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 June 30, 2019

OR

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

For the transition period from _____to_____

Commission File No. 0-14710

XOMA Corporation

(Exact name of registrant as specified in its charter)

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

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

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

Title of each class:	**Trading symbol(s):**	**Name of each exchange on which registered:**
Common Stock, $0.0075 par value	XOMA	The Nasdaq Stock Market LLC

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

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

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

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

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

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

As of August 2, 2019, the registrant had 8,727,617 shares of common stock, $0.0075 par value per share, outstanding.

XOMA CORPORATION
FORM 10-Q
TABLE OF CONTENTS

PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

XOMA CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	June 30, 2019 (unaudited)	December 31, 2018 (Note 1)
ASSETS		
Current assets:		
Cash	$ 42,327	$ 45,780
Trade and other receivables	2,577	1,468
Prepaid expenses and other current assets	619	378
Total current assets	45,523	47,626
Property and equipment, net	46	59
Operating lease right-of-use assets	6,417	—
Long-term royalty receivables	24,375	15,000
Long-term equity securities	1,138	392
Other assets	835	708
Total assets	$ 78,334	$ 63,785
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,369	$ 1,244
Accrued and other liabilities	615	2,382
Contingent consideration under royalty purchase agreements	3,075	—
Operating lease liabilities	2,297	—
Unearned revenue recognized under units-of-revenue method	851	490
Contract liabilities	798	798
Current portion of long-term debt	2,675	789
Total current liabilities	11,680	5,703
Unearned revenue recognized under units-of-revenue method – long-term	16,214	17,017
Long-term debt	23,348	21,690
Long-term operating lease liabilities	5,806	—
Other liabilities – long-term	294	590
Total liabilities	57,342	45,000
Commitments and Contingencies (Note 11)		
Stockholders' equity:		
Convertible preferred stock, $0.05 par value, 1,000,000 shares authorized, 6,256 shares issued and outstanding at June 30, 2019 and December 31, 2018	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 8,727,617 and 8,690,723 shares issued and outstanding at June 30, 2019 and December 31, 2018, respectively	65	65
Additional paid-in capital	1,214,168	1,211,122
Accumulated deficit	(1,193,241)	(1,192,402)
Total stockholders' equity	20,992	18,785
Total liabilities and stockholders' equity	$ 78,334	$ 63,785

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

(Note 1) The condensed consolidated balance sheet as of December 31, 2018 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, 2018.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Revenues:				
Revenue from contracts with customers	$ 625	$ 2,341	$ 8,651	$ 2,743
Revenue recognized under units-of-revenue method	337	(86)	442	(25)
Total revenues	962	2,255	9,093	2,718
Operating expenses:				
Research and development	724	376	980	808
General and administrative	4,949	4,411	10,888	9,579
Restructuring	-	459	-	459
Total operating expenses	5,673	5,246	11,868	10,846
Loss from operations	(4,711)	(2,991)	(2,775)	(8,128)
Other income (expense), net:				
Interest expense	(423)	(178)	(852)	(348)
Other income, net	1,062	1,222	2,788	2,723
Net loss and comprehensive loss	$ (4,072)	$ (1,947)	$ (839)	$ (5,753)
Basic and diluted net loss per share available to common stockholders	$ (0.47)	$ (0.23)	$ (0.10)	$ (0.69)
Weighted average shares used in computing basic and diluted net loss per share available to common stockholders	8,725	8,362	8,716	8,338

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

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

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

	Six Months Ended June 30, 2018						
	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance, December 31, 2017	5	$ —	8,249	$ 62	$ 1,184,783	$ (1,179,059)	$ 5,786
Exercise of stock options	—	—	—	—	14	—	14
Issuance of common stock related to 401(k) contribution	—	—	1	—	20	—	20
Vesting of restricted stock units	—	—	14	—	—	—	—
Stock-based compensation expense	—	—	—	—	1,416	—	1,416
Issuance of common stock	—	—	68	—	2,207	—	2,207
Net loss and comprehensive loss	—	—	—	—	—	(3,806)	(3,806)
Balance, March 31, 2018	5	—	8,332	62	1,188,440	(1,182,865)	5,637
Exercise of stock options	—	—	44	1	230	—	231
Issuance of common stock related to ESPP	—	—	1	—	22	—	22
Vesting of restricted stock units	—	—	2	—	—	—	—
Stock-based compensation expense	—	—	—	—	770	—	770
Issuance of warrants	—	—	—	—	139	—	139
Net loss and comprehensive loss	—	—	—	—	—	(1,947)	(1,947)
Balance, June 30, 2018	5	$ —	8,379	$ 63	$ 1,189,601	$ (1,184,812)	$ 4,852

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

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

	Six Months Ended June 30,	
	2019	2018
Cash flows from operating activities:		
Net loss	$ (839)	$ (5,753)
Adjustments to reconcile net loss to net cash used in operating activities:		
Fair value of Rezolute common stock shares received as consideration for license agreement	—	(955)
Stock-based compensation expense	2,739	2,186
Common stock contribution to 401(k)	102	20
Depreciation and amortization	12	15
Amortization of debt issuance costs, debt discount and final payment on debt	234	12
Loss on sublease	—	591
Non-cash lease expense	(97)	—
Change in fair value of long-term equity securities	(746)	402
Other	—	(20)
Changes in assets and liabilities:		
Trade and other receivables	(1,151)	(83)
Prepaid expenses and other assets	(368)	(193)
Accounts payable and accrued liabilities	193	(2,421)
Unearned revenue recognized under units-of-revenue method	(442)	25
Income tax payable	—	(1,637)
Other liabilities	427	623
Net cash provided by (used in) operating activities	64	(7,188)
Cash flows from investing activities:		
Payments related to purchase of royalty rights	(6,300)	—
Net cash used in investing activities	(6,300)	—
Cash flows from financing activities:		
Proceeds from issuance of common stock, net of issuance costs	17	2,331
Proceeds from exercise of options	257	481
Proceeds from issuance of long-term debt	3,000	—
Payment of preferred and common stock issuance costs	(377)	—
Debt issuance costs and loan fees	—	(181)
Principal payments – finance lease	(7)	(7)
Taxes paid related to net share settlement of equity awards	(107)	(237)
Net cash provided by financing activities	2,783	2,387
Effect of exchange rate changes on cash	—	20
Net decrease in cash	(3,453)	(4,781)
Cash at the beginning of the period	45,780	43,471
Cash at the end of the period	$ 42,327	$ 38,690
Supplemental Cash Flow Information:		
Cash paid for interest	$ 217	$ —
Cash paid for taxes	$ —	$ 1,637
Non-cash investing and financing activities:		
Interest added to principal balance on long-term debt	$ 376	$ 281
Prepaid financing cost related to issuance of common stock	$ —	$ 100
Issuance of common stock warrant under SVB loan	$ 66	$ 139
Estimated fair value of contingent consideration under the royalty purchase agreements	$ 3,075	$ —

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 therapeutic candidates derived from its unique platform of antibody technologies. Over the Company's extensive history, it built a pipeline of fully-funded programs discovered by its licensees and partners from direct use of the Company's proprietary antibody discovery platform and from product candidates it discovered and advanced prior to licensing them to licensees who assumed the responsibilities of subsequent development, regulatory approval and commercialization. Fully-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/or royalty payments. As part of the Company's royalty aggregator business model, the Company will continue to expand its pipeline of fully-funded programs by acquiring potential milestone and royalty revenue streams on additional product candidates.

Liquidity and Financial Condition

The Company has incurred significant operating losses and negative cash flows from operations since its inception. As of June 30, 2019, the Company had cash of $42.3 million. Based on the Company's current cash balance and its ability to control discretionary spending, such as royalty acquisitions, the Company has evaluated and concluded there are no conditions or events that raise substantial doubt about its ability to continue as a going concern for a period of one year following the date that these condensed consolidated financial statements are issued.

2. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions among consolidated entities were eliminated upon consolidation. The unaudited condensed consolidated financial statements were prepared in accordance with generally accepted accounting principles ("GAAP") in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. As permitted under those rules certain footnotes or other financial information can be condensed or omitted. These financial statements and related disclosures have been prepared with the assumption that users of the interim financial information have read or have access to the audited consolidated financial statements for the preceding fiscal year. Accordingly, these statements should be read in conjunction with the audited consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the U.S. Securities and Exchange Commission ("SEC") on March 7, 2019.

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

Use of Estimates

The preparation of financial statements in conformity with GAAP in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an ongoing basis, management evaluates its estimates including, but not limited to, those related to revenue recognition, long-term equity securities, debt amendments, operating lease right-of-use assets, legal contingencies, contingent consideration under royalty purchase agreements, income taxes 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 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.

Revenue Recognition

Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606") 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.

License of intellectual property

If the license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenue from non-refundable, upfront fees allocated to the license when the license is transferred to the customer and the customer is able to use and benefit from the license. For licenses that are bundled with other promises, such as transfer of related materials, process and know-how, the Company utilizes judgement to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time. Under the Company's license agreements, the nature of the combined performance obligation is the granting of licenses to the customers as the other promises are not separately identifiable in the context of the arrangement. Since the Company grants the license to a customer as it exists at the point of transfer, and is not involved in any future development or commercialization of the products related to the license, the nature of the license is a right to use the Company's intellectual property as transferred. As such, the Company recognizes revenue related to the combined performance obligation upon completion of the delivery of the related materials, process and know-how (i.e., at a point in time).

Milestone payments

At the inception of each arrangement that includes development and regulatory milestone payments, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price. ASC 606 suggests two alternatives to use when estimating the amount of variable consideration: the expected value method and the most likely amount method. Under the expected value method, an entity considers the sum of probability-weighted amounts in a range of possible consideration amounts. Under the most likely amount method, an entity considers the single most likely amount in a range of possible consideration amounts. The Company 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, such as regulatory approvals, are not considered probable of being achieved until those approvals are received. The transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis. The Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, the Company re-evaluates the probability or achievement of each such milestone and any related constraint, and if necessary, adjusts its estimates of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue and earnings in the period of adjustment.

Royalties

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

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

Sale of Future Revenue Streams

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

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

Stock-Based Compensation

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

The Company records compensation expense for service-based awards on a straight-line basis over the requisite service period, which is generally the vesting period of the award, or to the date on which retirement eligibility is achieved, if shorter. For awards with performance-based conditions, at the point that it becomes probable that the performance conditions will be met, the Company records a cumulative catch-up of the expense from the grant date to the current date, and then amortizes the remainder of the expense over the remaining service period. 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

The Company received shares of common stock from Rezolute, Inc. ("Rezolute") in April 2018 (Note 4). Equity investments in Rezolute are classified in the condensed consolidated balance sheets as long-term equity securities. The equity securities are measured at fair value, with changes in fair value recorded in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive income (loss) at each reporting period. The Company remeasures its equity investments at each reporting period until such time that the investment is sold or disposed of. If the Company sells an investment, any realized gains and losses on the sale of the securities will be recognized in the condensed consolidated statement of operations and comprehensive income (loss) in the period of sale.

Purchase of Rights to Future Milestones and Royalties

The Company has purchased rights to receive a portion of certain future developmental, regulatory and commercial sales milestones, royalties and option fees on sales of products currently in clinical development. The Company has accounted for the purchased rights as a financial asset in accordance with ASC 310, *Receivables*. The Company acquired such rights from various entities in September 2018, February 2019 and June 2019 and recorded the amount paid for these rights as long-term royalty receivables (see Note 5). In addition, the Company may be obligated to make contingent payments related to certain product development milestones, fees upon exercise of options related to future license products and sales-based milestones. The contingent payments are evaluated whether they are freestanding instruments or embedded derivatives. If freestanding instruments, the contingent payments are measured at fair value on the inception of the arrangement, subject to remeasurement to fair value each reporting period. Any changes in the estimated fair value is recorded in the condensed consolidated statement of operations and comprehensive income (loss).

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

The Company reviews any impairment indicators and changes in expected recoverability of the long-term royalty receivable asset regularly. If expected future cash flows discounted to the current period are less than the carrying value of the asset, the Company will record impairment. The impairment will be recognized by reducing the financial asset to an amount that represents the present value of the most recent estimate of cash flows.

Leases

The Company has entered into lease agreements for its corporate office facility in Emeryville, California and for additional office and laboratory facilities in Berkeley, California. Effective January 1, 2019, the Company adopted ASC Topic 842, *Leases* ("ASC 842") using the optional transition method and applied the standard only to leases that existed at that date. Under the optional transition method, the Company does not need to restate the comparative periods in transition and will continue to present financial information and disclosures for periods before January 1, 2019 in accordance with ASC Topic 840. The Company has elected the package of practical expedients allowed under ASC Topic 842, which permits the Company to account for its existing operating leases as operating leases under the new guidance, without reassessing the Company's prior conclusions about lease identification, lease classification and initial direct cost. As a result of the adoption of the new lease accounting guidance, on January 1, 2019, the Company recognized operating lease right-of-use assets of $7.4 million and operating lease liabilities of $9.2 million. The difference in the operating lease right-of-use assets and operating lease liabilities is primarily due to the carrying amount of lease-related restructuring liabilities of $1.7 million as of December 31, 2018 (see Note 8).

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

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

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

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

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

Net Income (Loss) per Share Available to Common Stockholders

Basic net income (loss) per share available to common stockholders is based on the weighted average number of shares of common stock outstanding during the period. During periods of income, the Company allocates participating securities a proportional share of net income determined by dividing total weighted average participating securities by the sum of the total weighted average number of common stock and participating securities (the "two-class method"). The Company's convertible preferred stock participates in any dividends declared by the Company on its common stock and are therefore considered to be participating securities. For the three and six months ended June 30, 2019 and 2018, the Company did not declare any dividends.

