Table of Contents

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, 2022

OR

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

For the transition period from _____to_____

Commission File No. 001-39801

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
8.625% Series A Cumulative Perpetual Preferred Stock, par value $0.05	XOMAP	The Nasdaq Global Market
Depositary Shares (each representing 1/1000th interest in a share of 8.375% Series B Cumulative Perpetual Preferred Stock, par value $0.05)	XOMAO	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 October 31, 2022, the registrant had 11,450,823 shares of common stock, $0.0075 par value per share, outstanding.

XOMA CORPORATION

FORM 10-Q

TABLE OF CONTENTS

GLOSSARY OF TERMS AND ABBREVIATIONS

Abbreviations	Definition
2018 Common Stock ATM Agreement	At The Market Issuance Sales Agreement with HCW dated December 18, 2018
2021 Series B Preferred Stock ATM Agreement	At The Market Issuance Sales Agreement with B. Riley dated August 5, 2021
'40 Act	Investment Company Act of 1940
ACA	The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010
Affimed	Affimed N.V.
Affitech	Affitech Research AS
Affitech CPPA	the Company's Commercial Payment Purchase Agreement with Affitech dated October 6, 2021
Agenus	Agenus, Inc. and certain affiliates
Agenus RPA	the Company's Royalty Purchase Agreement with Agenus dated September 20, 2018
Anti-TGFβ Antibody License Agreement	the Company's License Agreement with Novartis dated September 30, 2015
April 2022 Letter Amendment	the Letter Amendment to Officer Employment Agreement dated August 7, 2017, between XOMA Corporation and Thomas Burns dated April 1, 2022
Aronora	Aronora, Inc.
Aronora RPA	the Company's Royalty Purchase Agreement with Aronora dated April 7, 2019
AstraZeneca	AstraZeneca plc
ASC	Accounting Standards Codification
ASC 606	ASC Topic 606, Revenue from Contracts with Customers
Bayer	Bayer Pharma AG
Bioasis	Bioasis Technologies, Inc. and certain affiliates
Bioasis RPA	the Company's Royalty Purchase Agreement with Bioasis dated February 25, 2019
BLA	Biologic License Application
Black-Scholes Model	Black-Scholes Option Pricing Model
B. Riley	B. Riley Securities, Inc.
BVF	Biotechnology Value Fund, L.P.
CCPA	California Consumer Privacy Act of 2018, collectively the Act and its regulations
CARES	Coronavirus Aid, Relief, and Economic Security
cGMP	current Good Manufacturing Processes
Chiesi	Chiesi Farmaceutici S.p.A.
Chiron	Chiron Corporation
Chiron Collaboration Agreement	the Company's Collaboration Agreement with Chiron dated February 27, 2004, as amended in May 2005, July 2008 and September 2015
Company	XOMA Corporation, including subsidiaries
CPPA	Commercial Payment Purchase Agreement
CPRA	California Privacy Rights Act
EC	European Commission
EMA	European Medicines Agency
ESPP	2015 Employee Stock Purchase Plan, as amended
EU	European Union
FCPA	U.S. Foreign Corrupt Practices Act of 1977, as amended
FDA	U.S. Food and Drug Administration
GAAP	Generally accepted accounting principles
G&A	General and administrative
GDPR	General Data Protection Regulation

Gevokizumab License Agreement	the Company's License Agreement with Novartis dated August 24, 2017
HCRP	Healthcare Royalty Partners II, L.P.
HCW	H.C. Wainwright & Co., LLC
HIPAA	Federal Health Insurance Portability and Accountability Act of 1996
ICE®	Innate cell engager
Janssen	Janssen Biotech, Inc.
Kuros	Kuros Biosciences AG, Kuros US LLC and Kuros Royalty Fund (US) LLC, collectively
Kuros RPA	the Company's Royalty Purchase Agreement with Kuros dated July 14, 2021
Merck	Merck Sharp & Dohme Corp
NDA	New Drug Application
NOL	net operating loss
Novartis	Novartis Pharma AG, Novartis International Pharmaceutical Ltd., Novartis Institutes for Biomedical Research, Inc. and/or Novartis Vaccines and Diagnostics, Inc.
Novartis Note Agreement	the secured note agreement with Novartis (previously Chiron) dated May 26, 2005, as amended
Novartis Note	the note with Novartis pursuant to the Novartis Note Agreement
Ology Bioservices	Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)
Palo	Palobiofarma, S.L.
Palo RPA	the Company's Royalty Purchase Agreement with Palo dated September 26, 2019
Pfizer	Pfizer, Inc.
R&D	Research and development
Regeneron	Regeneron Pharmaceuticals, Inc.
Retention Plan	Retention and Severance Plan dated March 31, 2022
Rezolute	Rezolute, Inc., formerly Antria Bio
Rezolute License Agreement	the Company's License Agreement with Rezolute dated December 6, 2017, as amended in March 2018, January 2019 and March 2020
RPA	Royalty Purchase Agreement
Roche	F. Hoffmann-La Roche AG
SEC	U.S. Securities and Exchange Commission
Second Bioasis RPA	the Company's Royalty Purchase Agreement with Bioasis dated November 2, 2020
Series A Preferred Stock	the 8.625% Series A cumulative, perpetual preferred stock issued in December 2020
Series B Preferred Stock	the 8.375% Series B cumulative, perpetual preferred stock issued in April 2021
Series A and Series B Preferred Stock	Series A Preferred Stock and Series B Preferred Stock, collectively
Series B Depositary Shares	the depositary shares, each representing 1/1000th interest in a share of Series B Preferred Stock
Sonnet	Sonnet BioTherapeutics, Inc., formerly Oncobiologics, Inc.
Sonnet Collaboration Agreement	the Company's Collaboration Agreement with Sonnet dated July 23, 2012, as amended in May 2019
SOX	Sarbanes-Oxley Act of 2002
SVB	Silicon Valley Bank
SVB Loan Agreement	the loan and security agreement with SVB dated May 7, 2018, as amended
SVB Loan	the loan with SVB pursuant to the SVB Loan Agreement
Takeda	Takeda Pharmaceutical Company Limited
Takeda Collaboration Agreement	the Company's Collaboration Agreement with Takeda dated November 1, 2006, as amended in February 2007 and February 2009
VABYSMO®	faricimab-svoa
Viracta	Viracta Therapeutics, Inc.

Viracta RPA	the Company's Royalty Purchase Agreement with Viracta dated March 22, 2021
XOMA	XOMA Corporation, a Delaware corporation, including subsidiaries

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, 2022 (unaudited)	December 31, 2021 (Note 1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 78,285	$ 93,328
Restricted cash	—	2,049
Short-term equity securities	443	774
Trade and other receivables, net	16	209
Prepaid expenses and other current assets	997	613
Total current assets	79,741	96,973
Property and equipment, net	8	13
Operating lease right-of-use assets	73	200
Long-term royalty and commercial payment receivables	66,049	69,075
Other assets - long term	260	301
Total assets	$ 146,131	$ 166,562
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 985	$ 1,072
Accrued and other liabilities	1,208	525
Income taxes payable	—	91
Contingent consideration under RPAs and CPPAs	75	8,075
Operating lease liabilities	85	195
Unearned revenue recognized under units-of-revenue method	1,704	1,641
Preferred stock dividend accrual	1,368	1,368
Total current liabilities	5,425	12,967
Unearned revenue recognized under units-of-revenue method – long-term	10,381	11,685
Long-term operating lease liabilities	—	34
Total liabilities	15,806	24,686
Commitments and Contingencies (Note 9)		
Stockholders' equity:		
Preferred Stock, $0.05 par value, 1,000,000 shares authorized:		
8.625% Series A cumulative, perpetual preferred stock, 984,000 shares issued and outstanding at September 30, 2022 and December 31, 2021	49	49
8.375% Series B cumulative, perpetual preferred stock, 1,600 shares issued and outstanding at September 30, 2022 and December 31, 2021	—	—
Convertible preferred stock, 5,003 shares issued and outstanding at September 30, 2022 and December 31, 2021	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 11,450,823 and 11,315,263 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	86	85
Additional paid-in capital	1,306,606	1,307,030
Accumulated deficit	(1,176,416)	(1,165,288)
Total stockholders' equity	130,325	141,876
Total liabilities and stockholders' equity	$ 146,131	$ 166,562

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

(Note 1) The condensed consolidated balance sheet as of December 31, 2021, 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, 2021.

XOMA CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(unaudited)

(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenues:				
Revenue from contracts with customers	$ 25	$ 550	$ 3,300	$ 1,094
Revenue recognized under units-of-revenue method	426	390	1,241	1,121
Total revenues	451	940	4,541	2,215
Operating expenses:				
Research and development	29	30	125	129
General and administrative	4,794	4,255	15,620	14,922
Total operating expenses	4,823	4,285	15,745	15,051
Loss from operations	(4,372)	(3,345)	(11,204)	(12,836)
Other income (expense), net:				
Interest expense	—	—	—	(461)
Loss on extinguishment of debt	—	—	—	(300)
Other income (expense), net	194	(1,091)	76	(449)
Net loss and comprehensive loss	$ (4,178)	$ (4,436)	$ (11,128)	$ (14,046)
Less: accumulated dividends on Series A and Series B preferred stock	(1,368)	(1,368)	(4,104)	(3,192)
Net loss attributable to common stockholders, basic and diluted	$ (5,546)	$ (5,804)	$ (15,232)	$ (17,238)
Basic and diluted net loss per share attributable to common stockholders	$ (0.48)	$ (0.51)	$ (1.34)	$ (1.53)
Weighted average shares used in computing basic and diluted net loss per share attributable to common stockholders	11,447	11,311	11,400	11,279

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

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

	Series A Preferred Stock		Series B Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Deficit	Equity
Balance, December 31, 2021	984	$ 49	2	$ —	5	$ —	11,315	$ 85	$1,307,030	$ (1,165,288)	$ 141,876
Exercise of stock options	—	—	—	—	—	—	91	1	632	—	633
Issuance of common stock related to 401(k) contribution	—	—	—	—	—	—	4	—	85	—	85
Stock-based compensation expense	—	—	—	—	—	—	—	—	978	—	978
Preferred stock dividends	—	—	—	—	—	—	—	—	(1,368)	—	(1,368)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(2,280)	(2,280)
Balance, March 31, 2022	984	$ 49	2	$ —	5	$ —	11,410	$ 86	$1,307,357	$ (1,167,568)	$ 139,924
Exercise of stock options	—	—	—	—	—	—	11	—	189	—	189
Issuance of common stock related to ESPP	—	—	—	—	—	—	3	—	45	—	45
Stock-based compensation expense	—	—	—	—	—	—	—	—	836	—	836
Preferred stock dividends	—	—	—	—	—	—	—	—	(1,368)	—	(1,368)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(4,670)	(4,670)
Balance, June 30, 2022	984	$ 49	2	$ —	5	$ —	11,424	$ 86	$1,307,059	$ (1,172,238)	$ 134,956
Exercise of stock options	—	—	—	—	—	—	27	—	109	—	109
Stock-based compensation expense	—	—	—	—	—	—	—	—	806	—	806
Preferred stock dividends	—	—	—	—	—	—	—	—	(1,368)	—	(1,368)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(4,178)	(4,178)
Balance, September 30, 2022	984	$ 49	2	$ —	5	$ —	11,451	$ 86	$1,306,606	$ (1,176,416)	$ 130,325

	Series A Preferred Stock		Series B Preferred Stock		Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2020	984	$ 49	—	$ —	5	$ —	11,229	$ 84	$1,267,377	$ (1,181,086)	$ 86,424
Exercise of stock options	—	—	—	—	—	—	24	—	388	—	388
Exercise of common stock warrants	—	—	—	—	—	—	5	—	—	—	—
Issuance of common stock related to 401(k) contribution	—	—	—	—	—	—	2	—	90	—	90
Stock-based compensation expense	—	—	—	—	—	—	—	—	2,898	—	2,898
Preferred stock dividends	—	—	—	—	—	—	—	—	(707)	—	(707)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(7,373)	(7,373)
Balance, March 31, 2021	984	$ 49	—	$ —	5	$ —	11,260	$ 84	$1,270,046	$ (1,188,459)	$ 81,720
Exercise of stock options	—	—	—	—	—	—	49	1	593	—	594
Issuance of common stock related to ESPP	—	—	—	—	—	—	1	—	17	—	17
Stock-based compensation expense	—	—	—	—	—	—	—	—	768	—	768
Issuance of preferred stock	—	—	2	—	—	—	—	—	37,140	—	37,140
Preferred stock dividends	—	—	—	—	—	—	—	—	(1,424)	—	(1,424)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(2,237)	(2,237)
Balance, June 30, 2021	984	$ 49	2	$ —	5	$ —	11,310	$ 85	$1,307,140	$ (1,190,696)	$ 116,578
Exercise of stock options	—	—	—	—	—	—	1	—	31	—	31
Stock-based compensation expense	—	—	—	—	—	—	—	—	779	—	779
Preferred stock dividends	—	—	—	—	—	—	—	—	(1,368)	—	(1,368)
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	(4,436)	(4,436)
Balance, September 30, 2021	984	$ 49	2	$ —	5	$ —	11,311	$ 85	$1,306,582	$ (1,195,132)	$ 111,584

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,	
	2022	2021
Cash flows from operating activities:		
Net loss	$ (11,128)	$ (14,046)
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation expense	2,620	4,445
Common stock contribution to 401(k)	85	90
Depreciation	7	6
Amortization of debt issuance costs, debt discount and final payment on debt	—	200
Loss on extinguishment of debt	—	300
Non-cash lease expense	127	119
Change in fair value of equity securities	330	482
Changes in assets and liabilities:		
Trade and other receivables, net	193	(255)
Income tax receivable	—	1,526
Prepaid expenses and other assets	(343)	(526)
Accounts payable and accrued liabilities	596	955
Income taxes payable	(91)	—
Operating lease liabilities	(144)	(133)
Unearned revenue recognized under units-of-revenue method	(1,241)	(1,121)
Other liabilities	—	(6)
Net cash used in operating activities	(8,989)	(7,964)
Cash flows from investing activities:		
Payment of contingent consideration under RPAs and CPPAs	(8,000)	—
Receipts related to purchase of royalty rights and other commercial payment rights	3,026	—
Payments related to purchase of royalty rights and other commercial payment rights	—	(20,500)
Net cash used in investing activities	(4,974)	(20,500)
Cash flows from financing activities:		
Proceeds from issuance of preferred stock	—	40,000
Proceeds from issuance of common stock	—	17
Payment of preferred stock dividends	(4,104)	(2,131)
Payment of preferred and common stock issuance costs	—	(3,248)
Proceeds from exercise of options	2,373	1,492
Taxes paid related to net share settlement of equity awards	(1,398)	(479)
Principal payments – debt	—	(4,250)
Payment for extinguishment of debt	—	(17,103)
Payment for debt modification fee	—	(24)
Net cash (used in) provided by financing activities	(3,129)	14,274
Net decrease in cash, cash equivalents and restricted cash	(17,092)	(14,190)
Cash and restricted cash at the beginning of the period	95,377	86,364
Cash, cash equivalents and restricted cash at the end of the period	$ 78,285	$ 72,174
Supplemental Cash Flow Information:		
Cash paid for taxes	$ 95	$ —
Cash paid for interest	$ —	$ 311
Non-cash investing and financing activities:		
Preferred stock dividend accrual	$ 1,368	$ 1,368
Accrued cost related to issuance of preferred stock	$ —	$ 137

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, 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 the acquisition of rights to future milestones and royalties that the Company has made since the royalty aggregator business model was implemented in 2017. The Company's drug royalty aggregator business is focused on early to mid-stage clinical assets primarily in Phase 1 and 2 with significant commercial sales potential that are licensed to large-cap partners. 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, 2022, the Company had cash and cash equivalents of $78.3 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 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, 2021, filed with the SEC on March 8, 2022.

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 the units-of-revenue method, royalty and commercial payment receivables, legal contingencies, contingent consideration and stock-based compensation. 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 amortization of the payments received from HCRP. 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 COVID-19 pandemic and the subsequent global slowdown has led to delays and could result in further delays or terminations of some clinical trials underlying the Company's RPAs. 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.

Cash, Cash Equivalents and Restricted Cash

Cash consists of bank deposits held in business checking and interest-bearing deposit accounts. As of September 30, 2022, the Company had cash equivalent balances of $30.2 million, defined as highly liquid financial instruments that are both readily convertible to known amounts of cash and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. The Company considers all highly liquid debt instruments with maturities of three months or less at the time the Company acquires them and that can be liquidated without prior notice or penalty to be cash equivalents. As of December 31, 2021, the Company did not have any cash equivalent balances.

Restricted cash as of December 31, 2021 consisted of bank deposits held to pay dividends on the Company's Series A and Series B Preferred Stock. As of September 30, 2022, the Company has paid the first year of dividends for the Series A and Series B Preferred stock and is no longer required to hold a restricted cash balance.

The Company maintains cash balances at commercial banks. Balances commonly exceed the amount insured by the Federal Deposit Insurance Corporation. The Company has not experienced any losses in such accounts, and management believes that the Company is not exposed to any significant credit risk with respect to such cash.

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

	September 30, 2022	December 31, 2021
Cash and cash equivalents	$ 78,285	$ 93,328
Restricted cash	—	2,049
Total cash, cash equivalents and restricted cash	$ 78,285	$ 95,377

Revenue Recognition

The Company recognizes revenue from all contracts with customers according to 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 the 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 the 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 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 entered into a license agreement with Rezolute in December 2017, in which it received shares of common stock from 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 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 in the period of sale.

Purchase of Rights to Future Milestones, Royalties and Commercial Payments

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 the contingent payments fall within the scope of ASC 815, the contingent payments are measured at fair value at the inception of the arrangement, and subject to remeasurement to fair value each reporting period. Any changes in the estimated fair value are recorded in the condensed consolidated statement of operations and comprehensive loss.

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 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 or current based on whether 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 public information on clinical trials, press releases and updates from its partners regularly to identify any impairment indicators or changes in expected recoverability of the long-term royalty receivable asset. If an impairment indicator is identified, and the Company determines 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, 2022 and December 31, 2021.

Leases

The Company leases 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 the operating lease is recognized on a straight-line basis, 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.

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.

Income Taxes

The Company accounts for income taxes using the liability method under which deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amount which is more likely than not to be realizable.

The recognition, derecognition and measurement of a tax position is based on management's best judgment given the facts, circumstances and information available at each reporting date. The Company's policy is to recognize interest and penalties related to the underpayment of income taxes as a component of income tax expense. To date, there have been no interest or penalties charged in relation to the unrecognized tax benefits.

Net Loss per Share Attributable to Common Stockholders

The Company calculates basic and diluted loss per share attributable to common stockholders using the two-class method. The Company's convertible Series X preferred stocks participate in any dividends declared by the Company on its common stock and are therefore considered to be participating securities. The Company's Series A and Series B Preferred Stock do not participate in any dividends or distribution by the Company on its common stock and are therefore not considered to be participating securities.

Under the two-class method, net income, as adjusted for any accumulated dividends on Series A and Series B Preferred Stock for the period and any deemed dividends related to beneficial conversion features on convertible preferred stock, if applicable, is allocated to each class of common stock and participating security as if all of the net income for the period had been distributed. Undistributed earnings allocated to participating securities are subtracted from net income in determining net income attributable to common stockholders. 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. Basic net loss per share attributable to common stockholders is then calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period. All participating securities are excluded from the basic weighted average common shares outstanding.

Diluted net loss per share attributable to common stockholders is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed exercise of certain stock options and warrants for common stock using the treasury method, if dilutive. The calculation assumes that any proceeds that could be obtained upon exercise of options and warrants would be used to purchase common stock at the average market price during the period. Adjustments to the denominator are required to reflect the related dilutive shares. The Company's Series A and Series B Preferred Stock become convertible upon the occurrence of specific events other than a change in the Company's share price and, therefore, are not included in the diluted shares until the contingency is resolved.

Concentration of Risk

Cash, cash equivalents 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, 2022, one partner represented 94% of total revenues. For the nine months ended September 30, 2022, four partners represented 44%, 27%, 17% and 11% of total revenues. For the three months ended September 30, 2021, two partners represented 53% and 41% of total revenues. For the nine months ended September 30, 2021, three partners represented 51%, 23% and 23% of total revenues. As of December 31, 2021, one partner represented 100% of the trade receivables, net balance. There were no trade receivables, net balance as of September 30, 2022.

Comprehensive Loss

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

Accounting Pronouncements Recently Adopted

In May 2021, the FASB issued ASU 2021-04, *Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options*. The amendments in ASU No. 2021-04 provide guidance to clarify and reduce diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The amendments in this ASU

No. 2021-04 are effective for all entities for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years, with early adoption permitted, including interim periods within those fiscal years. The Company adopted ASU 2021-04 and related updates on January 1, 2022. The adoption of ASU 2021-04 had no impact on the condensed consolidated financial statements.

Recent Accounting Pronouncements Not Yet Adopted

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. The Company plans to adopt ASU 2016-13 and related updates on January 1, 2023. The Company is currently evaluating the impact of adopting this ASU and does not expect it to have a material impact on its consolidated financial statements.

3. Condensed Consolidated Financial Statements Details

Equity Securities

As of September 30, 2022 and December 31, 2021, equity securities consisted of an investment in Rezolute's common stock of $0.4 million and $0.8 million, respectively (Note 4). For the three and nine months ended September 30, 2022, the Company recognized a loss of $0.1 million and $0.3 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. For the three and nine months ended September 30, 2021, the Company recognized a loss of $1.1 million and $0.5 million, respectively, due to the change in fair value of its investment.

Accrued and Other Liabilities

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

	September 30, 2022	December 31, 2021
Accrued legal and accounting fees	555	295
Accrued incentive compensation	461	55
Accrued payroll and benefits	162	135
Other accrued liabilities	30	40
Total	$ 1,208	$ 525

Net Loss Per Share Attributable to Common Stockholders

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Numerator				
Net loss	$ (4,178)	$ (4,436)	$ (11,128)	$ (14,046)
Less: Series A accumulated dividends	(530)	(530)	(1,591)	(1,591)
Less: Series B accumulated dividends	(838)	(838)	(2,513)	(1,601)
Net loss attributable to common stockholders, basic and diluted	$ (5,546)	$ (5,804)	$ (15,232)	$ (17,238)
Denominator				
Weighted average shares used in computing basic and diluted net loss per share attributable to common stockholders	11,447	11,311	11,400	11,279
Basic and diluted net loss per share attributable to common stockholders	$ (0.48)	(0.51)	$ (1.34)	$ (1.53)

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Convertible preferred stock	5,003	5,003	5,003	5,003
Common stock options	888	505	831	362
Warrants for common stock	6	4	6	5
Total	5,897	5,512	5,840	5,370

4. Licensing and Other Arrangements

Novartis – Anti-TGFβ Antibody (NIS793)

On September 30, 2015, the Company and Novartis entered into the Anti-TGFβ Antibody License Agreement under which the Company granted Novartis 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 Anti-TGFβ Antibody License Agreement, Novartis 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 Anti-TGFβ Antibody License Agreement will remain in effect, on a country-by-country and product-by-product basis, until Novartis' royalty obligations end. The Anti-TGFβ Antibody License Agreement contains customary termination rights relating to material breach by either party. Novartis also has a unilateral right to terminate the Anti-TGFβ Antibody 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 were multiple promised goods and services under the Anti-TGFβ Antibody 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.

The Company was eligible to receive up to a total of $480.0 million in development, regulatory and commercial milestones under the Anti-TGFβ Antibody License Agreement. During the year ended December 31, 2017, Novartis achieved a clinical development milestone pursuant to the Anti-TGFβ Antibody 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 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 until the respective milestone is achieved. 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.

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' 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.

On October 21, 2020, the Company earned a $25.0 million milestone upon the dosing of the first patient in Novartis' first NIS793 Phase 2 clinical trial. As specified under the terms of the Anti-TGFβ Antibody License Agreement, the Company received $17.7 million in cash, and the remaining balance of $7.3 million was recognized as a reduction to the Company's debt obligation to Novartis.

On October 20, 2021, the Company earned a $35.0 million milestone payment upon dosing of the first patient in Novartis' first NIS793 Phase 3 clinical trial. The Company is eligible to receive remaining milestones up to a total of $410.0 million under the Anti-TGFβ Antibody License Agreement.

As of September 30, 2022 and December 31, 2021, 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, 2022 and 2021.

Novartis – Anti-IL-1β Antibody (VPM087) and IL-1 Beta

On August 24, 2017, the Company and Novartis entered into the Gevokizumab 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. Under the terms of the Gevokizumab 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 Gevokizumab 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, on behalf of the Company, to settle the Company's outstanding debt with Les Laboratories Servier ("Servier") (the "Servier Loan"). In addition, Novartis 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 Gevokizumab 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 Gevokizumab 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 Gevokizumab 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 Gevokizumab 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 until the respective milestone is achieved. 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, 2022 and December 31, 2021, there were no contract assets or contract liabilities related to this arrangement, and 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, 2022 and 2021.

