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, 2018

or

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

For the transition period from _____to_____

Commission File No. 0-14710

XOMA Corporation

(Exact name of registrant as specified in its charter)

Delaware	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2200 Powell Street, Suite 310 Emeryville, California 94608	**(510) 204-7200**
(Address of principal executive offices, including zip code)	**(Telephone Number)**

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 of 1934). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	**Outstanding at November 2, 2018**
Common Stock, $0.0075 par value	**8,387,596**

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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

XOMA CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

	September 30, 2018 (unaudited)	December 31, 2017 (Note 1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 28,433	$ 43,471
Trade and other receivables	1,315	397
Prepaid expenses and other current assets	423	327
Total current assets	30,171	44,195
Property and equipment, net	66	83
Long-term royalty receivables	15,000	—
Long-term equity securities	347	—
Other assets	578	657
Total assets	$ 46,162	$ 44,935
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,542	$ 1,679
Accrued and other liabilities	2,159	2,693
Income taxes payable	—	1,637
Unearned revenue recognized under units-of-revenue method	1,120	615
Contract liabilities	798	798
Total current liabilities	5,619	7,422
Unearned revenue recognized under units-of-revenue method – long-term	16,522	17,123
Long-term debt	22,034	14,572
Other liabilities – long-term	834	32
Total liabilities	45,009	39,149
Commitments and Contingencies (Note 11)		
Stockholders' equity:		
Convertible preferred stock, $0.05 par value, 1,000,000 shares authorized, 5,003 shares issued and outstanding at September 30, 2018 and December 31, 2017	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 8,387,163 and 8,249,158 shares issued and outstanding at September 30, 2018 and December 31, 2017, respectively	63	62
Additional paid-in capital	1,190,480	1,184,783
Accumulated deficit	(1,189,390)	(1,179,059)
Total stockholders' equity	1,153	5,786
Total liabilities and stockholders' equity	$ 46,162	$ 44,935

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

(Note 1) The condensed consolidated balance sheet as of December 31, 2017 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, 2017.

XOMA CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME

(unaudited)

(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenues:				
Revenue from contracts with customers	$ 775	$ 36,073	$ 3,518	$ 47,005
Revenue recognized under units-of-revenue method	121	110	96	328
Total revenues	896	36,183	3,614	47,333
Operating expenses:				
Research and development	637	307	1,445	7,215
General and administrative	4,657	7,255	14,236	17,625
Restructuring charges (credit)	909	(29)	1,368	3,451
Total operating expenses	6,203	7,533	17,049	28,291
(Loss) income from operations	(5,307)	28,650	(13,435)	19,042
Other income (expense):				
Interest expense	(209)	(202)	(557)	(1,108)
Loss on extinguishment of debt	—	(135)	—	(650)
Other income (expense), net	938	(263)	3,661	337
(Loss) income before income tax	(4,578)	28,050	(10,331)	17,621
Provision for income taxes	—	(1,706)	—	(1,706)
Net (loss) income and comprehensive (loss) income	$ (4,578)	$ 26,344	$ (10,331)	$ 15,915
Net (loss) income and comprehensive (loss) income available to common stockholders, basic	$ (4,578)	$ 16,038	$ (10,331)	$ 6,609
Net (loss) income and comprehensive (loss) income available to common stockholders, diluted	$ (4,578)	$ 16,418	$ (10,331)	$ 6,669
Basic net (loss) income per share available to common stockholders	$ (0.55)	$ 2.06	$ (1.24)	$ 0.89
Diluted net (loss) income per share available to common stockholders	$ (0.55)	$ 1.98	$ (1.24)	$ 0.88
Weighted average shares used in computing basic net (loss) income per share available to common stockholders	8,386	7,786	8,354	7,424
Weighted average shares used in computing diluted net (loss) income per share available to common stockholders	8,386	8,275	8,354	7,617

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,	
	2018	2017
Cash flows from operating activities:		
Net (loss) income	$ (10,331)	$ 15,915
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Fair value of Rezolute common stock shares received as consideration for license agreement	(955)	—
Stock-based compensation expense	3,033	4,893
Common stock contribution to 401(k)	20	506
Depreciation and amortization	23	289
Amortization of debt issuance costs, debt discount and final payment on debt	36	444
Loss on sublease	1,421	—
Loss on extinguishment of debt	—	650
Unrealized loss on foreign currency exchange	—	1,447
Gain on sale and disposal of equipment	—	(1,123)
Change in fair value of long-term equity securities	608	—
Other	(20)	262
Changes in assets and liabilities:		
Trade and other receivables	(918)	(460)
Prepaid expenses and other assets	(117)	493
Accounts payable and accrued liabilities	(1,778)	(7,254)
Unearned revenue recognized under units-of-revenue method	(96)	(9,857)
Income tax payable	(1,637)	1,706
Other liabilities	779	—
Net cash (used in) provided by operating activities	(9,932)	7,911
Cash flows from investing activities:		
Proceeds from sale of equipment	—	1,614
Purchase of property and equipment	(6)	(24)
Purchase of royalty rights in connection with Agenus purchase agreement	(15,000)	—
Net cash (used in) provided by investing activities	(15,006)	1,590
Cash flows from financing activities:		
Proceeds from issuance of convertible preferred stock, net of issuance costs	—	20,019
Proceeds from issuance of common stock, net of issuance costs	2,331	9,940
Proceeds from exercise of options	513	—
Proceeds from issuance of long-term debt	7,500	—
Debt issuance costs and loan fees	(217)	—
Principal payments – debt	—	(16,380)
Payment of final fee related to loan extinguishment	—	(1,150)
Principal payments – capital lease	(10)	(51)
Taxes paid related to net share settlement of equity awards	(237)	(41)
Net cash provided by financing activities	9,880	12,337
Effect of exchange rate changes on cash	20	167
Net (decrease) increase in cash and cash equivalents	(15,038)	22,005
Cash and cash equivalents at the beginning of the period	43,471	25,742
Cash and cash equivalents at the end of the period	$ 28,433	$ 47,747
Supplemental Cash Flow Information:		
Cash paid for interest	$ —	$ 518
Cash paid for taxes	$ 1,637	$ —
Non-cash investing and financing activities:		
Fair value of Rezolute common stock shares received as consideration for license agreement	$ 955	$ —
Repayment of principal and accrued interest under the Servier loan	$ —	$ 14,346
Interest added to principal balance on long-term debt	$ 281	$ 236
Prepaid financing cost related to issuance of common stock	$ 100	$ —
Issuance of common stock warrant under SVB loan	$ 139	$ —

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

1. Description of Business

XOMA Corporation (referred to as "XOMA" or the "Company"), a Delaware corporation, has a long history of discovering and developing innovative therapeutics derived from its unique platform of antibody technologies. Over the Company's extensive history, it built a portfolio of fully-funded programs by advancing product candidates into the earlier stages of development and then licensing them to licensees who assumed the responsibilities of later stage development, regulatory approval and commercialization. F ully-funded programs are those for which the Company's partners pay the development and commercialization costs. As licensees advance these programs, the Company is eligible for potential milestone and royalty payments. As part of the Company's royalty aggregator business model, the Company will continue to expand its portfolio of fully-funded programs by acquiring potential milestone and royalty revenue streams on additional product candidates.

Liquidity and Financial Condition

With the exception of the year ended December 31, 2017, the Company has typically incurred significant operating losses and negative cash flows from operations since its inception. As of September 30, 2018, the Company had cash and cash equivalents of $28.4 million. Based on the Company's current cash and cash equivalents balance and its ability to control discretionary spending, such as royalty acquisitions, the Company has evaluated and concluded there are no conditions or events, considered in the aggregate, that raise substantial doubt about its ability to continue as a going concern for a period of one year following the date that these 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 consolidated financial statements were prepared in accordance with generally accepted accounting principles ("GAAP") in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. As permitted under those rules certain footnotes or other financial information can be condensed or omitted. These financial statements and related disclosures have been prepared with the assumption that users of the interim financial information have read or have access to the audited consolidated financial statements for the preceding fiscal year. Accordingly, these statements should be read in conjunction with the audited consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2017, filed with the U.S. Securities and Exchange Commission ("SEC") on March 7, 2018.

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.

Reclassification

Certain prior period year amounts have been reclassified to conform to the current quarter presentation.

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, long-term equity securities, debt amendments, long-lived assets, restructuring liabilities, legal contingencies, 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 billing under past government contracts and amortization of the payments received from HealthCare Royalty Partners II, L.P. ("HCRP"). Under the Company's contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), the Company billed using NIH's provisional rates and thus is subject to future audits at the discretion of NIAID's contracting office. These audits can result in an adjustment to revenue previously reported which potentially could be material. In addition, under the contracts with HCRP, the amortization for the reporting period is calculated based on the payments expected to be made by the licensees to HCRP over the term of the arrangement. Any changes to the estimated payments by the licensees to HCRP can result in a material adjustment to revenue previously reported.

Restructuring and Impairment Charges

Restructuring costs are primarily comprised of severance costs related to workforce reductions, contract termination costs, lease-related liability and asset impairments. The Company recognizes restructuring charges when the liability has been incurred, except for employee termination benefits that are incurred over time. Generally, employee termination benefits (i.e., severance costs) are accrued at the date management has committed to a plan of termination and employees have been notified of their termination dates and expected severance payments. Key assumptions in determining the restructuring costs include the terms and payments that may be negotiated to terminate certain contractual obligations and the timing of employees leaving the Company. Other costs, including contract termination costs, are recorded when the arrangement is terminated. Asset impairment charges have been, and will be, recognized when management has concluded that the assets have been impaired.

For lease-related liability, the Company recognizes the present value of facility lease-related obligations, net of estimated sublease income and other costs, when the Company has future payments with no future economic benefit. In future periods the Company will record accretion expense to increase the liability to an amount equal to the estimated future cash payments necessary to exit the leases. This requires judgment and management estimation to determine the expected time frame for securing a subtenant, the amount of sublease income to be received and the appropriate discount rate to calculate the present value of the future cash flows. Should actual lease costs differ from estimates, the Company may be required to adjust the restructuring charge which will impact operating expenses in the period any adjustment is recorded.

Revenue Recognition

Effective January 1, 2018, the Company adopted Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers* ("ASC 606") using the modified retrospective transition method and applied the standard only to contracts that are still active or in place at that date. Also, as permitted, the Company applied the practical expedient under ASC 606 which permits the Company to treat all contract modifications that occurred prior to the adoption in aggregate when determining the performance obligations, transaction price and its allocation. Except for the Company's license agreement with Rezolute, Inc. (formerly AntriaBio, Inc.) ("Rezolute"), the Company did not have any other contracts with customers for which the Company had not completed its performance obligations as of the adoption date January 1, 2018. The license agreement with Rezolute was not considered a contract under ASC 606 as it is not probable that the Company will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to Rezolute and there was no consideration exchanged upon execution of the arrangement or as of January 1, 2018 (see Note 4). Thus, the Company determined that the adoption of ASC 606 did not have a financial impact on the Company's consolidated financial statements. In addition, the adoption of ASC 606 has no material impact for tax purposes. This standard applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under ASC 606, the Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the Company expects to receive in exchange for those goods or services.

To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation based on relative fair values, when (or as) the performance obligation is satisfied.

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

Licenses 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 expects to use 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, suc h as regulatory approvals, are not considered probable of being achieved until those approvals are received. The transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis. The Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, the Company re-evaluates the probability or achievement of each such milestone and any related constraint, and if necessary, adjusts its estimates of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue and earnings in the period of adjustment.

Royalties: For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied).

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

Sale of Future Revenue Streams

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

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

Stock-Based Compensation

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

The Company records compensation expense for service-based awards over the vesting period of the award on a straight-line basis. For awards with performance-based conditions, the Company records the expense over the remaining service period when management determines that achievement of the milestone is probable. Management evaluates when the achievement of a performance-based condition is probable based on the expected satisfaction of the performance conditions as of the reporting date. The amount of stock-based compensation expense recognized during a period is based on the value of the portion of the awards that are ultimately expected to vest.

The valuation of restricted stock units ("RSUs") is determined at the date of grant using the Company's closing stock price.

Equity Securities

Effective January 1, 2018, the Company adopted Accounting Standards Update ("ASU") 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities*. The amendment requires equity investments (except those accounted for under the equity method, those that result in consolidation of the investee and certain other investments) to be measured at fair value with any changes in fair value recognized in net (loss) income. For equity investments that do not have readily determinable fair values and do not qualify for the existing practical expedient in ASC 820, *Fair Value Measurements*, to estimate fair value using the net asset value per share of the investment, the Company may choose to measure those investments at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. In February 2018, the Financial Accounting Standards Board ("FASB") also issued ASU 2018-03, *Recognition and Measurement of Financial Assets and Financial Liabilities* (ASU 2018-03), which made improvements to address certain aspects of recognition, measurement, presentation and disclosure of financial instruments. ASU 2018-03 is effective for fiscal years beginning after December 15, 2017, and interim periods beginning after June 15, 2018, but may be adopted concurrently with ASU 2016-01. As permitted, the Company adopted ASU 2016-01 and ASU 2018-03 concurrently on January 1, 2018. The adoption had no impact on the condensed consolidated financial statements as the Company did not have any equity investments that existed as of the adoption date.

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

Net (Loss) Income per Share Available to Common Stockholders

Basic net (loss) income per share available to common stockholders is based on the weighted average number of shares of common stock outstanding during the period. Net (loss) income available to common stockholders consists of net (loss) income, as adjusted for the convertible preferred stock deemed dividends related to the beneficial conversion feature on this instrument at issuance. During periods of income, the Company allocates participating securities a proportional share of net income, after deduction of any deemed dividends on preferred stock, determined by dividing total weighted average participating securities by the sum of the total weighted average number of common stock and participating securities (the "two-class method"). The Company's convertible preferred stock participates in any dividends declared by the Company on its common stock and are therefore considered to be participating securities.

During periods of loss, the Company allocates no loss to participating securities because they have no contractual obligation to share in the losses of the Company. Diluted net (loss) income per share available to common stockholders is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed conversion of preferred stock, and the exercise of certain stock options, RSUs, and warrants for common stock. The calculation of diluted (loss) income per share available to common stockholders requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of any outstanding options, RSUs or warrants and the presumed exercise of such securities are dilutive to earnings (loss) per share available to common stockholders for the period. Adjustments to the denominator are required to reflect the related dilutive shares.

Concentration of Risk

Cash equivalents and receivables are financial instruments which potentially subject the Company to concentrations of credit risk, as well as liquidity risk for certain cash equivalents, such as money market funds. As of September 30, 2018, the Company had no cash equivalents. As of December 31, 2017, cash equivalents consist of money market funds which were held by major financial institutions which management believes are of high credit quality. The Company has not encountered any such liquidity issues during 2018.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the three months ended September 30, 2018, three partners represented 56%, 28% and 14% of total revenues. For the nine months ended September 30, 2018, three partners represented 50%, 21% and 17% of total revenues. For the three months ended September 30, 2017, one partner represented 98% of total revenues. For the nine months ended September 30, 2017, one partner represented 96% of total revenues. As of September 30, 2018, three partners represented 43%, 28% and 22% of the trade receivables balance, respectively. As of December 31, 2017, one partner represented 100% of the trade receivables balance.

Recent Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. ASU 2016-02 is aimed at making leasing activities more transparent and comparable, and requires substantially all leases be recognized by lessees on their balance sheet as a right-of-use asset and corresponding lease liability, including leases currently accounted for as operating leases. Early adoption is permitted and must be adopted using a modified retrospective approach In July 2018, however, the FASB issued ASU 2018-11, *Leases (Topic 842): Targeted Improvements*, which provides entities with an additional (and optional) transition method which would enable entities to initially apply the new leases standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings/accumulated deficit. This optional transition method is in addition to the modified retrospective transition approach included in ASU 2016-02. The new standard will be effective for the Company on January 1, 2019 and will be adopted by recognizing a cumulative effect adjustment to the opening balance of retained earnings as of that date. The effect of adoption on the Company's financial statements will depend on the leases in effect and the Company's borrowing rates at that time, but based on the Company's existing leases, adoption is expected to result in a significant increase in assets and liabilities on the balance sheet, and no significant change to the consolidated statement of operations and comprehensive (loss) income.

In June 2018, the FASB issued ASU 2018-07, *Compensation- Stock Compensation (Topic 718) "Improvements to Nonemployee Share-Based Payment Accounting,"* which expands the scope of Topic 718 to include all share-based payment transactions for acquiring goods and services from nonemployees An entity should apply the requirements of Topic 718 to nonemployee awards except for certain exemptions specified in the amendment. ASU 2018-07 is effective for the Company's interim and annual reporting periods during the year ending December 31, 2019, and all annual and interim reporting periods thereafter. Early adoption is permitted, but no earlier than an entity's adoption date of Topic 606. The Company elected to early adopt this standard on June 30, 2018. The adoption did not have a material impact on the condensed consolidated financial statements.

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

3. Condensed Consolidated Financial Statements Detail

Cash and Cash Equivalents

As of September 30, 2018, cash and cash equivalents consisted of demand deposits of $28.4million. As of December 31, 2017, cash and cash equivalents consisted of demand deposits of $34.9 million and money market funds of $8.6 million with maturities of less than 90 days at the date of purchase.

Long-term Equity Securities

As of September 30, 2018, long-term equity securities consisted of an investment in Rezolute's common stock of $0.3 million (see Note 4). The Company recognized losses of $0.2 million and $0.6 million due to the change in fair value of its investment in Rezolute's common stock in other income (expense), net line item of the consolidated statement of operations and comprehensive loss for the three and nine months ended September 30, 2018, respectively.

Property and Equipment, net

During the nine months ended September 30, 2017, the Company completed the sale of equipment and disposal of certain equipment located in one of its leased facilities for total proceeds of $1.6 million. The total carrying value of the equipment sold and disposed of was $0.1 million and $0.5 million during the three and nine months ended September 30, 2017, respectively. Accordingly, the Company recorded a loss of $0.1 million and a gain of $1.1 million on the sale and disposal of equipment in the other income (expense), net line of the condensed consolidated statements of comprehensive income (loss) for the three and nine months ended September 30, 2017, respectively.

Accrued and Other Liabilities

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

	September 30, 2018	December 31, 2017
Accrued legal and accounting fees	$ 244	$ 431
Accrued restructuring	1,205	130
Accrued incentive compensation	280	229
Deferred rent	—	765
Liability related to sublease	83	800
Accrued payroll and other benefits	146	141
Other	201	197
Total	$ 2,159	$ 2,693

Net (Loss) Income Per Share Available to Common Stockholders

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Numerator				
Net (loss) income	$ (4,578)	$ 26,344	$ (10,331)	$ 15,915
Less: Deemed dividend on convertible preferred stock	—	—	—	(5,603)
Less: Allocation of undistributed earnings to participating securities	—	(10,306)	—	(3,703)
Net (loss) income available to common stockholders, basic	$ (4,578)	$ 16,038	$ (10,331)	$ 6,609
Adjustments to undistributed earnings allocated to participating securities	—	380	—	60
Net (loss) income available to common stockholders, diluted	$ (4,578)	$ 16,418	$ (10,331)	$ 6,669
Denominator				
Weighted average shares used in computing basic net (loss) income per share available to common stockholders	8,386	7,786	8,354	7,424
Effect of dilutive stock options	—	489	—	193
Weighted average shares used in computing diluted net (loss) income per share available to common stockholders	8,386	8,275	8,354	7,617

Potentially dilutive securities are excluded from the calculation of diluted net (loss) income per share available to common stockholders if their inclusion is anti-dilutive. The following table shows the weighted-average outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net (loss) income per share available to common stockholders (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Convertible preferred stock	5,003	—	5,003	4,160
Common stock options and RSUs	1,644	313	1,638	753
Warrants for common stock	24	19	21	139
Total	6,671	332	6,662	5,052

4. Licensing and Other Arrangements

Novartis – Gevokizumab and IL-1 Beta

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

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

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

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

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

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

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

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2018. 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, 2018, and December 31, 2017, there are no contract assets or contract liabilities related to this arrangement. In addition, the Company did not recognize any revenue related to this arrangement during the three and nine months ended September 30, 2018. None of the costs to obtain or fulfill the contract were capitalized.

Novartis International – Anti-TGFβ Antibody

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

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

During the nine months ended September 30, 2017, Novartis International achieved a clinical development milestone pursuant to the License Agreement and, as a result, the Company earned a $10.0 million milestone payment which was recognized as license fees in the consolidated statement of operations and comprehensive income. As of September 30, 2018, the Company is eligible to receive up to a total of $470.0 million in development, regulatory and commercial milestones.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the remaining development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2018. 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 International's obligation to pay royalties with respect to a particular product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or ten years from the date of the first commercial sale of the product in that country.

As of September 30, 2018, and December 31, 2017, there are no contract assets or contract liabilities related to this arrangement. In addition, the Company did not recognize any revenue related to this arrangement during the three and nine months ended September 30, 2018. None of the costs to obtain or fulfill the contract were capitalized.

Rezolute

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

Under the terms of the license agreement, Rezolute is responsible for all development, regulatory, manufacturing and commercialization activities associated with RZ358 and is required to make certain development, regulatory and commercial milestone payments to the Company of up to $232.0 million in the aggregate based on the achievement of pre-specified criteria. Under the license agreement, the Company is also eligible to receive royalties ranging from the high single digits to the mid-teens based upon annual net sales of any commercial product incorporating RZ358. Rezolute is obligated to take customary steps to advance RZ358, including using diligent efforts to commence the next clinical study for RZ358 by a certain deadline and to meet certain spending requirements on an annual basis for the program until a marketing approval application for RZ358 is accepted by the FDA. Rezolute's obligation to pay royalties with respect to a particular RZ358 product and country will continue for the longer of the date of expiration of the last valid patent claim covering the product in that country, or twelve years from the date of the first commercial sale of the product in that country. Rezolute has an option through June 1, 2019 to obtain an exclusive license for their choice of one of the Company's preclinical monoclonal antibody fragments, including X129, in exchange for a $1.0 million upfront option fee and additional clinical, regulatory and commercial milestone payments to the Company of up to $237.0 million in the aggregate based on the achievement of pre-specified criteria as well as royalties ranging from the high single digits to the mid-teens based on annual net sales.

Pursuant to the license agreement and common stock purchase agreement, the Company is eligible to receive $6.0 million in cash and $12.0 million of Rezolute's common stock contingent on the completion of Rezolute's financing activities. Further, in the event that Rezolute does not complete a financing that raises at least $20.0 million in aggregate gross proceeds ("Qualified Financing") by March 31, 2019 (the "2019 Closing"), the Company will receive an additional number of shares of Rezolute's common stock equal to $7.0 million divided by the weighted average of the closing bid and ask prices or the average closing prices of Rezolute's common stock on the ten-day trading period prior to March 31, 2019. Finally, in the event that Rezolute is unable to complete a Qualified Financing by March 31, 2020, the Company is eligible to receive $15.0 million in cash in order to maintain the license. Under the common stock purchase agreement, Rezolute granted the Company the right and option to sell the greater of (i) 5,000,000 shares of common stock or (ii) one third of the aggregate shares held by the Company upon failure by Rezolute to list its shares of its common stock on the Nasdaq Stock Market or a similar national exchange on or prior to December 31, 2018.