During periods of loss, the Company allocates no loss to participating securities because they have no contractual obligation to share in the losses of the Company. Diluted net income (loss) 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 income (loss) 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 and receivables are financial instruments which potentially subject the Company to concentrations of credit risk, as well as liquidity risk for certain cash equivalents.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the three months ended June 30, 2019, three partners represented 52%, 35%, and 10% of total revenues. For the six months ended June 30, 2019, one partner represented 88% of total revenue. For the three months ended June 30, 2018, two partners represented 80% and 11% of total revenues. For the six months ended June 30, 2018, two partners represented 66% and 22% of total revenues. As of June 30, 2019, one partner represented 100% of the trade receivables balance. As of December 31, 2018, two partners represented 67% and 28% of the trade receivables balance.

Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 replaced the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. ASU 2016-13 requires use of a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. ASU 2016-13 is effective for fiscal years beginning after December 15, 2019, with early adoption permitted. Adoption of the standard requires using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date to align existing credit loss methodology with the new standard. The Company will adopt ASU 2016-13 effective January 1, 2020. The Company is currently evaluating the impact of this standard on its consolidated financial statements, including accounting policies, processes, and systems, but does not expect the standard will have a material impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820) ("ASU 2018-13"), which modifies, removes and adds certain disclosure requirements on fair value measurements based on the FASB Concepts Statement, Conceptual Framework for Financial Reporting—Chapter 8: Notes to Financial Statements. The ASU is effective for the Company's interim and annual reporting periods during the year ending December 31, 2020, and all annual and interim reporting period thereafter. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of ASU 2018-13. An entity is permitted to early adopt any removed or modified disclosures upon issuance of ASU 2018-13 and delay adoption of the additional disclosures until their effective date. The Company early adopted the guidance related to removal of disclosures upon issuance of this ASU and 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.

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

3. Condensed Consolidated Financial Statements Details

Long-term Equity Securities

As of June 30, 2019 and December 31, 2018, long-term equity securities consisted of an investment in Rezolute's common stock of $1.1 million and $0.4 million, respectively (see Note 4). The Company recognized gains of $31,000 and $0.7 million due to the change in fair value of its investment in Rezolute's common stock in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive loss for the three and six months ended June 30, 2019, respectively, and $0.4 million for the three and six months ended June 30, 2018.

Accrued and Other Liabilities

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

	June 30, 2019	December 31, 2018
Accrued legal and accounting fees	$ 169	$ 396
Accrued restructuring	—	1,361
Accrued incentive compensation	162	152
Accrued payroll and other benefits	107	155
Other	177	318
Total	$ 615	$ 2,382

Net Loss Per Share Available to Common Stockholders

Potentially dilutive securities are excluded from the calculation of diluted net loss 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 per share available to common stockholders (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Convertible preferred stock	6,256	5,003	6,256	5,003
Common stock options and RSUs	1,934	1,625	1,861	1,635
Warrants for common stock	28	21	27	19
Total	8,218	6,649	8,144	6,657

4. Licensing and Other Arrangements

Novartis – Gevokizumab (VPM087) and IL-1 Beta

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

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

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

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

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

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

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

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of June 30, 2019. 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 June 30, 2019 and December 31, 2018, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. In addition, the Company did not recognize any revenue related to this arrangement during the three and six months ended June 30, 2019 and 2018.

Novartis International – Anti-TGFβ Antibody (NIS793)

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

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

During the year ended December 31, 2017, Novartis International achieved a clinical development milestone pursuant to the License Agreement and, as a result, the Company earned a $10.0 million milestone payment which was recognized as license fees in the consolidated statement of operations and comprehensive income. As of June 30, 2019, the Company is eligible to receive up to a total of $470.0 million in development, regulatory and commercial milestones under the anti-TGFB anti-body agreement.

The Company concluded that the development and regulatory milestone payments are solely dependent on Novartis' performance and achievement of the specified events. The Company determined that it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the remaining development and regulatory milestones are fully constrained and excluded from the transaction price as of June 30, 2019. 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 June 30, 2019 and December 31, 2018, there were no contract assets or contract liabilities related to this arrangement. 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.

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.

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

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

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

In March 2018, the Company and Rezolute amended the license agreement and common stock purchase agreement. Pursuant to the as-amended terms of the license agreement and common stock purchase agreement, the Company is eligible to receive $6.0 million in cash, $8.5 million of Rezolute's common stock, and 7,000,000 shares of Rezolute's common stock, contingent on the completion of Rezolute's financing activities. Further, in the event that Rezolute 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 $8.5 million divided by the weighted average of the closing bid and ask prices or the average closing prices of Rezolute's common stock on the ten-day trading period prior to March 31, 2019. Finally, in the event that Rezolute is unable to complete a Qualified Financing by March 31, 2020, the Company is eligible to receive $15.0 million in cash in order for Rezolute to maintain the license. Under the common stock purchase agreement, Rezolute granted the Company the right and option to sell the greater of (i) 5,000,000 shares of common stock or (ii) one third of the aggregate shares held by the Company upon failure by Rezolute to list its shares of its common stock on the Nasdaq Stock Market or a similar national exchange on or prior to December 31, 2018.

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

Rezolute completed the Interim Financing Closing and the Initial Closing financing activities, as defined in the common stock purchase agreement, during the first and second quarter of 2018, respectively. As a result, XOMA received 8,093,010 shares of Rezolute's common stock and cash of $0.5 million in April 2018. Under the license agreement, XOMA was also entitled to receive $0.3 million of reimbursable technology transfer expenses from Rezolute. The Company concluded that the payment associated with the Initial Closing 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 license agreement and common stock purchase 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 license to RZ358, the transfer of RZ358 materials and product data/filing, and the transfer of process and know-how related to RZ358, which were determined to represent one combined performance obligation. The Company determined that the Additional Product Option was not an option with material right because there was no upfront consideration to the Company that would result to an incremental discount for the future opt in payments. Therefore, the Company concluded that the Additional Product Option was not a performance obligation. On June 1, 2019, Rezolute's right to the Additional Product Option expired unexercised.

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

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 June 30, 2019 and December 31, 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.

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

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

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

As of March 31, 2019, Rezolute completed all financing activities, as defined in the license agreement and common stock purchase agreement, and the Company is eligible to receive $8.5 million in future cash payments through September 2020 (in addition to any clinical, regulatory and annual net sales milestone payments and royalties). The Company concluded that the Future Cash Payments are dependent on Rezolute's ability to raise additional capital through future financing activities. The Company applied the variable consideration constraint to the Future Cash Payments and determined that it is probable that a significant revenue reversal will not occur in future periods for only $2.5 million of the total amount. During the six months ended June 30, 2019, the Company recognized $8.0 million as revenue, which consisted of the $5.5 million consideration due upon the Qualified Financing event and $2.5 million of the Future Cash Payments. As of June 30, 2019, and December 31, 2018, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized. As of June 30, 2019, the Company has an outstanding receivable of $2.5 million representing its original estimate of the Future Cash Payments expected to be received from Rezolute. As of June 30, 2019, the Company re-assessed the Future Cash Payments and determined that no events resulted in a revision of the original estimate and a significant revenue reversal is not probable to occur for the $2.5 million consistent with the previous quarter.

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 condensed consolidated balance sheets as of June 30, 2019 and December 31, 2018.

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. Based on actual sales, both the 2017 and 2018 sales milestones were not achieved. The Company remains eligible to receive $2.0 million if the specified net sales milestone is achieved in 2019. Under the second Acquisition Agreement entered into in December 2016, 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-revenue method over the life of the license agreements because of the Company's limited continuing involvement in the Acquisition Agreements. Such limited continuing involvement is related to the Company's undertaking to cooperate with HCRP in the event of litigation or a dispute related to the license agreements. Because the transaction was structured as a non-cancellable sale, the Company does not have significant continuing involvement in the generation of the cash flows due to HCRP and there are no guaranteed rates of return to HCRP, the Company recorded the total proceeds of $18.0 million as unearned revenue recognized under units-of-revenue method. The Company allocated the total proceeds between the two 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. During the third quarter of 2018, the Shire product underlying the Dyax Corp. license agreement was approved, and the Company began recognizing revenue under the units-of-revenue method due to sales of the approved product.

The Company recognized $0.3 million and $0.4 million as revenue under units-of-revenue method under these arrangements during the three and six months ended June 30, 2019, respectively. During the three and six months ended June 30, 2018, the Company recognized $43,000 and $0.2 million, respectively, of revenue under the units-of-revenue method. Due to lower than projected product sales, the Company reversed revenue recognized in prior periods under the units-of-revenue method under these arrangements by $0.1 million and $0.2 million during the three and six months ended June 30, 2018, respectively. The change in estimate of product sales resulted in net revenue of $(86,000) and $(25,000) during the three and six months ended June 30, 2018, respectively. As of June 30, 2019, the current and non-current portion of the remaining unearned revenue recognized under units-of-revenue method was $0.9 million and $16.2 million, respectively. As of December 31, 2018, the Company classified $0.5 million and $17.0 million as current and non-current unearned revenue recognized under units-of-revenue method, respectively.

5. Royalty Purchase Agreements

Agenus Royalty Purchase Agreement

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

In addition, the Company purchased from Agenus the right to receive 33% of the future royalties on 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 Agenus Royalty Purchase Agreement, the Company's share in future potential development, regulatory and commercial milestones is up to $59.5 million. There is no limit on the amount of future royalties on sales that the Company may receive under the agreements.

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

As of June 30, 2019 and December 31, 2018, there were no changes to the previously recorded $15.0 million long-term royalty receivables in the condensed consolidated balance sheets. The Company continues to asses that no payments are probable to be received under this agreement in the near term. Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment of $15.0 million has been fully collected. No impairment was recorded as of June 30, 2019 and December 31, 2018.

Bioasis Royalty Purchase Agreement

On February 25, 2019, the Company entered into a Royalty Purchase Agreement (the "Bioasis Royalty Purchase Agreement") with Bioasis Technologies Inc. and certain affiliates (collectively "Bioasis"). Under the Bioasis Royalty Purchase Agreement, the

Company purchased potential future milestone and royalty rights from Bioasis for product candidates that are being developed pursuant to a license agreement between Bioasis and Prothena Biosciences Limited. In addition, the Company was granted options to purchase a 1% royalty right on the next two license agreements entered into between Bioasis and third-party licensees subject to certain payments and conditions as well as a right of first negotiation on subsequent Bioasis license agreements with third parties. Upon exercise of the option related to the second license agreement executed by Bioasis, the Company may be obligated to pay up to $0.3 million per licensed product. Upon exercise of the option related to the third license agreement executed by Bioasis, the Company may be obligated to pay up to $0.4 million per licensed product.

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

At the inception of the agreement, the Company recorded $0.4 million as long-term royalty receivables in its condensed consolidated balance sheet, including the estimated fair value of the Bioasis Contingent Consideration of $0.1 million. Future changes in the estimated fair value of the contingent consideration will be recognized in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive loss. As of June 30, 2019, there was no change in the fair value of the contingent consideration from its initial value and no amounts were paid during the three months ended June 30, 2019.

Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment has been fully collected. No impairment was recorded as of June 30, 2019.

Royalty Purchase Agreement with Aronora, Inc.

On April 7, 2019, the Company entered into a Royalty Purchase Agreement (the "Aronora Royalty Purchase Agreement") with Aronora, Inc. ("Aronora"), which closed on June 26, 2019. Under the Aronora Royalty Purchase Agreement, the Company purchased from Aronora the right to receive future royalties and a portion of upfront, milestone, and option payments (the "Non-Royalties") related to five anti-thrombotic hematology drug candidates. Three candidates are subject to Aronora's collaboration with Bayer Pharma AG ("Bayer") (the "Bayer Products"), including one which is subject to an exclusive license option by Bayer. The Company will receive 100% of future royalties and 10% of future Non-Royalties from these Bayer Products. The other two candidates are unpartnered (the "non-Bayer Products") for which the Company will receive low-single digit percentage of net sales and 10% of Non-Royalties. The future payment percentage for Non-Royalties will be reduced from 10% to 5% upon the Company's receipt of two times the total cumulative amount of consideration paid by the Company to Aronora.

Under the terms of the Aronora Royalty Purchase Agreement, the Company paid Aronora a $6.0 million upfront payment at the close of the transaction. The Company financed $3.0 million of the upfront payment with a term loan under its Loan and Security Agreement with SVB (see Note 9). The Company will make a contingent future cash payment of $1.0 million for each of the three Bayer Products that are active on September 1, 2019 (up to a total of $3.0 million, the "Aronora Contingent Consideration"). Pursuant to the Aronora Royalty Purchase Agreement, if the Company were to receive $250.0 million in cumulative royalties on net sales per product, the Company would be required to pay associated tiered milestone payments to Aronora in an aggregate amount of up to $85.0 million per product (the "Royalty Milestones"). The Royalty Milestones are paid based upon various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. Royalties per product in excess of $250.0 million are retained by the Company.

At the inception of the agreement, the Company recorded $9.0 million as long-term royalty receivables in its condensed consolidated balance sheet, including the estimated fair value of the contingent consideration of $3.0 million for the Aronora Contingent Consideration. Future changes in the estimated fair value of the Aronora Contingent Consideration will be recognized in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive loss. As of June 30, 2019, there was no change in the fair value of the contingent consideration from its initial value. As the Company receives royalties from Aronora for a product, the Company will recognize the liability for future Royalty Milestones for such product when probable and estimable.

Under the cost recovery method, the Company does not expect to recognize any income related to milestones and royalties received until the investment has been fully collected. No impairment was recorded as of June 30, 2019.

6. Fair Value Measurements

The Company records its financial assets and liabilities at fair value. The carrying amounts of certain of the Company's financial instruments, including cash, trade receivables 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 June 30, 2019 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Long-term equity securities	$ —	$ —	$ 1,138	$ 1,138
Liabilities:				
Contingent consideration	$ —	$ —	$ 3,075	$ 3,075

	Fair Value Measurements at December 31, 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	$ —	$ —	$ 392	$ 392

During the three-month period ended June 30, 2019, there were no transfers between Level 1, Level 2, or Level 3 assets reported at fair value on a recurring basis.