Takeda

On November 1, 2006, the Company entered into the Takeda Collaboration Agreement with Takeda under which the Company agreed to discover and optimize therapeutic antibodies against multiple targets selected by Takeda.

Under the terms of the Takeda Collaboration Agreement, the Company may receive additional milestone payments aggregating up to $19.0 million relating to TAK-079 (mezagitamab) and TAK-169, and low single-digit royalties on future sales of all products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. The Company's right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent (or 12 years from first commercial sale if there is significant generic competition post patent-expiration).

In February 2009, the Company expanded the existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. The Company may receive milestones of up to $3.3 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets or collaboration products. The Company's right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

On November 16, 2020, the first patient was dosed in Takeda's Phase 2 study of mezagitamab, and the Company earned a $2.0 million milestone payment from Takeda.

No revenue was recognized for the three months ended September 30, 2022. The Company earned a development milestone pursuant to the Takeda Collaboration Agreement and recognized $0.8 million as revenue from contracts with customers in the condensed consolidated statement of operations and comprehensive loss during the nine months ended September 30, 2022. No revenue was recognized for the three and nine months ended September 30, 2021.

As of September 30, 2022 and December 31, 2021, there were no contract assets or contract liabilities related to this arrangement, and none of the costs to obtain or fulfill the contract were capitalized. The Company is eligible to receive remaining milestones up to a total of $16.0 million under the Takeda Collaboration Agreement.

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") products 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.

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 remaining development and regulatory milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. 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 an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

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. Rezolute's future royalty obligations in the United States will be reduced by 20% if the manufacture, use or sale of a licensed product is not covered by a valid XOMA patent claim, until such a claim is issued.

Pursuant to the license agreement, XOMA is eligible to receive a low single-digit royalty on sales of Rezolute's other non-RZ358 products from its current programs, including RZ402 which is in Phase 1 clinical testing. 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, 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

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. To the extent permitted by applicable laws, the Company has the right to terminate the license agreement if Rezolute challenges the licensed patents.

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.

The license agreement was subsequently amended in 2018, 2019 and 2020. Pursuant to the terms of the license agreement as amended, the Company received a total of $6.0 million upon Rezolute's financing and $8.5 million in installment payments through October 2020. The Company also received 161,861 shares of Rezolute's common stock (as adjusted for the 1:50 reverse stock split in October 2020).

In January 2022, Rezolute dosed the last patient in its Phase 2b clinical trial for RZ358, which triggered a $2.0 million milestone payment due to XOMA pursuant to the Rezolute License Agreement.

The Company recognized no revenue and $2.0 million as revenue from contracts with customers in the condensed consolidated statement of operations and comprehensive loss for the three and nine months ended September 30, 2022, respectively. No revenue was recognized for the three and nine months ended September 30, 2021.

As of September 30, 2022 and December 31, 2021, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.

Janssen Biotech

The Company and 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. Additional milestones may be due for drug candidates which are the subject of multiple clinical trials. 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 operations and 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 until the respective milestone is achieved. 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.

In May 2021, the Company earned a $0.5 million milestone from Janssen, upon dosing of the first patient in a Phase 3 clinical trial evaluating one of Janssen's biologic assets. In December 2021, the Company earned a $0.2 million milestone pursuant to its agreement with Janssen.

As of September 30, 2022 and December 31, 2021, 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, 2022. The Company recognized no milestone revenue and $0.5 million of milestone revenue for the three and nine months ended September 30, 2021, respectively.

Affimed

In April 2021, the Company and Affimed entered into a contractual agreement, under which the Company is eligible to receive payments from Affimed on potential future commercial sales related to three ICE molecules and preloaded natural killer cells containing the ICE molecules. Additionally, the Company is eligible to receive a milestone upon the first product candidate in each program achieving marketing approval.

The Company concluded that the commercial milestone payments are solely dependent on Affimed's 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 commercial milestones are fully constrained and excluded from the transaction price until the respective milestone is achieved. Any consideration related to commercial milestones (including royalties) will be recognized when the related approvals occur 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, 2022 and December 31, 2021, 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, 2022. No revenue was recognized for the three and nine months ended September 30, 2021.

Sale of Future Revenue Streams

On December 21, 2016, the Company entered into two royalty interest sale 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) 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 certain 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 the 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 the 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 $1.2 million as revenue under the units-of-revenue method under these arrangements during the three and nine months ended September 30, 2022, respectively. 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, 2021, respectively.

As of September 30, 2022, the Company classified $1.7 million and $10.4 million as current and non-current unearned revenue recognized under the units-of-revenue method, respectively. As of December 31, 2021, the Company classified $1.6 million and $11.7 million as current and non-current unearned revenue recognized under the units-of-revenue method, respectively.

5. Royalty and Commercial Payment Purchase Agreements

The balance of long-term royalty and commercial payment receivables was $66.0 million and $69.1 million as of September 30, 2022 and December 31, 2021, respectively. There were no acquisitions of royalty rights, commercial payment rights during the three and nine months ended September 30, 2022.

Royalty Purchase Agreement with Agenus

On September 20, 2018, the Company entered into the Agenus RPA, pursuant to which the Company acquired the right to receive 33% of the future royalties on six Incyte Europe S.a.r.l. ("Incyte") immuno-oncology assets, currently in development, due to Agenus from 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 teens-digit percentage of applicable net sales.

In addition, the Company acquired 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 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 RPA, 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 Agenus RPA, the Company paid Agenus $15.0 million.

At the inception of the agreement, the Company recorded $15.0 million as long-term royalty receivables in the consolidated balance sheets.

In November 2020, MK-4830 advanced into Phase 2 development, and Agenus earned a $10.0 million clinical development milestone under its license agreement with Merck, of which the Company earned $1.0 million. In accordance with the cost recovery method, the $1.0 million milestone received was recorded as a direct reduction of the recorded long-term royalty receivable balance.

The Company continues to assess that no further 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 purchase price 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, 2022 or December 31, 2021.

Royalty Purchase Agreement with Bioasis

On February 25, 2019, the Company entered into the Bioasis RPA, pursuant to which the Company acquired 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 the purchase of royalty rights 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.

Under the terms of the Bioasis RPA, 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 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 income. As of September 30, 2022, 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, 2022. 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 purchase price 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, 2022 or December 31, 2021.

On November 2, 2020, the Company entered into the Second Bioasis RPA, pursuant to which the Company acquired 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. The Company paid Bioasis $1.2 million upon closing of the Second Bioasis RPA for the purchased rights.

At the inception of the Second Bioasis RPA, the Company recorded $1.2 million as long-term royalty receivables in its consolidated balance sheet. The Company continues to assess that no payments are probable to be received under the Second Bioasis RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and other payments until the purchase price 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, 2022 or December 31, 2021.

Royalty Purchase Agreement with Aronora

On April 7, 2019, the Company entered into the Aronora RPA which closed on June 26, 2019. Under the Aronora RPA, the Company acquired 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 were subject to Aronora's collaboration with Bayer (the "Bayer Products"), including one which was subject to an exclusive license option by Bayer. The Company will receive 100% of future royalties and 10% of future Non-Royalties economics 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 RPA, 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 RPA, 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 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 purchase price 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, 2022 or December 31, 2021.

Royalty Purchase Agreement with Palobiofarma

On September 26, 2019, the Company entered into the Palo RPA, pursuant to which the Company acquired the rights to potential royalty payments in low single-digit percentages of aggregate net sales 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, ulcerative colitis, idiopathic pulmonary fibrosis, lung cancer, psoriasis and nonalcoholic steatohepatitis and other indications (the "Palo Licensed Products") that are being developed by Palo. Novartis is a development partner on NIR178, one of the Palo Licensed Products, and NIR178 is being developed pursuant to a license agreement between Palo and Novartis.

Under the terms of the Palo RPA, the Company paid Palo a $10.0 million payment at the close of the transaction, which occurred simultaneously upon parties' entry into the Palo RPA on September 26, 2019.

At the inception of the agreement, the Company recorded $10.0 million as long-term royalty receivables in its 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 purchase price 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, 2022 or December 31, 2021.

Royalty Purchase Agreement with Viracta

On March 22, 2021, the Company entered into the Viracta RPA, pursuant to which the Company acquired the right to receive future royalties, milestones, and other payments related to two clinical-stage drug candidates for $13.5 million. The first candidate, DAY101 (pan-RAF kinase inhibitor), is being developed by Day One Biopharmaceuticals, and the second candidate, vosaroxin (topoisomerase II inhibitor), is being developed by Denovo Biopharma. The Company acquired the right to receive (i) up to $54.0 million in potential milestones, potential royalties on sales, if approved, and other payments related to DAY101, excluding up to $20.0 million consideration retained by Viracta, and (ii) up to $57.0 million in potential regulatory and commercial milestones and high single-digit royalties on sales related to vosaroxin, if approved.

At the inception of the Viracta RPA, the Company recorded $13.5 million as long-term royalty receivables in its consolidated balance sheet. No payments are probable to be received under the Viracta RPA in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestones and other payments until the purchase price 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, 2022 or December 31, 2021.

Royalty Purchase Agreement with Kuros

On July 14, 2021, the Company entered into the Kuros RPA, pursuant to which the Company acquired the rights to 100% of the potential future royalties from commercial sales, which are tiered from high single-digit to low double-digits, and up to $25.5 million in pre-commercial milestone payments associated with an existing license agreement related to Checkmate Pharmaceuticals' vidutolimod (CMP-001), a Toll-like receptor 9 agonist, packaged in a virus-like particle, for an upfront payment of $7.0 million. The Company may pay up to an additional $142.5 million to Kuros in sales-based milestones.

At the inception of the Kuros RPA, the Company recorded $7.0 million as long-term royalty receivables in its consolidated balance sheet. Under the cost recovery method, the Company does not expect to recognize any income related to royalties, milestones and other payments until the purchase price has been fully collected.

In May 2022, Regeneron completed its acquisition of Checkmate Pharmaceuticals resulting in a $5.0 million milestone payment to Kuros. Pursuant to the Kuros RPA, XOMA is entitled to 50% of the milestone payment, which was received by XOMA on July 5, 2022.

The Company performed its quarterly impairment assessment, and no impairment indicators were identified. Accordingly, no impairment was recorded as of September 30, 2022 or December 31, 2021.

Commercial Payment Purchase Agreement with Affitech

On October 6, 2021, the Company entered into the Affitech CPPA, pursuant to which, the Company purchased a future stream of commercial payment rights to Roche's faricimab from Affitech for an upfront payment of $6.0 million. The Company is eligible to receive 0.50% of future net sales of faricimab for a ten-year period following the first commercial sales in each applicable jurisdiction. The Company may pay up to an additional $20.0 million based on the achievement of certain regulatory and sales milestones (Note 15). At the inception of the Affitech CPPA, the Company recorded $14.0 million as long-term royalty receivables which includes the $6.0 million upfront payment and $8.0 million in regulatory milestones in its consolidated balance sheet. The Company concluded the regulatory milestone payments of

$8.0 million met the definition of a derivative under ASC 815 and should be accounted at fair value and recorded as a current liability at the inception of the transaction. Therefore, the regulatory milestone payments were recorded as contingent liabilities in its consolidated balance sheet. The Company concluded the sales-based milestone payments of $12.0 million do not meet the definition of a derivative under ASC 815 and a liability will be recognized when probable and estimable.

In January 2022, Genentech, a member of the Roche group, received approval from the FDA to commercialize VABYSMO® (faricimab-svoa) for the treatment of wet, or neovascular, age-related macular degeneration and diabetic macular edema. Pursuant to the Affitech CPPA, the Company paid Affitech a $5.0 million milestone tied to these U.S. marketing approvals.

In September 2022, in connection with Roche receiving approval from the European Commission to commercialize VABYSMO for the treatment of neovascular or 'wet' age-related macular degeneration and visual impairment due to diabetic macular edema, the Company made a $3.0 million milestone payment to Affitech pursuant to the terms of the Affitech CPPA. As a result of the EC Approval, XOMA is eligible to receive a 0.5% commercial payment stream for ten years from the first commercial sale of VABYSMO in Europe.

In August 2022, the Company received $0.5 million from Roche representing the first commercial payment for sales of VABYSMO in the U.S. and Japan during the first six months of 2022. The payment was recorded in the Company's condensed consolidated balance sheet as of September 30, 2022, as a reduction of long-term royalty and commercial payment receivables. Based upon limited available information, the Company is unable to reasonably estimate net sales during the three months ended September 30, 2022.

Under the cost recovery method, the Company does not expect to recognize any income related to future commercial payment receipts until the purchase price 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, 2022 or December 31, 2021.

The following table summarizes the royalty receivable activities during the nine months ended September 30, 2022 (in thousands):

Balance at December 31, 2021	$ 69,075
Receipt of royalty and commercial payments	
Kuros	(2,500)
Affitech	(526)
Balance at September 30, 2022	$ 66,049

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 unadjusted 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, 2022 Using:			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents:				
Money market funds	$ 10,234	$ —	$ —	$ 10,234
U.S. treasury bills	19,925	—	—	19,925
Total cash equivalents	30,159	—	—	30,159
Equity securities	443	—	—	443
Total financial assets	$ 30,602	$ —	$ —	$ 30,602
Liabilities:				
Contingent consideration under RPAs and CPPAs	$ —	$ —	$ 75	$ 75

	Fair Value Measurements at December 31, 2021 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	$ 774	$ —	$ —	$ 774
Liabilities:				
Contingent consideration under RPAs and CPPAs	$ —	$ —	$ 8,075	$ 8,075

During the three and nine months ended September 30, 2022, there were no transfers between levels.

Equity Securities

The equity securities consisted of an investment in Rezolute's common stock and are classified on the condensed consolidated balance sheets as current assets as of September 30, 2022 and December 31, 2021. 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. As of September 30, 2022 and December 31, 2021, the Company valued the equity securities using the closing price for Rezolute's common stock traded on the Nasdaq Stock Market of $2.74 and $4.78, respectively. The inputs that were used to calculate the fair value of the equity securities were observable prices in active markets and therefore were classified as a Level 1 fair value measurement.

Contingent Consideration

The estimated fair value of the contingent consideration liability at the inception of the Bioasis RPA 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.

The estimated fair value of the contingent consideration liability at the inception of the Affitech CPPA represented the future consideration that was contingent upon the achievement of specified regulatory milestones. The fair value measurement was based on significant Level 3 inputs such as anticipated timelines and probability of achieving regulatory milestones. During the nine months ended September 30, 2022, the estimated fair value of the contingent consideration recorded pursuant to the Affitech CPPA decreased from $8.0 million to zero after the Company paid Affitech a total of $5.0 million for milestones tied to the achievement of U.S. marketing approvals in January 2022 and $3.0 million for milestones tied to the achievement of EC approvals in September 2022.

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 until settlement. During the nine months ended September 30, 2022, there were no changes in the estimated fair value of the contingent consideration recorded pursuant to the Bioasis RPA from the initial value of $0.1 million.

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 extend the lease for an additional term, however, the Company is not reasonably certain to exercise this option.

The following table summarizes maturity of the Company's operating lease liabilities as of September 30, 2022 (in thousands):

Undiscounted lease payments	Operating Leases
2022 (excluding the nine months ended September 30, 2022)	$ 52
2023	34
Total undiscounted lease payments	86
Present value adjustment	(1)
Total net lease liabilities	$ 85

The following table summarizes the cost components of the Company's operating leases for the three and nine months ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Lease costs:				
Operating lease cost	$ 45	$ 45	$ 133	$ 133
Variable lease cost [1]	4	3	9	8
Total lease costs	$ 49	$ 48	$ 142	$ 141

(1) Under the terms of the lease agreement, 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,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows under operating leases	$ 151	$ 147

The present value assumptions used in calculating the present value of the lease payments as of September 30, 2022 and December 31, 2021 were as follows:

	September 30, 2022	December 31, 2021
Weighted-average remaining lease term	0.42 years	1.17 years
Weighted-average discount rate	5.51 %	5.51 %

8. Common Stock Warrants

As of September 30, 2022 and December 31, 2021, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	September 30, 2022	December 31, 2021
May 2018	May 2028	Stockholders' equity	$ 23.69	6,332	6,332
March 2019	March 2029	Stockholders' equity	$ 14.71	4,845	4,845
				11,177	11,177

9. 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 $6.3 million (assuming one product per contract meets all milestone 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 RPAs and CPPAs with Bioasis, Aronora, Kuros and Affitech, the Company has committed to pay the Bioasis Contingent Consideration, the Aronora Royalty Milestones, the Kuros Sales Milestones and the Affitech regulatory and sales milestones. As of September 30, 2022, the estimated fair value of the Bioasis Contingent Consideration is $0.1 million and during the nine months ended September 30, 2022, the Company paid the Affitech Regulatory Milestones in full (Note 6). The liability for future Aronora Royalty Milestones, Kuros Sales Milestones and Affitech Sales Milestones will be recorded when the amounts, by product, are estimable and probable. As of September 30, 2022, none of these Aronora Royalty Milestones, Kuros Sales Milestones or Affitech Sales Milestones were assessed to be probable and as such, no liability was recorded on the condensed consolidated balance sheet.

10. Stock Based Compensation

The Company may grant qualified and non-qualified stock options, 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 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.

The fair value of the stock options granted during the three and nine months ended September 30, 2022 and 2021, was estimated based on the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022 (1)	2021	2022	2021
Dividend yield	n/a	0 %	0 %	0 %
Expected volatility	n/a	71 %	70 %	90 %
Risk-free interest rate	n/a	0.85 %	2.17 %	0.79 %
Expected term	n/a	5.61 years	5.65 years	5.67 years

(1) No stock options were granted during the three months ended September 30, 2022.

Stock option activity for the nine months ended September 30, 2022, 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 January 1, 2022	1,911,177	$ 20.64	6.33	$ 15,103
Granted	222,972	19.83		
Exercised	(128,811)	7.22		
Forfeited, expired or cancelled	(48,600)	64.55		
Outstanding at September 30, 2022	1,956,738	$ 20.34	6.21	$ 10,284
Exercisable at September 30, 2022	1,572,356	$ 19.09	5.53	$ 10,282

The aggregate intrinsic value of stock options exercised during the nine months ended September 30, 2022 and 2021 was $2.8 million and $1.6 million, respectively.

The weighted-average grant-date fair value per share of the options granted during the nine months ended September 30, 2022 and 2021 was $12.21 and $26.21, respectively.

As of September 30, 2022, $4.2 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 1.95 years.

Stock-based Compensation Expense

All stock-based compensation expense is recorded in G&A 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 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Total stock-based compensation expense included in G&A	$ 806	$ 779	$ 2,620	$ 4,445

In April 2022, the Company entered into a letter agreement with Thomas Burns that amends and supplements his amended and restated employment agreement. Pursuant to the letter agreement, in the event Mr. Burns remains employed

by the Company for a twelve-month period following the first day of employment of the Company's new Chief Executive Officer, he will be deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements. Conditioned on his execution of a release in favor of the Company, Mr. Burns will also receive this benefit upon any involuntary termination for reasons other than cause.

11. Capital Stock

Dividends

During the nine months ended September 30, 2022, the Company's Board of Directors declared and paid cash dividends on the Company's Series A Preferred Stock and Series B Depositary shares as follows:

Dividend Declaration Date	Series A Preferred Stock Cash Dividend Declared ($ per share)	Series B Depositary Share Cash Dividend Declared ($ per share)	Dividend Payment Date
October 20, 2021	$ 0.53906	$ 0.52344	January 18, 2022
March 17, 2022	$ 0.53906	$ 0.52344	April 15, 2022
May 18, 2022	$ 0.53906	$ 0.52344	July 15, 2022
July 20, 2022	$ 0.53906	$ 0.52344	October 17, 2022

BVF Ownership

As of September 30, 2022, BVF owned approximately 31.5% of the Company's total outstanding shares of common stock, and if all the Series X convertible preferred shares were converted, BVF would own 52.4% of the Company's total outstanding shares of common stock. The Company's Series A Preferred Stock becomes convertible upon the occurrence of specific events and as of September 30, 2022, the contingency was not met, therefore the Series A Preferred Stock is not included in the as-converted ownership calculation. Due to its significant equity ownership, BVF is considered a related party of the Company.

2018 Common Stock ATM Agreement

On December 18, 2018, the Company entered into the 2018 Common Stock ATM Agreement with 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 Common Stock ATM Agreement. On March 10, 2021, the Company amended the 2018 Common Stock ATM Agreement with HCW to increase the aggregate amount of shares of its common stock that it could sell through HCW as its sales agent to $50.0 million. No shares have been sold under the 2018 Common Stock ATM Agreement since the agreement was executed.

2021 Series B Preferred Stock ATM Agreement

On August 5, 2021, the Company entered into the 2021 Series B Preferred Stock ATM Agreement with B. Riley, under which the Company may offer and sell from time to time, at its sole discretion, through or to B. Riley, as agent or principal an aggregate amount not to exceed $50.0 million of its Series B Depositary Shares. B. Riley 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 B. Riley a commission of up to 3% of the gross proceeds of any Series B Depositary Shares sold under the 2021 Series B Preferred Stock ATM Agreement. No shares have been sold under the 2021 Series B Preferred Stock ATM Agreement since the agreement was executed.

12. Income Taxes

No provision was made for federal income tax, since the Company has incurred net operating losses during the three and nine months ended September 30, 2022 and 2021. The Company continues to maintain a full valuation allowance against its remaining net deferred tax assets.

The Company has a total of $5.9 million of gross unrecognized tax benefits, none of which would affect the effective tax rate upon realization as it currently has a full valuation allowance against its net deferred tax assets. The reversal of related deferred tax assets will be offset by a valuation allowance, 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, 2022, the Company has not accrued interest or penalties related to uncertain tax positions.

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (the Inflation Act) into law. The Inflation Act contains certain tax measures, including a corporate alternative minimum tax of 15% on some large corporations and an excise tax of 1% on corporate stock buy-backs. The various provisions of the Inflation Act do not have a material impact on the Company's financial statements.

13. Subsequent Events

On October 25, 2022, the Compensation Committee of the Board of Directors of the Company approved an amendment (the "Amendment") to the Retention Plan, previously filed with the Securities and Exchange Commission as Exhibit 10.1 to XOMA's Quarterly Report on Form 10-Q for the three months ended March 31, 2022. The Amendment provides that each of the Company's current employees, excluding its Chief Executive Officer, will be eligible to receive a cash retention bonus if employed through each of two periods: (1) the three-month anniversary of November 1, 2022 (the "Initial Period") and (2) the nine-month period immediately following the Initial Period. All other terms of the Plan remain the same.

On November 1, 2022, the Company entered into a letter agreement with Thomas Burns that amends his amended and restated employment agreement (the "Employment Agreement"). Pursuant to the Employment Agreement as amended by this letter agreement, in the event Mr. Burns remains employed by the Company for a twelve-month period beginning on November 1, 2022, he will be deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements. All other terms of the Employment Agreement remain the same.

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, the assumptions underlying our business model; the extent to which issued and pending patents may protect the products and processes in which we have an ownership or royalty interest and prevent the use of the covered subject matter by third parties, 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 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: there can be no assurance that our revenues or expenses will meet any expectations or follow any trend(s); that we will be able to retain our key employees; future arbitration, litigation or disputes with third parties may have a material adverse effect on us; 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.

We use our trademarks, trade names and services marks in this report as well as trademarks, trade names and service marks that are the property of other organizations. Solely for convenience, trademarks and trade names referred to in this report appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and trade names.

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, 2021.

Overview

XOMA is a biotech royalty aggregator. We have 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 the acquisition of rights to future milestones and royalties that we have made since our royalty aggregator business model was implemented in 2017. Our drug royalty aggregator business is focused on early to mid-stage clinical assets, primarily in Phase 1 and 2, with significant commercial sales potential that are licensed to large-cap partners. 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

Portfolio Updates – Royalty and Commercial Payment Purchase Agreements

In September 2022, in connection with Roche receiving approval from the EC to commercialize VABYSMO® (faricimab-svoa) for the treatment of neovascular or 'wet' age-related macular degeneration and visual impairment due to diabetic macular edema, we made a $3.0 million milestone payment to Affitech pursuant to the terms of the Affitech CPPA. Under the terms of the Affitech CPPA, we are eligible to receive a 0.5% commercial payment stream on net sales of VABYSMO in each of certain regions where it is approved, for a ten-year period following its first commercial sale in such region. As a result of the EC approvals, we will be eligible to receive a 0.5% commercial payment stream for ten years from the first commercial sale of VABYSMO in Europe.

