Note Agreement, dated May 26, 2005, as amended (as amended, restated, supplemented or otherwise amended from time to time, the "Note"), which in each case were assigned from Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation) to NIBR immediately prior to the execution of this Amendment.

B. The Company and NIBR are concurrently herewith entering into an amendment to the Note to, among other things, extend the maturity date of the Note.

C. The Company and Novartis International Pharmaceutical Ltd., a corporation organized under the laws of Bermuda ("Novartis") are concurrently herewith entering into that certain License Agreement dated the date hereof (the "License").

D. The Company and NIBR desire to amend the Security Agreement on the terms set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Definitions. Capitalized terms used herein but not otherwise defined shall have the meaning given to such terms in the Security Agreement.

2. Amendments to Security Agreement.

2.1 Recital A of the Security Agreement is hereby amended and restated in its entirety as follows:

"A. In accordance with that certain Secured Note Agreement, dated as of May 26, 2005, between the Company and the Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Note") and that certain Research, Development and Commercialization Agreement dated as of May 26, 2005 between the Company and Novartis Vaccines and

Diagnostics, Inc. (f/k/a Chiron Corporation) (the "Collaboration Agreement"), the Lender has agreed to make loans to the Company;"

2.2 Section 2 of the Security Agreement is hereby amended and restated in its entirety as follows:

"2. Collateral. The Collateral shall consist of all right, title and interest of the Company in and to the following, whether now existing or hereafter acquired:

(a) the Company's interest in the Collaboration and its share of Pre-tax Profits from Collaboration Products (as each such term is defined in the Collaboration Agreement), payable to the Company pursuant to Section 6.2 of the Collaboration Agreement as well as the Company's interest in all milestone payments, royalty-style payments or option payments that may become due to Company pursuant to the Amended and Restated Research, Development and Commercialization Agreement, effective as of July 1, 2008 by and between Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation) and the Company, as amended; and

(b) the Company's interest in all upfront fees, milestone payments, and royalty payments that may become due to Company pursuant to the License; and

(c) all proceeds of the foregoing Collateral."

3. Limitation of Amendments. Except as expressly provided herein and modified hereby, the Security Agreement shall remain unmodified and in full force and effect. This Amendment shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of the Security Agreement or any of the instruments or agreements referenced therein, or (b) otherwise prejudice any right or remedy which NIBR may now have or may have in the future under or in connection with the Security Agreement or any of the instruments or agreements referenced therein. This Amendment shall be construed in connection with and as part of the Security Agreement and all terms, conditions, representations, warranties, covenants and agreements set forth in the Security Agreement, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties; No Default: By its execution hereof, the Company hereby certifies to NIBR as follows:

4.1 The representations and warranties of the Company set forth in the Security Agreement are true and correct as of the date hereof; and

4.2 No default has occurred and is continuing which with the giving of notice or the passage of time would become an Event of Default, and no Event of Default has occurred and is continuing or will arise immediately after giving effect to or as a result of this Amendment.

5. Assignment. The parties acknowledge and agree that NIBR may assign or transfer its rights and obligations in the Security Agreement to any permitted transferee of the Note without the prior written consent of the Company.

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

6 . Further Assurances. The Company shall execute and deliver such other documents, and take such other actions, as may be requested by NIBR from time to time to give effect to the provisions of this Amendment.

7 . Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8 . Entire Agreement. This Amendment, together with the Security Agreement and the Note constitute and contain the entire agreement of NIBR and the Company with respect to their respective subject matters, and supersede any and all prior agreements and understandings relating to the subject matter thereof.

[*signature pages follow*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

XOMA (US) LLC

By: /s/ Jim R. Neal
Name: Jim R. Neal
Title: VP Business Development

NOVARTIS INSTITUTES FOR BIOMEDICAL RESEARCH, INC.