Long-Term Equity Securities

The following table provides a summary of changes in the estimated fair value of the Company's Level 3 financial assets for the six months ended June 30, 2019 (in thousands):

Balance at December 31, 2018	$ 392
Change in fair value	746
Balance at June 30, 2019	$ 1,138

The equity securities consisted of an investment in Rezolute's common stock and are classified as long-term assets on the condensed consolidated balance sheets as of June 30, 2019 and December 31, 2018. The changes in fair value during the periods are recorded in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive loss.

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

The estimated fair value of the equity securities was calculated based on the following assumptions as of June 30, 2019:

Closing common stock price on the Over-the-counter (OTC) exchange	$	0.20
Tranche 1:		
Discount for lack of marketability		20 %
Estimated time to liquidity of shares		0.75
Tranche 2:		
Discount for lack of marketability		33 %
Estimated time to liquidity of shares		1.75

As of December 31, 2018, 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 December 31, 2018:

Discount for lack of marketability	35 %
Estimated time to liquidity of shares	1.45 years
Scenario probabilities	
Liquidation	20 %
Near-term sale	5 %
Near-term financing	75 %

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

Contingent Consideration

The estimated fair value of the contingent consideration liability at the inception of the Bioasis Royalty Purchase Agreement represents the future consideration that is contingent upon the achievement of specified development milestones for a product candidate. The fair value measurement is based on significant Level 3 inputs such as anticipated timelines and probability of achieving development milestones of each licensed product candidate. Changes in the fair value of the liability for contingent consideration will be recorded in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive income (loss) until settlement. As of June 30, 2019, there were no changes in the estimated fair value of the contingent consideration from its initial value of $0.1 million.

The estimated fair value of the contingent consideration liability at the inception of the Aronora Royalty Purchase Agreement represents the future consideration that is contingent upon the active status of Bayer Product programs on September 1, 2019. The fair value measurement for the contingent consideration is based on significant Level 3 inputs such as management's expectation for the success and development of each of the products. Changes in the fair value of the liability for contingent consideration will be recorded in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive income (loss) until settlement. As of June 30, 2019, there were no changes in the estimated fair value of the contingent consideration from its initial value of $3.0 million.

Debt

The estimated fair value of the Company's outstanding debt is estimated using the net present value of the payments, discounted at an interest rate that is consistent with market interest rates, which is a Level 2 input. The carrying amount and the estimated fair value of the Company's outstanding long-term debt at June 30, 2019, and December 31, 2018, are as follows (in thousands):

	June 30, 2019		December 31, 2018	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Novartis note	$ 15,569	$ 15,384	$ 15,193	$ 14,825
SVB Loans	10,454	10,454	7,286	7,281
Total	$ 26,023	$ 25,838	$ 22,479	$ 22,106

7. Dispositions

On November 4, 2015, XOMA and Ology Bioservices, Inc. ("Ology Bioservices") entered into an asset purchase agreement under which Ology Bioservices agreed to acquire XOMA's biodefense business 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. 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. Based on the payment terms pursuant to the amended Ology Bioservices License Agreement, the Company was entitled to receive cash consideration in aggregate of $4.6 million, all of which was received as of December 31, 2018. No further payments remain under the agreement, but the Company is still eligible to receive royalties in the future.

The Company received $1.0 million and $0.2 million during the three and six months ended June 30, 2018, respectively, which was recognized as other income, net in the condensed consolidated statements of operations and comprehensive loss.

8. Restructuring Charges

On December 19, 2016, the Board of Directors approved a restructuring of its business based on its decision to focus the Company's efforts on clinical development, with an initial focus on the X358 clinical programs In early 2017, the Company further revised its strategy to prioritize out-licensing activities and further curtail research and development spending. The restructuring included a reduction in force in which the Company terminated a total of 62 employees. Charges related to these initiatives were complete by the end of fiscal year 2017.

Prior to 2017, the Company's operations were located in two buildings in Berkeley, California. Due to the restructuring activity and reduction in headcount, the Company determined that it did not need the building space in Berkeley, California and consolidated all of its personnel in a new office facility in Emeryville, California. During the year ended December 31, 2018, the Company completely vacated both of its leased facilities in Berkeley, California and subleased the space to subtenants. In connection with vacating this space, the Company recorded a discounted lease-related restructuring liability, 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. 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 for the three and six months ended June 30, 2018. In addition, 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 statement of operations and comprehensive loss during the three months ended June 30, 2018 (see Note 11).

As of December 31, 2018, the Company classified the current portion of the combined lease-related liabilities of $1.4 million within accrued and other liabilities and the non-current portion of $0.3 million within long-term other liabilities in its consolidated balance sheet. Upon adoption of ASC 842, the Company consolidated all its lease-related liabilities in the condensed consolidated balance sheet as of January 1, 2019 and reported as operating lease liabilities (see Note 2).

During the three and six months ended June 30, 2019, no lease-related restructuring charges were recognized in the condensed consolidated statements of operations and comprehensive loss. During the three and six months ended June 30, 2018, the Company recorded $0.5 million of restructuring costs in its condensed consolidated statements of operations and comprehensive loss.

9. Long-Term Debt

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"). 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.

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 fair value of the warrant issued to SVB was determined using the Black-Scholes Model and was estimated to be $0.1 million. In addition, the Company incurred debt issuance costs of $0.2 million in connection with the Loan Agreement.

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

As of June 30, 2019, both warrants are outstanding. In addition, both warrants may be exercised on a cashless basis and are exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of the Company.

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

In June 2019, a second Term Loan Advance was drawn, and the Company borrowed advances of $3.0 million under the Loan Agreement in connection with the Aronora Royalty Purchase Agreement (see Note 5). The Company recorded a discount of $45,000 against the debt, which is being amortized to interest expense over the term of the Term Loan Advance using the effective interest method.

The Company recorded $0.1 million and $0.2 million of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three and six months ended June 30, 2019, respectively.

As of June 30, 2019, the carrying value of the debt under the Loan Agreement was $10.5 million. Of this amount, $2.7 million is classified as current portion of long-term debt and $7.8 million is classified as long-term debt on the condensed consolidated balance sheet. As of December 31, 2018, the carrying value of the debt under the Loan Agreement was $7.3 million. Of this amount, $0.8 million was classified as current portion of long-term debt and $6.5 million was classified as long-term debt on the consolidated balance sheet.

Novartis Note

In May 2005, the Company executed a secured note agreement (the "Note Agreement") with Novartis. 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 4.22% at June 30, 2019 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") to extend the maturity date of the note from September 30, 2015 to September 30, 2020, and to eliminate 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 to further extend the maturity date of the Secured Note Amendment from September 30, 2020 to September 30, 2022.

As of June 30, 2019 and December 31, 2018, the outstanding principal balance under the Secured Note Amendment was $15.6 million and $15.2 million, respectively, and was included in long-term debt in the accompanying condensed consolidated balance sheets.

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 relates to the following debt instruments (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
SVB loans	$ 236	$ 12	$ 477	$ 12
Novartis note	186	144	372	283
Other	1	22	3	53
Total interest expense	$ 423	$ 178	$ 852	$ 348

10. Common Stock Warrants

As of June 30, 2019 and December 31, 2018, the following common stock warrants were outstanding:

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	June 30, 2019	December 31, 2018
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	6,332
March 2019	March 2029	Stockholders' equity	$ 14.71	4,845	—
				28,489	23,644

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 $7.5 million have not been recorded on the accompanying condensed consolidated balance sheets. The Company is unable to determine precisely when and if payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties.

Contingent Consideration

Pursuant to the Company's royalty purchase agreements with Bioasis and Aronora, the Company has committed to pay the Bioasis Contingent Consideration, the Aronora Contingent Consideration and the Royalty Milestones. The Company recorded $0.1 million and $3.0 million for the Bioasis Contingent Consideration and the Aronora Contingent Consideration, respectively, which represent the estimated fair value of these potential future payments at the inception of the agreements. These contingent consideration payments are remeasured at fair value at each reporting period, with changes in fair value recorded in other income (expense), net. The liability for future Royalty Milestones will be recorded when the amounts by product are estimable and probable.

Lease Agreements

The Company leases two facilities in Berkeley, California under operating leases that have a remaining lease term ranging from two to four years. The Company also leases one facility in Emeryville, California under an operating lease that expires in February 2023. The Emeryville lease contains both an option to early terminate the lease and an option to extend the lease for an additional term, however, the Company is not reasonably assured to exercise either option. During 2018, the Company completely vacated both of its leased facilities in Berkeley, California and consolidated all of its personnel in the office facility in Emeryville, California. The Company subleased the leased space in the vacated buildings to four subtenants as of June 30, 2019. As of January 1, 2019, the Company recognized right-of-use assets and lease liabilities for all three operating leases.

The maturity of the Company's operating lease liabilities as of June 30, 2019 is as follows (in thousands):

Undiscounted lease payments	Operating Leases
2019 (excluding the six months ended June 30, 2019)	$ 1,321
2020	2,736
2021	2,268
2022	1,943
2023	620
Thereafter	—
Total undiscounted lease payments	8,888
Present value adjustment	(785)
Total net lease liabilities	$ 8,103

The Company's future undiscounted lease payments under operating leases (as defined by prior guidance) as of December 31, 2018 are as follow (in thousands):

Year Ending December 31,	Rent Payments
2019	$ 4,381
2020	3,923
2021	3,156
2022	2,611
2023	854
Thereafter	—
Total minimum lease payments	$ 14,925

Rent expense recognized for operating leases was $0.6 million and $1.2 million for the three and six months ended June 30, 2019, respectively. Under the terms of the lease agreements, the Company is also responsible for certain variable lease payments that are not included in the measurement of the lease liability. Variable lease payments for operating leases were $0.4 million and $1.0 million for the three and six months ended June 30, 2019, respectively, including non-lease components such as common area maintenance fees.

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

	June 30, 2019
Cash paid for amounts included in the measurement of lease liabilities	
Operating cash flows under operating leases	$ 1,308

The following summarizes additional information related to operating leases (in thousands):

	June 30, 2019
Weighted-average remaining lease term	
Operating leases	3.43 years
Weighted-average discount rate	
Operating leases	5.51 %

Sublease Agreements

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 in base lease payments plus reimbursement of certain operating expenses 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 June 30, 2019, 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 six months ended June 30, 2019, the Company recognized $0.4 million and $0.7 million, respectively, of sublease income under this agreement. During the three and six months ended June 30, 2018, the Company recognized $0.4 million and $0.7 million, respectively, of sublease income under this agreement.

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 in base lease payments plus reimbursement of certain operating expenses 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 charges line item of the condensed consolidated statement of operations and comprehensive loss during the three months ended June 30, 2018(see Note 8). During the three and six months ended June 30, 2019, the Company recognized $0.1 million and $0.2 million, respectively, of sublease income under this agreement. During the three and six months ended June 30, 2018, the Company recognized $0.1 million of sublease income under this agreement.

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 in base lease payments over the term of the sublease, which ends at the same time as the original lease in May 2021. In addition, the sublease provides for payment of broker commissions of $137,000. During the three and six months ended June 30, 2019, the Company recognized $0.2 million and $0.3 million, respectively, of sublease income under this agreement.

In January 2019, 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 January 18, 2019. Under the term of the sublease agreement, the Company will receive $1.7 million in base lease payments over the term of the sublease, which ends at the same time as the original

lease in April 2023. In addition, the sublease provides for a tenant improvement allowance of $91,000 to the subtenant, and payment of broker commissions of $53,000. During the three and six months ended June 30, 2019, the Company recognized $0.1 million and $0.3 million, respectively, of sublease income under this agreement.

The Company's future cash flows to be received from subleases as of June 30, 2019 and December 31, 2018 is as follows (in thousands):

Sublease income	June 30, 2019
2019 (excluding the six months ended June 30, 2019)	$ 1,115
2020	2,280
2021	1,906
2022	1,644
2023	556
Total minimum lease payments	$ 7,501

Sublease income	December 31, 2018(1)
2019	$ 2,249
2020	2,376
2021	2,006
2022	1,746
2023	592
Total minimum lease payments	$ 8,969

(1) Sublease income as of December 31, 2018 includes base lease payments and expected reimbursement of certain operating expenses under executed sublease agreements.

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 six months ended June 30, 2019 and 2018, was estimated based on the following weighted average assumptions:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Dividend yield	0 %	0 %	0 %	0 %
Expected volatility	102 %	102 %	103 %	101 %
Risk-free interest rate	2.21 %	2.98 %	2.51 %	2.71 %
Expected term	5.60 years	5.55 years	5.60 years	5.60 years

Stock option activity for the six months ended June 30, 2019, was as follows:

	Number of shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at beginning of year	1,624,746	$ 23.09		
Granted	390,814	14.38		
Exercised	(25,861)	4.77		
Forfeited, expired or cancelled	(37,317)	60.01		
Outstanding at end of period	1,952,382	$ 20.88	7.7	$ 7,856
Exercisable at end of period	1,246,774	$ 23.62	7.1	$ 6,574

The aggregate intrinsic value of stock options exercised during the six months ended June 30, 2019 and 2018 was $0.2 million and $0.9 million, respectively.

The weighted-average grant-date fair value per share of the options granted during the six months ended June 30, 2019 and 2018 was $11.37 and $18.78, respectively.

As of June 30, 2019, $6.8 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

Stock-based compensation expense associated with the corporate performance-based stock options is recognized if the performance condition is considered probable of achievement using management's best estimates. As of June 30, 2019, the Company had 41,250 shares remaining related to outstanding performance-based stock options with a grant date fair value of $0.2 million that will vest based solely on the achievement of fiscal year 2019 corporate goals as set by the Compensation Committee of the Company's Board of Directors. For the six months ended June 30, 2019, the Company determined that all remaining options were probable of achievement in fiscal year 2019 and therefore the related expense of $56,000 and $0.1 million was recognized during the three and six months ended June 30, 2019, respectively. As of June 30, 2019, there was $0.1 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.

For the six months ended June 30, 2019, all remaining RSUs were forfeited and there was no unvested balance as of June 30, 2019.