VABYSMO was previously approved by the FDA in January 2022 and by Japan's Ministry of Health, Labour, and Welfare in March 2022. In August 2022, we received $0.5 million from Roche representing the first commercial payment for sales of VABYSMO in the U.S. and Japan during the first six months of 2022. The payment was recorded on our condensed consolidated balance sheet as of September 30, 2022, as a reduction of long-term royalty and commercial payment receivables.

In July 2022, we received $2.5 million pursuant to our Kuros RPA. This payment represents 50% of a milestone earned by Kuros upon the closing of Regeneron's acquisition of Checkmate Pharmaceuticals on May 31, 2022.

Portfolio Updates – License and Collaboration Agreements

In September 2022, after an interim analysis of data, Novartis decided to discontinue its study of CFZ533 (iscalimab) in liver transplant. In September 2021, Novartis also announced its decision to discontinue its study of CFZ533 in kidney transplant. Novartis is continuing iscalimab studies in other indications such as Sjögren's Syndrome and Lupus Nephritis.

In April 2022, Sonnet dosed the first patient in its Phase 1 clinical trial for SON-1010, and we earned a development-related milestone payment from Sonnet pursuant to our Sonnet Collaboration Agreement.

In January 2022, Rezolute dosed the last patient in its Phase 2b clinical trial for RZ358, and we earned a $2.0 million milestone payment pursuant to our Rezolute License Agreement.

COVID-19

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 and their licensees. 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 have and may further lead to delayed revenue from milestones from our licensees and royalty agreement counterparties or, if certain research programs are discontinued, we may recognize

impairment charges for our royalty receivables. COVID-19 and the related variants 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 legal contingencies, revenue recognition under the units-of-revenue method and stock-based compensation to be critical policies. There have been no significant changes in our critical accounting policies during the three and nine months ended September 30, 2022, as compared with those previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 8, 2022.

Our significant accounting policies are included in "Note 2 – Basis of Presentation and Significant Accounting Policies" in our Condensed Consolidated Financial Statements.

Results of Operations

Revenues

Total revenues for the three and nine months ended September 30, 2022 and 2021, were as follows (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Change	2022	2021	Change
Revenue from contracts with customers	$ 25	$ 550	$ (525)	$ 3,300	$ 1,094	$ 2,206
Revenue recognized under units-of-revenue method	426	390	36	1,241	1,121	120
Total revenues	$ 451	$ 940	$ (489)	$ 4,541	$ 2,215	$ 2,326

Revenue from Contracts with Customers

Revenue from contracts with customers includes upfront fees, annual license fees and milestone payments related to the out-licensing of our legacy product candidates and technologies. The decrease for the three months ended September 30, 2022, as compared to the same period in 2021, was primarily due to $0.5 million of milestone revenue recognized in the third quarter of 2021 under our license agreement with Compugen. The increase for the nine months ended September 30, 2022, as compared to the same period in 2021, was primarily due to $2.0 million in revenue recognized in the first quarter of 2022 related to a milestone event under our Rezolute License Agreement and a $0.8 million milestone earned pursuant to the Takeda Collaboration Agreement.

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 HCRP in 2016. The increase in revenue for the three and nine months ended September 30, 2022 as compared with the same periods in 2021, was due to the increase in sales of products underlying the agreements with HCRP.

Research and Development Expenses

R&D expenses were $29,000 and $0.1 million for the three and nine months ended September 30, 2022, respectively, which were consistent with $30,000 and $0.1 million for the same periods in 2021. We do not expect to incur substantial R&D expenses related to internally developed programs due to the focus on our royalty aggregator business model.

General and Administrative Expenses

G&A expenses include salaries and related personnel costs, professional fees, and facilities costs. G&A expenses were $4.8 million for the three months ended September 30, 2022, compared with $4.3 million for the same period in 2021. The increase of $0.5 million was due to a $0.5 million increase in consulting and legal expenses associated with deal costs. G&A expenses were $15.6 million for the nine months ended September 30, 2022, compared with $14.9 million for the same period in 2021. The increase of $0.7 million was primarily due to a $1.2 million increase in consulting and legal expenses associated with deal costs and a $1.0 million increase in personnel-related costs, partially offset by a $1.8 million decrease in stock-based compensation expense.

To support our royalty aggregator business model, we engage third parties to assist in our evaluation of potential acquisitions of milestone and royalty streams. These consulting expenses may continue to increase in response to an increase in the volume of acquisition targets evaluated.

Other Income (Expense)

Interest Expense

The $0.5 million interest expense reported for the nine months ended September 30, 2021, was related to our SVB Loan that was repaid in June 2021. There was no interest expense for the three and nine months ended September 30, 2022, nor any interest expense for the three months ended September 30, 2021.

Other Income (Expense), Net

The following table shows the activity in other income (expense), net for the three and nine months ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Change	2022	2021	Change
Other income (expense), net						
Investment income	$ 274	$ 8	$ 266	$ 372	$ 28	$ 344
Change in fair value of equity securities	(80)	(1,099)	1,019	(331)	(482)	151
Other	—	—	—	35	5	30
Total other income (expense), net	$ 194	$ (1,091)	$ 1,285	$ 76	$ (449)	$ 525

The change in fair value of equity securities is due to the change in market price of equity securities we own in shares of Rezolute's common stock. Investment income increased $0.3 million in both the three and nine months ended September 30, 2022, compared with the same periods in 2021 due to higher market interest rates.

Provision for Income Taxes

We recorded no provision for federal income tax, since we incurred net operating losses during the three and nine months ended September 30, 2022 and 2021. We continue to maintain a full valuation allowance against our remaining net deferred tax assets. We had a total of $5.9 million of gross unrecognized tax benefits, none of which would impact our effective tax rate to the extent that we continue to maintain a full valuation allowance against our deferred tax assets. We do not expect our unrecognized tax benefits to change significantly over the next twelve months.

Liquidity and Capital Resources

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

	September 30, 2022	December 31, 2021	Change
Cash and cash equivalents	$ 78,285	$ 93,328	$ (15,043)
Working capital	$ 74,316	$ 84,006	$ (9,690)

	Nine Months Ended September 30,		
	2022	2021	Change
Net cash used in operating activities	$ (8,989)	$ (7,964)	$ (1,025)
Net cash used in investing activities	(4,974)	(20,500)	15,526
Net cash (used in) provided by financing activities	(3,129)	14,274	(17,403)
Net decrease in cash, cash equivalents and restricted cash	$ (17,092)	$ (14,190)	$ (2,902)

Net cash used in operating activities for the nine months ended September 30, 2022 was our operating expenses of $15.7 million, excluding non-cash expenses of $3.2 million including stock-based compensation of $2.6 million, partially offset by a $2.0 million milestone payment received from Rezolute and a $0.8 million milestone payment received from Takeda. Net cash used in operating activities for the nine months ended September 30, 2021 of $8.0 million was primarily due to the $14.0 million net loss incurred, partially offset by stock-based compensation expense of $4.4 million, loss on remeasurement of equity securities to fair value of $0.5 million, loss on extinguishment of debt of $0.3 million and change in assets and liabilities of $0.4 million which includes $1.5 million in cash refund for income tax receivables.

Net cash used in investing activities for the nine months ended September 30, 2022 was $5.0 million due to the $5.0 million and $3.0 million milestone payments pursuant to the Affitech CPPA in January 2022 and September 2022, respectively, partially offset by the $2.5 million milestone payment received from Kuros in July 2022 and the $0.5 million commercial payment received from Affitech in August 2022. Net cash used in investing activities for the nine months ended September 30, 2021 of $20.5 million was due to the $13.5 million payment pursuant to the Viracta Royalty Purchase Agreement and $7.0 million payment pursuant to the Kuros Royalty Purchase Agreement.

Net cash used in financing activities for the nine months ended September 30, 2022, of $3.1 million was primarily due to the payment of dividends on our Series A and Series B Preferred Stock of $4.1 million, partially offset by the receipt of net cash provided from the exercise of stock options after related tax payments of $0.9 million. Net cash provided by financing activities for the nine months ended September 30, 2021 of $14.3 million was primarily due to the receipt of net cash proceeds of $37.1 million from our public offering of Series B Preferred Stock, $1.0 million net cash provided from the exercise of stock options after related tax payments, partially offset by $4.3 million related to principal payments on debt, $17.1 million cash used to extinguish outstanding loans and $2.1 million payment of dividends on our Series A Preferred Stock and Series B Preferred Stock.

Capital Resources

As of September 30, 2022, we had $78.3 million in cash and cash equivalents. Based on our current cash balance and our ability to control discretionary spending, such as royalty acquisitions, we have evaluated and concluded our financial condition is sufficient to fund our planned operations, commitments, and contractual obligations for a period of at least one year following the filing date of this report.

Our planned spending includes increased costs to source and hire a new CEO and personnel-related costs to fund our employee retention efforts. To support our royalty aggregator business model, we engage third parties to assist in our evaluation of potential acquisitions of milestone and royalty streams. Additional operating expenses, including consulting and legal costs, may increase in future periods in response to an anticipated increase in the volume of acquisition targets evaluated or completed.

We have primarily financed our operations and acquisitions through the issuance of our common stock, Series A and Series B Preferred Stock, and amounts received as milestone payments under our license agreements. 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. Milestone payments earned during the three and nine months ended September 30, 2022, are not indicative of anticipated milestones in future periods. We may seek additional capital through use of our 2018 Common Stock ATM Agreement or 2021 Series B Preferred Stock ATM Agreement (see Note 11 of the Condensed Consolidated Financial Statements), or through other public or private debt or equity transactions. 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 and preferred stock, which are 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. If we are unable to raise additional funds when we need them, our business and operations may be adversely affected.

Material Cash Requirements

Our material cash requirements in the short and long term consist of the following expenditures:

Operating expenditures: Our primary uses of cash and operating expenses relate to employee and related costs, consultants to support our administrative and business development efforts, legal and accounting services, insurance, investor relations and IT services. Our headquarters lease expires in February 2023, and we are currently evaluating our office space needs; however, due to our small staff and minimal operating space requirements, we do not expect to incur material incremental costs associated with our current or future building leases.

In response to our CEO's intention to retire as announced in December 2021, we have implemented a Retention Plan to encourage our employees to remain with the Company through and beyond the CEO transition period. Our Retention Plan includes a cash "stay" bonus, effective November 1, 2022, as well as a policy defining benefits upon any involuntary termination for reasons other than cause, which includes minimum severance, COBRA benefits, outplacement services and certain modifications to option awards. We expect our operating expenses to increase as a result of this Retention Plan and costs to source and hire a new CEO.

RPAs and CPPAs: A significant component of our business model is to acquire rights to potential future milestone and royalty streams. We expect to continue deploying capital toward these acquisitions in the near and long term.

We also have potential contingent consideration of $0.1 million recorded on our condensed consolidated balance sheets as of September 30, 2022, for development milestones due under our agreement with Bioasis. We paid $5.0 million in regulatory approval milestones to Affitech in January 2022 and $3.0 million in September 2022. We have evaluated and concluded our existing capital resources are adequate to meet those needs.

We also have potential sales-based milestones that may become due under our agreements with Aronora, Kuros and Affitech. All of these sales-based milestones represent a portion of the funds we may receive in the future pursuant to these agreements, and therefore will be fully funded by the related royalty or commercial payment receipts.

Collaborative Agreements, Royalties and Milestone Payments: We have 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 our licensees. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $6.3 million (assuming one product per contract meets all milestone events) have not been recorded on our condensed consolidated balance sheet as of September 30, 2022. We are unable to determine precisely when and if our 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. All payments due will be funded by a portion of the related milestone or royalty revenue we receive or will be reimbursed by our licensees.

Dividends: Holders of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per share of Series A Preferred Stock per year). Holders of Series B Depositary Shares are entitled to receive, when and as declared by our Board of Directors, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per share of Series B Preferred Stock ($25.00 per depositary share) per year, which is equivalent to $2,093.75 per year per share of Series B Preferred Stock ($2.09375 per year per depositary share). Dividends on the Series A and Series B Preferred Stock are payable in arrears on or about the 15th day of January, April, July and October of each year. Since original issuance, all dividends have been paid as scheduled. We expect to continue making these dividend payments as scheduled using our existing capital resources.

* * *

We have incurred significant operating losses since our inception and as of September 30, 2022, we have an accumulated deficit of $1.2 billion. As of September 30, 2022, we had $78.3 million in unrestricted cash and cash equivalents 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.

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, 2021, 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, 2021.

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 and net loss 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, 2021.

Risk Factors Summary

Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks and uncertainties that we face. Additional discussion of the risks and uncertainties summarized in this risk factor summary, as well as other risks and uncertainties that we face, can be found under "Risk Factors" below. The below summary is qualified in its entirety by that more complete discussion of such risks and uncertainties. You should consider carefully the risks and uncertainties described under "Risk Factors" below as part of your evaluation of the risks associated with an investment in our securities.

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

- 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), 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.

- 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.

- 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, errors, may be undetectable and payment calculations may call for retroactive adjustments. We may have to exercise legal remedies to resolve any disputes resulting from any such audit.

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

- 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. If we were to become an "investment company" and

be subject to the restrictions of the 1940 Act, those restrictions would likely require significant changes in the way we do business and add significant administrative burdens to our operations.

- 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.

- 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.

- 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 anticipated rates of returns. 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.

- 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.

- We rely heavily on license and collaboration relationships, and any disputes or litigation with our licensees, collaborators and their partners or termination or breach of any of the related agreements could reduce the financial resources available to us. In the event of any disagreement that cannot be resolved satisfactorily to us, we may end up being paid less than anticipated on such product or involved in costly and time-consuming arbitration or litigation, which could materially adversely affect our financial condition, results of operation and future prospects.

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

- We may not be able to successfully identify and acquire potential milestone and royalty streams on other products, product candidates, or programs, or other 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 acquisitions.

- Our potential milestone and royalty providers face uncertain results of clinical trials of product candidates. If our potential royalty providers' therapeutic product candidates do not receive regulatory approval, our potential royalty providers will be unable to market them.

- 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, milestone or royalty interest.

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

- We have a continuing obligation to pay quarterly dividends to holders of our Series A and Series B Preferred Stock, which will be an on-going expenditure for us and may limit our ability to borrow additional funds.

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 or their licensees, which could cause delays or elimination of our receipts of potential milestones and royalties under our licensing or royalty and milestone acquisition arrangements.

The COVID-19 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 or their licensees, which has and could further 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 RPA counterparties or their licensees 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, state or local 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 FDA, the EMA and other U.S. and foreign federal, state and local regulatory authorities to initiate their planned clinical trials or to market their products;
- 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, mutations in the COVID-19 virus, 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 California executive orders, San Francisco Bay Area orders and several other state and local orders across the United States, 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 restrictive 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, and the availability or cost of materials, which could disrupt our licensees' and RPA counterparties and their licensees' 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, probability, 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, recent volatility in 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 not sufficient to recover the full amount we are due pursuant to the terms of the agreements covering 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, less invasive 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.

Risks Related to our Industry

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, government regulations, the impact of COVID-19 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, declining sales or litigation. 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 potential milestone or royalty will not be rendered obsolete or non-competitive by new products or improvements on which we are not entitled to a potential milestone or 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 potential milestones and 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 any such audit.

The royalty, milestone and other payments we may receive are dependent on our licensees and royalty agreement counterparties and their 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 our part. 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 '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 that we 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 likely would require significant changes in the way we do business and add significant administrative costs and burdens to our operations. To ensure 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.

Our licensees or royalty-agreement counterparties or their licensees could be subject to natural disasters, public health crises, political crises and other catastrophic events that could hinder or disrupt development efforts.

We depend on our licensees and royalty-agreement counterparties and their licensees to successfully develop and commercialize product candidates for which we may receive milestone, royalty and other payments in the future. Our licensees and royalty-agreement counterparties and their licensees operate research and development efforts in various locations in the United States and internationally. If any of their facilities is affected by natural disasters, such as earthquakes, tsunamis, power shortages or outages, floods or monsoons, public health crises, such as pandemics and epidemics, political crises, such as terrorism, war, political instability, labor disputes or strikes, other conflict, or other events outside of their control, their research and development efforts could be disrupted, which could result in the delay or discontinuation of development of one or more of the product candidates in which we have rights to future milestone and/or royalty payments which could have a material adverse effect on our business, results of operations and prospects.

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 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. Although we generated net income of $15.8 million and $13.3 million and positive cash flows from operations of $22.7 million and $10.1 million for the years ended December 31, 2021 and 2020, respectively, we had an accumulated deficit of $1.2 billion as of September 30, 2022. 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, 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 partners' ability to license product candidates, and the success of our partners'

development programs, both of which are uncertain. Our success is also dependent on our partners 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 Common Stock ATM Agreement, as amended and to our 2021 Series B Preferred Stock 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 milestones and royalties, fewer potential milestones and royalties (or potential milestones or 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 a continuing obligation to pay quarterly dividends to holders of our Series A Preferred Stock and Series B Preferred Stock, which will be an on-going expenditure for us and may limit our ability to borrow additional funds.

Holders of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per year). Dividends on the Series A Preferred Stock will accumulate and be cumulative from, and including, the date of original issue by us of the Series A Preferred Stock. Dividends will be payable in arrears on or about the 15th day of January, April, July and October beginning April 15, 2021. In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of shares of Series A Preferred Stock are entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference of $25.00 per share, plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared), before any distribution or payment may be made to holders of shares of common stock or any other class or series of our equity stock ranking, as to liquidation rights, junior to the Series A Preferred Stock. The shares of Series A Preferred Stock are redeemable at our option, in whole or in part, at redemption prices ranging from $26.00 per share to $25.00 per share, plus any accrued and unpaid dividends, depending on the date of redemption.

Holders of depositary shares representing interests in our Series B Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per share of Series B Preferred Stock ($25.00 per depositary share) per year (equivalent to $2,093.75 per year per share or $2.09375 per year per depositary share). Dividends

on the Series B Preferred Stock will accumulate and be cumulative from, and including, the date of original issue by us of the Series B Preferred Stock. Dividends are payable in arrears on or about the 15th day of January, April, July and October beginning July 15, 2021.

The payment of cash dividends and share repurchases is subject to limitations under applicable laws and the discretion of our Board of Directors and is determined after considering current conditions, including earnings, other operating results and capital requirements. Decreases in asset values or increases in liabilities can reduce net earnings and stockholders' equity. A deficit in stockholders' equity could limit our ability to pay dividends and make share repurchases under Delaware law. On the other hand, our continued obligation to pay dividends to the holders of our Series A Preferred Stock and depositary shares representing interests in Series B Preferred Stock could restrict us from additional borrowings or make them more costly.

The holders of preferred stock have rights that are senior to those of our common stockholders.

As of September 30, 2022, we had issued and outstanding 984,000 shares of Series A Preferred Stock with a liquidation preference of $25.00 per share, plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared). Additionally, as of September 30, 2022, we had issued and outstanding 1,600,000 depositary shares, each representing a 1/1000th fractional interest in a share of our Series B Preferred Stock with a liquidation preference of $25,000 per share of Series B Preferred Stock ($25.00 per depositary share), plus an amount equal to any accumulated and unpaid dividends up to the date of payment (whether or not declared). Our preferred stock is senior to our shares of common stock in right of payment of dividends and other distributions. In the event of our bankruptcy, dissolution or liquidation, the holders of our preferred stock must be satisfied before any distributions can be made to our common stockholders.

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 milestones and royalties we are evaluating for acquisition. Often following our acquisition, the information we have regarding products underlying a potential milestone or 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 sponsors of the products of others or the nature or number 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 on our financial condition and results of operations.

The amount and duration of a royalty usually varies on a country-by-country basis and can be based on a number of factors, such as payments to third party licensors, whether the product is sold singly or in combination, patent expiration dates, regulatory exclusivity, years from first commercial sale of the applicable drug 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 reduction in a royalty amount or shortening of a potential royalty term were to occur, it could result in a reduction 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, therapeutic area, 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. For example, in September 2021 and 2022, Novartis decided to discontinue its studies of CFZ533 (iscalimab) in kidney transplant and liver transplant recipients, respectively. 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 and our partners 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 potential 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 or timing 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 potential milestone and royalty providers may rely on third parties to provide services in connection with their product candidate development and manufacturing programs. The inadequate performance by or loss of any of these service providers could affect our potential milestone and royalty providers' 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 our potential milestone and royalty providers have contracted, or cease to continue operations, and are not able to find a replacement provider quickly or lose information or items associated with their drug product candidates, our potential milestone and royalty providers' development programs and receipt of any potential resulting income may be delayed.

Agreements with other third parties, many of which are material to our business, expose us to numerous risks and have caused us to incur additional liabilities.

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.

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 potential milestone and royalty providers' product candidates to meet current Good Manufacturing Practices standards may subject our licensees to delays in regulatory approval and penalties for noncompliance.

Our potential milestone and royalty providers may rely on third party manufacturers and such contract manufacturers are required to produce clinical product candidates under 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 potential milestone and royalty providers' drug product candidates on the schedule required for clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with our potential milestone and royalty providers or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of our potential milestone and royalty providers' 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 potential milestone and royalty providers' product candidates or any failure of our potential milestone and royalty providers' 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 potential milestone and royalty providers' product candidates, or cause any of our potential milestone and royalty providers' products 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 use of them may be 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 and collaborators' 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.

Risks Related to Our Milestone Royalty Streams

We may not be able to successfully identify and acquire potential milestone and royalty streams on other products, product candidates, or programs, or other 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 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, indemnification and risk allocation, 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.

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

Our potential royalty providers' 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 NDA for a drug, and in the form of a 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 potential royalty providers 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 potential royalty providers' 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 potential milestone and royalty providers face uncertain results of clinical trials of product candidates.

Drug development has inherent risk, and our 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 our potential royalty providers 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 potential milestone and royalty providers' 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 potential milestone and royalty providers' future filings will be delayed;
- our potential milestone and royalty providers' preclinical studies will be successful;
- our potential milestone and royalty providers 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 potential milestone and royalty providers will be able to provide necessary data;
- results of future clinical trials by our potential milestone and royalty providers will justify further development; or
- our potential milestone and royalty providers ultimately will achieve regulatory approval for product candidates in which we have an interest.

The timing of the commencement, continuation and completion of clinical trials by our potential milestone and royalty providers 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 and our royalty agreement counterparties license our product candidates to others to fund and conduct clinical trials, we, and they, 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 potential milestone and royalty providers 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 our potential milestone and royalty providers 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 potential milestone and royalty providers' product candidates noncompetitive or obsolete.

New developments by others may render our potential milestone and royalty providers' 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 potential milestone and royalty providers 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 potential milestone and royalty providers. 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 potential milestone and royalty providers 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 potential milestone and royalty providers may halt development of product candidates in which we have an interest.

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

If our potential royalty providers 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 potential royalty providers 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 potential royalty providers may obtain regulatory approval. Even if coverage is available, the associated reimbursement rate may not be adequate for our potential royalty providers to cover related marketing 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. Thus, even if our partners' product candidates are approved by the FDA, our royalty partners may not be able to price the products effectively or obtain coverage and adequate reimbursement for their products, which could adversely affect the royalties we receive.

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 potential milestone and royalty providers' 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 potential royalty providers 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 a product in which we have an ownership or royalty interest). Consequently, we do not know if physicians or patients will adopt or use products in which we have an ownership or royalty interest 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 which may lead to litigation, increased costs and delays or removal of the product from 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 defense costs and/or 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 adequately 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, financial condition 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, regardless of merit or eventual outcome, including loss of future sales opportunities, discontinuation of clinical trials, increased costs associated with replacing products, a negative impact on our goodwill and reputation, costs to defend litigation, 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 potential royalty providers are unable to protect our intellectual property, in particular patent protection for principal products, product candidates and processes in which we have an ownership or royalty interest, and prevent the use of the covered subject matter by third parties, our potential royalty providers' ability to compete in the market will be harmed, and we may not realize our profit potential.

We and our potential royalty providers 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 and those of our potential royalty providers;
- prevent our competitors from gaining access to our proprietary information and technology and that of our potential royalty providers; or
- permit us or our potential royalty providers 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 potential royalty providers hold and are in the process of applying for a number of patents in the United States and abroad to protect 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, and our potential royalty providers intellectual property rights are not protected adequately, our potential royalty providers may not be able to commercialize technologies or products in which we have an ownership or royalty interest, and our competitors could commercialize such technologies or products, which could result in a decrease in our potential royalty providers' 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 potential royalty providers 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 potential royalty providers' patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our or our potential royalty providers' patents and patent applications; or

- the extent to which our or our potential royalty providers' 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, reduce the royalty rate due to us, and prevent our potential royalty providers 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 potential royalty providers may require licenses from others to develop and commercialize certain potential products in which we have an ownership or royalty interest. These licenses, if required, may not be available on acceptable terms, or may trigger contractual royalty offset clauses in our license agreements, or those of our royalty-agreement counterparties. We may become involved in litigation to determine the proprietary rights of others, and any such litigation will presumably be costly, time consuming, may not be adequately covered by insurance and may have other adverse effects on our business, such as inhibiting our potential royalty providers' 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.