In addition, under the terms of the license agreement, the Company is eligible to receive a low single digit royalty on sales of Rezolute's other products from its current programs. Rezolute's obligation to pay royalties with respect to a particular Rezolute product and country will continue for the longer of twelve years from the date of the first commercial sale of the product in that country or for so long as Rezolute or its licensee is selling such product in such country, provided that such 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. The Company has the right to terminate the license agreement if Rezolute challenges the licensed patents.

On March 30, 2018, the Company and Rezolute amended the license agreement and common stock purchase agreement. The license agreement was amended to add terms specifying the financial responsibility for certain tasks related to the technology transfer of RZ358 license. The common stock purchase agreement was amended as follows: (1) adjusted the total shares due upon the Initial Closing (as defined in the common stock purchase agreement) from $5.0 million in value to 7,000,000 shares; (2) increased the shares due upon a Qualified Financing from $7.0 million in value to $8.5 million in value; and (3) increased the shares due upon the 2019 Closing from $7.0 million in value to $8.5 million in value. All other terms of the license agreement and common stock purchase agreement remain unchanged.

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

Upon execution of the arrangement, the Company determined that it is not probable that the Company will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to Rezolute. Therefore, the Company determined that there was no contract on December 6, 2017 under ASC 606.

During the three months ended March 31, 2018, Rezolute completed an Interim Financing Closing as defined in the common stock purchase agreement resulting in consideration due to XOMA consisting of 69,252 shares of Rezolute's common stock and cash of $50,000. In addition, during the three months ended March 31, 2018, the Company completed the delivery of the license and related materials, product data/filing, process and know-how to Rezolute. However, the Company determined that the achievement of the Interim Financing Closing and related consideration as well as the amendment in March 2018 were not substantive to overcome the collectability criterion required to establish a contract under ASC 606. Thus, there was no contract as of March 31, 2018 and no revenue was recognized during the three months ended March 31, 2018 under the arrangement.

On April 3, 2018, Rezolute closed a debt financing activity for gross proceeds of $4.0 million, which triggered the Initial Closing defined under the amended common stock purchase agreement between the Company and Rezolute. As such, pursuant to the terms of the amended common stock purchase agreement with Rezolute, the Company received 8,023,758 shares of Rezolute's common stock and cash of $0.5 million. The cash and share consideration in connection with the Interim Financing Closing during the three months ended March 31, 2018 and Initial Closing as noted above were received in April 2018. Under the amended license agreement, XOMA was also entitled to receive $0.3 million of reimbursable technology transfer expenses from Rezolute. The Company concluded that the payment associated with the Initial Closing represents substantially all consideration for the delivered license and technology to Rezolute. Therefore, the Company determined that a contract exists between Rezolute and XOMA under ASC 606 on April 3, 2018.

The amended license agreement and amended common stock purchase agreement wereaccounted 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 license to RZ358, the transfer of RZ358 materials and product data/filing, and the transfer of process and know-how related to RZ358, which were determined to represent one combined performance obligation. The Company determined that the Additional Product Option is not an option with material right because there was no upfront consideration to the Company that would result to an incremental discount for the future opt in payments. Therefore, the Company concluded that the Additional Product Option is not a performance obligation. The option fee will be recognized as revenue when, and if, Rezolute exercises its option because the Company has no further performance obligations at that point.

On April 3, 2018, the Company determined that the transaction price under the arrangement was $1.8 million, which consisted of the8,093,010 shares of Rezolute's common stock valued at $1.0 million, $0.5 million in cash, and reimbursable technology transfer expenses of $0.3 million. During the nine months ended September 30, 2018, the Company recognized the entire transaction price of $1.8 million as revenue upon completion of the delivery of the licenses and related materials, product data/filing, process and know-how. The change in fair value of Rezolute's common stock after the contract inception date was due to the form of the consideration and therefore, not included in the transaction price pursuant to the accounting guidance. The Company accounts for the change in the fair value of its investment in Rezolute's common stock in other income (expense), net line item of the condensed consolidated statement of operations and comprehensive (loss) income.

The Company concluded that the development and regulatory milestone payments are solely dependent on Rezolute's performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2018. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Rezolute and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether the estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of September 30, 2018, the Company has a receivable from Rezolute related to the reimbursable technology transfer expenses of $0.3 million included in trade and other receivables on the condensed consolidated balance sheet. As of September 30, 2018, there was no contract liability related to this arrangement. As of December 31, 2017, there were no contract assets or contract liability related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.

NIAID

Prior to the sale of the Company's biodefense business discussed in Note 7, the Company performed services under a $64.8 million multiple-year contract funded with federal funds from NIAID (Contract No. HHSN272200800028C), for development of anti-botulinum antibody product candidates. The contract work was being performed on a cost plus fixed fee basis over a three-year period. The Company recognized revenue under the arrangement as the services were performed on a proportional performance basis. Consistent with the Company's other contracts with the U.S. government, invoices were provisional until finalized. The Company operated under provisional rates from 2010 through 2014, subject to adjustment based on actual rates upon agreement with the government. In 2014, upon completion of NIAID's review of hours and external expenses, XOMA agreed to exclude certain hours and external expenses resulting in a $0.4 million receivable and $0.8 million deferred revenue balances. As of December 31, 2017, the Company wrote off the $0.4 million receivable from NIAID as the likelihood of collection is remote. The Company classified $0.8 million as contract liabilities on the consolidated balance sheets as of September 30, 2018 and December 31, 2017, respectively.

Sale of Future Revenue Streams

On December 21, 2016, the Company entered into two Royalty Interest Acquisition Agreements (together, the "Acquisition Agreements") with HCRP. Under the first Acquisition Agreement, the Company sold its right to receive milestone payments and royalties on future sales of products subject to a License Agreement, dated August 18, 2005, between XOMA and Wyeth Pharmaceuticals (subsequently acquired by Pfizer, Inc. ("Pfizer")) for an upfront cash payment of $6.5 million, plus potential additional payments totaling $4.0 million in the event three specified net sales milestones are met in 2017, 2018 and 2019. The 2017 sales milestone was not achieved. The Company remains eligible to receive up to $3.0 million if specified net sales milestones are achieved in 2018 and 2019. Under the second Acquisition Agreement, the Company sold all rights to royalties under an Amended and Restated License Agreement dated October 27, 2006 between XOMA and Dyax Corp. for a cash payment of $11.5 million.

The Company classified the proceeds received from HCRP as unearned revenue, to be recognized as revenue under units-of-revenuemethod over the life of the license agreements because of the Company's limited continuing involvement in the Acquisition Agreements. Such limited continuing involvement is related to the Company's undertaking to cooperate with HCRP in the event of litigation or a dispute related to the license agreements. Because the transaction was structured as a non-cancellable sale, the Company does not have significant continuing involvement in the generation of the cash flows due to HCRP and there are no guaranteed rates of return to HCRP, the Company recorded the total proceeds of $18.0 million as unearned revenue recognized under units-of-revenue method. The Company allocated the total proceeds between the two Acquisition 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. Due to lower than projected product sales, the Company reversed revenue recognized in prior periods under units-of-revenue method under these arrangements by $129,000 during the second quarter 2018. The change in estimate of product sales resulted in netrevenue of $96,000 during the nine months ended September 30, 2018. During the three months ended September 30, 2018, the Company recognized $121,000 as revenue under the units-of-revenue method. During the third quarter of 2018, the Shire product underlying the Dyax Corp. license agreement was approved, and we began recognizing revenue under the units-of-revenue method due to sales of the approved product. The Company recognized $0.1 million and $0.3 million as revenue under units-of-revenue method under these arrangements during the three and nine months ended September 30, 2017, respectively. As of September 30, 2018, the current and non-current portion of the remaining unearned revenue recognized under units-of-revenue method was $1.1 million and $16.5 million, respectively. As of December 31, 2017, the Company classified $0.6 million and $17.1 million as current and non-current unearned revenue recognized under units-of-revenue method, respectively.

5. Agenus Royalty Purchase Agreement

On September 20, 2018, the Company entered into a Royalty Purchase Agreement (the "Royalty Purchase Agreement") with Agenus, Inc. ("Agenus"). Under the Royalty Purchase Agreement, the Company purchased from Agenus the right to receive 33% of the future royalties on six Incyte immuno-oncology assets, currently in development, due to Agenus from Incyte Europe Sarl ("Incyte") (net of certain royalties payable by Agenus to a third party) and 10% of all future developmental, regulatory and commercial milestones related to these assets. However, the Company did not have a right to the expected near-term milestone associated with the entry of INCAGN2390 (anti-TIM-3) into the clinical trials. The future royalties due to Agenus from Incyte are based on low-single to mid-teen digit percentage of applicable net sales. In addition, the Company purchased from Agenus the right to receive 33% of the future royalties on an undisclosed Merck immuno-oncology product currently in clinical development due to Agenus from Merck Sharp & Dohme Corp. ("Merck") and 10% of all future developmental, regulatory and commercial milestones related to this asset. The future royalties due to Agenus from Merck are based on low single digit percentage of applicable net sales. Pursuant to the Royalty Purchase Agreement, the Company's share in future potential development, regulatory and commercial milestones is up to $59.5 million. There is no limit on the amount of future royalties on sales that the Company may receive under the agreements.

Under the terms of the Royalty Purchase Agreement, the Company paid Agenus $15.0 million. The Company has financed $7.5 million of the purchase price with a term loan under its Loan and Security Agreement with Silicon Valley Bank ("SVB") (see Note 9).

As of September 30, 2018, the Company recorded $15.0 million as long-term royalty receivables in its condensed consolidated balance sheet. No payments are probable to be received under this agreement in the near term.

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 and cash equivalents, trade receivables and accounts payable, approximate their fair value due to their short maturities. Fair value is defined as the exchange price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The accounting guidance for fair value establishes a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs used in valuation techniques. The accounting standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value, which are the following:

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

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

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

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

	Fair Value Measurements at September 30, 2018 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Long-term equity securities	$ —	$ —	$ 347	$ 347

	Fair Value Measurements at December 31, 2017 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds (1)	$ 34,907	$ —	$ —	$ 34,907

(1) Included in cash and cash equivalents

During the nine-month period ended September 30, 2018, there were no transfers between Level 1, Level 2, or Level 3 assets reported at fair value on a recurring basis and the valuation techniques used did not change compared to the Company's established practice.

The following table provides a summary of changes in the estimated fair value of the Company's Level 3 financial assets for the nine months ended September 30, 2018 (in thousands):

Balance at December 31, 2017	$ —
Fair value of long-term equity securities at contract inception	955
Change in fair value	(608)
Balance at September 30, 2018	$ 347

The equity securities consisted of an investment in Rezolute's common stock and are classified as long-term assets on the condensed consolidated balance sheet as of September 30, 2018. The long-term equity securities are revalued each reporting period with changes in fair value recorded in other income (expense), net line item of the condensed consolidated statement of operations and comprehensive (loss) income. The Company and its valuation specialist used a probability-weighted expected return model to measure the fair value of the securities. This valuation methodology is based on unobservable estimates and judgements, and therefore is classified as a Level 3 fair value measurement. Scenarios and probabilities were based on Company management estimates and were incorporated into the determination of the fair value of the equity securities.

The estimated fair value of the equity securities was calculated based on the following assumptions as of September 30, 2018 and the contract inception date of April 3, 2018:

	September 30, 2018	April 3, 2018
Discount for lack of marketability	35%	30%
Estimated time to liquidity of shares	1.45 years	1.45 years
Scenario probabilities		
Liquidation	80%	65%
Near-term sale	5%	5%
Near-term financing	15%	30%

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

The estimated fair value of the Company's outstanding long-term debt is estimated using the net present value of the payments, discounted at an interest rate that is consistent with market interest rates, which is a Level 2 input. The carrying amount and the estimated fair value of the Company's outstanding long-term debt at September 30, 2018, and December 31, 2017, are as follows (in thousands):

	September 30, 2018		December 31, 2017	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Novartis note	$ 14,853	$ 14,552	$ 14,572	$ 14,178
SVB Loan	7,181	7,182	—	—
Total	$ 22,034	$ 21,734	$ 14,572	$ 14,178

7. Dispositions

On November 4, 2015, XOMA and Ology Bioservices entered into an asset purchase agreement under which Ology Bioservices agreed to acquire XOMA's biodefense bus iness and related assets (including certain contracts with the U.S. government), and to assume certain liabilities of XOMA. As part of the transaction, the parties entered into an intellectual property license agreement (the "Ology Bioservices License Agreement"), under which XOMA agreed to license to Ology Bioservices certain intellectual property rights related to the purchased assets. Under the Ology Bioservices License Agreement, the Company was eligible to receive contingent consideration up to a maximum of $4.5 million in cash and 23,008 shares of common stock of Ology Bioservices, based upon Ology Bioservices achieving certain specified future operational objectives. In addition, the Company is eligible to receive 15% royalties on net sales of any future Ology Bioservices products covered by or involving the related patents or know-how.

In February 2017, the Company executed an Amendment and Restatement to both the asset purchase agreement and Ology Bioservices License Agreement primarily to (i) remove the obligation to issue 23,008 shares of Ology Bioservices under the asset purchase agreement, and (ii) revise the payment schedule related to the timing of the $4.5 million cash payments due to the Company under the Ology Bioservices License Agreement. Of the $4.5 million, $3.0 million was contingent upon Ology Bioservices achieving certain specified future operating objectives. In the first quarter of 2017, the Company became entitled to receive $1.6 million under the agreement that was received in quarterly payments through September 2018. In the third quarter of 2017, Ology Bioservices achieved the specified operating objectives and the Company earned the $3.0 million milestone fee that was received in monthly payments through July 2018. The Company received $0.5 million and $2.5 million during the three and nine months ended September 30, 2018, and $0.3 million and $0.7 million during the three and nine months ended September 30, 2017, respectively, which was recognized as other income in the condensed consolidated statements of operations and comprehensive (loss) income.

8. Restructuring Charges

On December 19, 2016, the Board of Directors approved a restructuring of the Company's business based on its decision to focus the Company's efforts on clinical development, with an initial focus on the X358 clinical programs. The restructuring included a reduction-in-force in which the Company terminated 57 employees. In early 2017, the Company further revised its strategy to prioritize out-licensing activities and further curtail research and development spending and terminated five additional employees. Charges related to these initiatives were complete by the end of fiscal 2017.

At June 30, 2018, the Company completely vacated one of its two leased facilities in Berkeley, California and subleased the majority of the leased space to two subtenants. In connection with the sublease agreement executed in April 2018, the Company recognized a loss on the sublease of $0.6 million, which was recorded in the restructuring charges line item of the condensed consolidated statements of operations and comprehensive (loss) income (see Note 11). In connection with vacating this space, the Company recorded a discounted lease-related restructuring liability of $0.4 million as of June 30, 2018, which was calculated as the present value of the estimated future facility costs for which the Company would obtain no future economic benefit over the term of the lease, net of estimated future sublease income, and adjusted for the remaining balance of deferred rent of $0.6 million. This resulted in the Company recording a credit to restructuring costs of $0.1 million in its condensed consolidated statements of operations and comprehensive (loss) income. As of September 30, 2018, the Company remeasured the restructuring liability based on changes to the timing and amount of estimated future sublease income, which resulted in the Company recording $0.1 million of additional restructuring costs.

As of September 30, 2018, the Company completely vacated the other leased facility in Berkeley, California. In connection with vacating this space, the Company recorded a discounted lease-related restructuring liability of $1.0 million as of September 30, 2018, which was calculated as the present value of the estimated future facility costs for which the Company would obtain no future economic benefit over the term of the lease, net of estimated future sublease income, and adjusted for the remaining balance of deferred rent of $0.2 million. This resulted in the Company recording restructuring costs of $0.8 million in its condensed consolidated statements of operations and comprehensive (loss) income for the three months ended September 30, 2018.

The Company classified the current portion of the combined lease-related liabilities of $1.3 million within accrued and other liabilities and the non-current portion of $0.5 million within other liabilities- non-current in its condensed consolidated balance sheet as of September 30, 2018.

9. Long-Term Debt

Novartis Note

In May 2005, the Company executed a secured note agreement (the "Note Agreement") with Novartis, which was due and payable in full in June 2015. Under the Note Agreement, the Company borrowed semi-annually to fund up to 75% of the Company's research and development and commercialization costs under its collaboration arrangement with Novartis, not to exceed $50.0 million in aggregate principal amount. Interest on the principal amount of the loan accrued at six-month LIBOR plus 2%, which was equal to 4.60% at September 30, 2018 is payable semi-annually in June and December of each year. Additionally, the interest rate resets in June and December of each year. At the Company's election, the semi-annual interest payments could be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount did not exceed $50.0 million. The Company made this election for all interest payments. Loans under the Note Agreement were secured by the Company's interest in its collaboration with Novartis, including any payments owed to it thereunder.

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

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

As of September 30, 2018 and December 31, 2017, the outstanding principal balance under the Secured Note Amendment was $14.9 million and $14.6 million, respectively, and was included in long-term debt in the accompanying condensed consolidated balance sheets.

Servier Loan Agreement

In December 2010, in connection with the collaboration agreement entered into with Servier, the Company executed a loan agreement with Servier (the "Servier Loan Agreement"), which provided for an advance of €15.0 million (or $19.5 million at the exchange rate on the date of funding). The loan was secured by an interest in XOMA's intellectual property rights to gevokizumab and its use in indications worldwide, excluding certain rights in the U.S. and Japan. Interest was calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and subjected to a cap.

The Company and Servier executed multiple amendments to the Servier Loan Agreement in 2015 and 2017 primarily to revise the timing of the payments and the maturity date of the loan. On August 25, 2017, NIBR settled the Servier Loan in cash by paying directly to Servier $14.3 million which represented the outstanding balance of the loan based on a euro to dollar exchange rate of 1.1932. The funds that NIBR paid directly to Servier were a portion of the upfront payment due to XOMA under the XOMA-052 License Agreement (see Note 4). As a result of the debt being fully paid, the intellectual property securing the Servier Loan Agreement was released. A loss on extinguishment of $0.1 million from the payoff of the loan was recognized in the condensed consolidated statement of operations and comprehensive income during the three months ended September 30, 2017.

Hercules Term Loan

On February 27, 2015, the Company entered into a loan and security agreement with Hercules Technology Growth Capital, Inc. (the "Hercules Term Loan").

On March 21, 2017, the Hercules Term Loan was paid in full and the Company was not required to pay the 1% prepayment charge due pursuant to the terms of the loan. A loss on extinguishment of $0.5 million from the payoff of the Hercules Term Loan was recognized in the condensed consolidated statement of operations and comprehensive loss during the three months ended March 31, 2017.

In connection with the Hercules Term Loan, the Company issued unregistered warrants that entitle Hercules to purchase up to an aggregate of 9,063 unregistered shares of XOMA common stock at an exercise price equal to $66.20 per share. These warrants were exercisable immediately and have a five-year term expiring in February 2020. The warrants are classified in stockholders' equity on the condensed consolidated balance sheets. As of September 30, 2018, all of these warrants were outstanding.

Silicon Valley Bank Loan Agreement

On May 7, 2018 (the "Effective Date"), the Company executed a Loan and Security Agreement (the "Loan Agreement") with SVB. Under the Loan Agreement, upon the Company's request, SVB may make advances (each, a "Term Loan Advance") available to the Company up to $20.0 million (the "Term Loan"). The available fund may be increased up to $40.0 million upon the Company's request and approval by the bank subject to the Company's compliance with certain internal and credit requirements. The Company may borrow advances under the Term Loan from the Effective Date until the earlier of March 31, 2019 or an event of default (the "Draw Period"). Unless an event of default occurs, the period to draw may be extended to March 31, 2020, if the Company receives $20.0 million in gross cash proceeds from milestone/licensing payments by March 31, 2019. In the event of a default related to the Note Agreement with Novartis, SVB's obligation to make any credit extensions to the Company under the Loan Agreement will immediately terminate. The interest rate will be calculated at a rate equal to the greater of (i) 4.75%, and (ii) 0.25% plus the prime rate as reported from time to time in The Wall Street Journal.

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

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

Under the Loan Agreement, the Company may be obligated to pay a fee equal to 1% of the unused portion of the Term Loan upon the earlier of (i) he termination of the Loan Agreement, or (ii) the Draw Period if the aggregate original principal amount of the Term Loan Advances is less than $5.0 million

The Company's obligations under the Loan Agreement are secured by a security interest in substantially all of its assets, other than its intellectual property. The Loan Agreement includes customary affirmative and restrictive covenants, but does not include any financial maintenance covenants, and also includes standard events of default, including payment defaults.

In connection with the Loan Agreement, the Company issued a warrant to SVB which is exercisable in whole or in part for up to an aggregate of 6,332 shares of common stock with an exercise price of $23.69 per share (the "Warrant"). The Warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company. The fair value of the Warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $0.1 million. As of September 30, 2018, the Warrant is outstanding. In addition, the Company incurred debt issuance costs of $0.2 million in connection with the Loan Agreement.

As of September 30, 2018 the Company has borrowed advances of $7.5 million under the Loan Agreement in connection with the Agenus royalty purchase agreement (see Note 5). As of September 30, 2018, $7.2 million has been included in long-term debt in the accompanying condensed consolidated balance sheet, which includes a discount of $0.3 million.

During the three months ended September 30, 2018, the first Term Loan Advance was drawn, and the entire unamortized amount of deferred charges of $0.3 million was reclassified as a discount against the debt and will be amortized to interest expense over the term of the Term Loan Advance using the effective interest method. The Company recorded $11,000 of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three months ended September 30, 2018.

Interest Expense

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Novartis note	$ 171	$ 126	$ 453	$ 362
SVB loan	35	—	47	—
Servier loan	—	76	—	431
Hercules loan	—	—	—	311
Other	3	—	57	4
Total interest expense	$ 209	$ 202	$ 557	$ 1,108

10. Common Stock Warrants

As of September 30, 2018 and December 31, 2017, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	September 30, 2018	December 31, 2017
February 2015	February 2020	Stockholders' equity	$ 66.20	9,063	9,063
February 2016	February 2021	Stockholders' equity	$ 15.40	8,249	8,249
May 2018	May 2028	Stockholders' equity	$ 23.69	6,332	—
				23,644	17,312

11. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company has committed to make potential future milestone payments 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 $15.5 million (assuming one product per contract meets all milestones events) have not been recorded on the accompanying 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.

Lease Agreements

The Company leases facilities and office equipment under operating leases expiring on various dates through April 2023. These leases require the Company to pay taxes, insurance, maintenance and minimum lease payments. For each facility lease, the Company has two successive renewal options to extend the lease for five years upon the expiration of the initial lease term.