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 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Research and development	$ 59	$ 95	$ 108	$ 199
General and administrative	952	675	2,631	1,987
Total stock-based compensation expense	$ 1,011	$ 770	$ 2,739	$ 2,186

13. Capital Stock

Convertible Preferred Stock

Rights Offering 2018

On November 19, 2018, the Company initiated a rights offering to raise $20.0 million through the distribution of subscription rights to holders of its common stock and Series X preferred stock (the "Rights Offering"). In December 2018, the Company sold a total of 285,689 shares of common stock and 1,252.772 shares of Series Y preferred stock under the Rights Offering for aggregate gross proceeds of $20.0 million. Total offering costs of $0.3 million were offset against the proceeds from the sale of common stock and preferred stock, for total net proceeds of $19.7 million.

All Series Y convertible preferred shares were issued to Biotechnology Value Fund, L.P. ("BVF"). One of the Company's Directors, Matthew Perry, is the President of BVF. Each share of Series Y convertible preferred stock has a stated value of $13,000 per share and is convertible into 1,000 shares of registered common stock based on a conversion price of $13.00 per share of common stock. The total number of shares of common stock issuable upon conversion of all issued Series Y convertible preferred stock would be 1,252,772 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 June 30, 2019, BVF owned approximately 20.59% of the Company's total outstanding shares of common stock, and if all of the Series X and Series Y convertible preferred shares were converted, BVF would own 53.74% of the Company's total outstanding shares of common stock. As of June 30, 2019, none of the preferred stock has been converted into shares of the Company's common stock.

Biotechnology Value Fund Financing 2017

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 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 issuable upon conversion of all issued Series X convertible preferred stock would be 5,003,000 shares. Each share is convertible at the option of the holder at any time, provided that the holder will be prohibited from converting into common stock if, as a result of such conversion, the holder, together with its affiliates, would beneficially own a number of shares above a conversion blocker, which is initially set at 19.99% of the total common stock then issued and outstanding immediately following the conversion of such shares.

Preferred Stock

The Series X and Series Y convertible preferred stock have the following characteristics, which are set forth in Certificates of Designation of Preferences, Rights and Limitations filed with the Delaware Secretary of State.

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

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

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

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

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

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

2018 ATM Agreement

On December 18, 2018, the Company entered into an At The Market Issuance Sales Agreement (the "2018 ATM Agreement") with H.C. Wainwright & Co., LLC ("HCW"), under which the Company may offer and sell from time to time at its sole discretion shares of its common stock through HCW as its sales agent, in an aggregate amount not to exceed $30.0 million. HCW may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. The Company will pay HCW a commission of 3% of the gross proceeds of any shares of common stock sold under the 2018 ATM Agreement. No shares were sold under the 2018 ATM Agreement during the three and six months ended June 30, 2019.

14. Income Taxes

No provision was made for federal income tax since the Company is forecasting a loss for fiscal year 2019. As the Company continues to maintain a full valuation allowance against its U.S. net deferred tax assets, no income tax benefit is being recorded for any U.S. losses.

15. Subsequent Events

Rezolute

In July 2019, Rezolute raised an additional $20.0 million related to its January 2019 preferred stock financing. As a result, as discussed in Note 4, the Company is entitled to receive 15% of the net proceeds, or $2.9 million, which will be credited against the portion of Future Cash Payments due in 2020.

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

Forward Looking Statements

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

The following discussion and analysis should be read in conjunction with the unaudited financial statements and notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with the audited consolidated financial statements and related notes thereto included as part of our Annual Report on Form 10-K for the year ended December 31, 2018.

Overview

We have a long history of discovering and developing innovative therapeutics derived from our unique platform of antibody technologies. Over our extensive history, we built a pipeline of fully-funded programs discovered by our licensees and partners from direct use of our proprietary antibody discovery platform and from product candidates we discovered and advanced prior to licensing them to licensees who assumed the responsibilities of subsequent 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 development, regulatory and commercial milestone and royalty payments. As part of our royalty aggregator business model, we intend to continue to expand our pipeline of fully-funded programs by acquiring potential milestone and royalty revenue streams on additional product candidates from third parties.

Recent Business Developments

Rezolute

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

On January 30, 2019, Rezolute closed a preferred stock financing activity for gross proceeds of $25.0 million, which triggered the Qualified Financing defined under the amended common stock purchase agreement between us and Rezolute. As such, pursuant to the amended terms of the agreement with Rezolute, we received cash of $5.5 million. In addition, in February 2019, we received the reimbursable technology transfer expenses of $0.3 million from Rezolute. On June 1, 2019, Rezolute's right to obtain a license to one of our preclinical monoclonal antibody fragments expired unexercised.

Bioasis

On February 25, 2019, we entered into a Royalty Purchase Agreement with Bioasis Technologies Inc. (the "Bioasis Royalty Agreement") and certain affiliates (collectively "Bioasis"). Under the agreement, we purchased potential future milestone, royalty and option fee payment rights from Bioasis for product candidates that are being developed pursuant to a License Agreement between Bioasis and Prothena Biosciences Limited. Under the terms of the agreement, we paid Bioasis an upfront cash payment of $0.3 million and will be required to make contingent future cash payments of up to $0.2 million to Bioasis if and when the licensed product candidates reach certain development milestones. In addition, we were granted an option to purchase a 1% royalty right on the next two license agreements entered into between Bioasis and third-party licensees subject to certain payments and conditions as well as a right of first negotiation on subsequent Bioasis license agreements with third parties.

Aronora

On April 7, 2019 we entered into a Royalty Purchase Agreement with Aronora, Inc. (the "Aronora Royalty Purchase Agreement"), a private research and development company headquartered in Portland, Oregon ("Aronora"). Under the agreement, we purchased from Aronora the rights to potential royalty and a portion of upfront, milestone, and option payments associated with five anti-thrombotic hematology drug products in development: three candidates subject to Aronora's collaboration with Bayer Pharma AG ("Bayer") (the "Bayer Products") and two additional early stage candidates (the "non-Bayer Products").

Under the terms of the agreement, we made a $6.0 million upfront payment to Aronora when the transaction closed on June 26, 2019, and are required to make an additional $1.0 million payment for each of the three Bayer Products that are active as of September 1, 2019 (up to a total of $3.0 million). Pursuant to the Aronora Royalty Purchase Agreement, if we were to receive $250.0 million in cumulative royalties on net sales per product, we would be required to pay associated tiered milestones payments to Aronora in an aggregate amount of up to $85.0 million per product. The tiered milestones are paid based upon various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. We will retain royalties per product in excess of $250.0 million. We will receive, on average, low single-digit royalties on future sales of the of the Bayer Products and 10% of all future developmental, regulatory and sales milestones related to the Bayer Products. In addition, we purchased from Aronora the right to receive low-single digit percentage of net sales of the non-Bayer Products and 10% of all future payments, including upfront payments, option payments and developmental, regulatory and sales milestone payments on potential future sales of the non-Bayer Products.

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. In March 2019, we and SVB amended the Loan Agreement to extend the Draw Period from March 31, 2019 to March 31, 2020. In connection with the amendment, we issued a second warrant to SVB which is exercisable in whole or in part for up to an aggregate of 4,845 shares of common stock with an exercise price of $14.71 per share. The warrant may be exercised on a cashless basis and is exercisable within 10 years from the date of issuance or upon the consummation of certain acquisitions of XOMA. As of June 30, 2019, we had an outstanding balance of $10.5 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 drug development 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 lease accounting standard on January 1, 2019, 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 six months ended June 30, 2019, as compared with those previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2018, filed with the SEC on March 7, 2019.

Leases

On January 1, 2019, we adopted ASC Topic 842, Leases ("ASC 842") using the optional transition method and applied the standard only to leases that existed at that date. Under the optional transition method, we do not need to restate the comparative periods in transition and will continue to present financial information and disclosures for periods before January 1, 2019 in accordance with ASC Topic 840. We have elected the package of practical expedients allowed under ASC Topic 842, which permits us to account for our existing operating leases as operating leases under the new guidance, without reassessing our prior conclusions about lease identification, lease classification and initial direct cost. As a result of the adoption of the new lease accounting guidance, we recognized on January 1, 2019 operating lease right-of-use assets of $7.4 million and operating lease liabilities of $9.2 million.

We determined the initial classification and measurement of our right-of-use assets and lease liabilities at the lease commencement date and thereafter if modified. The lease term includes any renewal options and termination options that we are reasonably assured to exercise. The present value of lease payments is determined by using the interest rate implicit in the lease, if that rate is readily determinable; otherwise, we use our incremental borrowing rate. The incremental borrowing rate is determined by using the rate of interest that we would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment.

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

For operating leases that reflect impairment, we will recognize the amortization of the right-of-use asset on a straight-lined basis over the remaining lease term with rent expense still included in operating expenses in the condensed consolidated statements of operations and comprehensive income (loss).

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

We have elected the practical expedient to not separate lease and non-lease components. Our non-lease components are primarily related to property maintenance and insurance, which varies based on future outcomes, and thus is recognized in rent expense when incurred.

Results of Operations

Revenues

Total revenues for the three and six months ended June 30, 2019 and 2018, were as follows (in thousands):

	Three Months Ended June 30,		2018-2019	Six Months Ended June 30,		2018-2019
	2019	2018	Change	2019	2018	Change
Revenue from contracts with customers	$ 625	$ 2,341	$ (1,716)	$ 8,651	$ 2,743	$ 5,908
Revenue recognized under units-of-revenue method	337	(86)	423	442	(25)	467
Total revenues	$ 962	$ 2,255	$ (1,293)	$ 9,093	$ 2,718	$ 6,375

Revenue from Contracts with Customers

Revenue from contracts with customers includes upfront fees, milestone payments and royalties related to the out-licensing of our product candidates and technologies. The decrease for the three months ended June 30, 2019, as compared to the same period in 2018, was primarily due to $1.8 million recognized under our license agreement with Rezolute in the second quarter of 2018. The increase for the six months ended June 30, 2019, as compared to the same period in 2018, was primarily due to $8.0 million of license fee revenue recognized under our license agreement with Rezolute in the first quarter of 2019.

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. The increase in revenues for the three and six months ended June 30, 2019, as compared to the same periods in 2018, was primarily due to the sales of the Shire product underlying the Dyax Corp. license agreement. This product was approved in the third quarter of 2018, and we began recognizing revenue under the units-of-revenue method due to the sales of the approved product in the corresponding period. In addition, due to lower than projected sales of Trumenba, during the three and six months ended June 30, 2018, we reversed revenue recognized in prior periods under the units-of-revenue method under these arrangements by $129,000 and $222,000 during the three and six months ended June 30, 2018, respectively. The change in estimate of product sales resulted in net revenue of ($86,000) and ($25,000) during the three and six months ended June 30, 2018, respectively.

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 $0.7 million and $1.0 million for the three and six months ended June 30, 2019, compared with $0.4 million and $0.8 million for the same periods in 2018. The increase of $0.3 million for the three months ended June 30, 2019, compared to the same period of 2018, was primarily due to a $0.5 million pass-through license fee incurred based on the achievement of a development milestone by one of our partners, partially offset by a $0.1 million decrease in salary and related expenses. The increase of $0.2 million for the six months ended June 30, 2019, compared to the same period of 2018, was primarily due to a $0.5 million pass-through license fee, partially offset by a $0.3 million decrease in salary and related expenses.

We expect our R&D spending during the remainder of 2019 to remain comparable to 2018 levels.

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 $4.9 million and $10.9 million for the three and six months ended June 30, 2019, compared with $4.4 million and $9.6 million for the same periods in 2018. The increase of $0.5 million for the three months ended June 30, 2019, as compared to the same period of 2018, was primarily due to increases of $0.3 million in stock-based compensation expense and $0.2 million in legal and accounting expenses. The increase of $1.3 million for the six months ended June 30, 2019, as compared to the same period of 2018, was primarily due to increases of $0.6 million in stock-based compensation expense, $0.3 million in operating expenses for our building leases, and $0.2 million in investor communication expense.

To support our royalty aggregator business model, we engage third parties to assist in our evaluation of potential acquisitions of milestone and royalty streams. While we expect our personnel related costs during the remainder of 2019 to be comparable with 2018, consulting expenses may increase in response to an increase in the volume of acquisition targets evaluated or completed.

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 six months ended June 30, 2019 and 2018 (in thousands):

	Three Months Ended June 30,		2018-2019	Six Months Ended June 30,		2018-2019
	2019	2018	Change	2019	2018	Change
SVB loans	$ 236	$ 12	$ 224	$ 477	$ 12	$ 465
Novartis note	186	144	42	372	283	89
Other	1	22	(21)	3	53	(50)
Total interest expense	$ 423	$ 178	$ 245	$ 852	$ 348	$ 504

The increase in interest expense compared with 2018 is primarily due to the outstanding SVB loan balance. On May 7, 2018, we executed a loan agreement with SVB and in September of 2018 we borrowed advances of $7.5 million. In June of 2019, in connection with the Aronora Royalty Purchase Agreement, we borrowed an additional $3.0 million. We expect our interest expense to increase for the remainder of 2019 related to the outstanding SVB loan balance and increased interest rates, and to increase further if we choose to access additional funds.

Other Income, Net

The following table shows the activity in other income, net for the three and six months ended June 30, 2019 and 2018 (in thousands):

	Three Months Ended June 30,		2018-2019	Six Months Ended June 30,		2018-2019
	2019	2018	Change	2019	2018	Change
Other income, net						
Income under the agreement with Ology Bioservices	$ —	$ 1,000	$ (1,000)	$ —	$ 2,000	$ (2,000)
Sublease income	775	424	351	1,529	779	750
Change in fair value of long-term equity securities	31	(402)	433	746	(402)	1,148
Other	256	200	56	513	346	167
Total other income, net	$ 1,062	$ 1,222	$ (160)	$ 2,788	$ 2,723	$ 65

During the six months ended June 30, 2019 and 2018, we held long-term equity securities which consisted of shares of Rezolute's common stock. As of June 30, 2019 and 2018, we revalued the fair value of the long-term equity securities and we recognized a gain of $0.7 million and a loss of $0.4 million, respectively. During the six months ended June 30, 2019, we were party to four sublease agreements, compared with two sublease agreements for the same period of 2018. The income under the agreement with Ology Bioservices was due to payments we received from Ology Bioservices during the three and six months ended June 30, 2018 related to the disposition of our biodefense business in March 2016. The final payment was received in July 2018 and no further payments are due.