In addition, periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and or applications will be due to the U.S. and various foreign patent offices at various points over the lifetime of our and our licensees' patents and/or applications. We have systems in place to remind us to pay these fees, and we rely on our outside patent annuity service to pay these fees when due. Additionally, the U.S. and various foreign patent offices require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with rules applicable to the particular jurisdiction. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If such an event were to occur, it could have a material adverse effect on our business.

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 may be time-consuming and 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 of, COVID-19 related absence of, or changes in any of our key personnel, 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. We currently do not have key person insurance on any of our employees. In addition, given our minimal employee base, a COVID-19 outbreak in our employee population could significantly hinder our ability to meet our operating objectives. Furthermore, in December 2021, we announced James R. Neal notified us of his decision to retire as our Chief Executive Officer, effective at the earlier of (i) December 31, 2022, or (ii) the date we hire a new Chief Executive Officer. Changes in management may cause disruption in our business, strategic and employee relationships, which may delay or prevent the achievement of our business objectives. During the transition periods, there may be uncertainty among investors, employees and others concerning our future direction and performance.

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

We had 12 employees as of October 31, 2022. We may require additional experienced executive, accounting, legal, administrative and other personnel from time to time in the future. We are highly dependent on principal members of our executive team, the loss of whose services may adversely impact the achievement of our objectives. There is intense competition for the services of these personnel, especially in California.

Moreover, we expect 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.

While Mr. Neal has agreed to continue as the Chairman and Chief Executive Officer as per the terms of the separation agreement, there can be no assurance that a replacement will be found on a timely basis, or at all. Our inability to find a suitable replacement may have a detrimental impact on the organization and impede the progress of our royalty aggregator objectives.

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.

Natural disasters, power shortages, power interruptions or other calamities 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, riot, fire, power shortage or other calamity affecting our facilities may disrupt our business and could have material adverse effect on our results of operations.

If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which, particularly when taken together with our lack of earthquake insurance, could have a material adverse effect on our business.

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.

If our information technology systems or data are or were compromised by data breaches, cyberattacks, or other security incidents our intellectual property or other sensitive information could be exposed or stolen and we could experience adverse consequences, including regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.

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.

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 and protection 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 a person with authorized access to our network, to an individual hacker, to a state-sponsored attack. Cyber threats may be intentional or accidental, generic or commodity in nature, 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 foreign, 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.

Authorities worldwide 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.

We are subject to stringent and changing obligations related to data privacy and security. Significant disruptions of information technology systems, including cloud-based systems, or breaches of data security could adversely affect our business. Our actual or perceived failure to comply with any privacy or data security obligations could lead to regulatory investigations or actions; litigation; fines and penalties; a disruption of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.

We process sensitive and confidential information (including personal data), which subjects us to various obligations related to data privacy and security (e.g., U.S. and foreign law, regulations, guidance, industry standards, policies, contracts, and other obligations). For example, the EU implemented in 2018 the 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.

In the U.S., the CCPA became effective on January 1, 2020. The CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents. Additionally, although not effective until January 1, 2023, the CPRA, which expands upon the CCPA, was passed in the election on November 3, 2020. The CCPA gives (and the CPRA will give) California residents expanded privacy rights, including the right to request correction, access and deletion of their personal information, the right to opt out of certain personal information sharing, and the right to receive detailed information about how their information is processed. The CCPA and CPRA include a framework with potentially severe statutory damages and private rights of action and will likely impact our business activities, along with increasing our compliance costs and potential liability. If we fail to comply with the CCPA and CPRA, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations. Other states are beginning to pass similar laws. For example, on March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act, or CDPA, which becomes effective on January 1, 2023, and on June 8, 2021, Colorado enacted the Colorado Privacy Act, or CPA, which takes effect on July 1, 2023.

Complying with the GDPR, CCPA, CPRA, CDPA, CPA, or other laws, regulations, amendments to or re-interpretations of existing laws and regulations, and contractual or other obligations relating to privacy, data protection, data transfers, data localization, or information security may require us to make changes to our business to enable us to meet new legal requirements, incur substantial operational costs, modify our data practices and policies, and restrict our business operations. Further, data incidents 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.

In addition, cyber incidents 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. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events. Lastly, we cannot guarantee that we are in compliance with all applicable data protection laws and regulations as they are enforced now or as they evolve.

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 potential royalty providers 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 potential royalty providers 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 potential royalty providers' ability to sell products in which we have ownership or 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 Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the ACA, was enacted, which, among other things, substantially changed the way healthcare is financed by both governmental and private payers.

There have been judicial, Congressional and executive branch challenges to certain aspects of the ACA, as well as efforts by the Trump administration to repeal or replace certain aspects 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, includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by 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 eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January l, 2021, also eliminated the health insurer tax. The Bipartisan Budget Act of 2018, or the BBA, among other things, amends the ACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D and close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole". On, June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the

ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. Further, prior to the U.S. Supreme Court ruling, President Biden issued an executive order that initiated a special enrollment period from February 15, 2021 through August 15, 2021 for purposes of obtaining health insurance coverage through the ACA marketplace. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. In addition, on August 16, 2022, President Biden signed the Inflation Reduction Act of 2022, or the IRA, into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in ACA marketplaces through plan year 2025. The IRA also eliminates the "donut hole" under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost through a newly established manufacturer discount program. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how other such challenges, and the healthcare reform measures of the Biden administration will impact the ACA and our business.

Other legislative changes have also been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to two percent per fiscal year, starting in 2013 and, due to subsequent legislative amendments to the statute, will remain in effect until 2031 unless additional Congressional action is taken. However, COVID-19 relief support legislation suspended the 2% Medicare sequester from May 1, 2020 through March 31, 2022. Under current legislation the actual reduction in Medicare payments will vary from 1% in 2022 to up to 4% in the final fiscal year of this sequester. In addition, the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding.

Also, there has been heightened governmental scrutiny recently in the U.S. over 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. For example, in July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, the Department of Health and Human Services, or HHS, released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. In addition, the IRA, among other things, (i) directs the Secretary of HHS to negotiate the price of certain high-expenditure, single-source drugs and biologics covered under Medicare Part B and Medicare Part D, and subjects drug manufacturers to civil monetary penalties and a potential excise tax by offering a price that is not equal to or less than the negotiated "maximum fair price" under the law, and (ii) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. The IRA permits HHS to implement many of these provisions through guidance, as opposed to regulation, for the initial years. These provisions will take effect progressively starting in fiscal year 2023, although they may be subject to legal challenges. It is currently unclear how the IRA will be implemented but is likely to have a significant impact on the pharmaceutical industry. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, and restrictions on certain product access. In some cases, such legislation and regulations have been designed to encourage importation from other countries and bulk purchasing.

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 potential royalty providers from being able to generate revenue, attain profitability, develop, or commercialize our current product candidates in which we have an ownership or royalty interest.

We and our potential milestone and royalty providers are subject to various state and federal healthcare-related laws and regulations that if violated may impact the commercialization of our 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", or "relator" 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 Health Insurance Portability and Accountability Act of 1996, or 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 and their subcontractors 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 potential milestone and royalty providers' business activities could be subject to challenge under one or more of such laws.

If we or our potential milestone and royalty providers 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 potential milestone and royalty providers 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 potential milestone and royalty providers' 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.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, import and customs laws, trade and economic sanctions laws and other laws governing our operations.

We are subject to the U.S. Foreign Corrupt Practices Act and other anti-corruption laws, as well as export control laws, import and customs laws, trade and economic sanctions laws and other laws governing our operations. Our operations are subject to anti-corruption laws including the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. §201, the U.S. Travel Act, and other anti-corruption laws that apply in countries where we do business. The FCPA and these other laws generally prohibit us and our employees and intermediaries from authorizing, promising, offering, or providing, directly or indirectly, improper or prohibited payments, or anything else of value, to government officials or other persons to obtain or retain business or gain some other business advantage. We and the royalty agreement counterparties and licensees who generate our royalties operate in a number of jurisdictions that pose a high risk of potential FCPA violations, and we participate in collaborations and relationships with third parties whose corrupt or illegal activities could potentially subject us to liability under the FCPA or local anti-corruption laws, even if we do not explicitly authorize or have actual knowledge of such activities. In addition, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing laws might be administered or interpreted. We are also subject to other laws and regulations governing our international operations, including regulations administered by the governments of the United States and authorities in the European Union, including applicable export control regulations, economic sanctions and embargoes on certain countries and persons, anti-money laundering laws, import and customs requirements and currency exchange regulations, collectively referred to as the Trade Control laws. There is no assurance that we will be completely effective in ensuring our compliance with all applicable anti-corruption laws, including the FCPA or other legal requirements, including Trade Control laws. If we are not in compliance with the FCPA and other anticorruption laws or Trade Control laws, we may be subject to criminal and civil penalties, disgorgement and other sanctions and remedial measures, and legal expenses, which could have an adverse impact on our business, financial condition, results of operations and liquidity. Likewise, any investigation of any potential violations of the FCPA, other anti-corruption laws or Trade Control laws by the United States or other authorities could also have an adverse impact on our reputation, our business, financial condition and results of operations. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities or our business arrangements with third parties could be subject to challenge under one or more of such laws. It is possible that governmental authorities will conclude that our business practices or the business practices of the royalty agreement counterparties and licensees who generate our royalties may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations or the operations of the royalty agreement counterparties and licensees who generate our royalties are found to be in violation of any of these laws or any other governmental regulations, we or the royalty agreement counterparties and licensees who generate our may be subject to significant criminal, civil and administrative sanctions, including monetary penalties, damages, fines, disgorgement, individual imprisonment and exclusion from participation in government-funded healthcare programs, such as Medicare and Medicaid, additional reporting requirements and oversight if we or the royalty agreement counterparties and licensees who generate our royalties become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws, reputational harm, and we or marketers of products that generate our royalties may be required to curtail or restructure operations, any of which could adversely affect our ability to operate our business and our results of operations. The risk

of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. The shifting compliance environment and the need to build and maintain robust and expandable systems to comply with multiple jurisdictions with different compliance and/or reporting requirements increases the possibility that a healthcare company may run afoul of one or more of the requirements.

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

We or our potential milestone and royalty providers 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 potential milestone and royalty providers 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.

General Risk Factors

Our share price may be volatile, and there may not be an active trading market for our common stock, Series A Preferred Stock or our Series B Preferred Stock.

There can be no assurance that the market price of our common stock will not decline below its present market price. Additionally, there may not be an active trading market for our common stock, Series A Preferred Stock or depositary shares representing interests in our Series B Preferred 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 stock price or the existence of an active trading market for our common stock, Series A Preferred Stock or depositary shares representing interests in our Series B Preferred Stock. We have experienced significant volatility in the price of our common stock. From January 1, 2022, through October 31, 2022, the share price of our common stock has ranged from a high of $32.09 to a low of $15.68. From January 1, 2022, through October 31, 2022, the share price of our Series A Preferred Stock has ranged from a high of $27.09 to a low of $22.14. January 1, 2022, through October 31, 2022, the share price of our Series B Preferred Stock has ranged from a high of $26.81 to a low of $21.75. Additionally, we have two significant holders of our common stock that

could affect the liquidity of our stock and have a significant negative impact on our stock price if the holders were to quickly sell their ownership positions.

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 have issued equity securities and may issue additional equity securities from time to time, that materially and adversely affect the price of our common stock, including our Series X preferred stock, Series A Preferred Stock and depositary shares representing interests in our Series B Preferred Stock.

We expect 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 Common Stock ATM Agreement, as amended, and 2021 Series B Preferred Stock 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 existing securities may be materially and adversely affected.

As of September 30, 2022, there were 5,003 shares of Series X preferred stock issued and outstanding. 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. As of September 30, 2022, BVF owned approximately 31.5% of our total outstanding shares of common stock, and if all of the Series X convertible preferred shares were converted, BVF would own 52.4% of our total outstanding shares of common stock. Additionally, as of September 30, 2022, we had issued and outstanding 984,000 shares of Series A Preferred Stock and 1,600,000 depositary shares, each representing a 1/1000th fractional interest in a share of our Series B Preferred 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 securities.

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 additional dilution or result in other rights or obligations that adversely affect our stockholders. For example, holders of shares of our Series A Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.625% of the $25.00 liquidation preference per year (equivalent to $2.15625 per year). Additionally, holders of depositary shares representing interests in our Series B Preferred Stock are entitled to receive, when and as declared by our Board of Directors, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 8.375% of the $25,000 liquidation preference per share of Series B Preferred Stock ($25.00 per depositary share) per year (equivalent to $2,093.75 per year per share or $2.09375 per year per depositary share). 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.

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 disclosure controls and 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 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.

Our ability to use our NOL 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 NOLs incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such federal NOLs 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 NOL carry-forwards 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 an ownership change in February 2017, when we completed an equity financing for net proceeds of $24.8 million 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. 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.

The 2017 tax reform law, as modified by 2020 tax legislation, and possible future changes in tax laws or regulations could adversely affect our business and financial condition.

On December 22, 2017, former President Trump signed into law comprehensive tax legislation (the "Tax Cuts and Jobs Act") that significantly revised the Internal Revenue Code of 1986, as amended (the "Code"). Future guidance from the U.S. Internal Revenue Service and other tax authorities with respect to the Tax Cuts and Jobs Act may affect us, and certain aspects of the Tax Cuts and Jobs Act could be repealed or modified in future legislation. For example, on March 27, 2020, the CARES Act was enacted, which includes changes to the tax provisions that benefit business entities and makes certain technical corrections to the Tax Cuts and Jobs Act. On February 9, 2022, California enacted 2022 CA SB 113 (SB 113), which shortens the previously enacted suspension on the use of NOLs and prior limits on the use of business tax credits, including the R&D credit. Changes in corporate tax rates, the realization of net deferred tax assets relating to our U.S. operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Cuts and Jobs Act, the CARES Act, or future tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in future taxable years, and could increase our future U.S. tax expense. The foregoing items, as well as any other future changes in tax laws, could have a material adverse effect on our business, cash flow, financial condition, or results of operations. In addition, it is uncertain if and to what extent various states will conform to the Tax Cuts and Jobs Act, the CARES Act, or any newly enacted federal tax legislation.

Stockholder 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 business, financial condition and results of operations.

Securities-related class action and stockholder 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 time and 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. Although we carry insurance to protect us from such claims, our insurance may not provide adequate coverage. 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.

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

On November 1, 2022, the Company entered into a letter agreement with Thomas Burns that amends his amended and restated employment agreement (the "Employment Agreement"). Pursuant to the Employment Agreement as amended by this letter agreement, in the event Mr. Burns remains employed by the Company for a twelve-month period beginning on November 1, 2022, he will be deemed "retirement eligible" for purposes of his equity awards under the terms of his equity award agreements. All other terms of the Employment Agreement remain the same.

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 8.625% Series A Cumulative Perpetual Preferred Stock	8-K	000-14710	3.1	12/11/2020
3.7	Certificate of Designation of Preferences, Rights and Limitations of 8.375% Series B Cumulative Perpetual Preferred Stock	8-K	000-39801	3.1	04/08/2021
3.8	Certificate of Correction of the Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock dated June 9, 2021	10-Q	001-39801	3.8	08/05/2021
3.9	Certificate of Amendment to the Certificate of Designation of 8.375% Series B Cumulative Perpetual Preferred Stock of XOMA Corporation.	8-K	001-39801	3.1	08/05/2021
3.10	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, 3.7, 3.8, 3.9 and 3.10				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Deposit Agreement, dated effective April 9, 2021, by and among XOMA Corporation, American Stock Transfer & Trust Company, LLC, as depositary, and the holders of the depositary receipts issued thereunder	8-K	000-39801	4.1	04/08/2021
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[+#]	IL-1b Target License Agreement, dated August 24, 2017, by and between XOMA Corporation and Novartis Pharma AG				
10.2[+#]	License Agreement, dated August 24, 2017, by and between XOMA Corporation and Novartis Pharma AG				
10.3[+#]	License Agreement, dated March 23, 2016, between XOMA Corporation and Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.4+#	Amendment and Restatement, dated February 2, 2017, to the Asset Purchase Agreement, dated November 4, 2015, and License Agreement, dated March 23, 2016, between XOMA Corporation and Ology Bioservices Inc. (formerly Nanotherapeutics Inc., now a wholly owned subsidiary of National Resilience, Inc.)				
31.1+	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				
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+	Inline XBRL Instance Document				
101.SCH+	Inline XBRL Schema Document				
101.CAL+	Inline XBRL Calculation Linkbase Document				
101.DEF+	Inline XBRL Definition Linkbase Document				
101.LAB+	Inline XBRL Labels Linkbase Document				
101.PRE+	Inline XBRL Presentation Linkbase Document				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

\+ Filed herewith

\# Portions of this exhibit have been omitted as the Registrant has determined that (i) the omitted information is not material and (ii) the omitted material is of the type that the Registrant treats as private or confidential.

(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 3, 2022 By: /s/ JAMES R. NEAL
James R. Neal
Chief Executive Officer (Principal Executive Officer) and
Chairman of the Board of Directors

Date: November 3, 2022 By: /s/ THOMAS BURNS
Thomas Burns
Senior Vice President, Finance and Chief Financial Officer
(Principal Financial and Principal Accounting Officer)

Exhibit 10.1

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

IL-1 TARGET LICENSE AGREEMENT

by and between

XOMA (US) LLC

and

NOVARTIS PHARMA AG

TABLE OF CONTENTS

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

List of Exhibits

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

IL-1 TARGET LICENSE AGREEMENT

This IL-1 TARGET LICENSE AGREEMENT (the "Agreement") is entered into as of the 24th day of August, 2017 (the "Effective Date") by and between XOMA (US) LLC, a limited liability company organized under the laws of Delaware having offices at 2910 Seventh St., Berkeley, CA, USA, 94710 ("XOMA"), and Novartis Pharma AG, company limited by shares (*Aktiengesellschaft*) incorporated under the laws of Switzerland and registered in the Commercial Register of the Canton of Basel-Stadt, Switzerland, under number CHE-106.052.527 whose registered office is at Lichtstrasse 35, CH 4056 Basel, Switzerland ("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 rights with respect to IL-1 Antibodies and IL-1 Products (as defined below);

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

WHEREAS, the Parties desire that XOMA grant Novartis non-exclusive rights with respect to XOMA IL-1 IP to permit Novartis to make, use, sell, offer for sale, import, and otherwise exploit IL-1 Products in the Field in the Territory and an exclusive option with respect to Canakinumab (each, as defined below), in exchange for certain royalties to be paid to XOMA and the other consideration referenced herein, all on the terms and conditions set forth herein.

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

ARTICLE I
DEFINITIONS

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

"ACA" means the Patient Protection and Affordable Care Act, as the same may be amended or supplemented from time to time.

"Accounting Standards" means IFRS, as generally and consistently applied throughout Novartis' organization. Novartis shall promptly notify XOMA in the event that it changes the Accounting Standards pursuant to which its records are maintained; provided, however, that Novartis may only use internationally recognized accounting principles (e.g., IFRS, 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

to the date of the Change of Control or developed or generated thereafter by such Third Party acquiror without use of or access to 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 (1) 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.

"Biosimilar" a biological medicinal product for human use which (a) is highly similar to a reference biological medicinal product that has Regulatory Approval in the country in question; (b) has no clinically meaningful differences from such reference product in terms of quality, safety and efficacy, and (c) is approved for use (i) in the United States as a biosimilar biologic product (as defined in the ACA) pursuant to an abbreviated regulatory approval process established under the ACA; (ii) in the EU as a similar biologic medicinal product pursuant to Directive 2001/83/EC or Regulation (EC) No 726/2004 (as applicable); and/or (iii) in any other country pursuant to an equivalent regime in such country.

"BLA" means a Biologics License Application filed with the FDA in the United States with respect to an IL-1 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, in Basel, Switzerland or San Francisco, California.

"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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"Canakinumab" means the antibody known as canakinumab and any isoforms, allelic variants, mutants, polymorphisms, modified forms and fragments thereof, and human and non-human counterparts of the foregoing.

"Canakinumab Biosimilar" means a Biosimilar of Canakinumab.

[*] means the period during which [*] or [*] with respect to [*] (a) [*] or (b) [*]

"Canakinumab Patents" mean [*] and/or the [*]

"Canakinumab Product" means any pharmaceutical or biological product containing Canakinumab (alone or with other active ingredients), in all forms, presentations, formulations, methods of administration and dosage forms. For the purposes of this Agreement, Canakinumab Product shall be deemed to include Canakinumab Biosimilars.

"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 such Party or such Party's ultimate parent as a result of which the stockholders of such Party or parent 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 (1) or more subsidiaries); (b) the adoption of a plan relating to the liquidation or dissolution of a Party or its ultimate parent, 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 or biological product (in any formulation) containing one (1) or more active pharmaceutical ingredients in addition to the CV Canakinumab Product.

"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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"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 XOMA IL-1 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 XOMA IL-1 Claim (or, in the case of a Valid XOMA IL-1 Claim that has not yet issued, would infringe such Valid XOMA IL-1 Claim if it were to issue as then being prosecuted in good faith).

"CV Canakinumab Product" means the Canakinumab Product for the CV Indication.

"CV Indication" means the [*] For clarity, a CV Indication [*] including [*] and [*], or [*] or [*] or [*]

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

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

"Excluded Patents" mean PCT application [*] and all Patents claiming priority thereto.

"Executive Officers" means the Chief Executive Officer (or his designee) of XOMA and the Head BD&L (or his designee) of Novartis International AG, an Affiliate of Novartis.

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

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

"First Commercial Sale" means, with respect to a CV Canakinumab Product, the first arm's length sale to a Third Party for use or consumption of any such CV Canakinumab Product in a country. For clarity, the First Commercial Sale shall not include any sale by a Party to its Affiliates or sublicensees (unless such Person is the end user of such CV Canakinumab Product).

"Fixed Dose Combination Product" means a Combination Product administered in fixed-dose form.

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

"Gevokizumab" means the antibody known as gevokizumab, and any isoforms, allelic variants, mutants, polymorphisms, modified forms and fragments thereof, and human and non-human counterparts of the foregoing. For the purposes of this Agreement, Gevokizumab shall be deemed to include any Gevokizumab Biosimilar.

"HSR Act" means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

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

"IL-1 Antibody" means, [*], any [*] and [*] and [*] and [*] For clarity, [*]

"IL-1 Product" means any pharmaceutical or biological product containing an IL-1 Antibody (alone or with other active ingredients), in all [*] including for [*]

"[*]" means [*].

"IL-1b Target" means the interleukin-1b (IL-1b) family of cytokines that mediate immune and inflammatory reactions.

"Indebtedness" means (without duplication), as to any Person, (a) all obligations for the payment of principal, interest, penalties, fees or other liabilities for borrowed money (including guarantees and notes payable), incurred or assumed, (b) all obligations of such Person for the deferred purchase price of property or services, (c) any obligations to reimburse the issuer of any letter of credit, surety bond, debentures, promissory notes, performance bond or other guarantee of contractual performance, (d) all Indebtedness of Third Parties secured by a Lien on property owned or acquired by such Person, (e) any obligation that would be required to be reflected as debt on the balance sheet of such Person under the Accounting Standards and (f) all Indebtedness of others referred to in clauses (a) through (e) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement to pay or purchase such Indebtedness, to advance or supply funds for the payment or purchase of such Indebtedness or otherwise to assure a creditor against loss, in each case including all accrued interest and prepayment penalties, if any, and (g) all contingent obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (f) above.

"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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

"Liens" means all liens, claims, security interests, licenses, security interests, restrictions on ownership or transferability or other encumbrances of any kind.

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

"Net Sales" means the net sales on behalf of Novartis and any of its Affiliates or sublicensees (each, a "Selling Party") for any CV Canakinumab Product sold to Third Parties other than sublicensees in bona fide, arm's-length transactions, [*] The deductions booked on an accrual [*] 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 CV Canakinumab 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 CV Canakinumab 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 CV Canakinumab Product in the country of sale or disposal.

In the event a CV Canakinumab Product is sold as a Fixed Dose Combination Product, the Net Sales of a CV Canakinumab Product, for the purposes of determining royalty payments,

shall be determined by multiplying the Net Sales of the Fixed Dose 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 CV Canakinumab Product containing Canakinumab 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 Canakinumab and other active ingredient components that are included in the Fixed Dose Combination Product, then [*] in calculating the royalty-bearing Net Sales of the Fixed Dose Combination Product. In the event that such weighted average sale price cannot be determined for both a CV Canakinumab Product and the other product(s) in combination, or if the Combination Product is not a Fixed Dose Combination Product, the calculation of Net Sales for purposes of determining royalty payments shall be [*]

For the avoidance of doubt, sales between Novartis, its Affiliates and its sublicensees shall not be considered Net Sales (unless such Person is the end user of a CV Canakinumab Product).