On November 21, 2017, the Company entered into a non-cancellable sublease agreement for a portion of one of its three leased facilities. The term of the sublease agreement commenced on December 26, 2017. Under the term of the sublease agreement, the Company will receive $5.1 million over the term of the sublease, which ends at the same time as the original lease in April 2023. Under the sublease agreement, the Company's future sublease income will be equal to the amount required to be paid to the Company's landlord. In addition, the sublease provides for a tenant improvement allowance of $0.8 million to the subtenant, which was funded by the Company in January 2018. Upon execution of the sublease agreement, the Company recognized a loss on the sublease equal to the tenant improvement allowance. Under the sublease agreement, the sub-lessee executed a standby letter of credit naming the Company as the beneficiary amounting to $1.0 million as security under the sublease in the event of uncured default by the sub-lessee. As of September 30, 2018, the Company has not drawn any funds from the letter of credit as there was no default by the sub-lessee. During the three and nine months ended September 30, 2018, the Company recognized $0.4 million and $1.1 million of sublease income under this agreement, respectively.

On April 14, 2018, the Company entered into a non-cancellable sublease agreement for a portion of one of its three leased facilities. The term of the sublease agreement commenced on May 1, 2018. Under the term of the sublease agreement, the Company will receive $1.1 million over the term of the sublease, which ends at the same time as the original lease in April 2023. Under the sublease agreement, the Company's future sublease income is less than the amount required to be paid to the Company's landlord. In addition, the sublease provides for a tenant improvement allowance of $65,000 to the subtenant, and payment of broker commissions of $89,000.Upon execution of the sublease agreement, the Company recognized a loss on the sublease of $0.6 million, which was recorded in the restructuring chargesline item of the consolidated statements of operations and comprehensive loss for the three and six months ended June 30, 2018 (see Note 8). During the three and nine months ended September 30, 2018, the Company recognized $0.1 million and $0.2 million of sublease income under this agreement.

12. Stock-based Compensation

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

Stock Options

Stock options generally vest monthly over three to four 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, 2018 and 2017, was estimated based on the following weighted average assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Dividend yield	0%	0%	0%	0%
Expected volatility	101%	100%	101%	100%
Risk-free interest rate	2.76%	1.88%	2.72%	1.79%
Expected term	5.60 years	5.55 years	5.60 years	5.55 years

Stock option activity for the nine months ended September 30, 2018, was as follows:

	Number of shares	Weighted Average Exercise Price Per Share	Weighted Average Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at beginning of year	1,622,065	$ 24.54		
Granted	285,208	28.00		
Exercised	(52,400)	5.27		
Forfeited, expired or cancelled	(202,941)	44.07		
Outstanding at end of period	1,651,932	$ 23.35	8.0	$ 13,153
Exercisable at end of period	1,001,518	$ 27.98	7.4	$ 8,765

As of September 30, 2018, $6.5 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 1.9 years.

Performance-Based Stock Options

As of September 30, 2018, the Company had 82,500 shares related to outstanding performance-based stock options with a grant date fair value of $0.4 million that will vest based on the achievement of corporate goals set by the Compensation Committee of the Company's Board of Directors. Of this amount, options related to 41,250 shares were deemed probable of achievement as of September 30, 2018 and therefore, the related expense is being recognized over the service period. During the three and nine months ended September 30, 2018, the Company recognized stock-based compensation expense of $56,000 and $0.2 million, respectively, related to these stock options. As of September 30, 2018, there was $0.3 million unrecognized compensation costs related to these outstanding performance-based stock options.

In December 2017, the Company granted 130,000 stock options to executives with corporate performance-based vesting conditions. During the three months ended March 31, 2018, the Board of Directors approved a modification of 80,000 of these options from performance-based vesting to service-based vesting. The remaining 50,000 stock options were cancelled in conjunction with an executive's resignation.

Restricted Stock Units

RSUs generally vest annually over three years for employees and one year for directors. RSUs 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 valuation of RSUs is determined at the date of grant using the closing stock price.

RSU activity for the nine months ended September 30, 2018, is summarized below:

Restricted Stock Units:	Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested balance at January 1, 2018	18,480	$ 18.00
Vested	(17,614)	18.54
Unvested balance at September 30, 2018	866	$ 7.02

As of September 30, 2018, $3,000 of unrecognized compensation expense related to employee RSUs is expected to be recognized over a weighted average period of 1.1 years.

Stock-based Compensation Expense

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Research and development	$ 97	$ 102	$ 296	$ 774
General and administrative	750	1,936	2,737	4,119
Total stock-based compensation expense	$ 847	$ 2,038	$ 3,033	$ 4,893

13. Capital Stock

Biotechnology Value Fund Financing

In February 2017, the Company sold 1,200,000 shares of its common stock and 5,003 shares of Series X convertible preferred stock directly to Biotechnology Value Fund, L.P. and certain of its affiliates ("BVF") in a registered direct offering, for aggregate net cash proceeds of $24.8 million.

BVF purchased the shares of common stock from the Company at a price of $4.03 per share, the closing stock price on the date of purchase. Each share of Series X convertible preferred stock has a stated value of $4,030 per share and is convertible into 1,000 shares of registered common stock based on a conversion price of $4.03 per share of common stock. The total number of shares of common stock issued upon conversion of all issued Series X convertible preferred stock will 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 is initially set at 19.99% of the total common stock then issued and outstanding immediately following the conversion of such shares. As of September 30, 2018, BVF owned approximately 17.9% of the Company's total outstanding shares, and if all of the Series X convertible preferred shares were converted, BVF would own 48.6% of the Company's total outstanding common shares. As of September 30, 2018, none of the preferred stock has been converted into shares of the Company's common stock.

The designations, preferences, rights and limitations of the convertible preferred shares are set forth in a Certificate of Designation of Preferences, Rights and Limitations of Series X convertible preferred stock filed with the Delaware Secretary of State. Shares of Series X convertible preferred stock will generally have no voting rights, except as required by law and except that the consent of the holders of the outstanding Series X convertible preferred stock will be required to amend the terms of the Series X preferred stock and to approve certain corporate actions. In the event of the Company's liquidation, dissolution or winding up, holders of Series X convertible preferred stock will participate, on a pro-rata basis, with any distribution of proceeds to holders of common stock. Holders of Series X convertible preferred stock are entitled to receive dividends on shares of Series X convertible preferred stock equal (on an as if converted to common stock basis) to and in the same form as dividends actually paid on the Company's common stock or other junior securities.

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

The Company has also evaluated the embedded conversion and redemption features within the Series X convertible preferred stock in accordance with the accounting guidance for derivatives. Based on this assessment, the Company determined that the conversion option is clearly and closely related to the equity host, and thus, bifurcation is not required. The contingent redemption feature was determined to not be clearly and closely related to the equity-like host; however, it met the criteria as a scope exception for derivative accounting. Therefore, the contingent redemption feature was also not bifurcated from the Series X convertible preferred stock.

The fair value of the common stock into which the Series X convertible preferred stock is convertible exceeded the allocated purchase price of the Series X convertible preferred stock by $5.6 million on the date of issuance, as such the Company recorded a deemed dividend. The Company recognized the resulting beneficial conversion feature as a deemed dividend equal to the number of shares of Series X convertible preferred stock sold on February 16, 2017 multiplied by the difference between the fair value of the common stock and the Series X convertible preferred stock effective conversion price per share on that date. The dividend was reflected as a one-time, non-cash, deemed dividend to the holders of Series X convertible preferred stock on the date of issuance, which is the date the stock first became convertible.

ATM Agreement

On November 12, 2015, the Company entered into an At Market Issuance Sales Agreement (the "2015 ATM Agreement") with Cowen and Company, LLC ("Cowen"), under which the Company may offer and sell from time to time at its sole discretion shares of its common stock through Cowen as its sales agent, in an aggregate amount not to exceed $75 million. Cowen 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, including without limitation sales made directly on The NASDAQ Global Market, and also may sell the shares in privately negotiated transactions, subject to the Company's prior approval. The Company will pay Cowen a commission equal to 3% of the gross proceeds of the sales price of all shares sold through it as sales agent under the 2015 ATM Agreement. For the nine months ended September 30, 2018, the Company sold a total of 67,658 shares of common stock under the 2015 ATM Agreement for aggregate gross proceeds of $2.4 million. Total offering costs of $0.1 million were offset against the proceeds upon the sale of common stock. For the nine months ended September 30, 2017, the Company sold a total of 110,252 shares of common stock under the 2015 ATM Agreement for aggregate gross proceeds of $0.6 million. Total offering costs of $0.2 million were offset against the proceeds upon sale of common stock. The shares subject to 2015 ATM Agreement were registered on the shelf registration statement on Form S-3 that expired in February 2018.

Common Stock Purchase Agreement

In August 2017, in connection with the XOMA-052 License Agreement, the Company and Novartis entered into a Common Stock Purchase Agreement under which Novartis purchased 539,131 shares of the Company's common stock, at a price per share of $9.2742 for the aggregate purchase price of $5.0 million in cash. The fair market value of the common stock issued to Novartis AG was $4.8 million, based on the closing stock price of $8.93 per share on the effective date of the Common Stock Purchase Agreement, or August 24, 2017. The excess of the purchase price over the fair market value of the common stock represents a premium of $0.2 million which was accounted for as additional consideration to the license agreements (see Note 4 for further discussion). The shares issued to Novartis are unregistered securities and the Company agreed to use commercially reasonable efforts to make and keep public information available and timely file all reports and other documents with the SEC as required of the Company under the Securities Exchange Act of 1934, as amended. Under the Common Stock Purchase Agreement, upon a request by Novartis, the Company will use commercially reasonable efforts to register the shares for resale under the Securities Act on a registration statement on Form S-3, to be filed within 60 days of the written request, and will use commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act until the date all of the shares of common stock covered by such registration statement have been sold or can be sold publicly without restriction or limitation under Rule 144.

14. 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, 2018. The Company's provision for income taxes for the three and nine months ended September 30, 2017 differs from the amounts computed by multiplying the federal statutory rate by income before taxes primary due to a reduction in the valuation allowance and the use of a tax credit carryforward. As of September 30, 2018 and December 31, 2017, the Company had a total of $4.5 million of net unrecognized tax benefits, none of which would affect the effective tax rate upon realization. The Company does not expect its unrecognized tax benefits to change significantly over the next twelve months.

In accordance with SAB 118, the effects of the Tax Cuts and Jobs Act of 2017 (the "Tax Act") may be adjusted within a one-year measurement period from the enactment date for items that were previously reported as provisional, or where a provisional estimate could not be made. As described in the footnotes to the Annual Report on Form 10-K, the Company's accounting for the tax effects of enactment of the Tax Reform Act is being assessed; the Company made a reasonable estimate of the effects on its existing deferred tax balances and valuation allowance. The Company determined that the re-measurement of certain deferred tax assets and liabilities and corresponding valuation allowance was a provisional amount at December 31, 2017. The income tax provision for the nine months ended September 30, 2018 did not reflect any adjustment to the previously assessed Tax Act enactment effect. The Company will continue to assess forthcoming guidance and accounting interpretations on the effects of the Tax Act and expects to complete its analysis within the measurement period in accordance with the SEC guidance.

15. Subsequent Events

Sublease

In October 2018, the Company entered into a non-cancellable sublease agreement for a portion of one of its three leased facilities. The term of the sublease agreement commenced on October 24, 2018. Under the term of the sublease agreement, the Company will receive $1.7 million over the term of the sublease, which ends at the same time as the original lease in May 2021.

Rights Offering

In November 2018, the Company announced its intent to commence a rights offering pursuant to which the Company would raise up to approximately $20.0 million through the distribution of subscription rights to holders of its common stock and Series X preferred stock. In addition, the Company executed an investment agreement with BVF which has agreed to purchase at a minimum its as-converted pro rata share of the offering amount, and will purchase an amount of securities, up to approximately $20.0 million, that are not subscribed for by the Company's other stockholders in the rights offering.

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, extent to which our issued and pending patents may protect our products and technology, the potential of our existing product candidates to lead to the development of commercial products, our ability to receive potential milestone or royalty payments under license and collaboration agreements and the timing of receipt of those payments, the timing and adequacy of cost-cutting measures, and our ability to defend against claims that have been made in litigation. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for our licensees engaged in the development of new products in a regulated market. Among other things: our product candidates subject to our out-license agreements are still being developed, and our licensees may require substantial funds to continue development which may not be available; we may not realize the expected benefits of our cost-saving initiatives; we may not be successful in entering into out-license agreements for our product candidates; if our therapeutic product candidates do not receive regulatory approval, our third-party licensees will not be able to manufacture and market them; products or technologies of other companies may render some or all of our product candidates noncompetitive or obsolete; we do not know whether there will be, or will continue to be, a viable market for the products in which we have an ownership or royalty interest; even once approved, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be voluntarily taken off the market; we and our licensees are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of our product candidates and could subject us to significant fines and penalties; and certain of our technologies are in-licensed from third parties, so our capabilities using them are restricted and subject to additional risks. These and other risks, including those related to current economic and financial market conditions, are contained principally in Part II, Item 1A of this Quarterly Report on Form 10-Q and our other filings with the SEC. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from those we expect. Except as required by law, we assume no obligation to update these forward-looking statements, whether as a result of new information, future events or otherwise.

The following discussion and analysis should be read in conjunction with the unaudited financial statements and notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with the audited consolidated financial statements and related notes thereto included as part of our Annual Report on Form 10-K for the year ended December 31, 2017.

Overview

XOMA Corporation ("XOMA"), a Delaware corporation, has a long history of discovering and developing innovative therapeutics derived from its unique platform of antibody technologies. Over our extensive history, we built a portfolio of fully-funded programs by advancing product candidates into the earlier stages of development and then licensing them to licensees who assumed the responsibilities of later stage development, regulatory approval and commercialization. Fully-funded programs are those for which our partners pay the development and commercialization costs. As licensees advance these programs, we are eligible for potential milestone and royalty payments. As part of our royalty aggregator business model, we will continue to expand our portfolio of fully-funded programs by acquiring potential milestone and royalty revenue streams on additional product candidates.

Recent Business Developments

Rezolute

On April 3, 2018, Rezolute, Inc. ("Rezolute") closed a debt financing activity for gross proceeds of $4.0 million, which triggered the Initial Closing defined under the amended common stock purchase agreement between us and Rezolute. As such, pursuant to the terms of the amended common stock purchase agreement with Rezolute, we received 8,023,758 shares of Rezolute's common stock and cash of $0.5 million. In addition, in April 2018, we received from Rezolute the 69,252 shares of common stock and cash of $50,000 in connection with the Interim Financing Closing that occurred during the three months ended March 31, 2018. Under the amended license agreement, we are also entitled to receive $0.3 million of reimbursable technology transfer expenses from Rezolute.

Agenus

On September 20, 2018, we entered into a Royalty Purchase Agreement (the "Royalty Purchase Agreement") with Agenus, Inc., and certain affiliates (collectively, "Agenus"). Under the Royalty Purchase Agreement, we purchased from Agenus the right to receive 33% of the future royalties due to Agenus from Incyte Europe Sarl ("Incyte") (net of certain royalties payable by Agenus to a third party) and 10% of all future developmental, regulatory and sales milestones on sales of six Incyte immuno-oncology assets, with the exception of an expected near-term milestone associated with the entry of INCAGN2390 (anti-TIM-3) into the clinical trial. In addition, we purchased from Agenus the right to receive 33% of the future royalties due to Agenus from Merck Sharp & Dohme Corp. ("Merck") and 10% of all future developmental, regulatory and sales milestones on sales of an undisclosed Merck immuno-oncology product currently in clinical development. Pursuant to the Royalty Purchase Agreement, our share in future potential development, regulatory and commercial milestones is up to $59.5 million and the royalties have no limit. Under the terms of the Royalty Purchase Agreement, we paid Agenus $15.0 million. We have financed $7.5 million of the purchase with a term loan under our Loan and Security Agreement with Silicon Valley Bank ("SVB") dated May 7, 2018.

Silicon Valley Bank Loan Agreement

In May 2018, we executed a Loan and Security Agreement (the "Loan Agreement") with SVB. Under the Loan Agreement, upon our request, SVB may make advances available to us up to $20.0 million. The available funds may be increased up to $40.0 million upon our request and approval by the bank subject to our compliance of certain internal and credit requirements. As of September 30, 2018, we borrowed $7.5 million under the Loan Agreement.

Certain Factors Important to Understanding Our Financial Condition and Results of Operations

We have historically specialized in the discovery and development of innovative antibody-based therapeutics. In March 2017, we transformed our business model to become a royalty aggregator where we focus on expanding our portfolio of fully-funded programs by out-licensing our internally developed product candidates and acquiring potential milestone and royalty revenue streams on additional product candidates. We combined our royalty aggregator model with a significantly reduced corporate cost structure to further build value for our shareholders. Our long-term prospects depend upon the ability of our partners to successfully commercialize new therapeutics. Our financial performance is driven by many factors and is subject to the risks set forth in Part II, Item 1A - Risk Factors.

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, but not limited to, those related to revenue recognition, and stock-based compensation to be critical policies. Except for the adoption of the new revenue recognition standard on January 1, 2018, as described below and in Note 2 to the Condensed Consolidated Financial Statements, there have been no significant changes in our critical accounting policies during the nine months ended September 30, 2018, as compared with those previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on March 7, 2018.

Revenue Recognition

Effective January 1, 2018, we adopted Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers* ("ASC 606") using the modified retrospective transition method and applied the standard only to contracts are still active or in place at that date. Also, as permitted, we applied the practical expedient under ASC 606 which permits us to treat all contract modifications that occurred prior to the adoption in aggregate when determining the performance obligations, transaction price and its allocation. Except for the license agreement with Rezolute, Inc. (formerly AntriaBio, Inc.), we did not have any other contracts with customers for which we have not completed our performance obligations, as of the adoption date January 1, 2018. The license agreement with Rezolute was not considered a contract under ASC 606 as it is not probable that the Company will collect substantially all of the consideration to which it will be entitled in exchange for the goods or services that will be transferred to Rezolute and there was no consideration exchanged upon execution of the arrangement or as of January 1, 2018. Thus, we determined that the adoption of ASC 606 did not have a financial impact on our consolidated financial statements. In addition, the adoption of ASC 606 has no material impact for tax purposes.

We have certain license arrangements in the scope of ASC 606. The terms of these agreements may contain multiple performance obligations, which primarily include transfer of our licenses. Prior to recognizing revenue, we make estimates of the transaction price, including variable consideration that is subject to a constraint. Amounts of variable consideration are included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur and when the uncertainty associated with the variable consideration is subsequently resolved. Variable consideration may include payments based upon the achievement of specified milestones, and royalty payments based on product sales derived from the license agreements. If there are multiple distinct performance obligations, we allocate the transaction price to each distinct performance obligation based on its relative standalone selling price. All licenses we grant to customers are unique, as each uses a specific technology of XOMA or is geared towards a specific unique product candidate. Thus, there is no observable evidence of standalone selling price for the licenses. The standalone selling price is generally determined using a valuation approach based on discounted cash flow analysis. For licenses that are bundled with other promises, we utilize 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 our license agreements, the nature of the combined performance obligation is the granting of licenses to the customers. As such, we recognize revenue related to the combined performance obligation upon transfer of the license to the customers or completion of the transfer of related materials and services (i.e., point in time).

Results of Operations

Revenues

Total revenues for the three and nine months ended September 30, 2018 and 2017, were as follows (in thousands):

	Three Months Ended September 30,		2017-2018	Nine Months Ended September 30,		2017-2018
	2018	2017	Change	2018	2017	Change
Revenue from contracts with customers	$ 775	$ 36,073	$ (35,298)	$ 3,518	$ 47,005	$ (43,487)
Revenue recognized under units-of-revenue method	121	110	11	96	328	(232)
Total revenues	$ 896	$ 36,183	$ (35,287)	$ 3,614	$ 47,333	$ (43,719)

Revenue from Contracts with Customers

Revenue from contracts with customers includes upfront fees, milestone payments and royalties related to the out-licensing of our product candidates and technologies. The decrease for the three and nine months ended September 30, 2018, as compared to the same periods of 2017, was primarily due to $35.4 million of license and collaborative fee revenue recognized in connection with the license agreements with Novartis AG during the third quarter of 2017 and $10.0 million in milestone revenue earned under our license agreement with Novartis International Pharmaceutical Ltd. in the second quarter of 2017, partially offset by $1.8 million recognized under our license agreement and common stock purchase agreement with Rezolute recognized during the second quarter of 2018.

Revenue recognized under units-of-revenue method

Revenues include the amortization of unearned revenue from the sale of royalty interests to HealthCare Royalty Partners II, L.P. in December 2016.Due to lower than projected sales of Trumenba, we reversed revenue recognized in prior periods under units-of-revenue method under these arrangements by $129,000 during the second quarter 2018. The change in estimate of product sales resulted in net revenue of $96,000 during the nine months ended September 30, 2018. During the three months ended September 30, 2018, we recognized $121,000 as revenue under the units-of-revenue method. During the third quarter of 2018, the Shire product underlying the Dyax Corp. license agreement was approved, and we began recognizing revenue under the units-of-revenue method due to sales of the approved product.

The generation of future revenues related to licenses, milestones, and royalties is dependent on our ability to attract new licensees to our antibody technologies, and the achievement of milestones or product sales by our existing licensees.

Research and Development Expenses

Research and development ("R&D") expenses were $0.6 million and $1.4 million for the three and nine months ended September 30, 2018, compared with $0.3 million and $7.2 million for the same periods in 2017. The increase of $0.3 million for the three months ended September 30, 2018 compared to the same period in 2017 was due to a one-time adjustment for external manufacturing costs in the third quarter of 2017 of $0.7 million to reverse the cost of a batch of drug material that did not meet quality standards. This difference was partially offset by decreases in outside consulting fees and the allocation of facilities costs. The decrease in allocation of facilities costs is a result of a decreased proportion of R&D employees as a result of our restructuring activities in December 2016 (the "2016 Restructuring") and June 2017 (the "2017 Restructuring").

The overall decrease for the nine months ended September 30, 2018 compared to the same period in 2017 was primarily due to the implementation of our royalty-aggregator business model during the first quarter of 2017, which included the cessation of substantially all development activities. The decrease of $5.8 million for the nine months ended September 30, 2018, as compared to the same period of 2017, was primarily due to decreases of $1.9 million in clinical trial costs, $1.3 million in consulting costs, $1.1 million in the allocation of facilities costs, $0.5 million in stock-based compensation, and $0.4 million in salaries and related expenses.

We expect our R&D spending during the remainder of 2018 will be reduced as compared with 2017 levels due to the implementation of our royalty aggregator business model and related discontinuation of clinical trial activities.

General and Administrative Expenses

General and administrative ("G&A") expenses include salaries and related personnel costs, facilities costs and professional fees. G&A expenses were $4.7 million and $14.2 million for the three and nine months ended September 30, 2018, compared with $7.3 million and $17.6 million for the same periods in 2017. The decrease of $2.6 million for the three months ended September 30, 2018, as compared to the same period of 2017, was due primarily to decreases of $1.1 million in consulting services, $1.2 million in stock-based compensation, and $0.1 million in legal and accounting fees. The decrease of $3.4 million for the nine months ended September 30, 2018, as compared to the same period of 2017, was primarily due to decreases of $1.4 million in stock-based compensation, $0.5 million in legal and accounting fees, $1.8 million in consulting services, and $0.4 million in information technology costs, partially offset by an increase of $1.1 million in the allocation of facilities costs due to a greater proportion of G&A personnel compared to R&D personnel after our restructuring activities.