Provision for Income Taxes

No provision was made for federal income tax since we are forecasting a loss for fiscal year 2019. As we continue to maintain a full valuation allowance against our U.S. net deferred tax assets, no income tax benefit is being recorded for any U.S. losses.

Liquidity and Capital Resources

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

	June 30, 2019	December 31, 2018	Change
Cash	$ 42,327	$ 45,780	$ (3,453)
Working capital	$ 33,843	$ 41,923	$ (8,080)

	Six Months Ended June 30,		2018-2019
	2019	2018	Change
Net cash provided by (used in) operating activities	$ 64	$ (7,188)	$ 7,252
Net cash used in investing activities	(6,300)	—	(6,300)
Net cash provided by financing activities	2,783	2,387	396
Effect of exchange rate changes on cash	—	20	(20)
Net decrease in cash	$ (3,453)	$ (4,781)	$ 1,328

Cash Provided by (Used in) Operating Activities

The change in net cash from operating activities for the six months ended June 30, 2019, as compared with the same period in 2018, was primarily due to the $5.5 million cash receipts under the license and common stock purchase agreement with Rezolute in the first quarter of 2019.

Cash Used in Investing Activities

Net cash used in investing activities for the six months ended June 30, 2019 was due to the purchases of milestone and royalty rights of $6.3 million in connection with the Bioasis Royalty Purchase Agreement executed in February 2019 and the Aronora Royalty Purchase Agreement executed in April 2019.

Cash Provided by Financing Activities

Net cash provided by financing activities for the six months ended June 30, 2019 of $2.8 million was primarily related to proceeds received under the Loan Agreement of $3.0 million.

Net cash provided by financing activities for the six months ended June 30, 2018 of $2.4 million was primarily related to the sale of common stock for net proceeds of $2.3 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"). We may borrow advances under the Term Loan until the earlier of March 31, 2020 or an event of default (the "Draw Period"). 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 June 30, 2019, we have borrowed advances of $10.5 million under the Loan Agreement. The interest rate is 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.

2018 ATM Agreement

On December 18, 2018, we entered into the 2018 ATM Agreement with H.C. Wainwright & Co., LLC ("HCW"), under which we may offer and sell from time to time at our sole discretion shares of our common stock through HCW as our sales agent, in an aggregate amount not to exceed $30.0 million. HCW may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act and will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares up to the amount specified. We will pay HCW a commission of 3% of the gross proceeds of any shares of common stock sold under the 2018 ATM Agreement. No shares were sold under the 2018 ATM Agreement during the three and six months ended June 30, 2019.

* * *

We have incurred significant operating losses since our inception and have an accumulated deficit of $1.2 billion as of June 30, 2019. As of June 30, 2019, we had $42.3 million in cash, which we anticipate will enable us to maintain our operations for a period of at least 12 months following the filing date of this report.

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, 2018, as filed with the SEC. Except as noted below, 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, 2018.

Contingent Consideration

Pursuant to the Bioasis Royalty Purchase Agreement, we have committed to pay contingent consideration of up to $0.2 million to Bioasis as the licensed product candidates reach certain development milestones. We recorded the contingent consideration at $0.1 million, which represents the estimated fair value of potential future payments at the inception of the agreement.

Pursuant to the Aronora Royalty Purchase Agreement, we have committed to pay contingent consideration of up to $3.0 million for the achievement of an active status for the three Bayer Products at September 1, 2019. In addition, if we were to receive $250.0 million in cumulative royalties on net sales per product, we would be required to pay associated tiered milestones payments to Aronora in an aggregate amount of up to $85.0 million per product. The tiered milestones are paid based upon various royalty tiers prior to reaching $250.0 million in cumulative royalties on net sales per product. We will retain royalties per product in excess of $250.0 million. We recorded the contingent consideration related to the Bayer Products at $3.0 million, which represents the estimated fair value of potential future payments at the inception of the agreement.

The contingent consideration will be remeasured at fair value at each reporting period, with changes in the fair value recorded in the other income (expense), net line item of our condensed consolidated statement of operations and comprehensive income (loss). As of June 30, 2019, there were no changes in the estimated fair value of the contingent consideration from its initial value.

Off-balance Sheet Arrangements

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Controls and Procedures

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

Changes in Internal Control

There have been no changes in our internal controls over financial reporting as defined in Rule 13a-15(f) under the Exchange Act during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None.

ITEM 1A. RISK FACTORS

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

Risks Related to our Royalty Aggregator Strategy

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

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

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

Many of our potential royalty acquisitions may be associated with drug products that are in clinical development and have not yet been commercialized. To the extent that such products are not successfully developed and commercialized, our financial condition and results of operations may be negatively impacted.

As part of our royalty aggregator strategy, we will likely purchase future milestone and royalty streams associated with drug products which are in clinical development and have not yet been commercialized. To the extent that any such drug products are not successfully developed and subsequently commercialized, the value of our acquired potential milestone and royalty streams will be negatively affected. The ultimate success of our royalty aggregator strategy will depend on our ability to properly identify and acquire high quality products and the ability of the applicable counterparty to innovate, develop and commercialize their products, in increasingly competitive and highly regulated markets. Their inability to do so would negatively affect our ability to receive royalty and/or milestone payments. In addition, we are dependent, to a large extent, on third parties to enforce certain rights for our benefit, such as protection of a patent estate, adequate reporting and other protections, and their failure to do so would negatively impact our financial condition and results of operation.

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

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

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

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

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

The rules and interpretations of the SEC and the courts, relating to the definition of "investment company" are very complex. While we currently intend to conduct our operations so that we will not be an investment company under applicable SEC interpretations, we can provide no assurance that the SEC would not take the position that the Company would be required to register under the Investment Company Act of 1940 (the "'40 Act") and comply with the '40 Act's registration and reporting requirements, capital structure requirements, affiliate transaction restrictions, conflict of interest rules, requirements for disinterested directors, and other substantive provisions. We monitor our assets and income for compliance under the '40 Act and seek to conduct our business activities to ensure that we do not fall within its definitions of "investment company" or qualify under one of the exemptions or exclusions provided by the '40 Act. 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.

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 six months ended June 30, 2019, we had net losses of $4.1 million and $0.8 million, respectively. For the three and six months ended June 30, 2018, we had net losses of $1.9 million and $5.8 million, respectively. As of June 30, 2019, we had an accumulated deficit of $1.2 billion. We do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

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

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

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

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

- reduce or eliminate royalty aggregation efforts; 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 revised business plan or successfully operate as a royalty aggregator.

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

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

Reducing costs is a key element of our current business strategy. In August 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. In December 2016, we restructured our business to focus our efforts on clinical development, with an initial focus on the X358 clinical program, resulting in a further 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 our reduced 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 our ability to receive 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 drug 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 our licensees to delays in regulatory approval and penalties for noncompliance.

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

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

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

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

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

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

Risks Related to an Investment in Our Common Stock

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

There can be no assurance that the market price of our common stock will not decline below its present market price or that there will be an active trading market for our common stock. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common stock price. We have experienced significant volatility in the price of our common stock. From January 1, 2019, through August 2, 2019, the share price of our common stock has ranged from a high of $20.29 to a low of $11.50. 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.

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

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

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

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

We are authorized to issue, without stockholder approval, 1,000,000 shares of preferred stock, of which 5,003 shares of Series X preferred stock and 1,252.772 shares of Series Y preferred stock were issued and outstanding as of June 30, 2019. Each share of Series X and Series Y is convertible into 1,000 shares of registered common stock based on a conversion price of $4.03 per share and $13.00 per share of common stock, respectively. The total number of shares of common stock issuable upon conversion of all issued Series X and Series Y convertible preferred stock would be 6,255,772 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. A holder of Series X or Y preferred shares may elect to increase or decrease the conversion blocker above or below 19.99% on 61 days' notice, provided the conversion blocker does not exceed the limits under Nasdaq Marketplace Rule 5635(b), to the extent then applicable. If holders of our Series X and Series Y convertible preferred stock elect to convert their preferred shares into common stock, such conversion would dilute our currently outstanding common stock both in number and in earnings per share. BVF (and its affiliates), as current holders of all shares of our Series X and Series Y preferred stock, would, if they converted all such shares to common stock, obtain majority voting control of the company.

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

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

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

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

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

Our charter and by-laws:

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

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

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

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

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

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

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

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

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

Under the federal income tax law, federal net operating losses incurred in 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 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, 2018, 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 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 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) which may, as applicable, have an adverse effect on our profitability. 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 federal tax law. The impact of this tax reform on holders of our common stock is also uncertain and could be adverse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, our licensees may conduct clinical trials in foreign countries, which may subject them to further delays and expenses as a result of increased drug shipment costs, additional regulatory requirements and the engagement of foreign clinical research organizations, and may expose us 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 and our licensees for many reasons, including that they may have:

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

These factors may enable others to develop products and processes competitive with or superiorto 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 licensees' products from becoming profitable and negatively affect the royalties we may receive.

If our third-party licensees succeed in bringing our product candidates to the market, they may not be considered cost effective, and reimbursement to the patient may not be available or may not be sufficient to allow 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, 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, prduct candidates and processes, and prevent the use of the covered subject matter by third parties, our licensees' ability to compete in the market will be harmed, and we may not realize our profit potential.

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

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

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

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

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

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

If certain patents issued to others are upheld or if certain patent applications filed by others are issued and upheld, our licensees may require licenses from others to develop and commercialize certain potential products incorporating our technology or we may become involved in litigation to determine the proprietary rights of others. These licenses, if required, may not be available on acceptable terms, and any such litigation 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 or technology, there can be no assurance that any such enforcement actions will be successful, or if successful, the timing of such success or that we will have sufficient capital to prosecute any such actions to a successful conclusion.

In addition, we may be subject to claims that we, or our licensees, are infringing other parties' patents. If such claims are resolved against us, we or our licensees may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we obtain a license from the other party. Such license may not be available on reasonable terms, 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.

We had 11 employees as of August 2, 2019. 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 cyberattacks, computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. We could experience failures in our information systems and computer servers, which could be the result of a cyberattacks and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs and other business operations. The loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Similarly, we rely on third parties to manufacture our product candidates, and conduct clinical trials of our product candidates, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of any of our product candidates could be delayed or otherwise adversely affected.

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

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

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

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

In addition, our data security and information technology systems, as well as those of our partners and contractors, are potentially vulnerable to data security breaches, whether by employees or others, that may expose sensitive data or personal information to unauthorized persons. Effective May 25, 2018, the European Union ("EU") implemented the General Data Protection Regulation ("GDPR") a broad data protection framework that expands the scope of current EU data protection law to non-European Union entities that process, or control the processing of, the personal information of EU subjects, including clinical trial data. The GDPR allows for the imposition of fines and/or corrective action on entities that improperly use or disclose the personal information of EU subjects, including through a data security breach. Also, in June 2018, the State of California enacted the California Consumer Privacy Act of 2018, that will go into effect beginning January 1, 2020, which will also likely require us to expend significant time and resources to prepare for compliance. Accordingly, data security breaches experienced by us, our partners or contractors could lead to significant fines, required corrective action, the loss of trade secrets or other intellectual property, public disclosure of sensitive clinical or commercial data, and the exposure of personally identifiable information (including sensitive personal information) of our employees, partners, and others. A data security breach or privacy violation that leads to disclosure or modification of, or prevents access to, patient information, including personally identifiable information or protected health information, could result in fines, increased costs or loss of revenue as a result of:

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

If we are unable to prevent such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events. We expect that there will continue to be new proposed laws, regulations and industry standards relating to privacy and data protection in the United States, the EU and other jurisdictions, such as the California Consumer Privacy Act of 2018, which has been characterized as the first "GDPR-like" privacy statute to be enacted in the United States because it mirrors a number of the key provisions in the GDPR. We cannot presently determine the impact such laws, regulations and standards will have on our business. In any event, it is possible that governmental authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law involving applicable healthcare or privacy laws, including the GDPR, in light of the lack of applicable precedent and regulations.

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

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

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

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

Risks Related to Government Regulation

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

Even if our licensees receive regulatory approval for our product candidates, our licensees will be subject to ongoing regulatory oversight and review by the FDA and other regulatory entities. The FDA, the 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 our partners based, for example, on subsequently arising safety concerns. The FDA, EMA and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

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

The United States and some foreign jurisdictions have enacted or are considering a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our licensees' ability to sell our products, 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 our licensees 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	Certificate of Designation of Preferences, Rights and Limitations of Series Y Convertible Preferred Stock	8-K	000-14710	3.1	12/13/2018
3.7	By-laws of XOMA Corporation	8-K	000-14710	3.2	01/03/2012
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Form of 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
4.7	Form of Warrant (March 2019 Warrant)	10-Q	000-14710	4.7	05/06/2019
10.1+ #	Royalty Purchase Agreement dated April 7, 2019, between XOMA (US) LLC and Aronora, 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)				
99.1	XOMA Corporation Amended and Restated 2010 Long Term Incentive and Stock Award Plan	DEF 14A	000-14710	Appendix A	04/05/2019

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
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

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

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

SIGNATURES

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

XOMA Corporation

Date: August 6, 2019

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

Date: August 6, 2019

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

Exhibit 10.1
EXECUTION VERSION

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

ROYALTY PURCHASE AGREEMENT

dated as of April 7, 2019

between

ARONORA, INC., as Seller,

and

XOMA (US) LLC, as Purchaser

TABLE OF CONTENTS
(continued)

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

TABLE OF CONTENTS
(continued)

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

ROYALTY PURCHASE AGREEMENT

This **ROYALTY PURCHASE AGREEMENT** (this "Agreement") dated as of April 7, 2019 (the "Effective Date"), is between **ARONORA, INC.**, an Oregon corporation with its principal place of business at 4640 SW Macadam Avenue, Suite 200A, Portland, Oregon 97239 ("**Seller**"), and **XOMA (US) LLC**, a Delaware limited liability company with its principal place of business at 2200 Powell Street, Suite 310, Emeryville, California 94608 ("**Purchaser**").