"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.

"[*]" means [*] For clarity, [*]

"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 an IL-1 Product in any country or jurisdiction, the 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 IL-1 Product in such country or jurisdiction.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"Regulatory Authority" means any governmental agency or authority responsible for granting Regulatory Approvals for IL-1 Products, including the FDA, EMA and any corresponding national or regional regulatory authorities.

"Servier Lien Release" means receipt by Novartis of the Servier Payoff Letter completed and fully executed by Servier.

"Servier Loan" means all of the Indebtedness and other obligations due or payable under that certain Loan Agreement by and between XOMA (US) LLC on the one hand, and Les Laboratoires Servier and Institut de Recherches Servier (together, "Servier") on the other, dated as of December 30, 2010 (as amended, by that certain Consent, Transfer, Assumption and Amendment Agreement by and among XOMA Ireland Limited, XOMA (US) LLC and Les Laboratoires Servier, dated as of August 12, 2013; as amended, by that certain Amendment No. 2 to the Loan Agreement by and between XOMA (US) LLC and Servier, dated as of January 9, 2015; as amended, by that certain Amendment No. 3 to the Loan Agreement by and between XOMA (US) LLC and Servier, dated as of January 17, 2017; and as may be further amended by the parties thereto, subject to the terms of this Agreement) and any other Indebtedness due or payable between XOMA (US) LLC or any XOMA Affiliates and Servier and any Servier Affiliates related to any intellectual property licensed pursuant to this Agreement.

"Servier Payoff Letter" means the payoff letter substantially in the form attached as **EXHIBIT D**, with such amendments or modifications approved in writing by Novartis, which approval shall not be unreasonably withheld or delayed.

"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.

"Valid XOMA IL-1 Claim" means with respect to any country, (a) a claim of an issued and unexpired Patent that is a XOMA IL-1 Patent, or (b) a claim in a filed but not yet granted patent application that is a XOMA IL-1 Patent where such claim has not yet been pending for longer than [*] following the filing of the earliest application from which said patent application derives priority, in each case where such claim has not been (w) disclaimed, cancelled, withdrawn or abandoned, (x) dedicated to the public, (y) declared invalid, unenforceable, unpatentable or revoked by a decision of a court, government agency or other authority, or (z) admitted to be invalid or unenforceable through reexamination, reissue or otherwise; provided, that if such a claim ceases to be a Valid XOMA IL-1 Claim by reason of the foregoing (w) through (z), then such claim shall again be deemed a Valid XOMA IL-1 Claim in the event such claim subsequently issues within a XOMA IL-1 Patent.

"XOMA IL-1 IP" means XOMA IL-1 Know-How and XOMA IL-1 Patents.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"XOMA IL-1 Know-How" means Know-How, other than any Know-How that is part of any Acquiror IP, that is Controlled by XOMA or its Affiliates [*] to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit any IL-1 Antibody and/or IL-1 Products.

"XOMA IL-1 Patents" mean any Patents, other than any Patents that are part of any Acquiror IP, that are Controlled by XOMA or its Affiliates [*] that claim an IL-1 Antibody and/or any IL-1 Products and/or the use, manufacture, import, sale or commercial exploitation thereof, [*] including those set forth on **EXHIBIT A**. Notwithstanding the foregoing, [*]

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

ARTICLE II
LICENSE GRANTS

2.1 License Grants.

2.1.1 License Grant. XOMA hereby grants to Novartis and its Affiliates (a) a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (subject to Section 2.1.2) license under the XOMA IL-1 IP to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit all IL-1 Antibodies and IL-1 Products, including Biosimilars of the IL-1 Products, in the Field other than Canakinumab and Canakinumab Products (the "IL-1 License"); (b) a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (subject to Section 2.1.2) license under the XOMA IL-1 IP to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit Canakinumab and Canakinumab Products, in each case, in the Field other than for the CV Indication (the "Canakinumab Non-CV Indication Non-Exclusive License"); and (c) a non-exclusive, worldwide, royalty-bearing, sub-licensable (subject to Section 2.1.2) license under the XOMA IL-1 IP to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit Canakinumab and Canakinumab Products, in each case, in the Field for the CV Indication (the "Canakinumab CV Indication Non-Exclusive License").

2.1.2 Sublicensing. The license grants in Section 2.1.1 include the right to grant and authorize sublicenses solely in connection with those IL-1 Antibodies and IL-1 Products that are developed by or on behalf of Novartis, its Affiliates and sublicensees in multiple tiers; provided, that: (a) Novartis shall require that each sublicensee comply with all applicable provisions of this Agreement; and (b) Novartis shall remain directly responsible for each sublicensee's performance in connection with this Agreement.

2.2 Rights Retained by the Parties. For purposes of clarity, (a) 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; and (b) XOMA does not grant Novartis any rights under any Know-How and Patents Controlled by XOMA to make, have made, use, offer for sale, import, sell or otherwise exploit Gevokizumab under this Agreement. Novartis shall not, and shall not permit any of its Affiliates or sublicensees to, practice or use any of the XOMA IL-1 Patents or XOMA IL-1 Know-How outside of the scope of the license granted under Section 2.1.1 and/or Section 2.5, as applicable.

2.3 Rights in Bankruptcy.

2.3.1 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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.

2.3.2 All rights, powers and remedies of Novartis provided for in this Section 2.3 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, the right of access to any XOMA IL-1 IP (including all embodiments thereof).

2.4 Right of First Negotiation. If [*] or [*], XOMA shall provide Novartis written notice ("ROFN Notice") [*] and [*]. Novartis will have an exclusive right of first negotiation to elect to enter into exclusive negotiations with XOMA to obtain the license(s) or [*], exercisable by written notice to XOMA within [*] of receipt of a ROFN Notice provided by XOMA in the case of [*], and within [*] of receipt of a ROFN Notice provided by XOMA in the case of [*]. If Novartis exercises such right of first negotiation, the Parties will negotiate in good faith for up to [*] in the case of [*], and up to [*] in the case of [*], as each such periods may be extended by the Parties in writing (each, an "Exclusive Negotiation Period") following exercise of such right of first negotiation to reach agreement on mutually acceptable terms [*] If the Parties cannot agree on mutually acceptable terms during the applicable Exclusive Negotiation Period, then, [*]; provided, however, that [*]

2.5 Exclusive Option. XOMA hereby grants Novartis, an exclusive option and right (the "Exclusive Option") to convert, globally or on a country-by-country basis, (a) the Canakinumab Non-CV Indication Non-Exclusive License to an exclusive (even as to XOMA), perpetual, irrevocable, royalty-free, sub-licensable (subject to Section 2.1.2) license under the XOMA IL-1 IP in the applicable country to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit Canakinumab and Canakinumab Products, in each case, in the Field other than for the CV Indication; and (b) the Canakinumab CV Indication Non-Exclusive License to an exclusive (even as to XOMA), royalty-bearing, sub-licensable (subject to Section 2.1.2) license under the XOMA IL-1 IP in the applicable country to make, have made, use, offer for sale, import, sell, and otherwise commercially exploit Canakinumab and Canakinumab Products, in each case in the Field for the CV Indication (the "Canakinumab Exclusive License"). Novartis may exercise the Exclusive Option in a given country in the Territory [*] If Novartis is interested in exercising the Exclusive Option to receive the Canakinumab Exclusive License, Novartis will provide XOMA with written notice ("Novartis Interest Notice") of its intent to exercise such Exclusive Option, including notification of whether, in Novartis' good faith opinion, the Parties would be required by applicable Law to file with the United States Department of Justice, a notification and report form under the HSR Act (an "HSR Filing") with respect to the exercise of the Exclusive Option. As promptly as practicable but in any event within [*] of the date of Novartis' Interest Notice [*] and [*] or [*]. If reasonably requested by XOMA, the Parties

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

shall [*]. If Novartis elects to exercise the Exclusive Option, after the earliest of (i) [*] (ii) [*] or (iii) [*], Novartis shall provide XOMA with written notice of exercise. If an HSR Filing is required with respect to the exercise of the Exclusive Option, the Parties will cooperate with one another to the extent necessary in the preparation of any such HSR Filing. In such case, the Parties shall each use [*] efforts to ensure that applicable waiting period under the HSR Act or any applicable comparable foreign law in the applicable country expires or is terminated as soon as practicable. Notwithstanding the foregoing, nothing in this Section 2.5 shall require either Party or any of its Affiliates to commit to any divestiture, license (in whole or in part) or any arrangement to hold separate (or any similar arrangement) with respect to any of its products or assets. The Exclusive Option shall be deemed exercised on the date, (i) if an HSR Filing is not required, of Novartis' notice of exercise or (ii) if an HSR Filing is required, the date of expiration or termination of the applicable waiting period under the HSR Act (such date the "Canakinumab Exclusive License Effective Date"). Effective as of the Canakinumab Exclusive License Effective Date, (x) each of the Canakinumab Non-CV Indication Non-Exclusive License and the Canakinumab CV Indication Non-Exclusive License are hereby converted into the Canakinumab Exclusive License; and (y) the provisions set forth in **EXHIBIT B** shall apply with respect to the Canakinumab Exclusive License. For clarity purposes, the IL-1 License shall remain in effect and unaffected by Novartis's decision to exercise or not exercise the Exclusive Option.

ARTICLE III
FINANCIAL TERMS

3.1 Upfront Payment. In partial consideration for the licenses granted to Novartis hereunder, Novartis shall pay XOMA a total upfront payment of Ten (10) Million Dollars (US$10,000,000) within five (5) Business Days of the Servier Lien Release.

3.2 Royalties.

3.2.1 Royalties. Subject to [*], on a CV Canakinumab Product-by-CV Canakinumab Product basis, and country-by-country basis, Novartis shall pay royalties at a rate of [*] ([*]%) on Net Sales of such CV Canakinumab Product for the CV Indication sold by Novartis, its Affiliates, or its sublicensees in the Territory during the Royalty Term.

3.2.2 Royalty Term and Adjustments.

(a) Novartis' royalty obligations to XOMA under this Section 3.2 shall commence on a CV Canakinumab Product-by-CV Canakinumab Product and country-by-country basis on the date of First Commercial Sale of such CV Canakinumab Product by Novartis, its Affiliates or sublicensees to a Third Party in the relevant country where such CV Canakinumab Product is Covered by a Valid XOMA IL-1 Claim and shall expire on a CV Canakinumab Product-by-CV Canakinumab Product and country-by-country basis upon the earlier of (i) the date of expiration in such country of the last-to-expire Valid XOMA IL-1 Claim, where the sale of the applicable CV Canakinumab Product in the applicable country would infringe such Valid XOMA IL-1 Claim but for the license granted to Novartis under this Agreement; or (ii) the date on which [*] occurs in such country with respect to such CV Canakinumab Product (the "Royalty Term").

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(b) Upon the expiration of the Royalty Term for a CV Canakinumab Product in a country in the Territory, the licenses and rights granted to Novartis under this Agreement with respect to such CV Canakinumab Product in such country shall become fully paid-up, perpetual, irrevocable, royalty free licenses, which shall continue even after the expiration or termination of this Agreement.

(c) 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 [*], 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. Without limiting [*], in the event [*], or [*], and [*].

3.3 Reports; Royalty Payments.

3.3.1 After commencement of the First Commercial Sale and until the expiration of Novartis' royalty payment obligations under this ARTICLE III, Novartis agrees to make written reports to XOMA within [*] after the end of each Calendar Quarter covering sales of CV Canakinumab Products by Novartis, its Affiliates and sublicensees during such Calendar Quarter on a country-by-country basis in the Territory in each country where the CV Canakinumab Product is covered by a Valid XOMA IL-1 Claim.

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

(a) number of units sold of the CV Canakinumab Product(s);

(b) the Net Sales for the CV Canakinumab Product(s); and

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

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

3.3.4 Novartis [*] (the "[*]). At [*] and [*]

3.4 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.

3.5 Accounting.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

3.5.1 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 of CV Canakinumab Products, the CV Tracking Methodology, and royalties due thereon. Novartis shall keep such books and records for at least [*] following the Calendar Quarter to which they pertain.

3.5.2 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.

3.5.3 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 [*] 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.

3.5.4 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 10.1.

3.5.5 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.

3.5.6 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

3.7 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).

3.8 Taxes.

3.8.1 Except as otherwise provided in this Section 3.8, each Party shall be responsible for any tax obligations of its own due to this Agreement, including 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.

3.8.2 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, [*]. 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.

3.8.3 Subject to Section 3.8.4, 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.

3.8.4 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

3.8.5 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.

3.9 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 CV Canakinumab Product. Neither Party provides any representation, warranty or guarantee that the development of any CV Canakinumab Product will be successful, that Regulatory Approval for any IL-1 Product will be obtained, or that any other particular results will be achieved with respect to the commercialization of any CV Canakinumab Product hereunder.

3.10 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.

ARTICLE IV
OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

4.1 Ownership.

4.1.1 Pre-Existing Patents and Know-How. XOMA shall retain all of its right, title and interest in, to and under the XOMA IL-1 IP, and Novartis shall retain all of its rights, title and interest in, to and under the Patents and Know-How Controlled 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.

4.1.2 Intellectual Property Arising Under This Agreement. Novartis shall own all data, Patents and Know-How generated, discovered, developed, invented, conceived or reduced to practice by or on behalf of itself, its sublicensees, or Affiliates, whether solely by any such party or jointly by one (1) or more such parties, in connection with the exercise of the licenses granted under Section 2.1 with respect to any IL-1 Antibody or IL-1 Products under this Agreement, and all intellectual property rights therein (collectively, all such data, Patents and Know-How, the "Future IP").

4.2 Prosecution and Maintenance of Patents. As between the Parties, [*] shall have the sole right (but not the obligation) for Prosecuting and Maintaining the [*] Patents; provided that if [*] decides not to Prosecute and Maintain any [*] Patent in a country in the Territory, [*] shall notify in writing and consult with [*] regarding such decision or intention at least [*] prior to the date upon which the subject matter of such Patent shall become unpatentable or such Patent shall lapse or become abandoned. [*] shall thereupon have the right (but not the obligation), [*] in such country, to assume the Prosecution and Maintenance of such [*] Patent, in which case [*]. [*] shall be responsible for all costs and expenses associated with its Prosecution and Maintenance activities of [*] Patents.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

4.3 Defense of Claims Brought by Third Parties. [*] shall have the right to defend any claim that the making, using, selling, offering for sale, importing, or other exploitation of any [*] by or on behalf of [*], its Affiliates, or its sublicensees in or for the Territory infringes or misappropriates the intellectual property rights of any Third Party, and [*] shall have the right to defend any claim that the making, using, selling, offering for sale, importing, or other exploitation of any [*] by or on behalf of [*], its Affiliates, or sublicensees in or for the Territory infringes or misappropriates the intellectual property rights of any Third Party.

4.4 Enforcement. [*] shall have the sole right, but not the obligation, to enforce [*] against any infringement or misappropriation of [*] by a Third Party, or to defend any declaratory judgment action with respect thereto.

4.5 Trademarks. Novartis shall have the right to brand the IL-1 Products using Novartis related trademarks and any other trademarks and trade names it determines appropriate for an IL-1 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 V
CONFIDENTIALITY

5.1 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;

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(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.

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 Novartis International AG and XOMA, dated July 6, 2017 (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.

5.2 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 make, have made, use, offer for sale, import, sell, and otherwise exploit any IL-1 Antibody or IL-1 Products) including in filing or prosecuting patent applications in accordance with Section 4.2, 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 BLAs to Regulatory Authorities, and marketing IL-1 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 its licensors as necessary to satisfy its reporting obligations with respect to any IL-1 Antibody or IL-1 Product, in each case under appropriate confidentiality provisions substantially equivalent to those of this Agreement; or

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

5.3 Disclosure of Agreement.

5.3.1 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 5.3, neither Party nor its Affiliates shall make any public announcements concerning the terms of this Agreement or the transactions contemplated hereby or otherwise disclose the terms of this Agreement or the transactions contemplated hereby 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 or its Affiliates, 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 IL-1 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.

5.4 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 V.

5.5 Publications. XOMA shall not make any public disclosure (whether written, electronic, oral or otherwise) relating to any IL-1 Antibody or IL-1 Product without the prior

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 exercise of the licenses and rights with respect to any IL-1 Antibody or IL-1 Products under or in connection with this Agreement, and (b) publish or have published information about clinical trials related to any IL-1 Antibody or IL-1 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 an IL-1 Antibody or IL-1 Product under this Agreement, then Novartis shall use commercially reasonable efforts to provide XOMA with reasonable prior notice of such press release.

5.6 Clinical Trial Register. Each Party agrees that each clinical study and each nonclinical study with respect to any IL-1 Antibody or IL-1 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 any IL-1 Antibody or IL-1 Products.

ARTICLE VI
REPRESENTATIONS; WARRANTIES; COVENANTS

6.1 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 or its Affiliates is a party or by which it or its Affiliates are bound, nor violate any Law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party or its Affiliates;

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(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 (i) conduct clinical trials or to seek or obtain Regulatory Approvals of the IL-1 Products or patent extensions and (ii) under the HSR Act with respect to Novartis' exercise of the Exclusive Option; 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).

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

(a) The Patents listed in **EXHIBIT A** comprise a complete and accurate list of all XOMA IL-1 Patents;

(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 5.2) the XOMA IL-1 Know-How, and XOMA has the right to grant all rights and licenses it purports to grant to Novartis with respect to the XOMA IL-1 IP, the IL-1 Antibodies and IL-1 Products under this Agreement, free and clear of all Liens, other than Liens securing the Servier Loan, which will be released in accordance with the Servier Payoff Letter;

(c) Neither XOMA nor its Affiliates has 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) The XOMA IL-1 Know-How and XOMA IL-1 Patents [*] or [*];

(e) 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 IL-1 Antibodies or IL-1 Products;

(f) To XOMA's knowledge, [*] concerning the IL-1 Antibody or IL-1 Products or active pharmaceutical ingredients therein [*] and [*]; and

(g) Neither XOMA nor any Affiliate has entered into a government funding relationship that would result in rights to the IL-1 Antibody or IL-1 Product residing in

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

the U.S. 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 U.S. 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.

6.3 Covenant of XOMA. XOMA hereby covenants to Novartis that:

(a) 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. For clarity, unless and until Novartis has exercised the Exclusive Option with respect to a country, XOMA shall have the right to grant one or more Third Parties a non-exclusive license in such country for any Canakinumab Product under any or all of the XOMA IL-1 IP, subject to XOMA's obligations under Section 2.4;

(b) XOMA shall provide Novartis an updated **EXHIBIT A** from time to time upon Novartis' reasonable request, but no more frequently than [*];

(c) XOMA and its Affiliates', sublicensees' and representatives' performance in connection with this Agreement shall comply with all applicable Laws; and

(d) XOMA and its Affiliates will not prosecute any claims under the Excluded Patents directed to IL-1 Antibodies or IL-1 Products. As Novartis' sole and exclusive remedy, upon any breach by XOMA or its Affiliates of this Section 6.3(d), effective as of the date of such breach, the Excluded Patent(s) for which such breach occurred shall be deemed as and included within XOMA IL-1 Patents.

6.4 Covenant 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.

6.5 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 AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VII
INDEMNIFICATION

7.1 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(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 covenant made by Novartis under ARTICLE VI or any other provision under this Agreement; or

(c) the [*], including any [*] damage or other damage, in each case resulting from any of the foregoing activities described in this Section 7.1(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 7.2.

7.2 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 covenant made by XOMA under ARTICLE VI or any other provision under this Agreement; or

(c) [*] or [*], including [*] damage or other damage, in each case resulting from any of the foregoing activities described in this Section 7.2(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 7.1.

7.3 Procedure.

7.3.1 Notice of Claim. A Person entitled to indemnification under this ARTICLE VII (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 7.3 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).

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

7.3.2 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.

7.3.3 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.

7.3.4 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 VII. 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.

7.4 SPECIAL, INDIRECT AND OTHER LOSSES. EXCEPT FOR A BREACH OF ARTICLE V OR FOR CLAIMS OF A THIRD PARTY THAT ARE SUBJECT TO INDEMNIFICATION UNDER THIS ARTICLE VII, 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

7.5 No Exclusion. Neither Party excludes any liability for death or personal injury caused by its negligence or that of its employees, agents or subcontractors.

ARTICLE VIII
TERM AND TERMINATION

8.1 Term; Expiration. This Agreement shall become effective on the Effective Date and 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 the Canakinumab CV Indication Non-Exclusive License or if Novartis has exercised its Exclusive Option, the Canakinumab Exclusive License shall survive, and shall become fully paid-up, perpetual and irrevocable.

8.2 Termination for Cause. 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, [*], if [*] and the [*] 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 8.2 shall take effect until the resolution of such arbitration. Any termination by any Party under this Section 8.2 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.

8.3 Termination by Novartis for Convenience. Novartis may terminate this Agreement without cause at any time after the Effective Date in its entirety or on an IL-1 Product-by-IL-1 Product or country-by-country basis at any time on [*] prior written notice.

8.4 Effects of Termination. Upon any early termination (but not expiration) of this Agreement in its entirety or termination with respect to an IL-1 Product or country in the Territory other than any termination by Novartis under Section 8.2 due to XOMA's breach or termination by Novartis:

8.4.1 License Termination. All rights and licenses granted to Novartis with respect to CV Canakinumab Products shall be terminated and be of no further force and effect; provided, that if such termination is only with respect to a particular CV Canakinumab Product or country, then such termination shall apply only to such CV Canakinumab Product or with respect to the terminated countries, as applicable.

8.4.2 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

8.4.3 Effects of Termination for Novartis Termination due to XOMA Breach. Upon any early termination of this Agreement in its entirety by Novartis under Section 8.2 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 in addition to those set forth in Section 9.2: [*] (provided, [*], and [*].

ARTICLE IX
ACCRUED RIGHTS; SURVIVING PROVISIONS

9.1 Accrued Rights. 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 III 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.

9.2 Surviving Provisions. In addition to any other provisions of this Agreement that are elsewhere expressly stated to survive, the provisions of [*], [*], [*], and [*], and [*], and [*] 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 [*] after the effective date of termination or expiration of this Agreement, and (b) [*] shall survive for a period of [*] after the effective date of termination or expiration of this Agreement.

ARTICLE X
MISCELLANEOUS

10.1 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 10.1. 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,

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 10.1.

10.2 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.

10.3 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 10.3. 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 10.3 shall be null and void.

10.4 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.

10.5 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), 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:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

If to XOMA:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: Legal Department

With a required copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
Attention: Barbara A. Kosacz

If to Novartis:

Novartis Pharma AG
Lichtstrasse 35
4056 Basel
Switzerland
Attn: Head, BD&L

With a required copy to:

Novartis Pharma AG
Lichtstrasse 35
4056 Basel
Switzerland
Attn: General Counsel

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, 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.

10.6 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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.

10.7 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 (1) or more instances shall be construed as a continuing waiver of such condition or term or of another condition or term.

10.8 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.

10.9 Entire Agreement. This Agreement, together with the Schedule 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.

10.10 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.

10.11 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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, Schedule subsection, paragraph, clause, or Exhibit shall be deemed to be a reference to any Article, Section, Schedule, subsection, paragraph, clause, 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.

10.12 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.

10.13 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).

10.14 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.

10.15 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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.

10.16 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***]**

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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/ James R. Neal
Name: James R. Neal
Title: Chief Executive Officer

NOVARTIS PHARMA AG

By: /s/ Neil Johnston
Name: Neil Johnston
Title: As Attorney

By: /s/ Kim Parker
Name: Kim Parker
Title: As Attorney

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

EXHIBIT A – XOMA Patents

[*] (10 pages omitted)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

EXHIBIT B – Canakinumab Exclusive License Provisions

In addition to the provisions set forth in Section 2.5, effective as of the Canakinumab Exclusive License Effective Date, the provisions identified below shall take effect with respect to the Canakinumab Exclusive License as follows:

1. **Sublicensing:**

   a. Section 2.1.2 of the Agreement is hereby replaced in its entirety with the following new Section 2.1.2:

   "Sublicensing. The license grants in Section 2.1.1 include the right to grant and authorize sublicenses solely in connection with those IL-1 Antibodies and IL-1 Products that are developed by or on behalf of Novartis, its Affiliates and sublicensees in multiple tiers; provided, that (a) [*]; (b) Novartis shall require that each sublicensee comply with all applicable provisions of this Agreement; and (c) Novartis shall remain directly responsible for each sublicensee's performance in connection with this Agreement."