We expect our personnel related and facilities costs during the remainder of 2018 to decrease as compared with 2017 levels due to our restructuring activities in 2016 and 2017. To support our royalty aggregator business model, we engage third parties to assist in our evaluation of potential acquisitions of milestone and royalty streams. While we expect our personnel related costs to decrease as compared with 2017, consulting expenses may increase in response to an increase in the volume of acquisition targets evaluated or completed.

Restructuring Charges

On December 21, 2016, we announced a restructuring of our business based on our decision to focus our efforts on clinical development, with an initial focus on the X358 clinical programs. The restructuring included a reduction-in-force in which we terminated 57 employees, which was implemented in December 2016. In early 2017, we further revised our strategy to prioritize out-licensing activities and further curtail research and development spending and we eliminated an additional five employees with an effective termination date of June 30, 2017. During the three and nine months ended September 30, 2017, we recorded a credit of $29,000 and a charge of $3.5 million, respectively, related to severance, other termination benefits and outplacement services for the 2016 Restructuring and 2017 Restructuring activities. There were no such charges during the three and nine months ended September 30, 2018.

During the nine months ended September 30, 2018, we completely vacated both of our leased facilities in Berkeley, California and met the criteria of a cease-use date. We recorded a lease-related restructuring liability of $1.4 million as of September 30, 2018, which was adjusted for the remaining balance of deferred rent of $0.7 million. This resulted in us recording lease-related restructuring charges of $0.7 million for the nine months ended September 30, 2018. In addition, in connection with the sublease agreement executed in April 2018, we recognized a loss on the sublease of $0.6 million for the nine months ended September 30, 2018.

Other Income (Expense)

Interest Expense

Amortization of debt issuance costs and discounts are included in interest expense. Interest expense is shown below for the three and nine months ended September 30, 2018 and 2017 (in thousands):

	Three Months Ended September 30,		2017-2018	Nine Months Ended September 30,		2017-2018
	2018	2017	Change	2018	2017	Change
Novartis note	$ 171	$ 126	$ 45	$ 453	$ 362	$ 91
SVB loan	35	—	35	47	—	47
Servier loan	—	76	(76)	—	431	(431)
Hercules loan	—	—	—	—	311	(311)
Other	3	—	3	57	4	53
Total interest expense	$ 209	$ 202	$ 7	$ 557	$ 1,108	$ (551)

The decrease in interest expense compared with 2017 is primarily due to the March 2017 payoff of the Hercules loan and August 2017 payoff of the Servier Loan. On May 7, 2018, we executed a loan agreement with SVB and on September 21, 2018 we borrowed advances of $7.5 million. We expect our interest expense to increase for the remainder of 2018 if we choose to access additional funds.

Other Income (Expense), Net

The following table shows the activity in other income (expense), net for the three and nine months ended September 30, 2018 and 2017 (in thousands):

	Three Months Ended September 30,		2017-2018	Nine Months Ended September 30,		2017-2018
	2018	2017	Change	2018	2017	Change
Other income (loss), net						
Income under the agreement with Ology Bioservices	$ 470	$ 250	$ 220	$ 2,470	$ 650	$ 1,820
Sublease income	506	—	506	1,286	28	1,258
Change in fair value of long-term equity securities	(206)	—	(206)	(608)	—	(608)
Unrealized foreign exchange loss	—	(248)	248	—	(1,447)	1,447
(Loss) gain on sale and disposal of equipment	—	(103)	103	—	1,123	(1,123)
Other	168	(162)	330	513	(17)	530
Total other income (loss), net	$ 938	$ (263)	$ 1,201	$ 3,661	$ 337	$ 3,324

During the nine months ended September 30, 2018, we received long-term equity securities which consisted of an investment in Rezolute's common stock. As of September 30, 2018, the fair value of the long-term equity securities decreased and we recognized a loss of $0.6 million for the nine months ended September 30, 2018. The income under the agreement with Ology Bioservices was due to payments we received from Ology Bioservices during the three and nine months ended September 30, 2018 and 2017 related to the disposition of our biodefense business in March 2016 and no further payments are due. The loss of $0.1 million and the gain of $1.1 million on the sale of equipment for the three and nine months ended September 30, 2017 is related to the sale and disposal of equipment located in one of our leased facilities.

Loss on Extinguishment of Debt

In March 2017, we paid off our outstanding principal balance, final payment fee and accrued interest totaling $6.5 million under our loan and security agreement with Hercules, and we were not required to pay the 1% prepayment charge pursuant to the terms of the loan. We recognized a loss on extinguishment of $0.5 million from the payoff of the term loan.

Provision for Income Taxes

No provision was made for federal income tax since we have incurred net operating losses during the three and nine months ended September 30, 2018. Our provision for income taxes for the three and nine months ended September 30, 2017 differs from the amounts computed by multiplying the federal statutory rate by income before taxes primary due to a reduction in the valuation allowance and the use of a tax credit carryforward. As of September 30, 2018 and December 31, 2017, we had a total of $4.5 million of net unrecognized tax benefits, none of which would affect the effective tax rate upon realization. We do not expect our unrecognized tax benefits to change significantly over the next twelve months.

In accordance with SAB 118, the effects of the Tax Cuts and Jobs Act of 2017 (the "Tax Act") may be adjusted within a one-year measurement period from the enactment date for items that were previously reported as provisional, or where a provisional estimate could not be made. As described in the footnotes to our Annual Report on Form 10-K, the accounting for the tax effects of enactment of the Tax Reform Act is being assessed; we made a reasonable estimate of the effects on our existing deferred tax balances and valuation allowance. We determined that the re-measurement of certain deferred tax assets and liabilities and corresponding valuation allowance was a provisional amount at December 31, 2017. Our income tax provision for the nine months ended September 30, 2018 did not reflect any adjustment to the previously assessed Tax Act enactment effect. We will continue to assess forthcoming guidance and accounting interpretations on the effects of the Tax Act and expect to complete our analysis within the measurement period in accordance with the SEC guidance.

Liquidity and Capital Resources

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

	September 30, 2018	December 31, 2017	Change
Cash and cash equivalents	$ 28,433	$ 43,471	$ (15,038)
Working capital	$ 24,552	$ 36,773	$ (12,221)

	Nine Months Ended September 30,		2017-2018
	2018	2017	Change
Net cash (used in) provided by operating activities	$ (9,932)	$ 7,911	$ (17,843)
Net cash (used in) provided by investing activities	(15,006)	1,590	(16,596)
Net cash provided by financing activities	9,880	12,337	(2,457)
Effect of exchange rate changes on cash	20	167	(147)
Net (decrease) increase in cash and cash equivalents	$ (15,038)	$ 22,005	$ (37,043)

Cash (Used in) Provided by Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2018 of $9.9 million was primarily due to the $10.3 million net loss incurred.

Net cash provided by operating activities for the nine months ended September 30, 2017 was primarily due to the $25.7 million cash receipts under the license agreements executed with Novartis AG in August 2017.

Cash (Used in) Provided by Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2018 of $15.0 million was due to the purchase of milestone and royalty rights of $15.0 million in connection with the Agenus Royalty Purchase Agreement executed in September 2018.

Net cash provided by investing activities for the nine months ended September 30, 2017 of $1.6 million was due to the proceeds from the sale and disposal of equipment.

Cash Provided by Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2018 of $9.9 million was primarily related to proceeds received under the SVB loan agreement of $7.5 million and the sale of common stock for net proceeds of $2.3 million.

Net cash provided by financing activities for the nine months ended September 30, 2017 of $12.3 million was primarily related to the sale of preferred stock and common stock to BVF for total net proceeds of $24.9 million and the sale of common stock to Novartis AG for gross proceeds of $5.0 million. This increase was partially offset by the payoff of our outstanding loan with Hercules of $17.5 million.

SVB Loan Agreement

On May 7, 2018 (the "Effective Date"), we executed the Loan Agreement with SVB. Under the Loan Agreement, upon our request, SVB may make advances (each, a "Term Loan Advance") available to us up to $20.0 million (the "Term Loan"). The available fund may be increased up to $40.0 million upon our request and approval by the bank subject to our compliance of certain internal and credit requirements. We may borrow advances under the Term Loan until the earlier of March 31, 2019 or an event of default (the "Draw Period"). Unless an event of default occurs, the period to draw may be extended to March 31, 2020, if we receive $20.0 million in gross cash proceeds from milestone/licensing payments by March 31, 2019. In the event of a default related to our note agreement with Novartis Pharma AG ("Novartis"), SVB's obligation to make any credit extensions to us under the Loan Agreement will immediately terminate. As of September 30, 2018, we have borrowed advances of $7.5 million under the Loan Agreement. The interest rate will be calculated at a rate equal to the greater of (i) 4.75%, and (ii) 0.25% plus the prime rate as reported from time to time in The Wall Street Journal.

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

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

Under the Loan Agreement, we may be obligated to pay a fee equal to 1% of the unused portion of the Term Loan upon the earlier of (i) the termination of the Loan Agreement, or (ii) the Draw Period if the aggregate original principal amount of the Term Loan Advances is less than $5.0 million.

* * *

We have incurred significant operating losses since our inception and have an accumulated deficit of $1.2 billion as of September 30, 2018. As of September 30, 2018, we had $28.4 million in cash, which will enable us to maintain our operations for a period of at least 12 months following the filing date of this report

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 the market demand for our common stock or debt, which itself is subject to a number of pharmaceutical development and business risks and uncertainties, as well as the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us.

Changes in Contractual Obligations

Our future contractual obligations were reported in our Annual Report on Form 10-K for the year ended December 31, 2017, as filed with the SEC. There have been no material changes from the contractual obligations previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2017.

Off-balance Sheet Arrangements

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Controls and Procedures

We have established disclosure controls and procedures, as defined in Rule 13a-15(e) 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.

PART II – OTHER INFORMATION

I TEM 1. LEGAL PROCEEDINGS

None.

ITEM 1A. RISK FACTORS

This Quarterly Report on Form 10-Q contains forward-looking information based on our current expectations. Because our actual results may differ materially from any forward-looking statements made by or on behalf of us, this section includes a discussion of important factors that could affect our actual future results, including our revenues, expenses, operating results, cash flows, net loss and 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, 2017.

Risks Related to our Recently Undertaken Royalty Aggregator Strategy

Our planned acquisition 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 recuperate our capital expenditures in the acquisition.

We are engaged in a continual review of opportunities to acquire royalties and other intellectual property assets as part of our royalty aggregator strategy or to acquire companies that hold royalty assets. Generally, at any time, we seek to have acquisition opportunities in various stages of active review, including, for example, our engagement of consultants and advisors to analyze particular opportunities, technical, financial and other confidential information, submission of indications of interest and involvement as a bidder in competitive auctions. Many potential acquisition targets do not meet our criteria, and for those that do, we may face significant competition for these acquisitions from other royalty buyers and enterprises. Competition for future asset acquisition opportunities in our markets could increase the price we pay for such assets and could reduce the number of potential acquisition targets. The success of our acquisitions is based on our ability to make accurate assumptions regarding the valuation, timing and amount of future royalty and milestone payments as well as the viability of the underlying technology. 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 the applicable license agreement(s) covering the potential milestone and royalty streams being acquired. While we generally try to structure our potential receipt of 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 the assets of such counterparty. 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 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 are in companies or assets that have no approved or commercialized products or are dependent on the actions of unrelated third parties, which may negatively impact our investment returns.

As part of our recently launched royalty aggregator strategy, we will likely make investments in royalty assets, such as an upfront payment for a profit share or royalty stream in the biotech industry, many of which investments are in companies that, at the time of investment, have limited or no approved or commercialized products. If the assets are not successfully developed and subsequently commercialized, the value of our investments will be negatively affected. The ultimate success of our royalty aggregator strategy will depend on the ability of the counterparty to innovate, develop and commercialize their products, in increasingly competitive and highly regulated markets. Their inability to do so would negatively affect our investment. 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, and their failure to do so would negatively impact our investment returns.

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 to resolve any disputes resulting from the audit.

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

Although we intend to regularly exercise our royalty audit rights to the extent available, we rely in the first instance on our licensees and royalty-agreement counterparties to accurately report sales and calculate and pay applicable royalties and, upon exercise of such royalty 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 exercise legal remedies to enforce our agreements.

The lack of liquidity in our acquisitions 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 patents, license agreements and royalty rights that have limited secondary resale markets. The illiquidity of most of our assets may make it difficult for us to dispose of them at a favorable price and, as a result, we may suffer losses if we are required to dispose of any or all such assets in a liquidation or otherwise. In addition, if we liquidate all or a portion of our assets quickly or relating to a liquidation, we may realize significantly less than the value at which we had previously recorded these assets.

As we continue to develop our business, our mix of assets and our sources of income may require that we register with the SEC as an "investment company" in accordance with the Investment Company Act of 1940.*

We have not been and have no current intention to register as an "investment company" under the Investment Company Act of 1940, or the '40 Act, because we believe the nature of our operations currently exclude us from the definition of an investment company under the '40 Act. Accordingly, we do not believe we are currently subject to the provisions of the '40 Act, such as compliance 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. Generally, to avoid being a company that is an "investment company" under the '40 Act, it must both: (a) not be or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities, and (b) either (i) not be engaged or propose to engage in the business of investing in securities or own or propose to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis or (ii) not have more than 45% of the value of its total assets (exclusive of government securities and cash items) consist of or more than 45% of its net income after taxes (for the last four fiscal quarters combined) be derived from certain types of securities. In addition, we would not be an "investment company" if an exception, exemption, or safe harbor under the '40 Act applies.

We monitor our assets and income for compliance with the tests under the '40 Act and seek to conduct our business activities to ensure that we do not fall within its definitions of "investment company." If we were to become an "investment company" and be subject to the restrictions of the '40 Act, those restrictions would likely require changes in the way we do business and add significant administrative burdens to our operations. To ensure that we do not fall within the '40 Act, we may need to take various actions which we might otherwise not pursue. These actions may include restructuring the Company and/or modifying our mixture of assets and income.

Specifically, our mixture of securities vs. royalty assets will be important to our classification as an "investment company". While we currently believe that none of the definitions of "investment company" apply to us, we may in the future rely on an exception under the '40 Act provided by Section 3(c)(5)(A). To qualify under Section 3(c)(5)(A), as interpreted by the staff of the SEC, we would be required to have at least 55% of our total assets in "notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services" (or Qualifying Assets). The SEC staff has stated in a no action letter that royalty interests are Qualifying Assets under this exception. If the SEC or its staff in the future adopts a contrary interpretation or otherwise restricts the conclusions in the staff's no-action letter such that our royalty interests are no longer Qualifying Assets for purposes of Section 3(c)(5)(A), or if we fail to have at least 55% of our total assets in Qualifying Assets, we could be required to register under the '40 Act.

In light of our new business strategy as a royalty aggregator, we have determined that the special non-exclusive safe-harbor exemption from registration as an investment company for research and development companies under Rule 3a-8 formerly available to us is no longer applicable to our business operations and we therefore have elected for the time being to rely on the exemption provided by Rule 3a-2 under the '40 Act for so-called "transient investment companies." Rule 3a-2 provides a safe harbor for a period of one year so long as the company does not intend to engage primarily in the business of investing, reinvesting, owning, holding or trading in securities and has a bona fide intent to be engaged primarily as soon as is reasonably possible, and in any event within that one-year period, in a non-investment company business. A company may rely on Rule 3a-2 once during any three-year period. In light of our recent acquisition of royalty assets, while there can be no assurance that we will be able to do so, we believe that, prior to the expiration of such one-year exemption period, we will be entitled to rely on the more traditional exemptions from registration under the '40 Act referenced above.

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.

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.

With the exception of the year ended December 31, 2017, we have incurred significant operating losses and negative cash flows from operations since our inception. For the three and nine months ended September 30, 2018, we had net losses of $4.6 million and $10.3 million, respectively. For the three and nine months ended September 30, 2017, we had a net income of $26.3 million and $15.9 million, respectively. As of September 30, 2018, we had an accumulated deficit of $1.2 billion. We do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

To date, we have financed our operations primarily through the sale of equity securities and debt, and 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 partner's ability to generate revenues. If our partner's product candidates are not successfully developed or commercialized by our licensees, or if revenues are insufficient following regulatory approval, we will not achieve profitability and our business may fail. Our ability to achieve profitability is dependent in large part on the success of our and our licensee's ability to license product candidates, and the success of our licensees' development programs, both of which are uncertain. Our success is also dependent on our licensees obtaining regulatory approval to market product candidates which may not materialize or prove to be successful.

Our new strategy may require us to raise additional funds to acquire royalty assets; we cannot be certain that funds will be available, and if they are not available, we may be unsuccessful in acquiring assets 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. 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.

Additional funds may not be available when we need them on terms that are acceptable to us,if at all. If adequate funds are not available on a timely basis, we may:

- reduce or eliminate royalty aggregation efforts; or
- further reduce our capital or operating expenditures; or
- curtail our spending on protecting our intellectual property.

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

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

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

Reducing costs is a key element of our current business strategy. On August 21, 2015, in connection with our efforts to lower operating expenses and preserve capital while continuing to focus on our product pipeline, we implemented a workforce reduction, which led to the termination of 52 employees during the second half of 2015. On December 19, 2016, we approved a restructuring of our business based on our decision to focus our efforts on clinical development, with an initial focus on the X358 clinical program. The restructuring included a reduction-in-force in which we terminated 57 employees. In early 2017, we implemented a royalty aggregator business model, which resulted in the termination of five additional employees effective June 30, 2017.

If we experience excessive unanticipated inefficiencies or incremental costs in connection with restructuring activities, such as unanticipated inefficiencies caused by reducing headcount, we may be unable to meaningfully realize cost savings or capitalize on future opportunities and we may incur expenses in excess of what we anticipate. Any of these outcomes could prevent us from meeting our strategic objectives and could adversely impact our results of operations and financial condition.

Risks Related to Our Reliance on Third Parties

We rely heavily on licensee 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 milestone payments and future royalty revenues.

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), our product development under these agreements will be delayed or terminated. Disputes or litigation may also arise with our collaborators (with us and/or with one or more third parties), including those over ownership rights to intellectual property, know-how or technologies developed with our collaborators.

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

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

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

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

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

Under our contract with NIAID, a part of the National Institute of Health ("NIH"), we invoiced using NIH provisional rates, and these are subject to future audits at the discretion of NIAID's contracting office. These audits can result in an adjustment to revenue previously reported, which potentially could be material.

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

Our licensees may rely on third party manufacturers and such contract manufacturers are required to produce clinical product candidates under current Good Manufacturing Practices ("cGMP") to meet acceptable standards for use in clinical trials and for commercial sale, as applicable. If such standards change, the ability of contract manufacturers to produce our and our licensee's product candidates on the schedule required for our clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with our licensees or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of our licensee's 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 licensee's product candidates or any failure of our licensees' contractors to maintain compliance with the applicable regulations and standards could increase costs, reduce revenue, make our licensees postpone or cancel clinical trials, prevent or delay regulatory approval by the FDA and corresponding state and foreign authorities, prevent the import and/or export of our licensee's product candidates, or cause any of our licensee's product candidates that may be approved for commercial sale to be recalled or withdrawn.

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

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

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

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

For example, in connection with our dispositions or license arrangements, we have in the past out of necessity agreed to accept equity securities of the licensee in payment of fees. The future value of these shares is subject both to market risks affecting our ability to realize the value of these shares and more generally to the business and other risks to which the issuer of these shares may be subject.

Risks Related to an Investment in Our Common Stock

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

There can be no assurance the market price of our common stock will not decline below its present market price or there will be an active trading market for our common stock. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common stock price. We have experienced significant volatility in the price of our common stock. From January 1, 2018, through November 2, 2018, the share price of our common stock has ranged from a high of $36.86 to a low of $11.88. Additionally, we have two significant holders of our stock that could affect the liquidity of our stock and have a significant negative impact on our stock price if one or both of the holders were to quickly sell their ownership positions.

If we fail to meet continued listing standards of NASDAQ, our common stock may be delisted, which could have a material adverse effect on the liquidity of our common stock.

Our common stock is currently traded on the Nasdaq Global Market. The NASDAQ Stock Market LLC ("NASDAQ") has requirements that a company must meet in order to remain listed on NASDAQ.

We have in the past temporarily fallen out of compliance with NASDAQ listing standards and there can be no assurance that we will continue to meet NASDAQ listing requirements in the future.

We received a letter from the Listing Qualifications Staff of The NASDAQ Stock Market LLC (the "Staff") on March 22, 2017, providing notification that we no longer complied with the $50 million in total assets and total revenue standard for continued listing on The Nasdaq Global Market under NASDAQ's Listing Rule 5450(b)(3)(A) and that we also did not comply with either of the two alternative standards of Listing Rule 5450(b), the equity standard and the market value standard.

On May 2, 2017, following ten consecutive business days where the market value of our listed securities was $50 million or greater, we regained compliance with NASDAQ Listing Rule 5450(b)(2)(A).

If future events cause our common stock to be delisted, the liquidity of our common stock would be adversely affected and the market price of our common stock could decrease.

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

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

We may issue additional equity securities and thereby materially and adversely affect the price of our common stock.

We expect that significant additional capital will be needed in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in such a manner as we determine from time to time. 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.

We are authorized to issue, without stockholder approval, 1,000,000 shares of preferred stock, of which 5,003 shares of Series X preferred stock were issued and outstanding as of November 2, 2018. Each share of Series X is convertible into 1,000 shares of registered common stock based on a conversion price of $4.03 per share of common stock. The total number of shares of common stock issued upon conversion of all issued Series X convertible preferred stock will 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 is initially set at 19.99% of our total common stock then issued and outstanding immediately following the conversion of such shares. In addition, we are authorized to issue, generally without stockholder approval, up to 277,333,332 shares of common stock, of which 8,387,596 were issued and outstanding as of November 2, 2018. If we issue additional equity securities, the price of our common stock may be materially and adversely affected.

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

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

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

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

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

Our charter and by-laws:

- require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings; and
- authorize our Board of Directors to issue up to 1,000,000 shares of preferred stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine.