By: /s/ Christian Klee
Name: Christian Klee
Title: VP + CFO

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

EXHIBIT H – Form of Amendment to the Amended and Restated Research, Development and Commercialization Agreement

{Filed as Exhibit 10.4 to the Quarterly Report}

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

SCHEDULE 1 – Exceptions to Representations and Warranties

[*]

Certain confidential portions of this exhibit have been omitted and replaced with "[***]". such identified information has been excluded from this exhibit because it is (i) not material and (ii) would likely cause competitive harm to the company if disclosed.

Exhibit 10.2

CERTAIN CONFIDENTIAL PORTIONS OF THIS EXHIBIT HAVE BEEN OMITTED AND REPLACED WITH "[***]". SUCH IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF DISCLOSED.

NOVARTIS VACCINES AND DIAGNOSTICS, INC.
5300 Chiron Way
Emeryville, California 94608

September 30, 2015

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710

Attention:

Re: CD40 Agreement

Ladies and Gentlemen:

Reference is made to (i) that certain Amended and Restated Research, Development and Commercialization Agreement, dated July 1, 2008, as amended (the "CD40 Agreement"), between XOMA (US) LLC, a Delaware limited liability company ("XOMA"), and Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation), a Delaware corporation ("NVDI").

XOMA and NVDI hereby agree to the terms of this letter agreement as an amendment to the CD40 Agreement. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the CD40 Agreement, unless the context requires otherwise.

Section 1.41 of the CD40 Agreement is hereby amended and restated in its entirety as follows:

"**1.41 Royalty-Style Payment Period"** means, with respect to any Collaboration Product, Resumed Product, NVDI Ongoing Product, XOMA Ongoing Product or Reactivated Product, the longer of (i) the period during which such Product is covered by a Valid Claim of Related XOMA Patent Rights or Related NVDI Patent Rights as the case may be or (ii) ten (10) years from the launch of such Product on a country-by-country basis."

The Parties acknowledge and agree that the milestone set forth in Section 3.3(a) of the CD40 Agreement has been paid in full.

Section 3.6(a) of the CD40 Agreement is hereby amended and restated in its entirety as follows:

"**(a)** Subject to the adjustment provisions of Section 3.6(g), NVDI shall pay to XOMA royalty-style payments on Net Sales of each Collaboration Product [*] at the following rates during the applicable Royalty-Style Payment Period:

(i) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is equal to or less than [*];

(ii) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is greater than [*] and equal to or less than [*]; and

(iii) [*] of the portion of the aggregate Net Sales for such Collaboration Product in each calendar year that is greater than [*]."

Except as expressly stated herein, all provisions of the CD40 Agreement remain in full force and effect. [*].

This letter agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Please confirm that the foregoing is in accordance with your understanding by acknowledging your agreement in the space provided below.

Very truly yours,

NOVARTIS VACCINES AND DIAGNOSTICS, INC.

By: _____
Name: MARIA A. ROCCA-ICHIKAWA
Title: DIRECTOR, FINANCE

XOMA (US) LLC

By: /s/ Jim R. Neal
Name: Jim R. Neal
Title: VP Business Development

Exhibit 31.1

Certification

I, James R. Neal, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XOMA Corporation;

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 officers 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))) for the registrant and we 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 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 officers 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 registrant's board of directors (or persons performing the equivalent function):

   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.

Date: November 5, 2020

/s/ JAMES R. NEAL

James R. Neal
Chief Executive Officer

Exhibit 31.2

Certification

I, Thomas Burns, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XOMA Corporation;

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 officers 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))) for the registrant and we 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 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 officers 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 registrant's board of directors (or persons performing the equivalent function):

   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.

Date: November 5, 2020

/s/ THOMAS BURNS

Thomas Burns

Senior Vice President, Finance and Chief Financial Officer

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), James R. Neal, Chief Executive Officer of XOMA Corporation (the "Company"), and Thomas Burns, Senior Vice President, Finance and Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Quarterly Report on Form 10-Q for the three and nine months ended September 30, 2020, to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in Exhibit 32.1 fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 5th day of November, 2020

/s/ JAMES R. NEAL

James R. Neal
Chief Executive Officer

/s/ THOMAS BURNS

Thomas Burns
Senior Vice President, Finance and Chief Financial Officer

3. This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of XOMA Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.