W I T N E S E T H:

WHEREAS, pursuant to the Bayer License Agreement, Seller has the right to receive certain royalty and other future milestone payments from Bayer based on the achievement of certain clinical, regulatory and development milestones and Bayer Net Sales arising from the sale of Bayer Licensed Products (in each case, as defined below); and

WHEREAS, Seller desires to sell, assign, transfer, convey and grant to Purchaser, free and clear of all liens and encumbrances, and Purchaser desires to purchase, acquire and accept from Seller, the Subject Assets (as defined below), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties set forth herein and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto (each a "Party," and collectively, the "Parties") covenant and agree as follows:

ARTICLE I
DEFINED TERMS AND RULES OF CONSTRUCTION

Section 1.1 **Defined Terms.** The following terms, as used herein, shall have the following respective meanings:

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

"**[*]**" means [*], which is a "[*]" in the Bayer License Agreement.

"**[*]**" means [*], [*]

"**Adverse Change**" means any event, circumstance or change that could reasonably be expected to result, individually or in the aggregate, in a material adverse effect on (a) the legality, validity or enforceability of any of the Transaction Documents, the License Agreements or the first-priority security interest granted pursuant to Section 2.1(d), (b) the right or ability of Seller or Purchaser, as the case may be, to perform any of its obligations under any of the Transaction Documents to which it is a party, (c) the right or ability of Seller to exercise any of its rights under any License Agreement, (d) the right or ability of Seller or Purchaser to consummate the transactions contemplated hereunder or under any of the other Transaction Documents to which it is a party, (e) the rights or remedies of either Party under any of the Transaction Documents or under any License Agreement, (f) the timing, amount or duration of the Purchased Payments or the right of Purchaser to receive the Purchased Payments, (g) the Subject Assets or (h) the Product IP Rights.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

"**[*]**" means [*], which is a "[*]" in the Bayer License Agreement.

"**[*]**" means [*], which is a "[*]" in the Bayer License Agreement.

"**Affiliate**" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person.

"**Agreement**" has the meaning set forth in the preamble.

"**Applicable Agreements**" means the [*] License Agreement, the [*] License Agreements, and the [*] License Agreement.

"**Applicable Law**" means, with respect to any Person, all laws, rules, regulations and orders of Governmental Authorities applicable to such Person or any of its properties or assets.

"**Bankruptcy Event**" means the occurrence of any of the following in respect of a Person: (a) an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; (b) the filing of any petition or answer by such Person seeking to adjudicate itself as bankrupt or insolvent, or seeking for itself any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any Applicable Law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar Applicable Law now or hereafter in effect, or seeking, consenting to or acquiescing in the entry of an order for relief in any case under any such Applicable Law, or the appointment of or taking possession by a receiver, trustee, custodian, liquidator, examiner, assignee, sequestrator or other similar official for such Person or for any substantial part of its property; (c) corporate or other entity action taken by such Person to authorize any of the actions set forth in clause (a) or clause (b) above; or (d) without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar Applicable Law, or the filing of any such petition against such Person, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, in each case where such petition or order shall remain unstayed or shall not have been stayed or dismissed within 90 days from entry thereof; provided that in the case of an involuntary petition, such Person has not challenged such petition within 90 days thereof.

"**Bayer**" means **BAYER PHARMA AG** with a principal place of business at Muellerstrasse 178, Berlin 13353, Germany.

"**Bayer Consent**" means the Consent executed by Licensee substantially in the form set forth in Exhibit B.

"**Bayer License Agreement**" means (i) that certain License, Option, Development and Commercialization Agreement by and between Seller and Bayer effective as of December 21, 2012, as amended from time to time (the "Existing Bayer License Agreement"), and (ii) any New License Agreement relating to one or more of the Products licensed under the Existing Bayer License Agreement (either now or in the future), as amended from time to time. For purposes of clarity, if [*] and/or [*] are subsequently licensed under the Existing Bayer License Agreement, then any and all milestone and royalty payments associated with them shall be categorized as Non-Bayer Royalty Payments and Non-Bayer Non-Royalty Payments for purposes of this Agreement. For further purposes of clarity, if [*] is not optioned under the Existing Bayer License Agreement, then any and all milestone and royalty payments associated with it under a New License Agreement shall be categorized as Non-Bayer Royalty Payments and Non-Bayer Non-Royalty Payments for purposes of this Agreement.

"**Bayer License Agreement Related Rights**" means for the purposes of this Agreement, collectively, any and all rights of Seller under or in respect of the Bayer License Agreement arising out of, in connection with, or with respect to the Bayer Purchased Payments, only as set forth herein: [*] To the extent that any of the above [*], Seller shall [*].

"**Bayer Licensed Patents**" means "Licensed Patents" as defined as of the date hereof in the Bayer License Agreement.

"**Bayer Licensed Product**" means (i) (A) [*], (B) [*], and (C) [*] and (ii) in the case of a New License Agreement entered into by Seller in accordance with the terms hereof relating to any of the products listed directly above in subsection (i), the analogous term for "product," "licensed product," "compound" or any comparable concept as defined in the related New License Agreement.

"**Bayer Non-Royalty Payments**" means [*] of:

(a) all future upfront, milestone and option amounts paid, owed, or accrued to Seller by Bayer (or its Affiliates or Sublicensees) associated with A) [*], B) [*], and C) [*] in accordance with the Bayer License Agreement (determined without giving effect to Seller's sale and assignment of the Subject Assets to Purchaser under the Transaction Documents) (including any payments or consideration paid or payable to Seller in connection with any amendment, restatement, supplement, modification, waiver or replacement of the Bayer License Agreement prior to the date of Closing) excluding any upfront, milestone option or other non-royalty amounts payable under the Bayer License Agreement due to, accrued or received by Seller prior to the Closing Date, as evidenced by contemporaneous written documentation (which amounts shall be 100% payable to Seller if applicable) and specifically excluding the [*] milestone payment [*] to be paid upon option exercise;

(b) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described in clause (a) above;

(c) after deduction of related expenses incurred by Seller and/or Purchaser or any of their respective Affiliates (unless either Party is otherwise liable for such expenses pursuant to this Agreement, in which case, the responsible Party shall reimburse the other for any out-of-pocket expenses incurred by them, including reasonable out-of-pocket litigation costs, expenses and fees), all indemnity payments, recoveries, damages or award or settlement amounts ("Recoveries") paid, owed, or accrued to Seller or any of its Affiliates by any Third Party and comprising Bayer Non-Royalty Payments or any consideration in lieu thereof or as a result of a breach by any Person (other than Seller) of the Bayer License Agreement with respect thereto (which will specifically not include the amount of Recoveries not comprising Bayer Non-Royalty Payments or any consideration in lieu thereof or resulting from a Third Party breach, such as [*]which will be [*]and shall not [*]); and

(d) all proceeds (as defined under the UCC) of any of the foregoing but only to the extent that they are related to the Purchased Payments and Recoveries actually received.

"**Bayer Non-Royalty Payment Percentage**" means ten percent (10%) of the Bayer Non-Royalty Payment; PROVIDED, HOWEVER, that upon Purchaser's receipt of Purchased Payments equal to two times the total, cumulative amount of consideration paid by Purchaser to Seller hereunder (which amount will initially be Twelve Million Dollars ($12,000,000), but will increase to Eighteen Million Dollars ($18,000,000) if and when the Three Million Dollar ($3,000,000) clinical development milestone specified in Section 2.7 below is paid by Purchaser to Seller), the Bayer Non-Royalty Payment Percentage will automatically be reduced to five percent (5%).

"**Bayer Product**" means each of (A) [*], (B) [*] and (C) [*].

"**Bayer Purchased Payments** " means the Net Bayer Royalty Payments and the then-current Bayer Non-Royalty Payment Percentage of the Bayer Non-Royalty Payments.

"**Bayer Royalty Payments**" means:

(a) [*] of all royalties paid, owed, or accrued to Seller by Licensee (or its Affiliates or Sublicensees) on Net Sales of any and all Bayer Products by Licensee (or its Affiliates or Sublicensees) in accordance with the Bayer License Agreement;

(b) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described in clause (a) above;

(c) after deduction of related expenses incurred by Seller and/or Purchaser or any of their respective Affiliates (unless either Party is otherwise liable for such expenses pursuant to this Agreement, in which case, the responsible Party shall reimburse the other for any out-of-pocket expenses incurred by them, including reasonable out-of-pocket litigation, costs, expenses and fees), all Recoveries paid, owed, or accrued to Seller or any of its Affiliates by any Third Party and comprising the Bayer Royalty Payments or any consideration in lieu thereof or as a result of a breach by any Person (other than Seller) of the Bayer License Agreement with respect thereto (which will specifically not include the amount of Recoveries not comprising any Bayer Royalty Payments or any consideration in lieu thereof or resulting from a Third Party breach, such as [*]which will be [*]); and

(d) all proceeds (as defined under the UCC) of any of the foregoing but only to the extent that they are related to the Purchased Payments and Recoveries actually received.

"**Bayer Royalty Report**" means, with respect each Royalty Quarter, the report (including any certifications in respect thereof) required to be prepared and delivered by Bayer to Seller pursuant to Article 5 of the Bayer License Agreement.

"**Bill of Sale**" means that certain bill of sale dated as of the Closing Date executed by Seller and Purchaser substantially in the form of Exhibit A.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in California are authorized or required by Applicable Law to remain closed.

"**Closing**" has the meaning set forth in Section 6.1.

"**Closing Date**" has the meaning set forth in Section 6.1.

"**Collateral**" means the Collateral (as defined in the Protective Rights Agreement).

"**Commercially Reasonable Efforts**" means, with respect to the efforts to be expended by a Party with respect to any objective, the same reasonable, diligent, good faith efforts to accomplish such objective as a commercially reasonable Party of similar character would normally use to accomplish a similar objective under similar circumstances. It is understood and agreed that with respect to the research, development and license of a Product by Seller, such efforts shall be substantially equivalent to those efforts and resources commonly used by a commercially reasonable Party of similar character for products owned by it or to which it has rights, which product is at a similar stage in its development or product life and is of similar market potential. Commercially Reasonable Efforts shall be determined on a market-by-market and indication-by-indication basis for a particular Product, and it is anticipated that the level of effort may be different for different markets, and may change over time, reflecting changes in the status of the Product and the market(s) involved.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Depository Bank**" shall mean such bank or financial institution as may be agreed between the Parties from time to time to serve as the escrow agent for the Joint Escrow Account (the "Escrow Agent").

"**Disclosure Letter**" means the letter (if any) delivered by Seller to Purchaser at the Closing, in form and substance acceptable to Purchaser.

"**Disputes**" has the meaning set forth in Section 3.11(e).

"**Dollar**" or the sign "$" means United States dollars.

"**[*] License Agreement"** means that certain License Agreement by and between [*] and Seller dated [*], as amended from time to time.

"**EMA**" shall mean the European Medicines Agency.

"**Excluded Liabilities and Obligations**" has the meaning set forth in Section 2.3.

"**FDA**" means the U.S. Food and Drug Administration and any successor agency thereto.

"**GAAP**" means generally accepted accounting principles in effect in the United States from time to time.

"**Governmental Authority**" means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), commission, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including the FDA, the EMA and any other government authority in any jurisdiction.

"**Joint Escrow Account"** shall mean the joint escrow account established and maintained at the Depository Bank into which payments of the Bayer Royalty Payments and the Bayer Non-Royalty Payments are to be remitted (under the terms of an escrow agreement to be agreed upon by the parties, the "Escrow Agreement") and the account from which the Depository Bank transfers funds into the Purchaser Account and the Seller Account in accordance with the terms of this Agreement. Purchaser shall be responsible for all fees, expenses and costs associated with establishing and maintaining the Escrow Agreement.

"**Knowledge**" means (a) with respect to Seller, the actual knowledge of [*], and (b) with respect to Purchaser, the actual knowledge of [*], or, with respect to (a) and (b) directly above, their respective successors in such positions, or, in each case, to the extent any such person or position does not exist at any time, the knowledge of another person with equivalent responsibility, regardless of title; further in each case together with the knowledge that each such individual would have reasonably obtained after making a reasonable inquiry with respect to the particular matter in question.

"**Licensee**" means (i) any licensee under the Bayer License Agreement or a Non-Bayer License Agreement and any successor or assignee thereunder, and (ii) with respect to any New License Agreement entered into by Seller in accordance with the terms hereof, any licensee and any successor or permitted assignee thereof.

"**License Agreement**" means the Bayer License Agreement, any Non-Bayer License Agreement, and any New License Agreement.

"**Lien**" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property or other priority or preferential arrangement of any kind or nature whatsoever, in each case to secure payment of a debt or other liability or performance of an obligation, including any conditional sale or any sale with recourse. For purpose of clarity, this definition is not intended to mean any option granted in the Bayer License Agreement or any government march-in rights.

"**Loss**" means any loss, assessment, award, cause of action, claim, charge, cost, expense (including reasonable expenses of investigation and reasonable attorneys' fees and expenses), fine, judgment, liability, obligation, penalty or Set-off.

"**Net Bayer Royalty Payments**" means the Bayer Royalty Payments less the amount of any royalty payments required to be made to Third Parties pursuant to the Applicable Agreements.