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

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

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

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

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

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

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

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

Under the newly enacted federal income tax law, federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such federal net operating losses is limited. It is uncertain if and to what extent various states will conform to the newly enacted federal tax law. In addition, Section 382 of the U.S. Internal Revenue Code of 1986, as amended, and corresponding provisions of state law, generally limit the ability of a corporation that undergoes an "ownership change" to utilize its net operating loss carry-forwards ("NOLs") and certain other tax attributes against any taxable income in taxable periods after the ownership change. The amount of taxable income in each taxable year after the ownership change that may be offset by pre-change NOLs and certain other pre-change tax attributes is generally equal to the product of (a) the fair market value of the corporation's outstanding shares (or, in the case of a foreign corporation, the fair market value of items treated as connected with the conduct of a trade or business in the United States) immediately prior to the ownership change and (b) the long-term tax exempt rate (i.e., a rate of interest established by the U.S. Internal Revenue Service that fluctuates from month to month). In general, an "ownership change" occurs whenever the percentage of the shares of a corporation owned, directly or indirectly, by "5-percent shareholders" (within the meaning of Section 382 of the Internal Revenue Code) increases by more than 50 percentage points over the lowest percentage of the shares of such corporation owned, directly or indirectly, by such "5-percent shareholders" at any time over the preceding three years.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), we experienced ownership changes in 2009 and 2012, which substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. In February 16, 2017, we completed an equity financing for net proceeds of $24.8 million which triggered an additional ownership change under Section 382 that significantly impacted the availability of our tax attributes against future income. Further, due to the existence of a net unrealized built-in loss at the ownership change date, Section 382 further limits our ability to fully utilize the tax deductions associated with certain of our assets, including depreciation and amortization deductions recognized during the 60-month period following the ownership change ending in 2022. Although these deductions will occur in the post-change period, Section 382 treats the deductions as pre-change losses subject to the annual 382 limitation. As of December 31, 2017, we have excluded the NOLs and research and development credits that will expire as a result of the annual limitations. To the extent that we do not utilize our carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will also expire unused.

The recently passed comprehensive tax reform bill could adversely affect our business and financial condition.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 was signed into law that significantly revises the Internal Revenue Code of 1986, as amended. The newly enacted federal income tax law, among other things, contains significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted earnings (except for certain small businesses), limitation of the deduction for net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks, one time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits (including reducing the business tax credit for certain clinical testing expenses incurred in the testing of certain drugs for rare diseases or conditions). Notwithstanding the reduction in the corporate income tax rate, the overall impact of the new federal tax law is uncertain and our business and financial condition could be adversely affected. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax law. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse. We urge our stockholders to consult with their legal and tax advisors with respect to this legislation and the potential tax consequences of investing in or holding our common stock.

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

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

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

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

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

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

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

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

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

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

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

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act. At the present time, we believe all of our product candidates will be regulated by the FDA as biologics.

Initiation of clinical trials requires approval by health authorities. Clinical trials involve the administration of the investigational new drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials must be conducted in accordance with FDA and International Conference on Harmonization Good Clinical Practices and the European Clinical Trials Directive, as applicable, under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Other national, foreign and local regulations also may apply. The developer of the drug must provide information relating to the characterization and controls of the product before administration to the patients participating in the clinical trials. This requires developing approved assays of the product to test before administration to the patient and during the conduct of the trial. In addition, developers of pharmaceutical products must provide periodic data regarding clinical trials to the FDA and other health authorities, and these health authorities may issue a clinical hold upon a trial if they do not believe, or cannot confirm, that the trial can be conducted without unreasonable risk to the trial participants.

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

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

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

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

Our licensees face uncertain results of clinical trials of product candidates.

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

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

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

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

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

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

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

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

These factors may enable others to develop products and processes competitive with or superior to our own or those of our licensees. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later. As a result, we and our licensees may not be able to track development of competitive products, particularly at the early stages.

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

Our licensees may be unable to price our products effectively or obtain adequate reimbursement for sales of our products, which would prevent our products from becoming profitable.

If our third-party licensees succeed in bringing our product candidates to the market, they may not be considered cost effective, and reimbursement to the patient may not be available or may not be sufficient to allow us to sell our 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 reimbursement to the patient from third-party payors, such as government and private insurance plans. 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 business.

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

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

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

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

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

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

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

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

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

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

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

- whether any pending or future patent applications held by us 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 patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our patents and patent applications; or
- the extent to which our product candidates could infringe on the intellectual property rights of others, which may lead to costly litigation, result in the payment of substantial damages or royalties, and prevent our licensees from using our technology or product candidates.

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

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

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

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

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, thus preventing us, or our licensees, from using these products, processes or services and adversely affecting our revenue.

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

The loss of key personnel, including our Chief Executive Officer or Chief Financial Officer, could delay or prevent achieving our objectives.

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

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

After a series of restructuring activities during 2016 and 2017, we had 13 employees as of November 2, 2018. We may require additional experienced executive, accounting, legal, administrative and other personnel from time to time in the future. There is intense competition for the services of these personnel, especially in California. Moreover, we expect that the high cost of living in the San Francisco Bay Area, where our headquarters are 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.

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

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

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

Despite the implementation of security measures, our internal computer systems and those of our current and any future licensees, suppliers, contractors and consultants are vulnerable to damage from cyber−attacks, 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 cyber−attack and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs and other business operations. The loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Similarly, we rely on third parties to manufacture our product candidates, and conduct clinical trials of our product candidates, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of any of our product candidates could be delayed or otherwise adversely affected.

Data breaches and cyber-attacks could compromise our intellectual property or other sensitive information and cause significant damage to our business and reputation.

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

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

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

In addition, our data security and information technology systems, as well as those of our partners and contractors, are potentially vulnerable to data security breaches, whether by employees or others, that may expose sensitive data or personal information to unauthorized persons. Effective May 25, 2018, the European Union ("EU") will implement the General Data Protection Regulation ("GDPR") a broad data protection framework that expands the scope of current EU data protection law to non-European Union entities that process, or control the processing of, the personal information of EU subjects, including clinical trial data. The GDPR allows for the imposition of fines and/or corrective action on entities that improperly use or disclose the personal information of EU subjects, including through a data security breach. Accordingly, data security breaches experienced by us, our partners or contractors could lead to significant fines, required corrective action, the loss of trade secrets or other intellectual property, public disclosure of sensitive clinical or commercial data, and the exposure of personally identifiable information (including sensitive personal information) of our employees, partners, and others. A data security breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including personally identifiable information or protected health information, could result in fines, increased costs or loss of revenue as a result of:

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

If we are unable to prevent such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events.

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

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

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

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

Risks Related to Government Regulation

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

Even if we or our licensees receive regulatory approval for our product candidates, we or our licensees will be subject to ongoing regulatory oversight and review by the FDA and other regulatory entities. The FDA, the European Medicines Agency ("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.

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 us 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 or our licensees' ability to sell our products, if approved, profitably. Among policy makers and payers 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.

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, reduced product utilization and adversely affect our business and results of operations. Moreover, certain politicians have announced plans to regulate the prices of pharmaceutical products. We cannot know what form any such 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 us from being able to generate revenue, attain profitability, or commercialize our current product candidates and those for which we may receive regulatory approval in the future. In addition, given the uncertainties related to the Trump Administration's stated goal of letting the Affordable Care Act (the "ACA") fail, we cannot be certain that current provisions of the ACA will continue to cover prescription drug products.

We and our licensees are subject to various state and federal healthcare-related laws and regulations that may impact the commercialization of our product candidates or 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 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 persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. 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. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, penalties, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs.

The federal False Claims Act prohibits persons 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. 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 individuals, commonly known as "whistleblowers," 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 a False Claims Act action. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states also have enacted laws modeled after the federal False Claims Act.

The Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including private payors. The statute prohibits knowingly and willfully 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. We take our obligation to maintain our compliance with these various laws and regulations seriously.

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 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, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources, and to report information related to payments and other transfers of value to physicians and other healthcare providers; as well as state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws, it is possible that some of our or our licensees' business activities could be subject to challenge under one or more of such laws.

If we or our licensees are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations, any of which could have a material adverse effect on our business and results of operations.

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

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

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

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
3.1	Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	01/03/2012
3.2	Certificate of Amendment of Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/31/2012
3.3	Certificate of Amendment of Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/28/2014
3.4	Certificate of Amendment to the Amended Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	10/18/2016
3.5	Certificate of Designation of Preferences, Rights and Limitations of Series X Convertible Preferred Stock	8-K	000-14710	3.1	02/16/2017
3.6	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 and 3.6				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Form of Series X Preferred Stock Certificate	8-K	000-14710	4.1	02/16/2017
4.4	Form of Warrant (February 2015 Warrants)	10-Q	000-14710	4.10	05/07/2015
4.5	Form of Warrant (February 2016 Warrant)	10-Q	000-14710	4.9	05/04/2016
4.6	Form of Warrant (May 2018 Warrant)	10-Q	000-14710	4.6	08/07/2018
10.1#	Amendment No. 1, dated March 30, 2018, to theLicense Agreement, dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio, Inc.)	10-Q	000-14710	10.1	05/09/2018
10.2#	Amendment No. 1, dated March 30, 2018, to the Common Stock Purchase Agreement, dated December 6, 2017, between XOMA Corporation and Rezolute, Inc. (formerly AntriaBio, Inc.)	10-Q/A	000-14710	10.2	07/05/2018
10.3#	License Agreement dated December 6, 2017, between XOMA (US) LLC and Rezolute, Inc. (formerly AntriaBio)	10-K	000-14710	10.66	03/07/2018
10.4#	Common Stock Purchase Agreement dated December 6, 2017, between XOMA Corporation and Rezolute, Inc. (formerly AntriaBio)	10-K	000-14710	10.65	03/07/2018
10.5	Loan and Security Agreement dated May 7, 2018, between XOMA Corporation, XOMA (US) LLC and XOMA Technology, Ltd. and Silicon Valley Bank	10-Q	000-14710	10.5	08/07/2018
10.6	Officer Employment Agreement, dated April 27, 2018, between XOMA Corporation and Deepshikha Datta	10-Q	000-14710	10.6	08/07/2018

10.7	Change of Control Severance Agreement, dated April 27, 2018, between XOMA Corporation and Deepshikha Datta	10-Q	000-14710	10.7	08/07/2018
10.8	Amendment No. 1, dated July 19, 2018, to the Officer Employment Agreement, dated April 27, 2018, between XOMA Corporation and Deepshikha Datta	10-Q	000-14710	10.8	08/07/2018
10.9+#	Royalty Purchase Agreement dated September 20, 2018, between XOMA Corporation and Agenus 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+	XBRL Instance Document				
101.SCH+	XBRL Taxonomy Extension Schema Document				
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB+	XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document				

+ Filed herewith

Confidential treatment has been requested for certain provisions omitted from this Exhibit pursuant to Rule 406 promulgated under the Securities Act. The omitted information has been filed separately with the SEC.

(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 7, 2018

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

Date: November 7, 2018

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

Exhibit 10.9

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

ROYALTY PURCHASE AGREEMENT

dated as of September 20, 2018

among AGENUS ROYALTY FUND, LLC
as Seller,

AGENUS INC.
as Seller Parent

and

XOMA (US) LLC
Purchaser

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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EXHIBITS

Exhibit A	—	Form of Bill of Sale
Exhibit B	—	Incyte Agreement
Exhibit C	—	Merck Agreement
Exhibit D	—	LICR Agreement
Exhibit E	—	Intellectual Property Matters
Exhibit F	—	Form of Incyte Direction Letter
Exhibit G	—	Form of Merck Direction Letter
Exhibit H	—	Form of Legal Opinion of Goodwin Procter LLP

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

ROYALTY PURCHASE AGREEMENT

This **ROYALTY PURCHASE AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is made and entered into as of September 20, 2018, by and among AGENUS ROYALTY FUND, LLC, a Delaware limited liability company ("Seller"), AGENUS INC., a Delaware corporation ("Seller Parent"), and XOMA (US) LLC ("Purchaser").

WHEREAS, Seller wishes to sell, assign, convey and transfer to Purchaser, and Purchaser wishes to purchase from Seller, the Purchased Royalty Interests, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, agreements representations and warranties set forth herein, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions.

The following terms, as used herein, shall have the following meanings:

"Affiliate" shall mean any Person that controls, is controlled by, or is under common control with another Person. For purposes of this definition, "control" shall mean (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interests with the power, or the power by contract or otherwise, to direct the management and policies of such non-corporate entities.

"Agenus Switzerland" shall mean Agenus Switzerland Inc., a joint stock company organized under the laws of Switzerland formerly known as 4-Antibody AG, and a wholly-owned subsidiary of Seller Parent.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Bankruptcy Event" shall mean the occurrence of any of the following:

(i) Seller shall commence any case, proceeding or other action (a) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, relief of debtors or the like, seeking to have an order for relief entered with respect to such party, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its respective debts, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any portion of its assets, or Seller shall make a general assignment for the benefit of its creditors; or

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

(ii) there shall be commenced against Seller any case, proceeding or other action of a nature referred to in clause (i) above which remains undismissed, undischarged or unbonded for a period of ninety (90) calendar days; or

(iii) there shall be commenced against Seller any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against (a) all or any substantial portion of its assets and/or (b) the Royalties, which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, satisfied or bonded pending appeal within forty-five (45) calendar days from the entry thereof; or

(iv) Seller shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or

(v) Seller shall become unable, admit in writing its inability, or fail generally, to pay its debts as they become due; or

(vi) Seller shall be in a financial condition such that the sum of its debts, as they become due and mature, is greater than the fair value of its property on a going concern basis.

"Bill of Sale" shall mean the Bill of Sale pursuant to which Seller shall assign to Purchaser all of its right, title and interest in and to the Purchased Royalty Interests purchased hereunder, which Bill of Sale shall be substantially in the form of **Exhibit A**.

"Business Day" shall mean any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of New York, or any day on which banking institutions located in New York or in the state in which the Depository Bank is located are authorized or required by law or other governmental action to close.

"Closing" shall have the meaning set forth in Section 6.01.

"Closing Date" shall have the meaning set forth in Section 6.01.

"Confidential Information" shall mean, as it relates to Seller Parent, Seller and their respective Affiliates, the Incyte Agreement, the Merck Agreement, the Licensed Products, the Patent Rights, know-how, trade secrets, confidential business information, financial data and other like information (including but not limited to ideas, research and development, know-how, formulas, schematics, compositions, technical data and results, techniques, inventions (whether patentable or not), practices, methods, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), inventory, ideas, algorithms, processes, computer software programs or applications (in both source code and object code form), client lists, tangible or intangible proprietary information or material, and any other technical or scientific information, as well as any such information that would be deemed "Confidential Information" of Merck under the Merck Agreement or of Incyte under the Incyte Agreement, in each case, regardless of whether such information is specifically designated as confidential and regardless of whether such information is in written, oral, electronic, or other form. For the avoidance of doubt, any notices or reports delivered by a Seller Party pursuant to this Agreement shall be deemed to be Confidential Information.

"Confidentiality Breach" means, with respect to the disclosure of any Confidential Information that a Seller Party received pursuant or related to the Merck Agreement, Incyte Agreement or LICR Agreement, as applicable, to Purchaser, that such disclosure would be expected, in Seller Parent's reasonable, good faith judgment, to constitute a breach by Seller Parent of its confidentiality obligations under such agreement.

"Depository Bank" shall mean Bank of New York Mellon or such other bank or financial institution as may be agreed between the parties from time to time.

"Direction Letters" shall have the meaning set forth in Section 2.02(a)i.

"Discrepancy" shall have the meaning set forth in Section 2.02(a)iii.

"Dispute" shall mean any opposition, interference proceeding, reexamination proceeding, cancellation proceeding, re-issue proceeding, invalidation proceeding, inter parties review proceeding, injunction, claim, lawsuit, proceeding, hearing, investigation, complaint, arbitration, mediation, demand, investigation, or decree.

"EMA" shall mean the European Medicines Agency.

"Excluded Incyte Milestone" shall mean one Milestone Payment of $5,000,000 to be received by Seller from Incyte for the advancement of the TIM-3 program into clinical development pursuant to Section 7.5(b) of the Incyte Agreement.

"Excluded Liabilities and Obligations" shall have the meaning set forth in Section 2.04.

"Exploitation" shall mean, with respect to a Licensed Product, the manufacture, use, sale, offer for sale (including marketing and promotion), importation, distribution or other commercialization.

"FDA" shall mean the United States Food and Drug Administration and any successor agency thereto.

"Governmental Authority" shall mean any government, court, regulatory or administrative agency or commission, or other governmental authority, agency or instrumentality, whether foreign, federal, state or local (domestic or foreign), including each Patent Office, the FDA, the EMA, or any other government authority in any country.

"Incyte" shall mean Incyte Europe Sarl, a Swiss limited liability company, its Affiliates and any successors-in-interest and assigns under the Incyte Agreement.

"Incyte Agreement" shall mean that certain License, Development and Commercialization Agreement, dated as of January 9, 2015, by and between Seller Parent and Incyte, as amended on February 14, 2017, and as may be further amended from time to time, together with the following letter agreements, letter dated November 6, 2015, Side Letter No. 1 dated February 2, 2016, Side Letter No. 2 dated April 20, 2016 and Side Letter No. 3 dated December 21, 2017.

"Incyte Confidential Information" shall have the meaning set forth in Section 5.02(f).

"Incyte Direction Letter" shall have the meaning set forth in Section 5.04(c).

"Joint Escrow Account" shall mean the deposit account established and maintained at the Depository Bank into which payments of the Royalties and Milestones are to be remitted in accordance with Section 2.02(a) (and the terms of an escrow agreement to be agreed upon by the parties) and the account from which the Depository Bank transfers funds into the Purchaser Account and the Seller Account.

"Knowledge " shall mean, with respect to the Seller Parties and their Affiliates, the actual knowledge of (i) Garo Armen, Chief Executive Officer of the Seller Parent, (ii) Christine Klaskin, VP of Finance of the Seller Parent, (iii) Evan Kearns, Vice President and General Counsel of the Seller Parent, (iv) Michael Plater, Chief Business Officer of the Seller Parent, and (v) Christian Cortis, Chief Strategy Officer & Head of Finance of the Seller Parent and their respective successors in such positions, provided that with respect to Sections 3.11(g) and 3.12, "Knowledge" shall mean the actual knowledge of Michael Robinson, Vice President, Head of Intellectual Property, and his successor in such position.

"Law" shall mean any law, rule, ordinance or regulation, or any judgment, order, writ, decree, permit or license of any Governmental Authority.

"License Party Audit" shall have the meaning set forth in Section 5.06(b).

"Licensed Patents" means pending or granted: (i) patent applications as set forth in **Exhibit E**, and the patents resulting therefrom, if any, (ii) divisionals, continuations, continuations-in-part (solely to the extent such continuations-in-part disclose the same invention disclosed in any of the foregoing), reissues, renewals, substitutions, registrations, re-examinations, revalidations, and the like of any such patents and patent applications the subject of (i) above, and (iii) any and all foreign equivalents of the patents and patent applications the subject of (i) and (ii) above.

"Licensed Product" as to the Incyte Agreement or the Merck Agreement, as applicable, shall mean each Product covered therein as of the date hereof.

"LICR" shall mean the Ludwig Institute for Cancer Research Ltd., a non-profit corporation organized under the laws of Switzerland, its Affiliates and any successors-in-interest and assigns under the LICR Agreement.

"LICR Agreement" shall mean that certain License Agreement dated as of December 5, 2014, by and between LICR and Seller Parent, and as may be further amended from time to time in the future.

"Lien" shall mean lien, hypothecation, charge, instrument, preference, priority, security agreement, security interest, interest, mortgage, option, privilege, pledge, liability, covenant, order, tax, right of recovery, trust or deemed trust (whether contractual, statutory or otherwise arising) or any encumbrance, right or claim of any other person of any kind whatsoever whether choate or inchoate, filed or unfiled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

"Losses" shall mean collectively, any and all damages, losses, assessments, awards, cause of actions, claims, charges, costs and expense (including reasonable expenses of investigation and reasonable attorneys' fees and expenses), fines, judgments, liabilities, obligations or penalties; provided, however that Losses shall not include any lost profits or consequential, punitive, special or incidental damages except any lost profits or consequential, punitive, special or incidental damages awarded or payable by a Purchaser Indemnified Party to a Third Party in connection with a claim or action for which the Seller Parent is required to indemnify the Purchaser pursuant to Section 8.05.

"Material Adverse Effect" shall mean a material adverse effect on (i) the validity or enforceability of any of the Transaction Documents, the Incyte Agreement or the Merck Agreement, (ii) the ability of a Seller Party or any of its Affiliates to perform any of its material obligations under any of the Transaction Documents, the Incyte Agreement or the Merck Agreement, (iii) the rights or remedies of Purchaser under any of the Transaction Documents, the Incyte Agreement or the Merck Agreement, (iv) the timing, amount or duration of the Royalties, taken as a whole, and recognizing the early stage nature of the Licensed Products and the risks associated with the development and potential commercialization of early stage biopharmaceutical products, or (v) the right of Purchaser to receive payments in respect of the Purchased Royalty Interests in accordance with the Transaction Documents, the Incyte Agreement or the Merck Agreement.

"Merck" shall mean Merck Sharp & Dohme Corp., a corporation organized and existing under the laws of New Jersey, its Affiliates and any successors-in-interest and assigns under the Merck Agreement.

"Merck Agreement" shall mean that certain License and Research Collaboration Agreement dated as of April 25, 2014, by and between Merck and Seller Parent, as amended effective April 25, 2015, and February 6, 2017, and as may be further amended from time to time.

"Milestones" shall mean one hundred percent (100%) of all future milestone payments that become owed, accrued or otherwise payable to Seller after the Closing pursuant to Section 5.4 of the Merck Agreement and Section 7.5 of the Incyte Agreement including, without limitation, all clinical, regulatory, commercial and sales milestones pursuant to such sections (collectively, the "Milestone Payments"), and any future sums accrued, paid or due, other than Milestone Payments, that are (i) in lieu of the Milestone Payments (which shall not consist of securities without Purchaser's prior written consent); (ii) in satisfaction of the obligation to pay the Milestone Payments; or (iii) indemnity payments, recoveries, damages, settlement or other amounts to which Seller is or may become entitled to pursuant to or in connection with the Incyte Agreement or the Merck Agreement, as applicable, or any Licensed Patent thereunder, whether based on actual or alleged infringement, breach, or other circumstance, in each case described in this clause (iii) to the extent such infringement, breach, default or other circumstance has resulted or would result in a reduction in, or such payment is made in lieu of, Milestone Payments; and (iv) all proceeds (including any damages, monetary awards or other amounts recovered, whether by judgment or settlement) paid, owed, accrued or otherwise payable with respect to any of the foregoing of any suit, proceeding or other legal action taken to enforce the right to receive any of the foregoing (other than amounts awarded or recovered in connection with any judgment or settlement for reimbursement of the costs and expenses (including attorneys' fees) of the party bringing such suit or proceeding or taking such other legal action).

"Net Sales" shall mean "Net Sales" as such term is defined in the Incyte Agreement or the Merck Agreement, as applicable.

"Patent Rights" shall mean "Patent Rights" as such term is defined in the Incyte Agreement or the Merck Agreement, as applicable, but only to the extent such Patent Rights are owned or controlled by Seller Parent or its Affiliates.

"Permitted Liens" shall mean any: (a) Liens in favor of Purchaser or its Affiliates; (b) Liens created, permitted or required by the Transaction Documents in favor of Purchaser; (c) Liens incurred by Purchaser after the Closing Date; and (d) Liens that will be released at the Closing.

"Person" shall mean an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, but not including a government or political subdivision or any agency or instrumentality of such government or political subdivision.

"Product" shall mean "Royalty Bearing Product" as such term is defined in the Incyte Agreement or "Product" as such term is defined in the Merck Agreement, as applicable.

"Purchase Price" shall be the amount set forth in Section 2.03 which shall be payable in United States Dollars.