2. **Financials:**

   a. Section 3.2.1 of the Agreement is hereby replaced in its entirety with the following new Section 3.2.1:

   "Royalties. On a CV Canakinumab Product-by-CV Canakinumab Product basis, and country-by-country basis, Novartis shall pay royalties at a rate of [*] ([*]) on Net Sales of such CV Canakinumab Product for the CV Indication sold by Novartis, its Affiliates or its sublicensees in the Territory during the remainder of the Royalty Term."

   b. A new Section 3.2.2(d) is hereby inserted into the Agreement:

   "Third Party Licenses. In the event that [*] or [*] in connection with [*], or [*] under this Agreement, [*] or otherwise and [*] or [*]; provided, that to the extent (if at all) [*] having [*] under this Agreement, [*] under this Agreement.

   Except [*]. Any [*] that [*] and [*] or [*]

3. **Intellectual Property:**

   ARTICLE IV of the Agreement is hereby amended to insert the new provisions identified below solely as they related to the Canakinumab Exclusive License. For clarity purposes,

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

the provisions set forth in ARTICLE IV shall continue to apply with respect to the IL-1 License.

a. Ownership of Intellectual Property Arising Under the Canakinumab Exclusive License. Novartis shall own all data, Patents and Know-How generated, discovered, developed, invented, conceived or reduced to practice by or on behalf of itself, its sublicensees, or Affiliates, whether solely by any such party or jointly by one (1) or more such parties, in connection with the exercise of the Canakinumab Exclusive License under this Agreement, and all intellectual property rights therein, all of which shall be deemed to be "Future IP" under the Agreement.

b. Prosecution and Maintenance of [*] Patents.

i. General. Subject to Section 3.b.ii, as between the Parties, [*] shall diligently and timely Prosecute and Maintain [*] Patents [*] [*] 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 3.d., 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. [*] shall not unreasonably reject the requests and suggestions of [*] with respect to such drafts and with respect to strategies for filing and prosecuting such [*] Patents in the Territory with the goal of maximizing the exclusive period for Canakinumab and Canakinumab Products as well as any other antibodies that are subject to an exclusive license from [*] or its Affiliates to [*] or its Affiliates.

ii. Filing Decision or Prosecution Lapse. If, during the Term, [*], in exercising its obligations and rights pursuant to Section 3.b.i. 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, [*] shall notify in writing and consult with [*] regarding such decision or intention at least [*] prior to the date upon which the subject matter of such Patent shall become unpatentable or such Patent shall lapse or become abandoned, and [*] 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 [*] wishes to assume Prosecution and Maintenance of such [*] Patent, [*] shall (A) [*] [*] [*]; (B) promptly provide [*] with the appropriate documents for [*] such Patent in such country; and (C) cooperate and otherwise execute all such documents

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

and instruments at the [*] cost and expense, necessary to [*] such Patent in the name of [*] or its designee.

c. Patent Costs. [*] shall be responsible for all costs and expenses associated with its Prosecution and Maintenance activities of [*] Patents under Section 3.b.i.; provided, however, that [*] shall be responsible for all costs and expenses associated with its Prosecution and Maintenance activities of those [*].

d. Patent Term Extensions.

i. Novartis shall be responsible for determining the strategy for applying for the extension of the term of any [*] Patents with respect to Canakinumab, 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 permit or require Novartis (or one (1) 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, and [*].

ii. Novartis shall be responsible for determining the strategy with respect to certifications, notices and patent enforcement procedures regarding [*] Patents 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 3.d.ii. XOMA hereby authorizes Novartis to: (a) provide in any BLA or in connection with the BPCIA, a list of XOMA IL-1 Patents as required under the BPCIA; (b) except as otherwise expressly 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; 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

e. Defense of Claims Brought by Third Parties. If [*] receives written notice alleging that the making, using, selling, offering for sale, importing, or other commercial exploitation of Canakinumab or any Canakinumab Product by [*], its Affiliates or sublicensees in the Territory infringes or misappropriates the intellectual property rights of any Third Party, [*] shall promptly notify [*] of the same in writing. In any such instance, [*] shall have the sole right (but not the obligation) to defend such claim, at [*] (subject to any other provision of this Agreement [*] for the underlying infringement or misappropriation, to [*]).

f. Enforcement. [*] shall promptly notify [*] in writing if it reasonably believes that any [*] IP is infringed or misappropriated by a Third Party with respect to the manufacture, sale, offer for sale, use or importation of Canakinumab or any Canakinumab Product (collectively, "Competing Infringing Activities"). [*] shall have the sole right, but not the obligation, to enforce, including as a counterclaim in a defensive proceeding, [*] Patents with respect to Competing Infringing Activity, or to defend any declaratory judgment action with respect thereto provided however that [*] shall not settle any such enforcement action in any manner that would: (i) require any payment or admission of legal wrongdoing by [*]; or (ii) narrow the scope of or have an adverse effect on the enforceability of any [*] IP, in each case without the prior written consent of [*], which consent shall not be unreasonably withheld, delayed or conditioned. [*] shall keep [*] reasonably informed of the progress of any such action, and [*] shall reasonably cooperate with and assist [*] in such litigation as requested by [*], including providing information and materials, at [*] request and expense, and joining as a plaintiff to any action taken by [*] to enforce the [*] Patents in the Field in the Territory. For clarity, [*].

g. Recovery. That portion of a recovery received under Section 3.f. that is or can reasonably be attributed to a Third Party's breach of [*] with respect to a CV Canakinumab Product (such portion, the "CV Indication Recovery"), 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 such CV Indication Recovery shall be [*]; provided that if such CV Indication Recovery is [*], then such remainder of the CV Indication Recovery (excluding [*] included in such CV Indication Recovery) shall be treated [*].

4. [*]**.**

ARTICLE II of the Agreement is hereby amended to insert the new provision Section 2.6 as follows:

a. [*] agrees that, during [*] with respect [*].

b. If [*]"), then [*], that [*], or [*], and [*] will either (i) [*]; provided, [*], or (ii) [*]. [*]", as used in this subsection (b), means the [*] without [*].

5. Representations and Warranties of XOMA.

ARTICLE VI of the Agreement is hereby amended to insert the new provision Sections 6.6(a) - (e) as follows:

XOMA hereby represents and warrants to Novartis that, except as set forth in [*], as of the earlier of (i) the date of the Novartis Interest Notice or (ii) the day [*], as applicable:

(a) The representations and warranties set forth in Sections 6.1 and 6.2 of the Agreement remain true and correct with respect to the [*];

(b) The Patents listed in **EXHIBIT A**, as updated by XOMA as of the date of the Novartis Interest Notice, comprise a complete and accurate list of [*];

(c) To the knowledge of XOMA, the issued Patents in the [*] 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 [*] in good faith and complied with all duties of disclosure with respect thereto;

(d) To the knowledge of XOMA, the manufacture, use, sale, offer for sale or importation of Canakinumab or any Canakinumab Product [*]; and

(e) To the knowledge of XOMA, neither XOMA nor its Affiliates have committed any act, or omitted to commit any act, that may cause the [*] to expire prematurely or be declared invalid or unenforceable.

6. Covenants.

Effective as of the [*], Section 6.3 of the Agreement is amended by adding the new Section 6.3(c) as follows:

"XOMA will maintain all XOMA Third Party Agreements related to the [*] in effect as of the [*] in full force and effect during the Royalty Term, and will not (i) terminate any such XOMA Third Party Agreement, nor (ii) amend any such XOMA Third Party Agreement, in each case in any manner that adversely effects the rights of Novartis under this Agreement."

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

Confidential

EXHIBIT C – Form of Novartis Invoice

Sender's Logo

Street
Town, Country
Phone and Fax Nr.

INVOICE
INVOICE DATE:
_____ 20__

INVOICE No.: XXXX

Bill To:

[XXX]

For:
[Product X Royalties 1st Quarter 20]

And via fax to no. _____

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)	US$ 000'000.00
[(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 - ……..	
TOTAL	000'000,00
If you have any questions concerning this invoice, contact ……	
or e-mail to ……..	
VAT -Reg. No. Xxxxxxxxx (if applicable)	

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

Confidential

EXHIBIT D – Form of Servier Payoff Letter

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

August 24, 2017

XOMA (US) LLC
2910 Seventh Street
Berkeley, CA 94710
United States
Attention: Chief Financial Officer
FAX: 510-649-0315

Re: **Payoff Letter**

Ladies and Gentlemen:

Reference is made to (i) that certain Loan Agreement, dated as of December 30, 2010, as amended and assigned by the Consent, Transfer, Assumption and Amendment Agreement, dated as of August 12, 2013, as further amended by Amendment No2 to the Loan Agreement, dated as of January 9, 2015, and Amendment No3 to the Loan Agreement, dated as of January 17, 2017 (as so amended, and as further amended, restated, supplemented or otherwise modified from time to time through the date hereof, the "Loan Agreement"), each between XOMA (US) LLC, a Delaware limited liability company (as successor by assignment to XOMA Ireland Limited, "XOMA" or "you") and Les Laboratoires Servier ("Servier" or "us") and the other entities from time to time party thereto, and (ii) the other agreements, documents and instruments executed in connection therewith (as each may be further amended, restated, supplemented or otherwise modified from time to time through the date hereof, together with the Loan Agreement, collectively, the "Secured Agreements"). You have informed us that, on or about August 25, 2017, you expect to satisfy, in full, all of the Obligations under the Loan Agreement and the other Secured Agreements, including all monies, liabilities and obligations secured thereunder. All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Loan Agreement.

Upon Servier's receipt on August 25, 2017, by federal funds wire transfer (or similar transfer of immediately available funds) in accordance with the instructions set for the below, of an amount equal to €12,022,451, which amount shall be increased by an amount equal to €576 (representing per diem interest) for each day thereafter that the Payoff Amount remains unpaid (such amount, the "Payoff Amount", and the date upon which such wire is received, the "Payoff Effective Time"), Servier agrees to deliver (or cause to be delivered) to XOMA the original Promissory Note (marked as "cancelled") and all other instruments in Servier's possession, if any, and other releases of liens, discharges, terminations and release documentation, executed by Servier (if applicable) releasing Servier's Liens (as hereinafter defined) on all of the assets and property of XOMA subject to such Liens (the "Collateral").

Upon the Payoff Effective Time, Servier agrees and acknowledges that (i) all Obligations, including without limitation outstanding indebtedness (including, without limitation, for principal, interest and fees) and other obligations of XOMA under or relating to the Secured Agreements, shall be deemed paid and satisfied in full and irrevocably discharged, terminated and released, (ii) all security interests and other liens and encumbrances ("Liens") granted to or held by Servier in any assets of XOMA as security for such Obligations shall be automatically, forever and irrevocably satisfied, released and discharged, (iii) the Loan Agreement and the other Secured

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

Agreements shall be automatically terminated and of no further force or effect, and neither XOMA nor any other Person shall have a right to draw funds thereunder, and (iv) XOMA or its agent or designee shall be authorized, without further action, notice or consent, to file the UCC termination statement attached hereto as Exhibit A, and all other instruments, releases and documents evidencing the release of Servier's Liens on the Collateral. Further, Servier agrees to execute such documents and take all additional actions reasonably requested by XOMA, from time to time, to release its Liens on the Collateral and evidence the termination of the Obligations. XOMA agrees to pay Servier for all reasonable out-of-pocket costs and expenses incurred by Servier in connection with the matters referred to in the previous sentence, and acknowledges that Servier's execution of and/or delivery of documents releasing any security interest or claim in any Collateral of XOMA as set forth herein is made without recourse, representation, warranty or other assurance of any kind by Servier and hereby confirms that the commitments of Servier to make any Advance or incur liabilities under the Secured Agreements are terminated as of the Payoff Effective Time, and, as of the Payoff Effective Time, Servier shall have no further obligation to make Advances to XOMA or any other Person under the Secured Agreements.

The Payoff Amount referred to above should be sent to the following account of Servier:

[*]

This Agreement shall be governed by the internal laws of the State of New York. No party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other parties. This Agreement may be executed in any number of separate counterparts, each of which shall, collectively and separately, constitute one agreement. Delivery of an executed counterpart of this letter by electronic means (e.g., facsimile or .pdf) shall be equally as effective as delivery of an original executed counterpart and shall not affect the validity, enforceability, and binding effect of this letter. The undersigned parties have signed below to indicate their consent to be bound by the terms and conditions of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

If you need additional information, please do not hesitate to contact us.

Very truly yours,

LES LABORATOIRES SERVIER

By:_____
Name:
Title:

INSTITUT DE RECHERCHES SERVIER

By:_____
Name:
Title:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

ACCEPTED and AGREED:

XOMA (US) LLC

By: _____
Name:
Title:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

EXHIBIT A

UCC TERMINATION STATEMENT

A-1

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276625499 v2

Exhibit 10.2

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

LICENSE AGREEMENT

by and between

XOMA (US) LLC

and

NOVARTIS PHARMA AG

276626894 v2

TABLE OF CONTENTS

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

List of Exhibits and Schedules

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

LICENSE AGREEMENT

This LICENSE AGREEMENT (the "Agreement") is entered into as of the 24th day of August, 2017 (the "Effective Date") by and between XOMA (US) LLC, a limited liability company organized under the laws of Delaware having offices at 2910 Seventh St., Berkeley, CA, USA, 94710 ("XOMA"), and Novartis Pharma AG, a company limited by shares (*Aktiengesellschaft*) incorporated under the laws of Switzerland and registered in the Commercial Register of the Canton of Basel-Stadt, Switzerland, under number CHE-106.052.527 whose registered office is at Lichtstrasse 35, 4056 Basel, Switzerland ("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 the Antibody and Products (as defined below);

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

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

WHEREAS, simultaneously with the execution and delivery of this Agreement, XOMA Corporation is signing a Guaranty dated the Effective Date guarantying the full and prompt payment and performance of all of XOMA's obligations under this Agreement.

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

ARTICLE I
DEFINITIONS

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

"ACA" means the Patient Protection and Affordable Care Act, as the same may be amended or supplemented from time to time.

"Accounting Standards" means, with respect to XOMA, 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

Accounting Standards pursuant to which its records are maintained; provided, however, that each Party may only use internationally recognized accounting principles (e.g., IFRS, 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 developed or generated thereafter by such Third Party acquiror without use of or access to 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 (1) 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.

"Antibody" means gevokizumab, also known as XOMA-052, and any isoforms, allelic variants, mutants, polymorphisms, modified forms and fragments thereof, and human and non-human counterparts of the foregoing.

"Antitrust Laws" shall mean any federal, state, or foreign statutes, rules, regulations, orders, or decrees that are designed to prohibit, restrict, or regulate actions having the purpose or effect of monopolization or restraint of trade, including the Clayton Act, the HSR Act, and the Sherman Act.

"Biosimilar" a biological medicinal product for human use which (a) is highly similar to a reference biological medicinal product that has Regulatory Approval in the country in question; (b) has no clinically meaningful differences from such reference product in terms of quality, safety and efficacy, and (c) is approved for use (i) in the United States as a biosimilar biologic product (as defined in the ACA) pursuant to an abbreviated regulatory approval process established under the ACA; (ii) in the EU as a similar biologic medicinal product pursuant to Directive 2001/83/EC or Regulation (EC) No 726/2004 (as applicable); and/or (iii) in any other country pursuant to an equivalent regime in such country. A product shall not be considered to be a Biosimilar if (A) Novartis or any of its Affiliates or sublicensees was involved in the Development of such product, or (B) such product is commercialized by any sublicensee of

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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, in Basel, Switzerland or San Francisco, California.

"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 C.F.R. § 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 C.F.R. § 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 such Party or such Party's ultimate parent as a result of which the stockholders of such Party or parent 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 (1) or more subsidiaries); (b) the adoption of a plan relating to the liquidation or dissolution of a Party or its ultimate parent, 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)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 or biological product (in any formulation) containing one (1) or more active pharmaceutical ingredients in addition to the 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 or its applicable Affiliates in pursuing Development or Commercialization of other similar pharmaceutical or biological products proprietary to Novartis or its Affiliates 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 the Antibody or a Product, as applicable.

"Commercially Relevant Factors" means, with respect to the Development or Commercialization of the Antibody or a Product by Novartis or its Affiliates, all relevant factors that may affect the Development or Commercialization of the Antibody or such 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 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 the [*].

"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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 XOMA 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 XOMA Claim (or, in the case of a Valid XOMA Claim that has not yet issued, would infringe such Valid XOMA Claim if it were to issue as then being prosecuted in good faith).

"Develop" or "Development" means all research, discovery, pre-clinical development, clinical development, and regulatory activities with respect to the Antibody 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 the Chief Executive Officer (or his designee) of XOMA and the Head BD&L (or his designee) of Novartis International AG, an Affiliate of Novartis.

"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. For clarity, the First Commercial Sale shall not include any sale by a Party to its Affiliates or sublicensees (unless such Person is the end user of a Product).

"Fixed Dose Combination Product" means a Combination Product administered in fixed-dose form.

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"HSR Act" means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

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

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

"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 the Antibody or a Product (prior to Regulatory Approval), the Indication(s) for the Antibody or such 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.

"Indebtedness" means (without duplication), as to any Person, (a) all obligations for the payment of principal, interest, penalties, fees or other liabilities for borrowed money (including guarantees and notes payable), incurred or assumed, (b) all obligations of such Person for the deferred purchase price of property or services, (c) any obligations to reimburse the issuer of any letter of credit, surety bond, debentures, promissory notes, performance bond or other guarantee of contractual performance, (d) all Indebtedness of Third Parties secured by a Lien on property owned or acquired by such Person, (e) any obligation that would be required to be reflected as debt on the balance sheet of such Person under the Accounting Standards and (f) all Indebtedness of others referred to in clauses (a) through (e) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement to pay or purchase such Indebtedness, to advance or supply funds for the payment or purchase of such Indebtedness or otherwise to assure a creditor against loss, in each case including all accrued interest and prepayment penalties, if any, and (g) all contingent obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (f) above.

"Initial Payment" means Thirty Million Dollars (US$30,000,000).

"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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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, guidelines or ordinances having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision.

"Liens" means all liens, claims, security interests, licenses, security interests, restrictions on ownership or transferability or other encumbrances of any kind.

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

"Major European Country" means any of France, Germany, Italy, Spain or the United Kingdom.

"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, arm's-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) [*].

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 Fixed Dose 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 Fixed Dose 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 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 the Antibody and other active ingredient components that are included in the Fixed Dose Combination Product, then [*] in calculating the royalty-bearing Net Sales of the Fixed Dose 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, or if the Combination Product is not a Fixed Dose Combination Product, the calculation of Net Sales for purposes of determining royalty payments shall be [*].

For the avoidance of doubt, sales between Novartis, its Affiliates and its sublicensees shall not be considered Net Sales (unless such Person is the end user of a Product).

"Novartis Note Agreement" means that certain Secured Note Agreement by and between XOMA (US) LLC and Chiron Corporation, dated as of May 26, 2005; as amended, by that certain letter agreement by and between XOMA (US) LLC and Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation), dated as of June 19, 2015; as amended, by that certain letter agreement by and between XOMA (US) LLC and Novartis Vaccines and Diagnostics, Inc. (f/k/a Chiron Corporation) which was assigned to Novartis Institutes for BioMedical Research, Inc. immediately prior to the execution of such letter agreement, dated as of September 30, 2015.

"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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"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.

"Proceeding" means any action, suit, proceeding, claim, arbitration, audit of governmental authority, criminal prosecution, unfair labor practice charge or complaint, examination, inquiry or investigation.

"Product" means any pharmaceutical or biological product containing the Antibody (alone or with other active ingredients), in all forms, presentations, formulations, methods of administration and dosage forms. For the purposes of this Agreement, Product shall be deemed to include a Biosimilar of the Antibody.

"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, the 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"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, with respect or related to the Development or Commercialization of a Product in a particular country, territory or possession in the Territory. Regulatory Materials include INDs, BLAs, and amendments and supplements to any of the foregoing, and applications for pricing approvals.

"Servier Lien Release" means receipt by Novartis of the Servier Payoff Letter completed and fully executed by XOMA and Servier.

"Servier Loan" means all of the Indebtedness and other obligations due or payable under that certain Loan Agreement by and between XOMA (US) LLC on the one hand, and Les Laboratoires Servier and Institut de Recherches Servier (together, "Servier") on the other, dated as of December 30, 2010 (as amended, by that certain Consent, Transfer, Assumption and Amendment Agreement by and among XOMA Ireland Limited, XOMA (US) LLC and Les Laboratoires Servier, dated as of August 12, 2013; as amended, by that certain Amendment No. 2 to the Loan Agreement by and between XOMA (US) LLC and Servier, dated as of January 9, 2015; as amended, by that certain Amendment No. 3 to the Loan Agreement by and between XOMA (US) LLC and Servier, dated as of January 17, 2017; and as may be further amended by the parties thereto, subject to the terms of this Agreement) (the "Servier Loan Agreement") and any other Indebtedness due or payable between XOMA (US) LLC or any XOMA Affiliates and Servier and any Servier Affiliates related to any intellectual property licensed pursuant to this Agreement.

"Servier Payoff Letter" means the payoff letter substantially in the form attached as **EXHIBIT E**, with such amendments or modifications approved in writing by Novartis, which approval shall not be unreasonably withheld or delayed.

"Stock Purchase Agreement" means that certain Common Stock Purchase Agreement between Novartis and XOMA Corporation, dated the Effective Date.

"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.

"Valid XOMA Claim" means with respect to any country, (a) a claim of an issued and unexpired Patent that is a XOMA Patent, or (b) a claim in a filed but not yet granted patent

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

application that is a XOMA Patent where such claim has not yet been pending for longer than [*] years following the filing of the earliest application from which said patent application derives priority, in each case where such claim has not been (w) disclaimed, cancelled, withdrawn or abandoned, (x) dedicated to the public, (y) declared invalid, unenforceable, unpatentable or revoked by a decision of a court, government agency or other authority, or (z) admitted to be invalid or unenforceable through reexamination, reissue or otherwise; provided, that if such a claim ceases to be a Valid XOMA Claim by reason of the foregoing (w) through (z), then such claim shall again be deemed a Valid XOMA Claim in the event such claim subsequently issues within a XOMA Patent.

"XOMA IP" means XOMA Know-How and XOMA Patents.

"XOMA Know-How" means Know-How, other than any Know-How that is part of any Acquiror IP, that is Controlled by XOMA or its Affiliates [*] for the Development or Commercialization of the Antibody and/or Products.

"XOMA Patents" mean any Patents, other than any Patents that are part of any Acquiror IP, that are Controlled by XOMA or its Affiliates [*], that claim the Antibody and/or any Products and/or the use, manufacture or sale thereof, [*] including those set forth on **EXHIBIT A**.

"XOMA Product Patents" means all patents and patent applications claiming priority to US 60/692,830 (XOMA's "gevo family 1").

"XOMA Regulatory Materials" means all Regulatory Materials and Regulatory Approvals owned or Controlled by XOMA or its Affiliates relating to the Antibody 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:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

ARTICLE II
DEVELOPMENT AND COMMERCIALIZATION

2.1 Development and Commercialization. Novartis shall be solely responsible in its sole discretion [*] for the Development and Commercialization of the Antibody and/or Products (as applicable); provided, that, [*] Novartis shall, itself or through its [*], use Commercially Reasonable Efforts to continue to Develop, seek Regulatory Approval for and, following such Regulatory Approval, Commercialize such Product [*].

2.2 Regulatory; Manufacturing.

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

2.2.2 XOMA shall reasonably cooperate with and provide assistance to Novartis in connection with filings to or with any Regulatory Authority relating to the Antibody 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 [*] following the Effective Date [*].

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

2.3 Reporting. [*] 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) such Product in the Field in the Territory, both as to activities conducted during [*] 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 any 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 Inventory, Materials, Process and Know-How. Within [*] after the Effective Date:

2.5.1 XOMA shall transfer to Novartis the entire Inventory; provided, that [*] related to such transfer. [*] Inventory under this Agreement [*]. XOMA shall transfer, and shall cause its contractors to transfer, the Inventory in accordance with all applicable Laws and shall be delivered to a destination designated by Novartis. 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 the Antibody and each Product existing as of the Effective Date, including the Process for the Antibody and such Products, to Novartis or to a Third Party or Affiliate of Novartis designated by Novartis. "Process" means, with respect to the Antibody or a Product, [*], and [*], and [*], which [*] and [*] for the manufacture of the Antibody or such 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 a Third Party or Affiliate of Novartis, as follows:

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

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

(c) [*] in connection with the transfer of the Process, and [*], for clarity, [*] and [*] or [*]. Notwithstanding the foregoing, to the extent [*] with respect to [*] such [*] 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 [*] 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 [*]. Notwithstanding the foregoing, the Parties further agree that, [*] and [*]

2.5.4 Notwithstanding any other provision of this Section 2.5, [*] and that [*], in each case in connection [*]. XOMA shall use commercially reasonable efforts to [*] and provided that [*]. Such [*] during [*] and at [*].