"**Net Sales**" means:

(A) with respect to the Bayer License Agreement, the gross amount invoiced by Bayer or its Affiliates or Sublicensees, for sales of a Bayer Product to unaffiliated Third Parties less the following deductions:

i) [*]transportation, freight insurance, distribution, packing and handling;

ii) sales and excise taxes or customs duties paid by Bayer or its Affiliates or Sublicensees, or any other governmental charges imposed upon the sale of a Product and paid by Bayer or a Licensee, and their Affiliates or Sublicensees;

iii) rebates and premiums granted or allowed by Bayer or its Affiliates or Sublicensees, in connection with the sale of a Product;

iv) allowances or credits granted by Bayer or its Affiliates or Sublicensees, to customers on account of governmental requirements, rejection, outdating, returns, billing errors or recalls of a Product;

v) trade, cash and quantity discounts, bonuses or chargebacks granted by Bayer or its Affiliates or Sublicensees, in connection with the sale of a Product;

vi) costs of customer programs agreed upon by the parties such as cost effectiveness or patient assistance studies or programs designed to aid in patient compliance with medication schedules in connection with the sales of a Product;

vii) [*]; and

viii) [*].

For the purpose of calculating Net Sales, the Parties recognize that: (a) customers may include persons in the chain of commerce who enter into agreements with Bayer, its Affiliates or Sublicensees as to price even though title to the Product does not pass directly from Bayer, its Affiliates or Sublicensees to such customers and even though payment for such Product is not made by such customers directly to Bayer, its Affiliates or Sublicensees; and (b) in such cases, chargebacks paid by Bayer, its Affiliates or Sublicensees to or through a Third Party (such as a wholesaler) can be deducted by Bayer, its Affiliates or Sublicensees from gross revenue in order to calculate Net Sales.

If a Product is sold in the form of a combination product containing one or more active ingredients in addition to the Product, Net Sales for such combination product will be adjusted by multiplying actual Net Sales of such combination product by the fraction A / (A+B) where A is the invoice price of the Product, if sold separately, and B is the invoice price of any other active ingredient(s) in the combination, if sold separately. If, on a country-by-country basis, the other active ingredient(s) in the combination are not sold separately in that country, Net Sales shall be calculated by multiplying actual Net Sales of such combination product by the fraction A / C where A is the invoice price of the Product, if sold separately, and C is the invoice price of the combination product. If, on a country-by-country basis, neither the Product nor the other active ingredient(s) of the combination product is sold separately in such country, then the value of the active ingredient(s) for the purpose of determining Net Sales shall be determined between the Parties in good faith.

(B) With respect to any Non-Bayer License Agreement or New License Agreement, the term "Net Sales" as defined therein.

(C) With respect to any internal development and sale by Seller of a Non-Bayer Product or a reverted Bayer Product, the term "Net Sales" shall have the same meaning as set forth in subsection (A) directly above with the necessary changes being made to replace all references to Bayer with Seller.

"**New License Agreement**" has the meaning set forth in Section 5.6(b).

"**Non-Bayer License Agreement**" means any license agreement entered into with respect to the Non-Bayer Products (A) [*], and (B) [*], as amended from time to time (which, if relating to a Non-Bayer Product, may include a License Agreement with Bayer as the Licensee if such Non-Bayer Product is out-licensed to Bayer). This definition will further include (C) [*] if Bayer does not exercise its option and related rights revert to Seller.

"**Non-Bayer Licensee**" means (i) any Licensee under a Non-Bayer License Agreement and (ii) with respect to any New License Agreement entered into by Seller in accordance with the terms hereof, any Licensee party to the related New License Agreement and any successor or permitted assignee thereunder.

"**Non-Bayer License Agreement Related Rights**" means for the purposes of this Agreement, collectively, any and all rights of Seller under or in respect of a Non-Bayer License Agreement arising out of, in connection with, or with respect to the Non-Bayer Purchased Payments, only as set forth herein: [*]. To the extent that any of the above [*], Seller shall [*].

"**Non-Bayer Non-Royalty Payments**" means ten percent (10%) (the "Non-Bayer Non-Royalty Percentage") of:

(a) all future upfront, milestone, and option amounts paid, owed, or accrued to Seller by a Non-Bayer Licensee (or its Affiliates or Sublicensees) associated with Non-Bayer Products [*] and [*] (and [*] if Bayer does not exercise its option) in accordance with the applicable Non-Bayer License Agreement (determined without giving effect to Seller's sale and assignment of the Subject Assets to Purchaser under the Transaction Documents) (including any payments or consideration paid or payable to Seller in connection with any amendment, restatement, supplement, modification, waiver or replacement of the Non-Bayer License Agreement prior to the date of this Agreement) excluding any upfront, milestone, option or other non-royalty amounts related to Non-Bayer Products due to, accrued or received by Seller prior to the Closing Date, as evidenced by contemporaneous written documentation (which amounts shall be 100% payable to Seller if applicable);

(b) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described in clause (a) above;

(c) after deduction of related expenses incurred by Seller and/or Purchaser as agreed herein or any of their respective Affiliates (unless either Party is otherwise liable for such expenses pursuant to this Agreement, in which case, the responsible Party shall reimburse the other for any out-of-pocket expenses incurred by them, including reasonable out-of-pocket litigation costs, expenses and fees), all Recoveries paid, owed or accrued to Seller or any of its Affiliates by any Third Party and comprising Non-Bayer Non-Royalty Payments or any consideration in lieu thereof or as a result of a breach by any Person (other than the Seller) of the applicable Non-Bayer License Agreement with respect thereto (which will specifically not include the amount of Recoveries not comprising Non-Bayer Non-Royalty Payments or any consideration in lieu thereof or a Third Party breach, such as [*] which will be [*]); and

(d) all proceeds (as defined under the UCC) of any of the foregoing but only to the extent related to the Purchased Payments and Recoveries actually received;

PROVIDED, HOWEVER, that upon Purchaser's receipt of Purchased Payments equal to two times the total, cumulative amount of consideration paid by Purchaser to Seller hereunder (which amount will initially be Twelve Million Dollars ($12,000,000), but will increase to Eighteen Million Dollars ($18,000,000) if and when the Three Million Dollar ($3,000,000) clinical development milestone specified in Section 2.7 below is paid by Purchaser to Seller, the Non-Bayer Non-Royalty Percentage will automatically be reduced to five percent (5%).

"**Non-Bayer Products**" means [*] and [*] (and [*] if not optioned by Bayer).

"**Non-Bayer Purchased Payments**" means the Non-Bayer Royalty Payments and the Non-Bayer Non-Royalty Payments.

"**Non-Bayer Royalty Payments**" means:

(a) a [*] royalty on all amounts paid, owed, accrued or otherwise earned by Seller or paid, owed or accrued to Seller by a Non-Bayer Licensee (or its Affiliates or Sublicensees) on Net Sales of any and all Non-Bayer Products by Seller or a Non-Bayer Licensee, as applicable (or their respective Affiliates or Sublicensees) as in accordance with the applicable Non-Bayer License Agreement if applicable (determined separately from any additional royalties payable to Third Parties on such Net Sales and without giving effect to Seller's sale and assignment of the Subject Assets to Purchaser under the Transaction Documents) through the period ending on the tenth anniversary of the first commercial sale of the applicable Non-Bayer Product;

(b) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described in clause (a) above;

(c) after deduction of related expenses incurred by Seller and/or Purchaser or any of their respective Affiliates (unless either Party is otherwise liable for such expenses pursuant to this Agreement, in which case, the responsible Party shall reimburse the other for any out-of-pocket expenses incurred by them, including reasonable out-of-pocket litigation costs, expenses, and fees), all Recoveries paid, owed, or accrued to Seller or any of its Affiliates by any Third Party and comprising Non-Bayer Royalty Payments or any consideration in lieu thereof or as a result of a breach by any Person (other than the Seller) of the applicable Non-Bayer License Agreement with respect thereto (which will specifically not include the amount of Recoveries not comprising Non-Bayer Royalty Payments or any consideration in lieu thereof or resulting from a Third Party breach, such as [*] which will be [*]); and

(d) all proceeds (as defined under the UCC) of any of the foregoing but only to the extent related to the Purchased Payments and Recoveries actually received.

"**Non-Bayer Royalty Report**" means, with respect each Royalty Quarter, any royalty report (including any certifications in respect thereof) required to be prepared and delivered by a Non-Bayer Licensee to Seller pursuant to the applicable Non-Bayer License Agreement.

"**[*] License Agreements**" mean (a) that certain [*] License Agreement by and between [*] and Seller for [*] dated [*], as amended from time to time; (b) that certain [*] License Agreement by and between [*] and Seller for [*] dated [*], as amended from time to time; and (c) that certain [*] License Agreement by and between [*] and Seller for [*] dated [*], as amended from time to time.

"**Patent Expiration Date**" means, with respect to each Product on a country-by-country basis, the date of expiration of the last-to-expire Valid Claim of the Patent(s) covering such Product in the applicable country.

"**Patents**" means: (i) any United States and foreign patent applications and patents; (ii) any national, regional and international patent applications filed from patent applications and patents included in (i), including any divisional and continuation applications of the patent applications and patents included in (i) and any continuation-in-part applications to the extent dominated by patent applications and patents included in (i); (iii) any and all patents that have issued or in the future issue from patent applications included in (i) and (ii); and (iv) any and all extensions or restorations by existing or future extension or restoration mechanisms, including substitutions, reexaminations, revalidations, reissues, renewals, and extensions thereof.

"**Patent Office**" means the applicable patent office, including the United States Patent and Trademark Office and any comparable foreign patent office or any other comparable Governmental Authority within or outside the U.S., for any Product IP Rights that are Patents.

"**Permitted Liens**" means any (a) Liens in favor of Purchaser or its Affiliates; and (b) Liens incurred by Purchaser.

"**Person**" means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

"**Product**" means each of [*] and [*].

"**Product IP Rights**" means, all intellectual property rights owned or controlled by Seller relating to the Products, arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (i) trade names, trademarks and service marks (registered and unregistered), domain names and other Internet addresses or identifiers, trade dress and similar rights, and applications (including intent to use applications and similar reservations of marks and all goodwill associated therewith) to register any of the foregoing (collectively, "Trademarks"); (ii) patents, inventor certificates, patent applications (including provisionals, continuations, divisionals, and continuations in part), utility models and rights equivalent thereto, patents issuing from any applications, reissues, reexaminations, extensions (including patent term extension, supplemental protection certificates, and any extension of term by any appropriate Governmental Authority), and post-grant proceedings and all foreign equivalents thereof (collectively, "Patents"); (iii) copyrights (registered and unregistered) and applications for registration (collectively, "Copyrights"); (iv) trade secrets, know-how, inventions, methods, processes and processing instructions, technical data, specifications, research and development information, technology including rights and licenses, product roadmaps, customer lists and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, "Trade Secrets"); and (v) moral rights, publicity rights, data base rights and any other proprietary or intellectual property rights of any kind or nature that do not comprise or are not protected by Trademarks, Patents, Copyrights or Trade Secrets.

"**Product Patent**" means a Patent or patent application applicable to a Product and listed Exhibit D.

"**Protective Rights Agreement**" shall mean the Protective Rights Agreement by and between Seller and Purchaser to be executed at the Closing, which Protective Rights Agreement shall be substantially in the form of Exhibit C. For the avoidance of doubt, the Protective Rights Agreement is not intended to derogate from the validity of the true and absolute sale of the Subject Assets, as contemplated by this Agreement and as evidenced by the Bill of Sale, but is being executed and delivered solely to protect Purchaser's interests to the extent such assignment becomes subject to a Recharacterization despite the Parties' intentions.

"**Purchased Payments**" means, during the term of this Agreement, the Bayer Purchased Payments and the Non-Bayer Purchased Payments, accruing on or after the Closing Date.

"**Purchase Price**" has the meaning set forth in Section 2.2.

"**Purchaser**" has the meaning set forth in the preamble.

"Purchaser Account" means Purchaser's deposit account with Silicon Valley Bank which account Purchaser may change from time to time by furnishing written notice to Seller and the Escrow Agent.

"**Purchaser Indemnified Party**" has the meaning set forth in Section 7.1.

"**Recharacterization**" shall mean a judgment or order by a court of competent jurisdiction that Seller's right, title and interest in, to and under the Bayer License Agreement or a Non-Bayer License Agreements, as applicable, and the Subject Assets were not fully sold, assigned and transferred to Purchaser pursuant to, as contemplated by, and subject to the provisions of this Agreement and the Bill of Sale, but instead that such transaction(s) constituted a loan and security device.

"**Regulatory Agency**" means a Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals in any jurisdiction.

"**Regulatory Approvals**" means, collectively, all regulatory approvals, registrations, certificates, authorizations, permits and supplements thereto, as well as associated materials (including the product dossier) pursuant to which any Products (subject to any applicable License Agreement) may be researched, developed, manufactured, used, marketed, imported, exported, sold and distributed in a jurisdiction, issued by the appropriate Regulatory Agency.

"**Royalty Milestones**" has the meaning set forth in Section 2.6.

"**Royalty Quarter**" means the three-month period ending on the last day of each of March, June, September and December of each calendar year.

"**Royalty Payments**" means Bayer Royalty Payments and Non-Bayer Royalty Payments, as applicable.

"**Royalty Reports**" means any report summarizing the Net Sales of a Product during the relevant Royalty Quarter on a country-by-country or any other basis.

"**[*] License Agreement**" means that certain [*] License Agreement by and between [*] and Seller dated [*], as amended from time to time.

"**SEC**" means the U.S. Securities and Exchange Commission.

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

"**Seller Account**" means the Seller's account with Chase Manhattan Bank which account Seller may change from time to time by furnishing written notice to Purchaser and the Escrow Agent.

"**Seller Indemnified Party**" has the meaning set forth in Section 7.2.

"**Set-off**" means any set-off, off-set, rescission, counterclaim, reduction, deduction or defense.

"**Subject Assets**" means, collectively, (a) Seller's right, title and interest in and to receive the Purchased Payments as defined herein, (b) the Bayer License Agreement Related Rights and the Non-Bayer License Agreement Related Rights, and (c) Seller's right to sell, assign, pledge or otherwise transfer the Purchased Payments, in whole or in part, under the terms of this Agreement. For purposes of clarity, Purchased Payments shall not include any amounts (stock, cash, or otherwise) from the purchase or acquisition of Seller.