"Purchased Royalty Interests" shall mean (a) thirty three percent (33%) of all of the Royalties (net of all outbound royalties paid, owed, accrued or otherwise payable by Seller Parent or its Affiliates to LICR under the LICR Agreement); (b) ten percent (10%) of all future Milestones (other than the Excluded Incyte Milestone); and (c) in the case of each of (a) and (b) above, all "accounts" (as such term is defined in the UCC) of Seller with respect to the Royalties and Milestones. For clarity, the Purchased Royalty Interests do not include any portion of the Excluded Incyte Milestone.

"Purchaser" shall have the meaning set forth in the first paragraph hereof.

"Purchaser Account" shall mean Purchaser's deposit account with Silicon Valley Bank which account Purchaser may change from time to time by furnishing written notice to Seller.

"Purchaser Indemnified Party" shall have the meaning set forth in Section 8.05(a).

"Purchaser-Requested Audit" shall have the meaning set forth in Section 5.06(a).

"Representatives" shall have the meaning set forth in Section 5.02(b).

"[*]" shall have the meaning set forth in Section [*].

"Royalty" or "Royalties" shall mean without duplication, (a) one hundred percent (100%) of all royalties paid, owed, accrued or otherwise payable after the Closing by Incyte pursuant to Section 7.6 of the Incyte Agreement with respect to Net Sales of any applicable Licensed Product thereunder, (b) all royalties paid, owed, accrued or otherwise payable after the Closing by Merck pursuant to Section 5.5 of the Merck Agreement with respect to Net Sales of any applicable Licensed Product thereunder (collectively (a) and (b) are hereinafter referred to as "Royalty Payments"), (c) any sums accrued, paid or due, other than Royalty Payments, that are (i) in lieu of the Royalty Payments (which shall not consist of securities without Purchaser's prior written consent); (ii) in satisfaction of the obligation to pay the Royalty Payments; or (iii) indemnity payments, recoveries, damages, settlement or other amounts to which Seller is or may become entitled to pursuant to or in connection with the Incyte Agreement or the Merck Agreement, as applicable, or any Licensed Patent thereunder, whether based on actual or alleged infringement, breach, default or other circumstance, in each case described in this clause (iii) to the extent such infringement, breach, or other circumstance has resulted or would result in a reduction in, or such payment is made in lieu of, Royalty Payments; and (d) all proceeds (including any damages, monetary awards or other amounts recovered, whether by judgment or settlement) paid, owed, accrued or otherwise payable with respect to any of the foregoing of any suit, proceeding or other legal action taken to enforce the right to receive any of the foregoing (other than amounts awarded or recovered in connection with any judgment or settlement for reimbursement of the costs and expenses (including attorneys' fees) of the party bringing such suit or proceeding or taking such other legal action).

"Secured Party" has the meaning set forth in Section 6.02(j).

"Seller" has the meaning set forth in the preamble.

"Seller Account" shall mean a segregated account established for the benefit of Seller.

"Seller Indemnified Party" has the meaning set forth in Section 8.05(b).

"Seller Organizational Documents" means the certificate of formation of Seller dated as of September 14, 2018 and the limited liability company agreement of Seller dated as of September 14, 2018.

"Seller Parent" has the meaning set forth in the preamble.

"Seller Party" shall mean Seller and Seller Parent, individually, and "Seller Parties" shall mean Seller and Seller Parent, collectively.

"[*]" shall have the meaning set forth in Section [*].

"Specified Persons" shall mean (i) Garo Armen, Chief Executive Officer of the Seller Parent, (ii) Christine Klaskin, VP of Finance of the Seller Parent, (iii) Evan Kearns, Vice President and General Counsel of the Seller Parent, (iv) Michael Plater, Chief Business Officer of the Seller Parent and (v) Christian Cortis, Chief Strategy Officer & Head of Finance, and their respective successors in such positions provided that with respect to Section 3.11(g) and 3.12, "Specified Person" shall mean Michael Robinson, Vice President, Head of Intellectual Property, and his successor in such position.

"[*]" shall have the meaning set forth in Section [*].

"Subsidiary" or "Subsidiaries" shall mean with respect to any Person (i) any corporation of which the outstanding capital stock having at least a majority of votes entitled to be cast in the election of directors under the ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or (ii) any other Person of which at least a majority voting interest under ordinary circumstances is at the time owned, directly or indirectly, by such Person.

"Third Party" shall mean any Person other than Seller, Seller Parent or Purchaser or their respective Affiliates.

"Third Party Patents" shall mean, with respect to any Third Party, any and all issued patents and pending patent applications as of the date of this Agreement, including all provisional applications, substitutions, continuations, continuations-in-part, divisions, and renewals, all letters patent granted thereon, and all patents-of-addition, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms (including regulatory extensions), and all supplementary protection certificates, together with any foreign counterparts thereof anywhere in the world, of such Third Party.

"Transaction Documents" shall mean, collectively, this Agreement and the Bill of Sale.

"UCC" shall mean the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

ARTICLE II
PURCHASE AND SALE OF THE PURCHASED ROYALTY INTERESTS

Section 2.01 Purchase and Sale.

(a) Subject to the terms and conditions of this Agreement, on the Closing Date, Seller hereby sells, assigns, transfers, conveys and grants to Purchaser, and Purchaser hereby purchases, acquires and accepts from Seller, all of Seller's rights, title and interest in and to the Purchased Royalty Interests, free and clear of any and all Liens, other than Permitted Liens.

(b) Each of Seller and Purchaser intends and agrees that the sale, assignment and transfer of the Purchased Royalty Interests under this Agreement shall be, and is, a true sale by Seller to Purchaser that is absolute and irrevocable and that provides Purchaser with the full benefits of ownership of the Purchased Royalty Interests, and each of Seller and Purchaser do not intend the transactions contemplated hereunder to be, or for any purpose characterized as, a loan from Purchaser to Seller, or a pledge or security agreement. Seller waives any right to contest or otherwise assert that this Agreement is other than a true sale by Seller to Purchaser under applicable law, which waiver shall be enforceable against Seller in any bankruptcy or insolvency proceeding relating to Seller.

(c) Seller hereby consents to Purchaser recording and filing, at Purchaser's sole cost and expense, financing statements (and continuation statements with respect to such financing statements when applicable) meeting the requirements of applicable law in such manner and in such jurisdictions as are necessary or appropriate to (i) evidence or perfect the sale, assignment, transfer, conveyance and grant by Seller to Purchaser, and the purchase, acquisition and acceptance by Purchaser from Seller, of the Purchased Royalty Interests and (ii) perfect the security interest in the Purchased Royalty Interests granted by Seller to Purchaser pursuant to Section 2.01(d).

(d) Notwithstanding that Seller and Purchaser expressly intend for the sale, contribution, assignment, transfer, conveyance and granting of the Purchased Royalty Interests to be a true, complete, absolute and irrevocable sale and assignment, in the event that any transfer contemplated by this Agreement is held not to be a sale, Seller hereby assigns, conveys, grants and pledges to Purchaser, as security for its obligations created hereunder, a first priority security interest in and to all of Seller's right, title and interest in, to and under the Purchased Royalty Interests, whether now owned or hereafter acquired, and any "proceeds" (as such term is defined in the UCC) thereof and, solely in such event, this Agreement shall constitute a security agreement.

Section 2.02 Transfers and Payments in Respect of the Purchased Royalty Interests.

(a) Payments of the Royalties. Purchaser shall be entitled to receive the following transfers and payments in respect of the Purchased Royalty Interests:

i. Effective upon the Closing, Purchaser shall be entitled to receive any and all payments of the Purchased Royalty Interests. Any and all payments of the Purchased Royalty Interests shall be paid by Incyte, Merck or other payor, as applicable, into the Joint Escrow Account by wire transfer of immediately available funds in accordance with the Incyte Direction Letter or Merck Direction Letter (collectively, the "Direction Letters"), as the case may be, or other instruction letter provided to such other payor in compliance with Section 5.04(c), and distributed from the Joint Escrow Account to the Purchaser Account. If Seller or its Affiliates receives any payment on account of any Purchased Royalty Interests directly from the payor of such Purchased Royalty Interests, Seller or any of its Affiliates, as the case may be, shall hold such amounts in trust for the benefit of Purchaser and, within five (5) Business Days after receipt thereof, transfer all such funds into the Joint Escrow Account by wire transfer of immediately available funds.

ii. Notwithstanding any claim or set-off which Seller may have against Purchaser or which Incyte or Merck, as applicable, may have against Seller, Seller shall use its reasonable best efforts to ensure that Incyte and Merck remit all payments that each is required to pay under the Incyte Agreement or the Merck Agreement, respectively, with respect to the Purchased Royalty Interests directly to the Joint Escrow Account, pursuant to the Direction Letters.

iii. For the avoidance of doubt, the parties understand and agree that if Incyte or Merck, as applicable, fails to make any payment in respect of the Purchased Royalty Interests when Seller or Purchaser reasonably believes they are due under the Incyte Agreement or the Merck Agreement, as applicable (each such unpaid amount, a "Discrepancy"), because of a disagreement with Incyte or Merck, as applicable, as to when, whether or the amount of any payment of the Purchased Royalty Interests that are owed, then Seller shall not be obligated to pay to Purchaser or otherwise compensate or make Purchaser whole with respect to any such Discrepancy, but instead the parties shall attempt to recover such Discrepancy from Incyte or Merck, as applicable; provided, however, that nothing in this Section 2.02(a) shall limit or affect in any respect the rights of any Purchaser Indemnified Party under Section 8.05.

iv. For the avoidance of doubt, the parties understand and agree that if Incyte or Merck, as applicable, fails to pay any payment in respect of the Purchased Royalty Interests when Seller or Purchaser reasonably believes they are due under the Incyte Agreement or the Merck Agreement, as applicable, because of any set-off under any of the agreements effectuated by Incyte or Merck, as the case may be, then Seller shall pay to Purchaser the amount required to make Purchaser whole with respect to any such deficiency, by depositing the amount thereof in the Purchaser Account.

Section 2.03 Purchase Price .

In consideration for the sale of the Purchased Royalty Interests, and subject to the terms and conditions set forth herein, Purchaser shall pay to Seller, or its designee, on the Closing Date, the sum of $15,000,000 (the "Purchase Price") by wire transfer to an account designated in writing by Seller prior to the Closing.

Section 2.04 No Assumed Obligations.

Notwithstanding any provision in this Agreement or any other writing to the contrary, Purchaser is acquiring only the Purchased Royalty Interests and is not assuming any liability or obligation of either Seller Party or any of their Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, whether under the Incyte Agreement, the Merck Agreement or any Transaction Document or otherwise. All such liabilities and obligations shall be retained by and remain obligations and liabilities of such Seller Party (the "Excluded Liabilities and Obligations").

Section 2.05 Excluded Assets.

Purchaser does not, by purchase of the rights granted hereunder or otherwise pursuant to any of the Transaction Documents, acquire any assets or contract rights of Seller or any of its Affiliates under the Incyte Agreement, the Merck Agreement, the Patent Rights or any other assets of either Seller Party (including the Excluded Incyte Milestone), other than the Purchased Royalty Interests.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER PARENT

Seller and Seller Parent, as applicable, hereby represents and warrants to Purchaser as of the date first written above the following:

Section 3.01 Organization; Operations of Seller Parent and Seller.

(a) Seller Parent is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has all powers and all licenses, authorizations, consents and approvals required to conduct its business as now conducted and as proposed to be conducted in connection with the transactions contemplated by the Transaction Documents to which Seller Parent is a party and the Incyte Agreement and the Merck Agreement. Seller Parent is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction in which the failure to do so could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(b) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, and has all powers and all licenses, authorizations, consents and approvals required to conduct its business as now conducted and as proposed to be conducted in connection with the transactions contemplated by the Transaction Documents to which Seller is a party. Seller is duly qualified to do business as a foreign limited liability company and is in good standing in every jurisdiction in which the failure to do so could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(c) Since September 14, 2018, Seller (i) has had no business activities other than acquiring the right to receive payments under the Merck Agreement and the Incyte Agreement, selling the Purchased Royalty Interests to Purchaser as contemplated hereby and otherwise performing its obligations under the Transaction Documents and (ii) has not been, is not, and will not be engaged, in any business unrelated to effecting the transactions contemplated by the Transaction Documents. Since September 14, 2018, the sole assets of Seller that it has owned consist exclusively of the right to receive payments under the Merck Agreement and the Incyte Agreement and any rights arising under the Incyte Agreement or the Merck Agreement, as applicable. Since September 14, 2018, Seller has not incurred any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person, except as required to execute and deliver the Transaction Documents and to consummate the transactions contemplated thereby. Immediately prior to Closing, Seller shall have no obligations or liabilities, except those incurred in connection with, and pursuant to the Transaction Documents and the transactions contemplated thereby.

Section 3.02 Corporate Authorization.

Each Seller Party has all necessary corporate or limited liability company, as applicable, power and authority to enter into, execute and deliver the Transaction Documents to which it is a party and to perform all of the obligations to be performed by it hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents to which such Seller Party is a party have been duly authorized, executed and delivered by such Seller Party and each Transaction Document to which it is a party constitutes the valid and binding obligation of such Seller Party, enforceable against such Seller Party in accordance with its terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or general equitable principles.

Section 3.03 Governmental Authorization.

Except for filings with the Securities and Exchange Commission, its successor or foreign equivalent, the execution and delivery by a Seller Party of the Transaction Documents to which it is a party, and the performance by such Seller Party of its obligations hereunder and thereunder and under the Incyte Agreement and the Merck Agreement, as applicable, do not require any notice to, action or consent by, or in respect of, or filing with, any Governmental Authority.

Section 3.04 Ownership.

Seller is the exclusive owner of the entire right, title (legal and equitable) and interest in, to and under the Purchased Royalty Interests and has good and valid title thereto, free and clear of all Liens (other than Permitted Liens). The Purchased Royalty Interests sold, assigned, transferred, conveyed and granted to Purchaser at the Closing are not pledged, sold, contributed, assigned, transferred, conveyed or granted by Seller to any Person, nor has Seller consented to any such action. Seller has full right to sell, contribute, assign, transfer, convey and grant the Purchased Royalty Interests to Purchaser. Upon the sale, assignment, transfer, conveyance and granting by Seller of the Purchased Royalty Interests to Purchaser, Purchaser shall acquire good and valid title to the Purchased Royalty Interests free and clear of all Liens, other than Permitted Liens, and shall be the exclusive owner of the Purchased Royalty Interests.

Section 3.05 Solvency.

Assuming consummation of the transactions contemplated by the Transaction Documents to which Seller is a party (i) the present fair saleable value of Seller's assets is greater than the amount required to pay its debts as they become due, (ii) Seller does not have unreasonably small capital with which to engage in its business, (iii) Seller will be able to realize upon its assets and pay its debts and other obligations as they mature, and (iv) Seller has not incurred, will not incur, nor does it have present plans or intentions to incur, debts or liabilities beyond its ability to pay such debts or liabilities as they become absolute and matured.

Section 3.06 Litigation.

(a) There is no (i) action, suit, arbitration proceeding, claim, investigation or other proceeding pending or, to the Knowledge of Seller and its Affiliates, threatened against Seller Parent or any of its Affiliates or (ii) any inquiry of any Governmental Authority pending or, to the Knowledge of Seller and its Affiliates, threatened against Seller Parent or any of its Affiliates, in each case with respect to clauses (i) and (ii) above, which, if adversely determined, could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(b) To the actual knowledge of any Specified Person there is no (i) action, suit, arbitration proceeding, claim, investigation or other legal proceeding pending or threatened against Incyte or any of its Affiliates or Merck or any of its Affiliates (x) involving the Licensed Products or (y) involving Seller Parent or any of its Affiliates or (ii) any inquiry of any Governmental Authority pending or threatened against Incyte or any of its Affiliates or Merck or any of its Affiliates involving the Licensed Products, in each case with respect to clauses (i) and (ii) above, which, if adversely determined, could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

Section 3.07 Compliance with Laws.

None of Seller, Seller Parent or any of its Subsidiaries (A) are in violation of, or have violated, or to the Knowledge of Seller and its Affiliates, are under investigation with respect to, or been given notice of any violation of, in any material respect, any law, rule, ordinance or regulation of, or any judgment, order, writ decree, permit or license granted, issued or entered by, any Governmental Authority or (B) are subject to any judgment, order, writ decree, permit or license granted, issued or entered by, any Governmental Authority, which in the case of (A) or (B), could reasonably be expected to result in a Material Adverse Effect.

Section 3.08 Conflicts.

(a) Neither the execution and delivery of any of the Transaction Documents to which Seller or Seller Parent is a party nor the performance or consummation of the transactions contemplated hereby and thereby will: (i) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, any provisions of the certificate of incorporation or by-laws (or other organizational or constitutional documents) of Seller Parent or any of its Affiliates; (ii) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by or give rise to any right of termination, cancellation or acceleration of any right or obligation of any provision of the Incyte Agreement or Merck Agreement; (iii) require any consent of any Person or Governmental Authority; (iv) result in the creation or imposition of any Lien on the Purchased Royalty Interests, other than Permitted Liens; or (v) except as would not reasonably be expected to result in a Material Adverse Effect, contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, in any material respects any provisions of any Law, contract or agreement (other than the Incyte Agreement or Merck Agreement) to which Seller Parent or any of its Affiliates or any of their respective assets or properties are subject or bound.

(b) Neither Seller Party has granted, nor does there exist, any Lien (other than a Permitted Lien) on the Purchased Royalty Interests. Neither Seller Party has granted, nor does there exist, any Lien (other than a Permitted Lien and Liens in favor of the Secured Party) on the Incyte Agreement or Merck Agreement.

Section 3.09 No Withholding

No deduction or withholding for or on account of any tax has been made or, to the Knowledge of Seller and its Affiliates, was required to be made under applicable Law from any payment to Seller under the Incyte Agreement or the Merck Agreement, as applicable. As of the Closing Date, to the Knowledge of Seller and its Affiliates, no deduction or withholding for or on account of any tax is required to be made under applicable Law from any payment by Seller to Purchaser under this Agreement.

Section 3.10 License Agreements.

The Incyte Agreement attached hereto as **Exhibit B**, the Merck Agreement attached hereto as **Exhibit C**, and the LICR Agreement attached hereto as **Exhibit D** are true, correct and complete copies of each such agreement, as in effect on the date hereof, and there have been no amendments or modifications to such agreements which are not reflected in such exhibits.

Section 3.11 Products; Royalties.

(a) Since February 14, 2017, Incyte has been responsible for the clinical development of each of the Licensed Products being clinically developed under the Incyte Agreement, and is responsible for seeking all applicable regulatory approvals from applicable Governmental Authorities for each of such Licensed Products, and Seller Parent or its Affiliates have no responsibility for the clinical development of any of such Licensed Products nor for seeking any regulatory approvals from any Governmental Authorities for any of such Licensed Products.

(b) To the Knowledge of Seller and its Affiliates, Incyte is in compliance with its obligations to develop each of the Licensed Products currently being developed under the Incyte Agreement and to seek and obtain regulatory approvals from applicable Governmental Authorities for such Licensed Products.

(c) Merck has been responsible for the clinical development of the Licensed Product being clinically developed under the Merck Agreement and is responsible for seeking all applicable regulatory approvals from applicable Governmental Authorities for such Licensed Product, and Seller Parent or its Affiliates have no responsibility for the development of such Licensed Product nor for seeking any regulatory approvals from any Governmental Authorities for such Licensed Product.

(d) To the Knowledge of Seller and its Affiliates, Merck is in compliance with its obligations to develop the Licensed Product currently being developed under the Merck Agreement and seek and obtain regulatory approvals from applicable Governmental Authorities for such Licensed Product.

(e) Other than (i) the Incyte Agreement, (ii) the Merck Agreement, (iii) the LICR Agreement, (iv) the Transaction Documents, (v) any third party contractor agreements entered into on Incyte's behalf in performance of pre-clinical services, (vi) agreements with the Secured Party, and (vii) the statutory right of remuneration arising under German law, as of the Closing, neither Seller Parent nor any of its Affiliates shall have entered into, are a party to, or are otherwise subject to any agreement, contract, instrument or other binding obligation that in any way relates to or involves the Royalties, Milestones or the Products (which, for purposes of clarity, the parties acknowledge and agree shall not include any agreement, contract, instrument or other binding obligation that relates to the Patent Rights but does not otherwise relate to or involve the Royalties, Milestones or the Products and shall not include any expired material transfer, research or similar agreement or contract manufacturing or similar agreement relating to or involving the Royalties, Milestones or the Products).

(f) To the Knowledge of Seller and its Affiliates, neither Seller Parent nor Seller nor any of their Affiliates has received any information from Incyte or Merck, as applicable, or any Third Party or Governmental Authority, whether through any form of written, oral or digital communication and whether or not under any of the express provisions of the Incyte Agreement or the Merck Agreement, as applicable (including pursuant to any joint steering committee meeting or the meeting of any other organized body provided for under any such agreement) relating to any of the Licensed Products (including any of the clinical trials for any of the Licensed Products or any of the studies related to those clinical trials) that would reasonably be expected to result in a Material Adverse Effect.

(g) To the actual knowledge of the Specified Persons, no Third Party Patent that Incyte or Merck, as applicable, does not have the right to use, has been, or is infringed by Incyte's or Merck's, as applicable, Exploitation of an applicable Licensed Product.

(h) Neither Seller Parent nor Agenus Switzerland has (i) received any notice of any dispute from LICR, including pursuant to Article 8 of the LICR Agreement, or (ii) given any notice of any dispute to LICR, including pursuant to Article 8 of the LICR Agreement.

Section 3.12 Intellectual Property Matters .

(a) **Exhibit E** sets forth an accurate and complete list of all pending Licensed Patents licensed to Incyte pursuant to the Incyte Agreement, and, to the Knowledge of Seller and its Affiliates, **Exhibit E** sets forth an accurate and complete list of all pending Licensed Patents licensed to Merck pursuant to the Merck Agreement, including for each such Licensed Patent: (i) the jurisdictions in which such Licensed Patent application is pending, (ii) the pending patent application serial number, and (iii) the owner of such Licensed Patent application.

(b) To the Knowledge of Seller and its Affiliates, the Licensed Patents have been diligently prosecuted in accordance with applicable Law. To the Knowledge of Seller and its Affiliates, each individual involved in the filing and prosecution of the Licensed Patents has complied in all material respects with all applicable duties of candor and good faith in dealing with the United States Patent Office in connection with the filing and prosecution of the Licensed Patents.

(c) To the Knowledge of Seller and its Affiliates, (i) there are no unpaid maintenance or renewal fees payable by Seller to any Governmental Authority or Third Party that currently are overdue for any of the Licensed Patents and (ii) no Licensed Patents have lapsed or been abandoned, cancelled or expired.

(d) To the Knowledge of Seller and its Affiliates, the Licensed Patents have not been the subject of any litigation, interference, reissue, *inter partes* review, post-grant review, or re-examination proceedings.

(e) To the Knowledge of Seller and its Affiliates, Seller Parent has not received any written notice of any pending or threatened Dispute, litigation, interferences, *inter partes* reviews, post-grant reviews, reexaminations, or like patent office proceedings involving any Licensed Patents.