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

ARTICLE III
LICENSE GRANTS

3.1 License Grants; [*].

3.1.1 License Grant. 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 and Commercialize the Antibody 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 the [*]) with respect to [*]

(b) If [*] or [*] in connection with [*], and [*] will either (i) [*] provided, that [*] or [*] or (ii) [*] during [*] shall [*] set forth in subsection (a). [*]", as used in this subsection (b), means [*] 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, non-transferable (other than in accordance with Section 11.3), non-sublicenseable 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.

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 or recoup the costs thereof against amounts payable to XOMA under this Agreement.

ARTICLE IV
FINANCIAL TERMS; REPAYMENT OF SERVIER LOAN

4.1 Upfront Consideration. In partial consideration for the licenses and other rights granted to Novartis hereunder, Novartis shall provide the following payments and other consideration to XOMA:

4.1.1 Upfront Payment and Servier Loan Repayment.

(a) Within five (5) Business Days following the Effective Date, Novartis shall, on behalf of XOMA, pay to Servier Twelve Million Twenty Two Thousand Four Hundred Fifty-One Euros (€12,022,451) plus Five Hundred Seventy-Six Euros (€576) for each day, beginning with the second (2nd) day after the Effective Date, such amount has not been paid to Servier (the "Servier Payoff Amount" and such payment, the "Servier Loan Repayment"), which XOMA represents and warrants to Novartis will be not less than the full amount of all outstanding Indebtedness under the Servier Loan as of the date of such payment. Promptly after receipt of Servier Lien Release, XOMA shall file the UCC Financing Statement Amendment attached to the Servier Payoff Letter terminating the Liens on XOMA intellectual property securing the Servier Loan (the "Servier Liens").

(b) Within five (5) Business Days after Servier Lien Release, Novartis shall pay to XOMA an amount equal to the Initial Payment minus the Servier Payoff Amount.

4.1.2 Novartis Loan Deferral. Promptly following the Servier Lien Release, Novartis shall cause Novartis Institutes for BioMedical Research, Inc. to amend the Novartis Note Agreement to amend and restate Section 2(e) thereof to read in its entirety as follows:

> "(e) Maturity Date. Unless earlier accelerated by the reason of the occurrence of an Event of Default (as provided in Section 5 below), any unpaid principal amount of any Loan owed by the Company to the Lender together with all accrued and unpaid interest thereon, shall be due and payable in full on September 30, 2022."

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

4.1.3 Equity Investment. Novartis shall make a Five Million Dollar (US$5,000,000) equity investment in XOMA Corporation on the terms and subject to the conditions set forth in the Stock Purchase Agreement.

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 the Antibody or a 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**	**[*] Development and Regulatory Milestone Payment**
1	**[*]**	US$[*]	[*]
2	**[*]**	US$[*]	US$[*]
3	**[*]**	US$[*]	US$[*]
4	**[*]**	US$[*]	US$[*]
5	**[*]**	US$[*]	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 [*]; (c) Development and Regulatory Milestones may be achieved [*] or [*] that [*] Development and Regulatory Milestone; (d) [*] refers to [*]); and (e) [*] and [*]

4.2.2 Within [*] following the achievement of a Development and Regulatory Milestone, 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 [*].

4.3 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 in the Territory 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 where such Product is Covered by a Valid XOMA Claim 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 XOMA Claim, where the sale of the applicable Product in the applicable country would infringe such Valid XOMA Claim but for the license granted to Novartis under the Agreement; and

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(b) Notwithstanding anything in this Agreement to the contrary, and [*] provided for under this Agreement, for sales of a Product in countries [*] and [*] Further, upon the expiration of the Royalty Term for a Product in a country in the Territory, the licenses granted to Novartis under this Agreement with respect to such Product in such country shall become fully paid-up, royalty free licenses, which shall continue even after the expiration or termination of 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 subject to Section 2.5.2(c), [*] responsible for the payment of [*] and other payment obligations, if any, [*] in connection with (i) any [*] which [*] and [*], 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. Without limiting [*] hereunder, in the event that [*] and [*] and [*]

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

(f) In the event that Novartis [*] or [*] in connection with the [*] under this Agreement, [*] or otherwise and [*] with respect [*] (including [*]) [*] provided, that to the extent (if at all) [*] having [*] under this Agreement, [*] hereunder shall be [*] 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 carried forward and Novartis may [*] royalty payment amounts due to XOMA [*] that [*], provided further that [*] for such Product in such country, [*] with respect to any such [*] any [*] hereunder.

4.4 Reports; Royalty Payments.

4.4.1 Until the expiration of Novartis' royalty payment obligations under this ARTICLE IV, Novartis agrees to make written reports to XOMA [*] 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 IV.

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 IV 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 one-time 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) [*], and no previous sales milestone had been achieved under this Section 4.5, then [*], and all [*] (b) each [*] and (c) [*]

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 [*] following the Calendar Quarter to which they pertain.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 [*] 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 U.S. Dollars. When conversion of payments from any foreign currency is required to be undertaken by Novartis, the U.S. Dollar equivalent shall be calculated using Novartis' then-current standard exchange rate methodology as applied in its external reporting.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 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, [*]. 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 shall have occurred and be continuing, and all amounts thereunder have become due and payable in accordance with Section 5(b) of the Novartis Note Agreement, 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 the Lender any amounts then due and payable by XOMA to the Lender under the Novartis Note Agreement. Any such election shall be confirmed by prompt written notice to XOMA delivered in accordance with Section 11.6, 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. Capitalized terms used in this Section 4.13 but not defined in this Agreement shall have the meanings given thereto in the Novartis Note Agreement.

ARTICLE V
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 Controlled 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. Novartis shall own all data, Patents and Know-How generated, discovered, developed, invented, conceived or reduced to practice by or on behalf of itself, its sublicensees, XOMA, or Affiliates of the Parties, whether solely by any such party or jointly by one (1) or more such parties, in connection with the Development and/or Commercialization of the Antibody and Products under this Agreement, and all intellectual property rights therein (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 Antibody and Products hereunder shall be made in the name of and owned by Novartis or its Affiliates or sublicensees.

5.1.3 Invention Assignment Agreements.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(a) XOMA hereby covenants to Novartis that all contractors and employees of XOMA and its Affiliates and licensees will be under the obligation to either (i) assign all right, title and interest in and to any Novartis Patents and their inventions and discoveries relating thereto, whether or not patentable, to XOMA as the sole owner thereof; or (ii) obtain a license under such Patents that are developed by such contractors or sublicensees in the performance of its obligations under such agreement that relates to the Antibody or Product.

(b) Novartis hereby covenants to XOMA that all contractors and employees of Novartis and its Affiliates and sublicensees will be under the obligation to either (i) assign all right, title and interest in and to any Novartis Patents and their inventions and discoveries relating thereto, whether or not patentable, to Novartis as the sole owner thereof; or (ii) obtain a license under such Patents that are developed by such contractors or sublicensees in the performance of its obligations under such agreement that relates to the Antibody or Product.

5.2 Prosecution and Maintenance of Patents.

5.2.1 General. [*] 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 5.6, 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. [*] shall not unreasonably reject the requests and suggestions of [*] with respect to such drafts and with respect to strategies for filing and prosecuting such Patents in the Territory with the goal of maximizing the exclusive period for the Antibody and Products and any other antibodies that are subject to an exclusive license from [*] or its Affiliates to [*] or its Affiliates.

5.2.2 Filing Decision or Prosecution Lapse. If, during the Term, [*], in exercising its obligations and rights 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, [*] shall notify in writing and consult with [*] regarding such decision or intention at least [*] prior to the date upon which the subject matter of such Patent shall become unpatentable or such Patent shall lapse or become abandoned, and [*] 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 [*] wishes to assume Prosecution and Maintenance of such Patent, [*] shall (a) [*]; (b) promptly provide [*] with the appropriate documents for [*] of such Patent in such country; and (c) cooperate and otherwise execute all such documents and instruments at the [*] cost and expense, necessary to [*] such Patent in the name of [*] or its designee.

5.3 Patent Costs. [*] shall be responsible for all costs and expenses associated with its Prosecution and Maintenance activities of [*] Patents under Section 5.2; provided, however, that

[*] shall be responsible for all costs and expenses associated with its Prosecution and Maintenance activities of those [*]

5.4 Defense of Claims Brought by Third Parties. If a Party becomes aware of any claim that the Development or Commercialization of the 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 VIII, and [*] shall have the sole right (but not the obligation) to defend such claim, [*] (subject to any other provision of this Agreement [*] for the underlying infringement or misappropriation, [*]).

5.5 Enforcement. Each Party shall promptly notify the other Party in writing if it reasonably believes that any [*] is infringed or misappropriated by a Third Party with respect to the manufacture, sale, offer for sale, use or importation of the Antibody or Product in the Territory (collectively, "Competing Infringing Activities"). [*] shall have the sole right, but not the obligation, to enforce [*] with respect to Competing Infringing Activity, or to defend any declaratory judgment action with respect thereto; provided, however, that [*] shall not settle any such enforcement action in any manner that would: (a) require any payment or admission of legal wrongdoing by [*]; or (b) narrow the scope of or have an adverse effect on the enforceability of any [*], in each case without the prior written consent of [*], which consent shall not be unreasonably withheld, delayed or conditioned. [*] shall keep [*] reasonably informed of the progress of any such action, and [*] shall reasonably cooperate with and assist [*] in such litigation as requested by [*], including providing information and materials, at [*] request and expense, and joining as a plaintiff to any action taken by [*] to enforce [*] Patents in the Field in the Territory. For clarity, [*]

5.6 Patent Term Extensions.

5.6.1 Novartis shall be responsible for determining the strategy for applying for the extension of the term of any XOMA Patents with respect to the Antibody, 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 permit or require Novartis (or one (1) 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, and [*].

5.6.2 Novartis shall be responsible for determining the strategy with respect to certifications, notices and patent enforcement procedures regarding XOMA Patents Covering the

Antibody or Products 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 5.6. XOMA hereby authorizes Novartis to: (a) provide in any BLA or in connection with the BPCIA, a list of XOMA Patents as required under the BPCIA; (b) except as otherwise expressly 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 XOMA Patents Covering the Antibody or Products; 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 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 [*].

5.8 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. XOMA shall assign and hereby assigns any trademarks owned or Controlled by XOMA at the Effective Date that are related to the Antibody or the Products (but for clarity, not including the name "XOMA" or any other corporate name not specific to the Antibody or any Product) to Novartis, including all goodwill therein. XOMA agrees to execute any further documents as may be requested by Novartis to effectuate or confirm such assignment.

ARTICLE VI
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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 the 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 Novartis International AG and XOMA, dated July 6, 2017 (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:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(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 the Antibody 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 the 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 nor its Affiliates shall make any public announcements concerning the terms of this Agreement or the transactions contemplated hereby or otherwise disclose the terms of this Agreement or the transactions contemplated hereby 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 or its Affiliates, 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(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 VI.

6.5 Publications. XOMA shall not make any public disclosure (whether written, electronic, oral or otherwise) relating to the 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 the Antibody or Products under or in connection with this Agreement, and (b) publish or have published information about clinical trials related to the Antibody 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 the Antibody or Product 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 the 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 Antibody and Products.

ARTICLE VII
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 or its Affiliates is a party or by which it or its Affiliates are bound, nor violate any Law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party or its Affiliates;

(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 or patent term extensions; 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 Products.

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(a) [*] which have been [*] and [*] which [*]

(b) The Patents listed in **EXHIBIT A** comprise a complete and accurate list of all Patents Controlled by XOMA [*]

(c) 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 Antibody and Products under this Agreement, free and clear of all Liens, other than Liens securing the Servier Loan, which will be released in accordance with the Servier Payoff Letter;

(d) Neither XOMA nor any Affiliate has 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;

(e) (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 Antibody or Products in the form that they exist; and (ii) to the knowledge of XOMA, the manufacture, use, sale, offer for sale or importation of the Antibody and Products in the form that they exist 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;

(f) 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;

(g) To the knowledge of XOMA, neither XOMA nor any Affiliate has committed any act, or omitted to commit any act, that may cause the XOMA Patents to expire prematurely or be declared invalid or unenforceable;

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

(i) (A) Other than the contracts set forth in **EXHIBIT D and SCHEDULE 1** and, in each case, designated as responsive to Section 7.2(i), there are no contracts or other agreements between XOMA (or its Affiliate) and any Third Parties that relate to the Development or Commercialization of the Antibody or Products as contemplated hereunder, and

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

(B) 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;

(j) Neither XOMA nor any Affiliate has, nor to its knowledge, has any Third Party acting under authority of XOMA, [*] with respect to the Antibody or Product, or [*] with respect to the Antibody and Products and [*]. All [*] compliance with all applicable Law, including, if and as applicable, cGMP, cGCP and cGLP, and all Regulatory Materials submitted to any Regulatory Authority [*]

(k) To XOMA's knowledge, [*] concerning the Antibody or Products or active pharmaceutical ingredients therein [*] and [*]

(l) Neither XOMA nor any Affiliate has entered into a government funding relationship that would result in rights to the Antibody or Product residing in the U.S. 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 U.S. 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;

(m) Attached as **EXHIBIT C** is a detailed list of, to XOMA's knowledge, any and all quantities and forms of the Antibody, Products, and all cell banks, bioassay materials, cell lines, sequences and constructs for the expression and production of such Antibody, and all related documentation including certificates of analysis, batch records, testing records and other documentation which is necessary or useful for Novartis to use any of the foregoing as intended hereunder (collectively, the "Inventory") existing as of the Effective Date and owned by XOMA, whether in XOMA's possession or in the possession of Third Parties based on XOMA's good faith efforts to identify the Inventory as of the Effective Date. Promptly following the Effective Date, XOMA shall provide Novartis with an updated **EXHIBIT C** to disclose additional Inventory that has been identified by XOMA. To the extent that, following the provision of such updated **EXHIBIT C**, 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 (m) 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

(n) XOMA has disclosed to Novartis and provided [*]

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

(a) Except with Novartis' prior written consent (which shall not be unreasonably withheld, delayed or conditioned), XOMA will maintain all XOMA Third Party Agreements, other than the Servier Loan Agreement, set forth on **EXHIBIT D**, in full force and effect during the Term, and will not (i) terminate any XOMA Third Party Agreement, nor (ii)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

amend any XOMA Third Party Agreement, in each case in any manner that adversely effects the rights of Novartis under this Agreement;

(b) XOMA shall provide Novartis an updated **EXHIBIT A** from time to time upon Novartis' reasonable request, but no more than [*]

(c) 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;

(d) XOMA will not amend any of the agreements evidencing the Servier Loan except (i) in connection with and solely in order to achieve Servier Loan Repayment and Servier Lien Release and (ii) in any manner that would increase Novartis' obligations or affect Novartis' rights under this Agreement; and

(e) XOMA and its Affiliates', sublicensees' and representatives' performance in connection with this Agreement shall comply with all applicable Laws.

7.4 Covenant 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.

7.5 [*]. Upon the terms and subject to the conditions set forth in this Agreement, and as it relates to any inquiry and/or investigation conducted under the Antitrust Laws by a governmental entity in connection with the transactions contemplated under this Agreement or any transaction relating to intellectual property licensed under this Agreement, each of the Parties shall (and shall cause their applicable Affiliates to) use its respective [*] to (i) consult and cooperate with the other Party and consider in good faith the views of the other Party in connection with all substantive communications, including any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals, undertaking or agreements made or submitted; (ii) provide the other Party with a reasonable advance opportunity to review and comment upon all written communications to any governmental entity; (iii) keep the other Party informed promptly in all respects of any communication received by such Party from, or given by such Party to, any governmental entity and of any communication received or given in connection with any proceeding by a private party, in each case, including providing a copy of any written communication and informing the other Party of the substance of any oral communication; and (iv) except as may be prohibited by any governmental entity or by any applicable Law, each Party hereto will provide reasonable advance notice to the other of and permit authorized representatives of the other Party to be present at each meeting or telephone conference with any government entity; *provided, however*, and notwithstanding anything in this Agreement to the contrary, that Novartis shall control and lead communications with any governmental entity regarding the transactions contemplated under this Agreement or any transaction relating to intellectual property licensed under this Agreement, and determine all strategy in connection with responding to any requests, investigations or litigation by any governmental entity regarding the transactions

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

described herein or any transaction relating to intellectual property licensed under this Agreement under the Antitrust Laws. Neither XOMA nor any of its respective Affiliates shall, without Novartis' prior written consent, in Novartis' sole discretion, take or commit to take any action that limits Novartis' freedom of action with respect to or Novartis' ability to retain the license and other rights granted to it hereunder or otherwise receive the full benefits of this Agreement or any transaction relating to intellectual property licensed under this Agreement.

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 AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VIII
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 covenant made by Novartis under ARTICLE VII or any other provision under this Agreement; or

(c) the Development of 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 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), (c) or (d) 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

"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 covenant made by XOMA under ARTICLE VII or any other provision under this Agreement;

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

(d) the Servier Loan, including any breach or default of or non-compliance with the Servier Loan Agreement, except for any breach, default or non-compliance caused solely and directly by Novartis' failure to make the Servier Loan Repayment in breach of Section 4.1.1;

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 VIII (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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 VIII. 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 VI OR FOR CLAIMS OF A THIRD PARTY THAT ARE SUBJECT TO INDEMNIFICATION UNDER THIS ARTICLE VIII, 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 subcontractors.

ARTICLE IX
TERM AND TERMINATION

9.1 Term; Expiration. This Agreement shall become effective as of the Effective Date and, unless earlier terminated pursuant to this ARTICLE IX, 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.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

9.2 Termination for Cause. 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, [*], if [*] and the [*] and thereafter [*]. 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 shall take effect until the resolution of such arbitration. Any termination by any Party under this Section 9.2 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 for Convenience. Novartis may terminate this Agreement without cause at any time after the Effective Date in its entirety or on a Product-by-Product or country-by-country basis at any time on six (6) months 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 Product or country in the Territory other than any termination by Novartis under Section 9.2 due to XOMA's breach:

9.4.1 Program Continuity. The Parties intend that upon any such termination of this Agreement, in whole or in part, the transfer from Novartis to XOMA of rights, materials, data and documentation related to the Antibody 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 Product or country, then such termination shall apply only to such Products 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 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. Effective upon the effective date of such termination:

(a) Novartis hereby grants XOMA a [*] license under the Novartis Product IP (as defined below) solely to Develop, import, use, make, have made, offer for sale and

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

sell, effective upon termination of this Agreement (i) if this Agreement is terminated with respect to a particular country, the Antibody and Products in such countries; (ii) if this Agreement is terminated with respect to a particular Product, such Product throughout the Territory and (iii) if this Agreement is terminated in full, the Antibody and Products throughout the Territory, subject to [*]

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

(c) 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 terminated Product or Products with respect to the terminated countries that are in progress at the time of notice of termination, (a) Novartis shall [*]; or (b) 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 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; [*]

9.4.6 Regulatory Filings. To the extent permitted by applicable Law, and within [*] 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 9.4.6, 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 be [*] in accordance with Section [*], unless [*] in accordance with [*], 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 [*] 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 the Antibody or Products and all pharmacovigilance data (including all adverse event databases) relating to the Antibody or

Products, in each case, to the extent applicable to the Products and/or countries which are the subject of the termination, 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 the Antibody or Product for a period of [*] after such termination. Such transfer shall be at [*] 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 the Antibody 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, in each case, to the extent applicable to the Products and/or countries which are the subject of the termination. Such activities shall be [*] in accordance with Section [*], unless [*] in accordance with Section [*], in which case [*]

9.4.9 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.

9.4.10 [*] 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 at [*] to the extent [*] may also include [*] relating to the terminated Products; however, [*]. In the event that, [*] (or such [*] as the Parties may agree), [*] as to any [*] in connection therewith, [*] by notice to the other Party [*] pursuant to this Section [*]. Notwithstanding the foregoing, [*], by providing [*] with written notice [*] (or such [*] pursuant to the preceding sentence), [*], [*]; provided, that [*] that are [*] then upon such notice being provided, the [*] 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 [*] and [*] provided, that [*] and [*] under this Section 9.4.10. [*] (or [*] as the case may be), [*] and [*] for [*] and [*] The Parties will also [*] 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 9.4.10; provided, that [*] if [*] in which event [*] (or, [*] then [*] the [*] provided [*] this Agreement. [*]. The Parties [*]; provided, however, each Party shall [*] under this Section 9.4.10.

9.4.11 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 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 X
ACCRUED RIGHTS; SURVIVING PROVISIONS

10.1 Accrued Rights. 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 IV 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.

10.2 Surviving Provisions. In addition to any other provisions of this Agreement that are elsewhere expressly stated to survive, the provisions of [*] and [*] and Sections [*] 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 [*] after the effective date of termination or expiration of this Agreement, and (b) [*] shall survive for a period of [*] after the effective date of termination or expiration of this Agreement.

ARTICLE XI
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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 Reimbursement by [*]. [*] shall reimburse [*] and [*] in [*] that [*] may reasonably [*]

11.6 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), 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

2910 Seventh Street
Berkeley, California 94710
Attention: Legal Department

With a required copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
Attention: Barbara Kosacz

If to Novartis:

Novartis Pharma AG
Lichtstrasse 35
4056 Basel
Switzerland
Attention: Head, BD&L

With a required copy to:

Novartis Pharma AG
Lichtstrasse 35
4056 Basel
Switzerland
Attention: General Counsel

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, 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.

11.7 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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.

11.8 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 (1) or more instances shall be construed as a continuing waiver of such condition or term or of another condition or term.

11.9 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.

11.10 Entire Agreement. This Agreement, together with the Stock Purchase Agreement and 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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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***]**

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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/ James R. Neal
Name: James R. Neal
Title: Chief Executive Officer

NOVARTIS PHARMA AG

By: /s/ Neil Johnston
Name: Neil Johnston
Title: As Attorney

By: /s/ Kim Parker
Name: Kim Parker
Title: As Attorney

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

EXHIBIT A – XOMA Patents

[*] (9 pages omitted)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

Confidential

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)]

[XXX]

And via fax to no. _____

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)	US$ 000'000.00
[(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 - ……..	
TOTA	000'000,00
If you have any questions concerning this invoice, contact ……	

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

or e-mail to ……..
VAT -Reg. No. Xxxxxxxxxx (if applicable)]

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

Confidential

EXHIBIT C – Inventory

[*] (2 pages omitted)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

Confidential

EXHIBIT D – XOMA Third Party Agreements

[*]

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

Confidential

EXHIBIT E – Form of Servier Payoff Letter

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

August 24, 2017

XOMA (US) LLC
2910 Seventh Street
Berkeley, CA 94710
United States
Attention: Chief Financial Officer
FAX: 510-649-0315

Re: **Payoff Letter**

Ladies and Gentlemen:

Reference is made to (i) that certain Loan Agreement, dated as of December 30, 2010, as amended and assigned by the Consent, Transfer, Assumption and Amendment Agreement, dated as of August 12, 2013, as further amended by Amendment No2 to the Loan Agreement, dated as of January 9, 2015, and Amendment No3 to the Loan Agreement, dated as of January 17, 2017 (as so amended, and as further amended, restated, supplemented or otherwise modified from time to time through the date hereof, the "Loan Agreement"), each between XOMA (US) LLC, a Delaware limited liability company (as successor by assignment to XOMA Ireland Limited, "XOMA" or "you") and Les Laboratoires Servier ("Servier" or "us") and the other entities from time to time party thereto, and (ii) the other agreements, documents and instruments executed in connection therewith (as each may be further amended, restated, supplemented or otherwise modified from time to time through the date hereof, together with the Loan Agreement, collectively, the "Secured Agreements"). You have informed us that, on or about August 25, 2017, you expect to satisfy, in full, all of the Obligations under the Loan Agreement and the other Secured Agreements, including all monies, liabilities and obligations secured thereunder. All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Loan Agreement.

Upon Servier's receipt on August 25, 2017, by federal funds wire transfer (or similar transfer of immediately available funds) in accordance with the instructions set for the below, of an amount equal to €12,022,451, which amount shall be increased by an amount equal to €576 (representing per diem interest) for each day thereafter that the Payoff Amount remains unpaid (such amount, the "Payoff Amount", and the date upon which such wire is received, the "Payoff Effective Time"), Servier agrees to deliver (or cause to be delivered) to XOMA the original Promissory Note (marked as "cancelled") and all other instruments in Servier's possession, if any, and other releases of liens, discharges, terminations and release documentation, executed by Servier (if applicable) releasing Servier's Liens (as hereinafter defined) on all of the assets and property of XOMA subject to such Liens (the "Collateral").