(f) To the Knowledge of Seller and its Affiliates, neither Seller Parent or any of its Affiliates has received written notice of any threatened or actual action, suit or proceeding that claims that the manufacture, use, marketing, sale, offer for sale, importation or distribution of a Product infringes any patent or other intellectual property rights of any other Person or constitutes misappropriation of any other Person's trade secrets or other intellectual property rights.

(g) To the Knowledge of Seller and its Affiliates, there is no Third Party infringing any Licensed Patents. Neither Seller nor any of its Affiliates has received any notice of infringement of any Licensed Patents.

Section 3.13 No Other Representations or Warranties.

Except for the representations and warranties contained in this Article III, neither Seller Party nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of a Seller Party, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Royalty Interests, the Licensed Products or the Royalties furnished or made available to Purchaser or its Representatives (including any information, documents, management presentations or material delivered to Purchaser, or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Licensed Products, or any representation or warranty arising from statute or otherwise in Law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser represents and warrants to the Seller Parties as of the date first written above, the following:

Section 4.01 Organization.

Purchaser is a limited liability company duly formed, validly existing and in good standing under the laws of Delaware and has all powers and all licenses, authorizations, consents and approvals required to carry on its business as now conducted.

Section 4.02 Authorization.

Purchaser has all necessary power and authority to enter into, execute and deliver the Transaction Documents and to perform all of the obligations to be performed by it hereunder and thereunder and to consummate the transactions contemplated hereunder and thereunder. The Transaction Documents have been duly authorized, executed and delivered by Purchaser and each Transaction Document constitutes the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general equitable principles.

Section 4.03 Broker's Fees.

Purchaser has not taken any action that would entitle any Person to any commission or broker's fee that would be payable by Seller or its Affiliates in connection with the transactions contemplated by the Transaction Documents.

Section 4.04 Conflicts.

Neither the execution and delivery of this Agreement or any other Transaction Document nor the performance or consummation of the transactions contemplated hereby or thereby will: (i) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, in any material respects, any provisions of (A) any law, rule or regulation of any Governmental Authority, or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which Purchaser or any of its assets or properties may be subject or bound; or (B) any contract, agreement, commitment or instrument to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or committed; (ii) contravene, conflict with, result in a breach or violation of, constitute a default under, or accelerate the performance provided by, any provisions of any organizational or constitutional documents of Purchaser; or (iii) require any notification to, filing with, or consent of, any Person or Governmental Authority.

Section 4.05 Access to Information.

Purchaser acknowledges that it has (i) reviewed the Incyte Agreement and the Merck Agreement and such other documents and information relating to the Licensed Products and (ii) has had the opportunity to ask such questions of, and to receive answers from, representatives of Seller concerning the Incyte Agreement, the Merck Agreement and the Licensed Products, in each case as it deemed necessary to make an informed decision to purchase the Purchased Royalty Interests in accordance with the terms of this Agreement. Purchaser acknowledges the early stage nature of the Licensed Products and accepts the risks associated with the development and potential commercialization of early stage biopharmaceutical products. Purchaser has such knowledge, sophistication and experience in financial and business matters that it is capable of evaluating the risks and merits of purchasing the Purchased Royalty Interests in accordance with the terms of this Agreement.

Section 4.06 Financing.

Purchaser has sufficient funds available to consummate all of the transactions contemplated by any of the Transaction Documents and to pay the Purchase Price and all other cash amounts required to be paid in connection with the transactions contemplated by the Transaction Documents, and, when so required to pay or otherwise perform, as applicable, Purchaser will be able to pay or otherwise perform the obligations of Purchaser or any of its Affiliates under the Transaction Documents (including the Purchase Price payment at Closing and all other cash amounts required to be paid at or in connection with the Closing). Purchaser acknowledges and agrees that its obligations under this Agreement are not contingent on obtaining financing.

ARTICLE V
COVENANTS

The parties covenant and agree as follows:

Section 5.01 Books and Records.

(a) Subject to Section 5.02(g), as promptly as practicable (but in no event more than two (2) Business Days) after receipt by Seller Parent or any of its Affiliates of notice of any action, claim, investigation or proceeding (commenced or threatened) relating to the transactions contemplated by any Transaction Document or the Purchased Royalty Interests that, if determined adversely, would reasonably be expected to result in a Material Adverse Effect, Seller Parent shall inform Purchaser of the receipt of such notice and the substance of such action, claim, investigation or proceeding and, if in writing, shall furnish Purchaser with a copy of such notice and any related materials with respect to such action, claim, investigation or proceeding.

(b) Seller shall keep and maintain, or cause to be kept and maintained, full and accurate books of accounts and records adequate to reflect accurately all Royalties and Milestones paid and/or payable with respect to the Incyte Agreement and the Merck Agreement and all deposits made into, and disbursements made from, the Joint Escrow Account. Seller shall provide information as the amount and calculation of the amount of all Royalties and Milestones paid into the Joint Escrow Account hereunder in sufficient detail for Purchaser to review the same for accuracy and shall certify that such calculations are correct.

(c) Subject to Section 5.02(g), Purchaser shall have the right, from time to time, not more than twice per calendar year to request a meeting or teleconference with the appropriate representatives of Seller Parent to discuss the progress of the development of the Products, and/or during normal business hours and upon at least ten (10) Business Days' prior written notice to Seller, to visit the offices and properties of Seller where books and records relating or pertaining to the Purchased Royalty Interests are kept and maintained, to inspect and make extracts from and copies of such books and records, to discuss, with officers of Seller, the Purchased Royalty Interests and to verify compliance with the provisions of the Transaction Documents, including, without limitation, provisions relating to the receipt and application of the Royalties and Milestones.

(d) Subject to Section 5.02(g), as promptly as practicable (but in no event more than five (5) Business Days) after receipt by Seller Parent or any of its Affiliates of any material written notice, certificate, offer, proposal, correspondence, report or other material written communication from Incyte, Merck, or any other payor of any Royalties or Milestones, or any Governmental Authority directly relating to or referencing the Purchased Royalty Interests, Seller Parent shall inform Purchaser of such receipt and the substance contained therein and, if requested by Purchaser, shall furnish Purchaser with a copy of such material written notice, certificate, offer, proposal, correspondence, report or other material written communication.

Section 5.02 Confidentiality; Public Announcement.

(a) Except as expressly authorized in this Agreement or the other Transaction Documents or except with the prior written consent of Seller Parent, Purchaser hereby agrees that (i) it will use the Confidential Information of the Seller Parties solely for the purpose of the transactions contemplated by this Agreement and the other Transaction Documents and exercising its rights and remedies and performing its obligations hereunder and thereunder; (ii) it will keep confidential the Confidential Information of the Seller Parties; and (iii) it will not furnish or disclose to any Person any Confidential Information of the Seller Parties.

(b) Subject to Section 5.02(f), but otherwise notwithstanding anything to the contrary set forth in this Agreement or any other Transaction Document, Purchaser may, without the consent of Seller Parent, furnish or disclose Confidential Information of the Seller Parties to Purchaser's Affiliates and its and their actual and potential partners, directors, officers, employees, managers, officers, investors, co-investors, partners, financing parties, bankers, agents, consultants, advisors, insurers, rating agencies, self-regulatory organizations, trustees and representatives ("Representatives") on a need-to-know basis provided that such Persons shall be informed of the confidential nature of such information and shall be obligated to keep such information confidential pursuant to the terms of this Section 5.02. Each party hereby acknowledges that the United States federal and state securities laws prohibit any Person that has material, non-public information about a company from purchasing or selling securities of such a company or from communicating such information to any other Person under circumstances in which it is reasonably foreseeable that such Person is likely to purchase or sell such securities.

(c) If Purchaser, its Affiliates or their respective Representatives are required by applicable law or legal or judicial process (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to furnish or disclose any portion of the Confidential Information of the Seller Parties, Purchaser shall, to the extent practicable and legally permitted, provide such Seller Party, as promptly as practicable, with written notice of the existence of, and terms and circumstances relating to, such requirement, so that such Seller Party may seek a protective order or other appropriate remedy, at such Seller Party's expense (and, if such Seller Party seeks such an order, Purchaser, such Affiliates or such Representatives, as the case may be, shall provide, at such Seller Party's expense, such cooperation as such Seller Party shall reasonably require). Subject to the foregoing, Purchaser, such Affiliates or such Representatives, as the case may be, may disclose that portion (and only that portion) of the Confidential Information of such Seller Party that is legally required to be disclosed; provided, however, that Purchaser, such Affiliates or such Representatives, as the case may be, shall exercise reasonable efforts (at the Seller Parties' expense) to preserve the confidentiality of the Confidential Information of the Seller Parties, including by obtaining reliable assurance that confidential treatment will be accorded any such Confidential Information disclosed.

(d) Subject to Section 5.02(f), but otherwise notwithstanding anything to the contrary contained in this Agreement or any of the other Transaction Documents, Purchaser may disclose the Confidential Information of the Seller Parties, as the case may be, including this Agreement, the other Transaction Documents and the terms and conditions hereof and thereof, to the extent necessary in connection with the enforcement of its rights and remedies hereunder or thereunder or as required to perfect Purchaser's rights hereunder or thereunder; provided that, Purchaser shall only disclose that portion of the Confidential Information that its counsel advises that it is legally required to disclose and will exercise commercially reasonable efforts to ensure that confidential treatment will be accorded to that portion of the Confidential Information that is being disclosed, including requesting confidential treatment of information in the Transaction Documents and Purchaser shall, to the extent practicable and legally permitted, provide such Seller Party, as promptly as practicable, with written notice of such request for confidential treatment of information in the Transaction Documents, so that such Seller Party may also seek a protective order or other appropriate remedy. In any event, Purchaser will not oppose action by a Seller Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information in the event that confidential treatment cannot be obtained by Purchaser.

(e) Subject to Section 5.02(d), each of Seller Parent, Seller and Purchaser shall not, and shall cause their respective Affiliates not to, without the prior written consent of the other party, issue any press release or make any other public disclosure with respect to the transactions contemplated by this Agreement or any other Transaction Document, except if and to the extent that any such release or disclosure is required by applicable law or by any Governmental Authority of competent jurisdiction, including in connection with such party's filings with the Securities and Exchange Commission, its successor or foreign equivalent, in which case, Seller Parent, Seller, Purchaser or their respective Affiliates, as the case may be, shall use commercially reasonable efforts to consult in good faith with the other party regarding the form and content thereof before issuing such press release or making such public announcement; provided however, that once a party consults with the other parties regarding a release or disclosure, such party may continue to make substantially similar releases or discloses in the future without the need to consult the other parties.

(f) If a Seller Party discloses or furnishes to Purchaser any Confidential Information, that a Seller Party received as a Recipient (as defined in the Incyte Agreement) pursuant to the Incyte Agreement (such Confidential Information, "Incyte Confidential Information"), pursuant to this Agreement, then with respect to all Incyte Confidential Information so disclosed or furnished, Purchaser hereby agrees to be bound by Article 11 of the Incyte Agreement with respect to the confidentiality and non-use of such Incyte Confidential Information, in addition to the confidentiality and non-use obligations under this Agreement.

(g) If a Seller Party reasonably believes that the provision of any notice, books, records, discussion, certificate, offer, proposal, correspondence, report or other written communication to Purchaser pursuant to this Agreement would constitute a Confidentiality Breach, then such Seller Party shall instead provide Purchaser (i) a written summary of all information contained in such notice, books, records, discussion, certificate, offer, proposal, correspondence, report or other written communication; provided that to the extent that such Seller Party reasonably believes that providing Purchaser with any portion of the summary set forth in clause (i) would constitute a Confidentiality Breach, then such Seller Party shall instead (ii) paraphrase or otherwise describe the substance of such portion of such notice, books, records, discussion, certificate, offer, proposal, correspondence, report or other written communication to the maximum extent possible without causing a Confidentiality Breach in the reasonable belief of such Seller Party.

Section 5.03 Commercially Reasonable Efforts; Further Assurance.

Subject to the terms and conditions of this Agreement, each party hereto will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable laws and regulations to consummate the transactions contemplated by any Transaction Document. Purchaser and the Seller Parties agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary in order to consummate or implement expeditiously the transactions contemplated by any Transaction Document and to vest in Purchaser good, valid and marketable rights and interests in and to the Purchased Royalty Interests free and clear of all Liens, other than Permitted Liens.

Section 5.04 Remittance to Joint Escrow Account.

(a) Not later than thirty (30) Business Days following the Closing Date, Seller and Purchaser shall establish the Joint Escrow Account and Seller and Purchaser, each acting reasonably, shall execute and deliver all documents, certificates and agreements as are reasonably required to establish the Joint Escrow Account.

(b) The Joint Escrow Account shall be maintained by Seller and Purchaser throughout the term of this Agreement.

(c) Seller Parent and/or its Affiliates shall instruct and use commercially reasonable efforts to cause the payor of any Royalties and Milestones (including Incyte and Merck) to pay such Royalties and Milestones directly into the Joint Escrow Account, and in furtherance thereof, promptly following the establishment of the Joint Escrow Account, Seller Parent shall send an irrevocable letter executed by a duly authorized officer of Seller Parent to each of Incyte and Merck in the form attached hereto as **Exhibit F** to Incyte (the "Incyte Direction Letter") and in the form attached hereto as **Exhibit G** to Merck (the "Merck Direction Letter"), with instructions to pay all such Royalties and Milestones payable under the Incyte Agreement or the Merck Agreement, as applicable, to the Joint Escrow Account. Without in any way limiting the foregoing, commencing on the Closing Date and at any time thereafter, any and all Purchased Royalty Interests received by Seller Parent or any of its Affiliates shall be held in trust for the benefit of Purchaser and transferred to the Joint Escrow Account within five (5) Business Days of Seller Parent's or its Affiliate's knowledge of its receipt thereof.

Section 5.05 Incyte Agreement, Merck Agreement.

(a) Neither Seller Parent nor its Affiliates shall, without the written consent of Purchaser, (i) forgive, release or compromise, or agree to any delay or postponement of the payment of, any Purchased Royalty Interests owed under the Incyte Agreement or the Merck Agreement, as applicable, (ii) waive, amend, cancel or terminate, exercise or fail to exercise any of their rights constituting or involving the right to receive the Purchased Royalty Interests, (iii) amend, modify, restate, cancel, supplement, terminate or waive any provision of the Incyte Agreement, the LICR Agreement or the Merck Agreement, as applicable, or grant any consent thereunder, or agree to do any of the foregoing, including entering into any agreement with Incyte, LICR or Merck, as applicable, under the provisions of the Incyte Agreement or the Merck Agreement, respectively, in all such cases, referring to or directly involving, the Purchased Royalty Interests, if the effect thereof would reasonably be expected to result in an adverse effect on the Purchased Royalty Interests, (iv) create, incur, assume or suffer to exist any Lien, upon or with respect to the Purchased Royalty Interests, or agree to do or suffer to exist any of the foregoing, except for any Permitted Liens, (v) amend Sections 7.5 or 7.6 of the Incyte Agreement or (vi) amend Sections 5.4 or 5.5 of the Merck Agreement .

(b) Subject to Section 5.02(g), Seller Parent shall, as promptly as practicable, provide to Purchaser copies of any formal notice or report directly relating to the Purchased Royalty Interests and prepared by Incyte or Merck, as applicable, it has received pursuant to the Incyte Agreement or the Merck Agreement, as applicable.

(c) Subject to Section 5.02(g), as promptly as practicable after (A) receiving written or oral notice from Incyte or Merck, as applicable (i) terminating the Incyte Agreement or the Merck Agreement, respectively, (ii) alleging any breach of or default or dispute under the Incyte Agreement or the Merck Agreement, as applicable, by Seller Parent which, if not cured or adversely determined, as applicable, could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, or (iii) asserting the existence of any facts, circumstances or events which alone or together with other facts, circumstances or events could reasonably be expected (with or without the giving of notice or passage of time or both) to give rise to a breach of or default under the Incyte Agreement or the Merck Agreement, as applicable, by Seller Parent which, if not cured, could reasonably be expected to result in a Material Adverse Effect, or give rise to the right to terminate the Incyte Agreement, or the Merck Agreement, as applicable, by Incyte or Merck, respectively, or (B) Seller or any of its Affiliates obtains Knowledge of any fact, circumstance or event which alone or together with other facts, circumstances or events could reasonably be expected (with or without the giving of notice or passage of time or both) to give rise to a breach of or default under the Incyte Agreement or the Merck Agreement, as applicable, by Seller Parent or its Affiliates which, if not cured, could reasonably be expected to result in a Material Adverse Effect, or give rise to the right to terminate the Incyte Agreement, or the Merck Agreement, as applicable, by Incyte or Merck, respectively, in each case, Seller Parent shall promptly give a written notice to Purchaser describing in reasonable detail the relevant dispute, breach or default, including a copy of any written notice received from Incyte or Merck, as applicable, and, in the case of any breach or default or alleged breach or default by Seller Parent, describing in reasonable detail any action Seller Parent proposes to take to dispute or correct such dispute, alleged breach or default and (i) dispute such breach or default, or (ii) cure as promptly as practicable such breach or default in accordance with applicable Law and in a manner consistent in all material respects with the standard with which Seller Parent or its Affiliates would dispute or cure a breach in the administration of its own business (assuming, for these purposes, that the Incyte Agreement or the Merck Agreement, as applicable, were the only business of Seller Parent).

(d) Seller Parent shall not take any actions under the Merck Agreement, the Incyte Agreement or the LICR Agreement that could reasonably be expected to result in a Material Adverse Effect without the prior written consent of Purchaser. Notwithstanding anything to the contrary contained in this Agreement, Seller Parent and its Affiliates may directly or indirectly (including by sublicense or otherwise) research, develop, manufacture, use, sell, offer for sale (including marketing and promotion), import, distribute or otherwise commercialize any biopharmaceutical product or products, except as would be a breach of the Incyte Agreement or the Merck Agreement.

(e) Seller Parent shall, except as would not reasonably be expected to result in a Material Adverse Effect, ensure that all licenses, covenants, releases and other rights granted under the Incyte Agreement or the Merck Agreement, as applicable, by or on behalf of Seller Parent and each of its Affiliates are, and shall at all such times remain, valid, enforceable and in full force and effect to the extent required by the Incyte Agreement or the Merck Agreement, as applicable.

Section 5.06 Audits .

(a) Consultation. During the term of this Agreement, Seller Parent and Purchaser shall consult with each other regarding the timing, manner and conduct of any audit of Incyte's or Merck's records, as applicable, with respect to the Royalties and the Milestones. If in the course of such consultation, Purchaser requests that Seller Parent conduct an inspection or audit of Incyte's or Merck's records, as applicable (each a "Purchaser-Requested Audit"), with respect to the Royalties and the Milestones, as applicable, Seller Parent shall consider such request in good faith and act on such request in a manner consistent in all material respects with the standard with which Seller Parent would act in the administration of its own business (assuming, for these purposes, that the Incyte Agreement or the Merck Agreement, as applicable, were the only business of Seller Parent). During any time that the Purchased Royalty Interests owned by Purchaser constitute a greater percentage of the royalties associated with the Incyte Agreement or the Merck Agreement than is then owned by Seller and its Affiliates, then the above-referenced Purchaser-Requested Audit (and the below referenced License Party Audit) shall become an automatic mandatory rights of Purchaser (with Seller Parent or its assignee retaining its own separate right) not subject to Seller's prior consent and Purchaser shall have the right to require Seller and its Affiliates to enforce provisions contained in the Incyte Agreement or the Merck Agreement as applicable.

(b) Audits. To the extent Seller Parent has the right to perform or cause to be performed inspections or audits under the Incyte Agreement or the Merck Agreement, as applicable, regarding payments payable and/or paid thereunder (each, a "License Party Audit"), Seller Parent, subject to Section 5.06(a), shall exercise such right in Seller Parent's sole discretion. If conducting a Purchaser-Requested Audit, Seller Parent shall, to the extent permitted by the Incyte Agreement or the Merck Agreement, as applicable, select such public accounting firm to conduct the Purchaser-Requested Audit as Purchaser shall reasonably recommend, and reasonably acceptable to Seller Parent, for such purpose. Subject to Section 5.02(g) , as promptly as practicable after completion of any License Party Audit (whether or not requested by Purchaser), Seller Parent shall deliver to Purchaser an audit report summarizing the results of such License Party Audit. If an inspection or audit constitutes a Purchaser-Requested Audit, all of the expenses of any such Purchaser-Requested Audit (including, without limitation, the fees and expenses of the

independent public accounting firm) that would otherwise be borne by Seller Parent pursuant to the Incyte Agreement or the Merck Agreement, as applicable, shall instead be borne (as such expenses are incurred, upon the provision to Purchaser of written documentation evidencing such expenses) by Purchaser, provided that any reimbursement by Incyte or Merck, as applicable, of the expenses of the Purchaser-Requested Audit shall belong to Purchaser. Any deficiency in payments of Royalties or Milestones made by Incyte or Merck, as applicable, demonstrated in a License Party Audit shall be paid promptly, in accordance with the Incyte Agreement or the Merck Agreement, as applicable, to Purchaser and Seller by deposit in the Joint Escrow Account for further distribution to Purchaser and Seller pursuant to the terms hereof.

Section 5.07 Notice.

Each Seller Party shall provide Purchaser with written notice as promptly as practicable (and in any event within five (5) Business Days) after becoming aware of any of the following:

i. any Bankruptcy Event;

ii. any material breach or default by a Seller Party of any covenant, agreement or other provision of this Agreement or any other Transaction Document to which such Seller Party is a party; or

iii. any representation or warranty made by Seller Parent in any of the Transaction Documents or in any certificate delivered to Purchaser pursuant hereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made;

with, in the case of clause (i) above, a copy to the Depository Bank. If Purchaser has actual notice of any Bankruptcy Event, it shall be entitled to give written notice thereof to the Depository Bank, provided it concurrently delivers a copy thereof to Seller.

Section 5.08 Seller Operations.

Except as permitted under Section 8.04, all of the equity interests in Seller are, and shall always be, owned, directly or indirectly, by Seller Parent. Following the Closing, Seller will not acquire or otherwise possess any assets or incur any liabilities, Liens (other than Permitted Liens) or other obligations (contractual or otherwise) except in connection with the performance of its obligations under the Transaction Documents or resulting out of the ownership of assets that are not the Purchased Royalty Interests. Seller will not undertake any actions other than to enter into and perform its obligations under the Transaction Documents and all documents, instruments, or agreements directly related thereto. Neither Seller nor Seller Parent or any of their Affiliates or any manager of Seller shall amend or alter the Seller Organizational Documents, agree to dissolve Seller or otherwise windup its affairs or allow or take any action for Seller to become subject to any Bankruptcy Event. Seller Parent shall use commercially reasonable efforts to complete the dissolution of Agenus Switzerland and the

transfer of all of the assets and liabilities of Agenus Switzerland to Seller Parent in a timely fashion.

Section 5.09 Special Purpose Vehicle Covenants

(a) Seller will at all times remain in existence as a limited liability company separate and distinct from Seller Parent or any other Person and will not consent to or enter into any agreement or contract with respect to any reorganization, merger, recapitalization or consolidation of Seller with or into any other Person. Seller shall maintain its accounts, books and records separate from any other Person (including Seller Parent) and will not commingle any funds with any other Person (including Seller Parent).

(b) Seller shall not:

(i) fail to hold itself out to the public and all other Persons as a legal entity separate from the owners of its capital stock and from any other Person;

(ii) commingle its assets with assets of any other Person except in connection with, and for the limited purposes of, operation of the Joint Escrow Account;

(iii) fail to conduct its business only in its own name, nor fail to comply with all organizational formalities necessary to maintain its separate existence;

(iv) fail to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person nor have its assets listed on any financial statement of any other Person; provided, however, that Seller's assets may be included in a consolidated financial statement of its Affiliates in conformity with applicable provisions of GAAP (provided that such assets shall also be listed on Seller's own separate balance sheet);

(v) fail to pay its own liabilities and expenses only out of its own funds, except in respect of short term advances to be repaid;

(vi) enter into any transaction with an Affiliate except transactions that are at prices and on terms and conditions that could be obtained on an arm's-length basis from unrelated Third Parties;

(vii) fail to correct any known misunderstanding regarding its separate identity and not identify itself as a department or division of any other Person;

(viii) fail to maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require the holders of its capital stock to make additional capital contributions to Seller;

(ix) fail to cause the representatives of Seller to act at all times with respect to Seller consistently and in furtherance of the foregoing and in the best interests of Seller;

(x) make any payment or distribution of assets with respect to any obligation of any other person other than as required under trade or commercial agreements entered into in the ordinary course of business; or

(xi) engage in any business activity other than as contemplated hereunder or under the other Transaction Documents and any activities ancillary or related thereto.

Section 5.10 Patent Maintenance

(a) Seller Parent and its Affiliates shall, subject to the provisions of the Incyte Agreement and any rights of Incyte thereunder, and except as would not reasonably be expected to result in a Material Adverse Effect, (i) prosecute and maintain the Licensed Patents licensed to Incyte in accordance with, and, subject to, the Incyte Agreement, and (ii) not disclaim or abandon any of such applicable Licensed Patents, or fail to take any commercially reasonable action necessary to prevent the disclaimer or abandonment of such applicable Licensed Patents, except, in each case, where the disclaimer or abandonment of any such applicable Licensed Patents is commercially reasonable or is pursuant to instruction by Incyte or Merck. For the avoidance of doubt, Seller Parent shall have no obligation to pursue, request or obtain patent term extension under 35 U.S.C. 156, or any foreign counterpart thereto, in connection with any Licensed Patent.

(b) With respect to patent applications included in the Licensed Patents, Seller Parent and its Affiliates shall exercise commercially reasonable judgment in the continued prosecution and maintenance of each patent application included in the Licensed Patents and of any continuation or divisional patent application thereof.

Section 5.11 [*]

If Seller Parent or an Affiliate [*] or [*] (as applicable), and/or [*] by [*], as applicable, [*] Seller Parent or its Affiliates (any [*], a "[*]")], and Seller Parent or its Affiliates [*] or [*] or [*] with respect to the [*] and [*] of such [*] (each a [*]), then this Agreement shall [*] or [*], as applicable, [*] (e.g., the [*] in respect of [*] would result in [*]), and such [*] shall be deemed to be part of the [*]. If Seller Parent or an Affiliate [*] and Seller Parent or such Affiliate [*] or [*] (each a "[*]") prior to the [*], then on or before [*] of such [*], the parties shall [*] or [*], as applicable, [*] (e.g., the [*] in respect of [*] would result in [*]). For purposes of the foregoing, with respect to [*] that are [*], a [*] will consist of the [*] under a [*] or by Seller under a [*], but only to the extent Seller or its Affiliates [*] or [*] under the [*] or the [*] (as applicable) prior to [*].

ARTICLE VI
THE CLOSING; CONDITIONS TO CLOSING

Section 6.01 Closing.

Subject to the closing conditions set forth in Sections 6.02 and 6.03, the closing of the transactions contemplated under this Agreement (the "Closing") shall take place on the date hereof, or such later date as may be agreed upon by Purchaser and Seller (such date, the "Closing Date").

Section 6.02 Conditions Applicable to Purchaser in Closing.

The obligations of Purchaser to effect the Closing, including the requirement to pay the Purchase Price pursuant to Section 2.03, shall be subject to the satisfaction of each of the following conditions, as of the Closing Date, any of which may be waived by Purchaser in its sole discretion:

(a) Accuracy of Representations and Warranties . The representations and warranties of the Seller Parent set forth in the Transaction Documents shall be true, correct and complete in all material respects, as of the Closing Date.

(b) No Adverse Circumstances . There shall not have occurred or be continuing any event or circumstance described in the definition of a Material Adverse Effect.

(c) Litigation. No action, suit, litigation, proceeding or investigation shall have been instituted, be pending or, to the Knowledge of Seller and its Affiliates , threatened (i) challenging or seeking to make illegal, to delay or otherwise directly or indirectly to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain damages in connection with the transactions contemplated by this Agreement, or (ii) seeking to restrain or prohibit Purchaser's acquisition or future receipt of the Purchased Royalty Interests.

(d) Officer's Certificate. Purchaser shall have received a certificate of the President of Seller pursuant to which such officer certifies that the conditions set forth in Sections 6.02(a), (b) and (c) shall have been satisfied in all material respects.

(e) Bill of Sale. A Bill of Sale substantially in the form set forth in **Exhibit A** shall have been executed and delivered by Seller to Purchaser, and Purchaser shall have received the same.

(f) Legal Opinion . Purchaser shall have received the opinions of Goodwin Procter LLP, counsel to Seller, in the form set forth in **Exhibit H** .

(g) Corporate Documents of Seller and Seller Parent . Purchaser shall have received certificates of an executive officer of each of Seller and Seller Parent (the statements made in which shall be true and correct on and as of the Closing Date): (i) attaching copies, certified by such officer as true and complete, of the certificate of formation or incorporation and the operating agreement or by-laws, as applicable, of Seller or Seller Parent (as applicable); (ii) attaching copies, certified by such officer as true and complete, of resolutions of the board of directors or Sole Manager, as applicable, of Seller or Seller Parent (as applicable) authorizing and approving the execution, delivery and performance by Seller or Seller Parent (as applicable) of the Transaction Documents and the transactions contemplated herein and therein; (iii) setting forth the incumbency of the officer or officers of Seller or Seller Parent (as applicable) who have executed and delivered the Transaction Documents including therein a signature specimen of each officer or officers; and (iv) attaching copies, certified by such officer as true and complete, of a certificate of the appropriate Governmental Authority of Seller's or Seller Parent's (as applicable) jurisdiction of incorporation, stating that such party is in good standing under the laws of such jurisdiction.

(h) Covenants. (i) Seller shall have complied in all material respects with the covenants set forth in the Transaction Documents and (ii) Seller Parent shall have complied in all material respects with the covenants set forth in the Transaction Documents to which it is a party.

(i) Financing Statements. Purchaser shall have received such other certificates, documents and financing statements as Purchaser may reasonably request, including one or more financing statements satisfactory to Purchaser to create, evidence and perfect the sale of the Purchased Royalty Interests pursuant to Section 2.01(c) and the back-up security interest granted pursuant to Section 2.01(d).

(j) Release of Liens. Seller Parent shall have received an executed and delivered authorization from HealthCare Royalty Partners III, L.P., as secured party on its own behalf and in a representative capacity for certain of its affiliates (the "Secured Party") to release the Lien of the Secured Party on the Purchased Royalty Interests pursuant to that certain Security Agreement dated January 19, 2018, by and between Seller Parent and Secured Party.

Section 6.03 Conditions Applicable to Seller in Closing.

The obligations of Seller to effect the Closing shall be subject to the satisfaction of each of the following conditions, any of which may be waived by Seller in its sole discretion:

(a) Accuracy of Representations and Warranties . The representations and warranties of Purchaser set forth in this Agreement shall be true, correct and complete as of the Closing Date in all material respects.

(b) Litigation. No action, suit, litigation, proceeding or investigation shall have been instituted, be pending or, to the actual k nowledge of Purchaser, threatened (i) challenging or seeking to make illegal, to delay or otherwise directly or indirectly to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain damages in connection with the transactions contemplated by this Agreement, or (ii) seeking to restrain or prohibit Purchaser's acquisition of the Purchased Royalty Interests.

(c) Officer's Certificate. Seller shall have received at the Closing a certificate of an authorized representative of Purchaser certifying that the conditions set forth in Sections 6.03(a), ((b)) and ((d)) have been satisfied in all respects as of the Closing Date.

(d) Covenants. Purchaser shall have complied in all material respects with the covenants set forth in the Transaction Documents.

(e) Purchase Price. Seller shall have received payment of the Purchase Price in accordance with Section 2.03.

(f) Release of Liens. Seller Parent shall have received an executed and delivered Lien release from the Secured Party.

ARTICLE VII
EXPIRATION

Section 7.01 Expiration Date.

This Agreement shall terminate six (6) months following receipt by Purchaser of all payments of the Purchased Royalty Interests to which it is entitled hereunder.

Section 7.02 Effect of Expiration.

In the event of the expiration of this Agreement pursuant to Section 7.01, this Agreement shall forthwith become void and have no effect without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, managers or members other than the provisions of this Section 7.02 and Sections 5.02, 8.01 and 8.05 hereof, which shall survive any termination as set forth in Section 8.01. Nothing contained in this Section 7.02 shall relieve any party from liability for any breach of this Agreement.

ARTICLE VIII
MISCELLANEOUS

Section 8.01 Survival.

All representations and warranties made herein and in any other Transaction Document or any closing certificates delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall continue to survive until the receipt by Purchaser of the last payment due pursuant to the terms of both the Incyte Agreement and the Merck Agreement. Notwithstanding anything in this Agreement or implied by law to the contrary, all of the agreements contained in Sections 5.02, 8.01 and 8.05 shall survive indefinitely following the execution and delivery of this Agreement and the Closing and the expiration of this Agreement.

Section 8.02 Specific Performance.

Each of the parties hereto acknowledges that the other parties will have no adequate remedy at law if it fails to perform any of its obligations under any of the Transaction Documents. In such event, each of the parties agrees that the other parties shall have the right, in addition to any other rights they may have (whether at law or in equity), to specific performance of this Agreement.

Section 8.03 Notices.

All notices, consents, waivers and communications hereunder given by any party to the other shall be in writing and delivered personally, by hand, by a recognized overnight courier, or by dispatching the same by certified or registered mail, return receipt requested, with postage prepaid, or by email (provided any notice given by email shall also be given by another method of delivery permitted by this Section 8.03), in each case addressed:

If to Purchaser:

XOMA (US) LLC
2200 Powell Street
Suite 310
Emeryville, CA 94608
Attention: Legal Department
Email: bob.maddox@xoma.com

with a copy (which shall not constitute notice) to:

Donahue Fitzgerald LLP
1999 Harrison St. 25th Floor
Oakland, California 94612
Attention: Steven K. Lee, Esq.
Email: slee@donahue.com

If to Seller Parent:

Agenus Inc.
3 Forbes Road
Lexington, MA 02421
Attention: Legal Department
Email: evan.kearns@agenusbio.com

If to Seller:

Agenus Royalty Fund, LLC
3 Forbes Road
Lexington, MA 02421
Attention: Legal Department
Email: evan.kearns@agenusbio.com

with a copy (which shall not constitute notice) to:

Goodwin Procter LLP
100 Northern Ave
Boston, MA 02210
Attention: Arthur R. McGivern, Esq.
Email: AMcGivern@goodwinlaw.com

or to such other address or addresses as Purchaser, Seller Parent or Seller may from time to time designate by notice as provided herein, except that notices of changes of address shall be effective only upon receipt. All such notices, consents, waivers and communications shall: (a) when posted by certified or registered mail, postage prepaid, return receipt requested, be effective three (3) Business Days after dispatch, unless such communication is sent trans-Atlantic, in which case they shall be deemed effective five (5) Business Days after dispatch, (b) when delivered by a recognized overnight courier or in person, be effective upon receipt when hand delivered or (c) on the date sent by e-mail of a PDF document if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, and followed by a transmission pursuant to another method of delivery permitted by this Section 8.03.

Section 8.04 Successors and Assigns.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither Seller Party shall be entitled to assign any of their obligations and rights under the Transaction Documents to which such Seller Party is a party without the prior written consent of Purchaser. Purchaser may assign any of its obligations and rights under the Transaction Documents, without restriction and without the consent of Seller; provided that, notwithstanding any assignment pursuant to this Section 8.04, Purchaser shall remain obligated with respect to the payment of the Purchase Price in connection with the Closing.

Section 8.05 Indemnification.

(a) Seller Parent hereby agrees to indemnify and hold Purchaser and its Affiliates and any of their respective partners, directors, managers, members, officers, employees and agents (each a "Purchaser Indemnified Party") harmless from and against any and all Losses incurred or suffered by any Purchaser Indemnified Party arising out of (i) any breach of any representation, warranty or certification made by a Seller Party in any of the Transaction Documents to which such Seller Party is a party or certificates given by such Seller Party in writing pursuant hereto or thereto, (ii) any breach of or default under any covenant or agreement by a Seller Party pursuant to any Transaction Document to which such Seller Party is a party; (iii) any Excluded Liabilities and Obligations, (iv) any breach of any representation, warranty or certification made by a Seller Party in any of the Transaction Documents to which such Seller Party is party or certificates given by a Seller Party to Purchaser in writing pursuant to any Transaction Document to which such Seller Party is a party, to the extent directly or indirectly related to the Purchased Royalty Interests or the Purchaser's interest therein or (v) any breach of or default under any covenant or agreement by a Seller Party pursuant to any Transaction Document to which such Seller Party is party, to the extent directly or indirectly related to the Purchased Royalty Interests or Purchaser's interest therein; provided that the foregoing shall exclude any indemnification to any Purchaser Indemnified Party (i) that results from the gross negligence or willful misconduct of such Purchaser Indemnified Party, or (ii) to the extent resulting from acts or omissions of Seller Parent or any of its Affiliates based upon the written instructions from any Purchaser Indemnified Party.

(b) Purchaser hereby agrees to indemnify and hold Seller Parent, its Affiliates and any of their respective partners, directors, managers, officers, employees and agents (each a "Seller Indemnified Party ") harmless from and against any and all Losses incurred or suffered by a Seller Indemnified Party arising out of any breach of any representation, warranty or certification made by Purchaser in any of the Transaction Documents or certificates given by Purchaser in writing pursuant hereto or thereto or any breach of or default under any covenant or agreement by Purchaser pursuant to any Transaction Document, to the extent any such Losses are not subject to indemnification by Seller hereunder; provided, however, that the foregoing shall exclude any indemnification to any Seller Indemnified Party (i) that results from the gross negligence or willful misconduct of such Seller Indemnified Party, or (ii) to the extent resulting from acts or omissions of Purchaser or any of its Affiliates based upon the written instructions from any Seller Indemnified Party.

(c) If any claim, demand, action or proceeding (including any investigation by any Governmental Authority) shall be brought or alleged against an indemnified party in respect of which indemnity is to be sought against an indemnifying party pursuant to the preceding paragraphs, the indemnified party shall, promptly after receipt of notice of the commencement of any such claim, demand, action or proceeding, notify the indemnifying party in writing of the commencement of such claim, demand, action or proceeding, enclosing a copy of all papers served, if any, provided that, the omission to so notify such indemnifying party will not relieve the indemnifying party from any liability that it may have to any indemnified party under the foregoing provisions of this Section 8.05 unless, and only to the extent that, such omission results in the forfeiture of, or have a material adverse effect on the exercise or prosecution of, substantive rights or defenses by the indemnifying party. In case any such action is brought against an indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish and provided that the indemnifying party acknowledges in writing to the indemnified party that it would have an indemnity obligation pursuant to this Section 8.05 with respect to such action, to assume and control the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 8.05 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. In any such proceeding, an indemnified party shall have the right to retain its own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party; provided that the indemnifying party shall be responsible for the indemnified party's reasonable fees and expenses of such counsel if (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the indemnifying party has assumed the defense of such proceeding and has failed within a reasonable time to retain counsel reasonably satisfactory to such indemnified party or (iii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between them based on the advice of counsel to the indemnified party. It is agreed that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate law firm (in addition to local counsel where necessary) for all such indemnified

parties. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any indemnifiable Loss under this Agreement by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional written release of such indemnified party, in form and substance reasonably satisfactory to the indemnified party, from all liability on claims that are the subject matter of such claim or proceeding, (ii) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of any indemnified party and (iii) does not impose any continuing material obligation or restrictions on any indemnified party.

(d) No claim for indemnification hereunder for breach of any representations or warranties contained in any Transaction Document may be made after the expiration of the survival period applicable to such representation or warranty; provided that any written claim for breach thereof made prior to such expiration date and delivered to the party against whom such indemnification is sought shall survive thereafter with respect to such claim.

(e) Following the date first written above, except in the case of fraud or intentional breach, the indemnification afforded by this Section 8.05 shall be the sole and exclusive remedy for any and all Losses sustained or incurred by a party hereto in connection with the transactions contemplated by the Transaction Documents, including with respect to any breach of any representation, warranty or certification made by a party hereto in any of the Transaction Documents or certificates given by a party in writing pursuant hereto or thereto or any breach of or default under any covenant or agreement by a party pursuant to any Transaction Document. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR PROVIDED FOR UNDER APPLICABLE LAW, EXCEPT AS PROVIDED FOR IN THIS SECTION 8.05 AND FOR INSTANCES OF ACTUAL FRAUD OR WILLFUL MISCONDUCT, NONE OF THE PARTIES HERETO SHALL BE LIABLE TO ANY OTHER PARTY HERETO OR ANY PERSON, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES OR LOST PROFITS RELATING TO THE BREACH OR ALLEGED BREACH HEREOF, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAVE BEEN DISCLOSED TO ANY PARTY HERETO IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN. Notwithstanding the foregoing, in the event of any breach or failure in performance of any covenant or agreement contained in any Transaction Document, the non-breaching party shall be entitled to seek specific performance, injunctive or other equitable relief. For clarity, neither party shall have any right to terminate this Agreement or any other Transaction Document as a result of any breach by the other party hereof or thereof, but instead shall have the right to seek indemnification under this Section 8.05 and such specific performance.

(f) Other than with respect to a breach of Sections 5.04, 5.08 or 5.09, or any fraud or intentional breach, in no event shall the maximum aggregate amount of Losses that may be recovered by the Purchaser Indemnified Parties under this Agreement pursuant to Section 8.05 [*].

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Section 8.06 Independent Nature of Relationship.

(a) The relationship between the Seller Parties, on the one hand, and Purchaser is solely that of sellers and purchaser, and neither Purchaser nor Seller has any fiduciary or other special relationship with the other or any of their respective Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute the Seller Parties and Purchaser as a partnership, an association, a joint venture or other kind of entity or legal form. Any party shall not refer other party as a "partner" or the relationship as a "partnership" or "joint venture".

(b) No officer or employee of Purchaser will be located at the premises of Seller Parent or any of its Affiliates. No officer, manager or employee of Purchaser shall engage in any commercial activity with Seller Parent or any of its Affiliates other than as contemplated herein and in the other Transaction Documents.

(c) Seller Parent and/or any of its Affiliates shall not at any time obligate Purchaser, or impose on Purchaser any obligation, in any manner or respect to any Person not a party hereto.

Section 8.07 Tax.

(a) For U. S, federal, state and local income tax purposes, Seller and Purchaser shall treat the transactions contemplated by the Transaction Documents as a sale of the Purchased Royalty Interests. The parties hereto agree not to take any position that is inconsistent with the provisions of this Section 8.07(a) on any tax return or in any audit or other administrative or judicial proceeding unless otherwise required by law (including a good faith resolute of any tax audit). If there is an inquiry by any Governmental Authority of Purchaser or Seller related to this Section 8.07(a), Seller and Purchaser shall cooperate in responding to such inquiry in a reasonable manner consistent with this Section 8.07(a) .

(b) To the extent any amount is withheld at source from a payment made pursuant to the Incyte Agreement or the Merck Agreement, as applicable, such withheld amount shall for all purposes of this Agreement be treated as paid to Seller and Purchaser on a pro rata basis in accordance with each of the party's underlying ownership interest in each such payment (taking into account any amounts withheld); e.g., with respect to Purchaser, amounts so withheld shall be attributed to Purchaser, and deemed paid to Purchaser, in accordance with the Purchased Royalty Interests. Any amounts withheld pursuant to this Section 8.07(b) attributable to Purchaser shall be credited for the account of Purchaser. If there is an inquiry by any Governmental Authority of Purchaser related to this Section 8.07, Seller shall cooperate with Purchaser in responding to such inquiry in a reasonable manner consistent with this Section 8.07. Neither party shall have any obligation to gross-up or otherwise pay the other party any amounts with respect to source withholding. All amounts withheld at source as described herein shall for all purposes of this Agreement be deemed to have been received by the party to which they are attributed as provided above or to which the payment subject to such withholding was made.

(c) Any and all payments from Seller to Purchaser under this Agreement shall be made without any deduction or withholding of any tax except as required by applicable law, provided that Seller shall not make any deduction or withholding of any U.S. tax as long as Purchaser has delivered to Seller a properly executed IRS Form W-9 or any other applicable or successor forms prior to the payment and that as a result withholding is not required by applicable law. If any withholding or deduction is required at source from a payment made pursuant to the Incyte Agreement, the Merck Agreement or this Agreement, Seller and Purchaser shall take commercially reasonable measures and cooperate with Incyte or Merck, as applicable, to obtain any available reduction or exemption from such tax.

Section 8.08 Entire Agreement.

This Agreement, together with the Exhibits and Schedule hereto (which are incorporated herein by reference), and the other Transaction Documents, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein (or in the Exhibits, Schedule or other Transaction Documents) has been made or relied upon by either party hereto. None of this Agreement, nor any provision hereof, is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 8.09 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

Section 8.10 Severability.

If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

Section 8.11 Counterparts; Effectiveness.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Any counterpart may be executed by electronic signature and such electronic signature shall be deemed an original.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Section 8.12 Amendments; No Waivers.

(a) This Agreement or any term or provision hereof may not be amended, changed or modified except with the written consent of the parties hereto. No waiver of any right hereunder shall be effective unless such waiver is signed in writing by the party against whom such waiver is sought to be enforced.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

AGENUS INC.

By: _____
Name:
Title:

AGENUS ROYALTY FUND, LLC

By: _____
Name:
Title:

[Signature Page to Royalty Purchase Agreement]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

XOMA (US) LLC

By: _____
Name: Jim Neal
Title: CEO

[Signature Page to Royalty Purchase Agreement]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

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) and 15d-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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ JAMES R. NEAL

Date: November 7, 2018

James R. Neal
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Thomas Burns, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XOMA Corporation;

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

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

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2018

/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, 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 period endedSeptember 30, 2018, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report 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 7th day of November 2018.

/s/ JAMES R. NEAL
James R. Neal
Chief Executive Officer

/s/ THOMAS BURNS
Thomas Burns
Senior Vice President, Finance, and Chief Financial Officer

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.