Upon the Payoff Effective Time, Servier agrees and acknowledges that (i) all Obligations, including without limitation outstanding indebtedness (including, without limitation, for principal, interest and fees) and other obligations of XOMA under or relating to the Secured Agreements, shall be deemed paid and satisfied in full and irrevocably discharged, terminated and released, (ii) all security interests and other liens and encumbrances ("Liens") granted to or held by Servier in any assets of XOMA as security for such Obligations shall be automatically, forever and

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

irrevocably satisfied, released and discharged, (iii) the Loan Agreement and the other Secured Agreements shall be automatically terminated and of no further force or effect, and neither XOMA nor any other Person shall have a right to draw funds thereunder, and (iv) XOMA or its agent or designee shall be authorized, without further action, notice or consent, to file the UCC termination statement attached hereto as Exhibit A, and all other instruments, releases and documents evidencing the release of Servier's Liens on the Collateral. Further, Servier agrees to execute such documents and take all additional actions reasonably requested by XOMA, from time to time, to release its Liens on the Collateral and evidence the termination of the Obligations. XOMA agrees to pay Servier for all reasonable out-of-pocket costs and expenses incurred by Servier in connection with the matters referred to in the previous sentence, and acknowledges that Servier's execution of and/or delivery of documents releasing any security interest or claim in any Collateral of XOMA as set forth herein is made without recourse, representation, warranty or other assurance of any kind by Servier and hereby confirms that the commitments of Servier to make any Advance or incur liabilities under the Secured Agreements are terminated as of the Payoff Effective Time, and, as of the Payoff Effective Time, Servier shall have no further obligation to make Advances to XOMA or any other Person under the Secured Agreements.

The Payoff Amount referred to above should be sent to the following account of Servier:

[*]

This Agreement shall be governed by the internal laws of the State of New York. No party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other parties. This Agreement may be executed in any number of separate counterparts, each of which shall, collectively and separately, constitute one agreement. Delivery of an executed counterpart of this letter by electronic means (e.g., facsimile or .pdf) shall be equally as effective as delivery of an original executed counterpart and shall not affect the validity, enforceability, and binding effect of this letter. The undersigned parties have signed below to indicate their consent to be bound by the terms and conditions of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

If you need additional information, please do not hesitate to contact us.

Very truly yours,

LES LABORATOIRES SERVIER

By:_____
Name:
Title:

INSTITUT DE RECHERCHES SERVIER

By:_____
Name:
Title:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

ACCEPTED and AGREED:

XOMA (US) LLC

By: _____
Name:
Title:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

EXHIBIT A

UCC TERMINATION STATEMENT

See attached.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

Confidential

SCHEDULE 1 – Exceptions to Representations and Warranties

[*] (2 pages omitted)

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626894 v2

Exhibit 10.3

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

NANOTHERAPEUTICS LICENSE AGREEMENT,

BY AND BETWEEN

XOMA (US) LLC

and

NANOTHERAPEUTICS, INC.

March 23, 2016

276626674 v2

NANOTHERAPEUTICS LICENSE AGREEMENT

This NANOTHERAPEUTICS LICENSE AGREEMENT (this "**Agreement**") is entered into as of March 23, 2016 (the "**Effective Date**") by and between XOMA (US) LLC, a Delaware limited liability company ("**Licensor**), and Nanotherapeutics, Inc., a Delaware Corporation ("**Licensee**"). Each of Licensor and Licensee is sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, simultaneously with the execution of this Agreement, Licensor and Licensee have entered into that certain Asset Purchase Agreement (the "**APA**") relating to the BOT Business (as defined in the APA).

WHEREAS, Licensor desires to retain ownership of the XOMA Co-Formulation Patents, XOMA Vector Patents, XOMA BOT Know-How, and XOMA General Know-How (each defined in the APA and which were not included within the Purchased Assets (as defined in the APA) acquired by Licensee under the APA) and Licensee desires to license the XOMA Co-Formulation Patents, XOMA Vector Patents, XOMA BOT Know-How, and XOMA General Know-How for all uses within the Field and Licensor agrees to grant such license.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Whenever used in this Agreement with an initial capital letter, the terms defined in this Article 1 shall have the meanings specified herein and therein. Capitalized terms not defined herein shall have the meanings set forth in the APA.

"**Bankruptcy Code**" has the meaning given in Section 6.14.

"**Calendar Quarter**" means each three month period commencing on January 1, April 1, July 1, and October 1.

"**Field**" means [*].

"**Net Sales**" means the gross amounts invoiced by Buyer, its Affiliates, and any of its or their licensees or collaborators (each, a "**Selling Party**") for the sale, transfer or other distribution of XOMA Derived Products to Third Parties, less the following deductions to the extent reasonable and customary and actually incurred, allowed, paid, accrued or specifically allocated in its financial statements, for:

(a) discounts (including trade, quantity and cash discounts), cash and non-cash coupons, retroactive price reductions, and charge-back payments and rebates granted to any Third Party (including to governmental entities or agencies, purchasers, reimbursers,

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

customers, distributors, wholesalers, and group purchasing and managed care organizations or entities (and other similar entities and institutions));

(b) credits or allowances, if any, on account of price adjustments, recalls, claims, damaged goods, rejections or returns of items previously sold (including Product returned in connection with recalls or withdrawals) and amounts written off by reason of uncollectible debt, provided that if the debt is thereafter paid, the corresponding amount shall be added to the Net Sales of the period during which it is paid; and

(c) rebates (or their equivalent), administrative fees, chargebacks and retroactive price adjustments and any other similar allowances granted by a Selling Party (including to governmental authorities, purchasers, reimburses, customers, distributors, wholesalers, and managed care organizations and entities (and other similar entities and institutions)) which effectively reduce the selling price or gross sales of the Product.

If non-monetary consideration is received by a Selling Party for any Product in a given country, Net Sales will be calculated based on the average price charged for such Product in such country, as applicable, during the preceding royalty period, or in the absence of such sales, transfers or other distributions, the fair market value of the Product in such country, as applicable, as determined by the Parties in good faith. If the Parties are unable to reach such an agreement, the Parties shall refer such matter to a jointly selected Third Party with expertise in the pricing of pharmaceutical products that is not, and has not in the past five (5) years been, an employee, consultant, legal advisor, officer, director or stockholder of, and does not have any conflict of interest with respect to, either Party for resolution. Net Sales shall be determined on, and only on, the first sale, transfer or other distribution by a Selling Party to a Third Party that is not a Selling Party.

"**Term**" has the meaning given in Section 4.1.

"**Territory**" means worldwide.

2. LICENSES

2.1 **XOMA Co-Formulation Patents**. Licensor hereby grants Licensee an exclusive, royalty-free, fully paid-up, freely sublicensable and transferable, license under the XOMA Co-Formulation Patents for all uses and applications in the Field in the Territory, including to make, have made, use, sell, offer for sale, import, export, manufacture, develop and commercialize products for use in the Field and in the Territory.

2.2 **XOMA Vector Patents**. Licensor hereby grants Licensee a non-exclusive, royalty-free, fully paid-up, freely sublicensable and transferable, license under the XOMA Vector Patents for all uses and applications in the Field in the Territory, including to make, have made, use, sell, offer for sale, import, export, manufacture, develop and commercialize products for use in the Field and in the Territory.

2.3 **XOMA BOT Know-How**. Licensor hereby grants Licensee an exclusive, royalty-free, fully paid-up, freely sublicensable and transferable, license to the XOMA BOT Know-How for all uses and applications in the Field in the Territory, including to make, have made, use, sell,

offer for sale, import, export, manufacture, develop and commercialize products for use in the Field and in the Territory.

2.4 **XOMA General Know-How**. Licensor hereby grants Licensee a non-exclusive, royalty-free, fully paid-up, freely sublicensable and transferable, license to the XOMA General Know-How for all uses and applications in the Field in the Territory, including to make, have made, use, sell, offer for sale, import, export, manufacture, develop and commercialize products for use in the Field and in the Territory.

3. PAYMENTS

3.1 In consideration of the licenses granted in Article 2, Licensee shall make the payments set forth below in this Section 3.1:

(a) One Million, Five Hundred Thousand Dollars ($1,500,000), payable in four equal, consecutive Calendar Quarter payments, with the first such payment being due at the end of the Calendar Quarter in which [*];

(b) Two Million Dollars ($2,000,000) within three (3) Business Days of [*];

(c) One Million Dollars ($1,000,000), payable in four equal, consecutive Calendar Quarter payments, with the first such payment being due at the end of the Calendar Quarter in which [*]; and

(d) Quarterly Royalty Payments of Fifteen Percent (15%) of Net Sales of XOMA Derived Products.

3.2 **Payment of Milestone and Royalty Amounts; Accounting and Records**.

3.2.1 **Payment of Royalties**. Licensee shall pay Licensor the royalty payments set forth in Section 3.1(d) for each Calendar Quarter in which there are Net Sales, within thirty (30) days after the end of each such Calendar Quarter.

3.2.2 **Royalty Reports**. Licensee shall provide, at the same time each payment is made pursuant to Section 3.1(d), a report showing: (a) the gross sales of each XOMA Derived Product by country; (b) the amount of deductions, by category of permitted deduction, from gross sales to determine Net Sales; and (c) a calculation of the amount of royalty due to Licensor.

3.2.3 **Mode of Payment**. All payments made pursuant to Section 3.1 shall be made in immediately available funds by wire transfer to a United States based account to be identified by Licensor.

3.2.4 **Currency of Payments**. All payments made pursuant to Section 3.1 shall be made in United States dollars. When calculating the Net Sales of any XOMA Derived Product that occur in currencies other than the U.S. dollars, Licensee shall convert the amount of such sales

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

into U.S. dollars using the applicable exchange rate reported in the Wall Street Journal for the last day of the applicable reporting period.

3.2.5 **Late Payments**. To the extent any payments made pursuant to Section 3.1 are not paid within the specified time period, such outstanding payments shall accrue interest from the date due, at the one year LIBOR rate on the last Business Day of the applicable calendar quarter prior to the date on which such payment was due, plus [*] point, calculated on the basis of a 360-day year, or, if lower, the maximum rate permitted by law.

3.2.6 **Blocked Currency**. If, at any time, legal restrictions prevent Licensee from remitting part or all of a royalty payment due under Section 3.1(d) when due with respect to any country where XOMA Derived Products are sold, Licensee shall promptly notify Licensor in writing and shall continue to provide Net Sales reports for such royalty payments within thirty (30) days after the end of each such Calendar Quarter. Such royalty payments shall continue to accrue in such country, and Licensee shall deposit such payment in local currency in such country to the credit of Licensor in a recognized banking institution designated by Licensor in writing.

3.2.7 **Withholding Tax**. If Laws require withholding of income or other taxes imposed upon any royalty payments made by Licensee to Licensor under this Agreement, Licensee shall (i) make such withholding payments as may be required, (ii) subtract such withholding payments from such payments, (iii) submit appropriate proof of payment of the withholding taxes to Licensor within a reasonable period of time, and (iv) promptly provide Licensor with all official receipts with respect thereto. Licensee shall provide reasonable assistance in order to allow Licensor to obtain the benefit of any present or future treaty against double taxation which may apply to such payments.

3.2.8 **Records**. Licensee shall keep, and shall require each Selling Party to keep, full, true and accurate books of account containing all particulars that may be necessary for the purpose of calculating all royalty payment amounts payable under Section 3.1(d).

3.2.9 **Audits**. Upon timely request and at least thirty (30) days' prior written notice from Licensor, Licensor may have an independent public accountant reasonably acceptable to Licensee perform, on behalf of Licensor, an audit of such books and records of the Selling Parties that are reasonably necessary for Licensor's independent public accountant to report on Net Sales of XOMA Derived Products for the then current calendar year and the two (2) most recently completed calendar years prior to the date of such request and the correctness of any Net Sales report or royalty payment made during such period. Such audit shall be conducted during regular business hours in such a manner as to not unnecessarily interfere with the Licensee's normal business activities. Such audit shall not be performed more frequently than once per calendar year nor more frequently than once with respect to records covering Net Sales of any Product during any give period of time. Such audits shall be conducted at the expense of Licensor, unless such audit identifies an underpayment of royalty payments of [*] or more for any XOMA Derived Product over any calendar year, in which case Licensee shall reimburse Licensor for all expenses incurred by Licensor to conduct such audit.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

3.2.10 **Underpayment**. If the audit reveals an underpayment to Licensor, Licensee shall pay the shortfall amount to Licensor within thirty (30) days after the completion of the audit together with the applicable late payment interest amount.

4. TERM AND TERMINATION

4.1 **Term**. This Agreement shall commence on the Effective Date and shall continue in full force and effect, unless otherwise terminated pursuant to Section 4.2, until the expiration of the last valid claim of the XOMA Patents in all countries in the Territory (the "**Term**"). Upon the expiration of the Term, the licenses granted to Licensee shall be retained as fully paid-up, worldwide, perpetual and irrevocable licenses.

4.2 **Termination**. This Agreement may be terminated as follows:

4.2.1 **Termination for Convenience**. Licensee may terminate this Agreement at any time upon [*] prior written notice to Licensor.

4.2.2 **Termination for Breach**. If a Party materially breaches any of its obligations under this Agreement, the non-breaching Party may provide the breaching Party with a written notice specifying the nature of the breach, and stating its intention to terminate this Agreement if such breach is not cured. If the material breach is not cured within [*] after the receipt of such notice, the non-breaching Party shall be entitled, without prejudice to any of its other rights under this Agreement, and in addition to any other remedies available to it by law or in equity, to terminate this Agreement by providing written notice to the other Party.

4.2.3 **Termination for Failure of Exercised Option**. In the event that (i) Buyer does not exercise its Option in accordance with Section 2.3 of the APA, on or before the end of the Option Period or (ii) Buyer notifies Seller that it will not exercise the Option, this Agreement will automatically terminate.

4.3 **Surviving Provisions**. Termination or expiration of this Agreement for any reason shall be without prejudice to the rights and obligations of the Parties that have accrued prior to the termination or expiration. The following provisions shall survive early termination: Section 3.2 and Articles 4 and 5.

4.4 **Cumulative Rights**. The rights and remedies provided to each Party in this Article 3 are cumulative and in addition to any other rights and remedies available to such Party at law or in equity.

5. NO WARRANTIES; LIMITATION OF LIABILITIES

5.1 **Warranty Disclaimer**. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY WITH RESPECT TO ANY KNOW-HOW, RIGHTS OR OTHER SUBJECT MATTER OF THIS AGREEMENT AND EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

5.2 **Limited Liability**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR LOST REVENUES, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 5.2 IS INTENDED TO OR SHALL LIMIT OR RESTRICT THE LIABILITY OF EITHER PARTY FOR THE BREACH OF ITS OBLIGATIONS UNDER THE CONFIDENTIALITY AGREEMENT.

6. GENERAL PROVISIONS

6.1 **Expenses**. Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.

6.2 **Further Assurances and Actions**. Each of the parties hereto, upon the request of the other party hereto and without further consideration, will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, or delivered, all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably necessary to effect complete consummation of the transactions contemplated by this Agreement. Licensor and Licensee agree to execute and deliver such other documents, certificates, agreements, and other writings and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

6.3 **Notices**. All notices, requests, demands, waivers, and communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand (including by reputable overnight courier):

6.3.1 if to Licensor, to:

XOMA (US) LLC
c/o XOMA Corporation
2910 Seventh Street
Berkeley, CA 94710
(510) 204-7200
Attn: General Counsel

with a copy to:

Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Attn: Van W. Ellis
Telephone: (202) 887-8776

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

6.3.2 if to Licensee, to:

Nanotherapeutics, Inc.
13859 Progress Blvd., Suite 300
Alachua, FL 32615
Telephone: 386-462-9663
Attn: James Talton

with a copy to: Nanotherapeutics, Inc.

13859 Progress Blvd., Suite 300
Alachua, FL 32615
Telephone: 386-462-9663
Attn: Andy Cziotka, Esq.

or to such other person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given (i) on the date on which so hand-delivered; and (ii) on the date on which faxed and confirmed.

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

6.5 **Headings**. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

6.6 **Severability**. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced under any Law or public policy, all other terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

6.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto, it being understood that all parties hereto need not sign the same counterpart.

6.8 **Entire Agreement; No Third Party Beneficiaries**. This Agreement (together with the schedules, annexes and exhibits attached hereto), the APA, and the Ancillary Agreements

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between or among the parties hereto with respect to the subject matter hereof. Except as specifically provided herein, this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

6.9 **Relationship of the Parties**. Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture, or legal entity of any type between Licensor and Licensee, or to constitute one as the agent of the other. Moreover, each party agrees not to construe this Agreement, or any of the transactions contemplated hereby, as a partnership for any tax purposes.

6.10 **Governing Law; Jurisdiction**. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to the conflict of law principles thereof. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any other party or its successors or assigns shall be brought and determined in state or federal court sitting in California, and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit, or proceeding relating thereto except in the courts described above in California, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts described herein for any reason; (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise); and (c) that (i) the suit, action, or proceeding in any such court is brought in an inconvenient forum; (ii) the venue of such suit, action, or proceeding is improper; or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

6.11 **Specific Performance**. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties hereto will be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity, without the necessity of demonstrating the inadequacy of monetary damages and without the posting of a bond.

6.12 **Waiver of Jury Trial**. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE ANCILLARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY, OR THE TRANSACTIONS CONTEMPLATED HEREBY AND FOR ANY COUNTERCLAIM THEREIN.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

6.13 **Binding Effect; Assignment**. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and permitted assigns of the parties and such Persons. This Agreement may not be assigned by any party hereto without the prior written consent of each of the other parties; provided, however, that any Party may assign its rights hereunder to one or more of its Affiliates so long as such Affiliate agrees in writing to become a party to this Agreement and be bound to the terms and conditions of this Agreement, and the transferring party shall remain liable for the performance of all obligations of itself and its Affiliated transferees under this Agreement.

6.14 **Section 365(n) of the Bankruptcy Code**. All rights and licenses granted pursuant to any Section of this Agreement are, and shall be deemed to be, rights and licenses to "intellectual property" (as defined in Section 101(35A) of title 11 of the United States Code and of any similar provisions of applicable Laws under any other jurisdiction (the "**Bankruptcy Code**")). Each Party agrees that the other Party, as a Licensee of rights and licenses under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against a Party under the Bankruptcy Code or analogous provisions of applicable Law outside the United States, the other Party shall be entitled to a complete duplicate of (or complete access to, as appropriate) any intellectual property licensed to such Party and all embodiments of such intellectual property, which, if not already in such Party's possession, shall be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon such Party's written request therefor, unless the Party in the bankruptcy proceeding elects to continue to perform all of its obligations under this Agreement or (b) if not delivered under clause (a), following the rejection of this Agreement by the Party in the bankruptcy proceeding upon written request therefor by the other Party.

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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

XOMA (US) LLC

By: /s/ James R. Neal
Name: James R. Neal
Title: Senior Vice President and Chief Operating Officer

NANOTHERAPEUTICS, INC.

By: /s/ James D. Talton,
Name: James D. Talton, Ph.D.
Title: President and Chief Executive Officer

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

276626674 v2

Exhibit 10.4

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

Amendment and Restatement to Agreements

This Amendment and Restatement ("Amendment") to both the Asset Purchase Agreement ("APA") and Nanotherapeutics License Agreement ("License Agreement") is dated February 2, 2017, between XOMA Corporation ("XOMA") and Nanotherapeutics, Inc. ("Nano"). Capitalized terms not otherwise defined in this Amendment shall have the meaning set forth in the APA and License Agreement.

Seller and Buyer are parties to an APA dated November 4, 2015 and the License Agreement dated March 23, 2016; and

Nano wishes to exercise the Option to purchase the Optioned Assets under the APA; and The parties wish to amend and restate both the APA and the License Agreement.

Therefore, the parties agree as follows:

1. Exercise of Option. Nano exercises the Option, under Section 2.3 of the APA, effective as of the date of this First Amendment.

2. Amendments.

a. Article III of the APA is deleted in its entirety.

b. The definition of "**Net Sales**", under Section 1 of the License Agreement, is amended and restated to include a new subparagraph (d), such that the definition now reads as follows:

"***Net Sales****" means the gross amounts invoiced by Buyer, its Affiliates, and any of its or their licensees or collaborators (each, a "****Selling Party****") for the sale, transfer or other distribution of XOMA Derived Products to Third Parties, less the following deductions to the extent reasonable and customary and actually incurred, allowed, paid, accrued or specifically allocated in its financial statements, for:*

(a) discounts (including trade, quantity and cash discounts), cash and non-cash coupons, retroactive price reductions, and charge-back payments and rebates granted to any Third Party (including to governmental entities or agencies, purchasers, reimbursers, any Third Party (including to governmental entities or agencies, purchasers, reimbursers, customers, distributors, wholesalers, and group purchasing and managed care organizations or entities (and other similar entities and institutions));

(b) credits or allowances, if any, on account of price adjustments, recalls, claims, damaged goods, rejections or returns of items previously sold (including Product returned in connection with recalls or withdrawals) and amounts

written off by reason of uncollectible debt, provided that if the debt is thereafter paid, the corresponding amount shall be added to the Net Sales of the period during which it is paid;

(c) rebates (or their equivalent), administrative fees, chargebacks and retroactive price adjustments and any other similar allowances granted by a Selling Party (including to governmental authorities, purchasers, reimburses, customers, distributors, wholesalers, and managed care organizations and entities (and other similar entities and institutions)) which effectively reduce the selling price or gross sales of the Product; and

(d) proceeds of the sale, assignment, license or other transfer of any priority review vouchers under the 21st Century Cures Act.

If non-monetary consideration is received by a Selling Party for any Product in a given country, Net Sales will be calculated based on the average price charged for such Product in such country, as applicable, during the preceding royalty period, or in the absence of such sales, transfers or other distributions, the fair market value of the Product in such country, as applicable, as determined by the Parties in good faith. If the Parties are unable to reach such an agreement, the Parties shall refer such matter to a jointly selected Third Party with expertise in the pricing of pharmaceutical products that is not, and has not in the past five (5) years been, an employee, consultant, legal advisor, officer, director or stockholder of, and does not have any conflict of interest with respect to, either Party for resolution. Net Sales shall be determined on, and only on, the first sale, transfer or other distribution by a Selling Party to a Third Party that is not a Selling Party.

c. Section 3.1 of the License Agreement is amended and restated to read as follows:

3.1 In consideration of the licenses granted in Article 2, Licensee shall make the payments set forth below in this Section 3.1:

(a) $1,620,000 payable in installments as set forth below:

1. $150,000 on or before March 31, 2017; and

2. $250,000 on or before the last business day of each subsequent calendar quarter (the first such payment due on or before June 30, 2017), until the balance of the $1,620,000 is paid in full.

3. If Licensee makes a lump-sum payment of $1,500,000 on or before April 1st, 2017, the amount payable in this Section 3.1(a) will be deemed satisfied and no further monies will be due under this Section 3.1(a).

(b) $3,000,000 payable in installments as set forth below:

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

1. *$250,000 within three Business Days of Licensee's receipt of payment for achievement of "Proof of Efficacy" as agreed to by DoD and DTRA and defined under Milestone 5 ("MS 5") under PROJECT AGREEMENT NO.: 01 signed on September 30, 2016 between Advanced Technology International and Nanotherapeutics, Inc.*

2. *$250,000 on or before the last business day of each subsequent calendar month until the balance of the $3,000,000 is paid in full.*

(c) Quarterly Royalty Payments of 15% of Net Sales of XOMA Derived Products.

3. In the event that Nano fails to make any of the payments set forth in the amended and restated Section 3.1 of the License Agreement on or before the due dates set forth above, the license granted under the License Agreement shall immediately terminate on the due date, and Nano shall return all Optioned Assets and related materials to XOMA within [*].

4. XOMA rescinds the cease and desist demand outlined in its January 4th, 2017 letter to Nano.

5. XOMA will provide the Bot Antibody materials requested by Nano as soon as practicable, and will continue to support the Bot Antibody development so long as Nano continues to make License Fee payments as they come due.

6. Except as set forth in this First Amendment, the terms and condition of the APA and the License Agreement shall remain in full force and effect.

NANOTHERAPEUTICS, INC
By: /s/ Prasad Raje
Name: Prasad Raje
Title: President & CEO

XOMA CORPORATION
By: /s/ James R. Neal
Name: James R. Neal
Title: Chief Executive Officer

[*] = Certain portions of this exhibit (indicated by asterisks) have been omitted as the registrant has determined that the information is both not material and is the type that the registrant treats as private or confidential.

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 3, 2022

/s/ JAMES R. NEAL

James R. Neal

Chief Executive Officer and Chairman of the Board of Directors

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 3, 2022

/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, 2022, 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 3rd day of November, 2022

/s/ JAMES R. NEAL

James R. Neal
Chief Executive Officer and Chairman of the Board of Directors

/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.