"**Sublicensee**" means any licensee of the Licensee under the applicable Bayer License Agreement, Non-Bayer License Agreement or New License Agreement.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"**Third Party**" shall mean any Person other than Seller 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**" means this Agreement, the Applicable Agreements, the Bill of Sale, the Protective Rights Agreement, the Disclosure Letter (if any) and the Bayer Consent.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of Delaware; provided that if with respect to any financing statement or by reason of any provisions of Applicable Law, the perfection or the effect of perfection or non-perfection of the first priority security interest or any portion thereof granted pursuant to Section 2.1(d) is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of Delaware, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

"**U.S.**" or "**United States**" means the United States of America, its fifty (50) states, each territory thereof and the District of Columbia.

"**Valid Claim**" means a claim of any unexpired Patent that has not been withdrawn, canceled or disclaimed nor held to be invalid or unenforceable by a court or tribunal of competent jurisdiction in an unappealed or unappealable decision or, in the case of any patent application, that has not been finally rejected in an appealed or unappealable decision by the relevant patent office.

Section 1.2 Rules of Construction. Unless the context otherwise requires, in this Agreement:

(a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(b) Unless otherwise defined, all terms that are defined in the UCC shall have the meanings stated in the UCC.

(c) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders.

(d) The definitions of terms shall apply equally to the singular and plural forms of the terms defined.

(e) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without limitation".

(f) Unless otherwise specified, references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth herein or in any of the other Transaction Documents) and include any annexes, exhibits and schedules attached thereto.

(g) References to any Applicable Law shall include such Applicable Law as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

(h) References to any Person shall be construed to include such Person's successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth herein or in any of the other Transaction Documents), and any reference to a Person in a particular capacity excludes such Person in other capacities.

(i) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(j) The words "hereof", "herein", "hereunder" and similar terms when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision hereof, and Article, Section and Exhibit references herein are references to Articles and Sections of, and Exhibits to, this Agreement unless otherwise specified.

(k) In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

(l) Where any payment is to be made, any funds are to be applied or any calculation is to be made under this Agreement on a day that is not a Business Day, unless this Agreement otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the succeeding Business Day, and payments shall be adjusted accordingly.

(m) Any reference herein to a term that is defined by reference to its meaning in the License Agreement shall refer to such term's meaning in the License Agreement (including any other defined terms in such License Agreement that are included in such term's meaning thereunder) as in existence on the date hereof.

ARTICLE II
PURCHASE AND SALE OF THE SUBJECT ASSETS

Section 2.1 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 Subject Assets, free and clear of any and all Liens, other than Permitted Liens.

(b) Seller and Purchaser intend and agree that the sale, assignment, transfer, conveyance and granting of the Subject Assets under this Agreement shall be, and are, a true, complete, absolute and irrevocable assignment and sale by Seller to Purchaser of the Subject Assets and that such assignment and sale shall provide Purchaser with the full benefits of ownership of the Subject Assets as set forth herein. Neither Seller nor Purchaser intends the transactions contemplated hereby to be, or for any purpose to be characterized as, a loan from Purchaser to Seller or a pledge or assignment or a security agreement. Seller waives any right to contest or otherwise assert that this Agreement does not constitute a true, complete, absolute and irrevocable sale and assignment by Seller to Purchaser of the Subject Assets under Applicable Law, which waiver shall be enforceable against Seller in any Bankruptcy Event in respect of Seller. The sale, assignment, transfer, conveyance and granting of the Subject Assets shall be reflected on Seller's financial statements and other records as a sale of assets to Purchaser.

(c) Seller hereby authorizes Purchaser or its designee to execute, record and file, and consents to Purchaser or its designee executing, recording and filing, at Purchaser's sole cost and expense, financing statements in the appropriate filing offices under the UCC (and continuation statements with respect to such financing statements when applicable), and amendments thereto or assignments thereof, in such manner and in such jurisdictions as are necessary or appropriate to 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 Subject Assets and to perfect a first priority security interest in the Subject Assets granted by Seller to Purchaser pursuant to Section 2.1(d).

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

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

Section 2.2 Purchase Price. In full consideration for the sale, assignment, transfer, conveyance and granting of the Subject Assets, and subject to the terms and conditions set forth herein, Purchaser shall pay (or cause to be paid) to Seller, or Seller's designee, on the Closing Date, the sum of Six Million Dollars ($6,000,000), in immediately available funds by wire transfer to Seller Account (the "**Purchase Price**").

Section 2.3 No Assumed Obligations. Notwithstanding any provision in this Agreement or any other writing to the contrary, Purchaser is purchasing, acquiring and accepting only the Subject Assets and is not assuming any liability or obligation of Seller or any of Seller's Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter (including any liability or obligation of Seller under a License Agreement and any payments required to be made to Third Parties under the Applicable Agreements). All such liabilities and obligations shall be retained by and remain liabilities and obligations of Seller or its Affiliates, as the case may be (the "**Excluded Liabilities and Obligations**").

Section 2.4 Excluded Assets. Purchaser does not, by purchase, acquisition or acceptance of the rights, title or interest granted hereunder or otherwise pursuant to any of the Transaction Documents, purchase, acquire or accept any assets or rights, contract or otherwise, of Seller other than the Subject Assets.

Section 2.5 Payments in Respect of Purchased Payments. Pursuant to the terms hereof, Purchaser is acquiring the Subject Assets, including Purchaser's right to receive the Purchased Payments.

Section 2.6 Royalty Milestones. Within three (3) Business Days following Purchaser's receipt of the following cumulative Net Bayer Royalty Payments or Non-Bayer Royalty Payments (as the case may be) with respect to and as applicable to a Product (determined separately for each Product), Purchaser shall make the following one-time sales milestone payments to Seller:

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Royalty Payments received by Purchaser for a Product (determined separately for each Product on a cumulative basis)	Royalty milestone payable to Seller
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of [*]	[*]
Royalty Payments received by Purchaser of US$250 Million	[*]

Each associated Royalty Milestone payment shall be made on each Product (whether partnered or unpartnered) upon reaching the cumulative Royalty Payment receipts set forth above as to such Product. Total Royalty Milestones may be up to Eighty-Five Million Dollars ($85,000,000) cumulative per Product.

Section 2.7 Contingent Purchase Price Payment. On September 1, 2019 (the "Determination Date"), as long as Bayer has not terminated or materially adversely amended the Bayer License Agreement, Purchaser shall pay to Seller $1,000,000, for each Active Bayer-Related Program (as defined below) in existence as of the Determination Date. For these purposes, an "Active Bayer-Related Program" is defined as each of [*], [*], and [*] which as of the Determination Date is either:

(a) [*], or

(b) [*].

[*] as of the Determination Date is sufficient to satisfy the conditions in subsection (a) and/or (b) directly above. If [*] by the Determination Date, [*]shall be sufficient to satisfy the conditions in subsection (a) and/or (b) directly above. With respect to each of [*], [*] (and [*] if [*]), if Seller obtains information on or before the Determination Date that one or more of them have been terminated [*], then Seller will promptly notify Purchaser of such information and the Contingent Purchase Price will be adjusted proportionately. For purposes of clarity the maximum amount of payments under this Section 2.7 shall be $3,000,000.

Section 2.8 No Guarantee of Purchased Payments. Seller makes no guarantee to Purchaser that Net Sales of any Product will equal any minimum amount or that Bayer and Non-Bayer Purchased Payments will equal any minimum amount. So long as Seller complies with the terms of this Agreement, the Purchase Price is not subject in whole or in part to any reduction, discount, or set-off due to lack of Net Sales, Royalty Payments, or Purchased Payments.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Letter, Seller hereby represents and warrants to Purchaser as of the date hereof and affirms that such will be true and accurate as of the date of Closing as follows:

Section 3.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of Oregon and has all powers and authority, and all licenses, permits, franchises, authorizations, consents and approvals, required to own its property and conduct its business as now conducted and to exercise its rights and to perform its obligations under the Bayer License Agreement and the Transaction Documents. Seller is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification or good standing is required by Applicable Law (except where the failure to be so qualified or in good standing could not reasonably be expected to result in an Adverse Change).

Section 3.2 No Conflicts.

(a) None of the execution and delivery by Seller of any of the Transaction Documents, the performance by Seller of the obligations contemplated hereby or thereby or the consummation of the transactions contemplated by this Agreement or any of the other Transaction Documents will: (i) contravene, conflict with, result in a breach, violation, cancellation or termination of, constitute a default (with or without notice or lapse of time, or both) under, require prepayment under, give any Person the right to exercise any remedy or obtain any additional rights under, or accelerate the maturity or performance of or payment under, in any respect, (A) any Applicable Law or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which Seller or any of its respective assets or properties may be subject or bound, (B) any term or provision of any contract, agreement, indenture, lease, license, deed, commitment, obligation or instrument to which Seller is a party or by which Seller or any of its respective assets or properties is bound or committed (including a License Agreement) or (C) any term or provision of any of the organizational documents of Seller; (ii) give rise to any additional right of termination, cancellation or acceleration of any right or obligation of Bayer or any Sublicensee under the Bayer License Agreement; or (iii) except as provided in any of the Transaction Documents, result in or require the creation or imposition of any Lien on the Product IP Rights, the Products, the Bayer License Agreement or the Subject Assets.

(b) Except for Permitted Liens, Seller has not granted, nor does there exist, any Lien on the Transaction Documents, the License Agreement or the Subject Assets nor does there exist any Lien on the Product IP Rights or the Products.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 3.3 Authorization.

(a) Seller has the legal right under the terms of the Bayer License Agreement and Applicable Law to enter into this Agreement and each of the other Transaction Documents, including, without limitation, the right to sell, assign, transfer, convey and grant the Subject Assets to Purchaser as contemplated hereby and by the other Transaction Documents

(b) Seller has all power and authority to execute and deliver, and perform its obligations under, each of the Transaction Documents and to consummate the transactions contemplated by this Agreement and the other Transaction Documents. The execution and delivery of each of the Transaction Documents and the performance by Seller of its obligations hereunder and thereunder have been duly authorized by Seller. Each of the Transaction Documents has been and will be duly executed and delivered by Seller. Each of the Transaction Documents constitutes and will constitute as of the Closing Date, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally and general equitable principles.

Section 3.4 Ownership.

(a) Seller is the exclusive owner of the entire right, title (legal and equitable) and interest in, to and under the Subject Assets and has good and valid title thereto, free and clear of all Liens (other than Permitted Liens). The Subject Assets have not been pledged, sold, assigned, transferred, conveyed or granted by Seller to any other Person. Seller has full right to sell, assign, transfer, convey and grant the Subject Assets to Purchaser. Upon the sale, assignment, transfer, conveyance and granting by Seller of the Subject Assets to Purchaser, Purchaser shall acquire good, valid and marketable title to the Subject Assets free and clear of all Liens (other than Permitted Liens), and, subject to those rights retained by Seller pursuant to this Agreement, shall be the exclusive owner of the Subject Assets.

(b) No Person other than Purchaser shall have any right to receive the Bayer Purchased Payments payable under the Bayer License Agreement (other than to the extent Purchaser assigns its right to receive such Purchased Payments to any other Person as permitted herein).

Section 3.5 Governmental and Third Party Authorizations. The execution and delivery by Seller of the Transaction Documents, the performance by Seller of its obligations hereunder and thereunder and the consummation of any of the transactions contemplated hereunder and thereunder (including the sale, assignment, transfer, conveyance and granting of the Subject Assets to Purchaser) do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority or any other Person, except for the filing of UCC financing statements, the Bayer Consent, and those previously obtained.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 3.6 **No Litigation.** There is no (a) action, suit, arbitration proceeding, claim, demand, citation, summons, subpoena, investigation or other proceeding (whether civil, criminal, administrative, regulatory, investigative or informal) pending or, to the Knowledge of Seller, threatened, against, relating to or affecting any Product, any Product IP Rights, or the Subject Assets, at law or in equity, or (b) inquiry or investigation (whether civil, criminal, administrative, regulatory, investigative or informal) by or before a Governmental Authority pending or, to the Knowledge of Seller, threatened, against Seller or any of its Subsidiaries against, relating to or affecting any Product, any Product IP Rights, or the Subject Assets, that, in each case, (i) could reasonably be expected to result in an Adverse Change, or (ii) challenges or seeks to prevent, enjoin, alter, delay, make illegal or otherwise interfere with the consummation of any of the transactions contemplated by any of the Transaction Documents. To the Knowledge of Seller, no event has occured or circumstance exists that may give rise to or serve as a basis for the commencement of any such action, suit, arbitration, claim, investigation, proceeding or inquiry.

Section 3.7 **Solvency.** Seller has determined that, and by virtue of its entering into the transactions contemplated by the Transaction Documents and its authorization, execution and delivery of the Transaction Documents, Seller's incurrence of any liability hereunder or thereunder or contemplated hereby or thereby is in its own best interests. Upon consummation of the transactions contemplated by the Transaction Documents and the application of the proceeds therefrom, (a) the present fair saleable value of Seller's property and assets will be greater than the sum of its debts, liabilities and other obligations, including contingent liabilities, (b) the present fair saleable value of Seller's property and assets will be greater than the amount that would be required to pay its probable liabilities on its existing debts, liabilities and other obligations, including contingent liabilities, as they become absolute and matured, (c) Seller will be able to realize upon its assets and pay its debts, liabilities and other obligations, including contingent obligations, as they mature, (d) Seller will not be rendered insolvent, will not have unreasonably small capital with which to engage in its business and will not be unable to pay its debts as they mature, (e) Seller has not incurred, will not incur and does not have any present plans or intentions to incur debts, liabilities or other obligations beyond its ability to pay such debts, liabilities or other obligations as they become absolute and matured, (f) Seller will not have become subject to any Bankruptcy Event, and (g) Seller will not have been rendered insolvent within the meaning of Section 101(32) of Title 11 of the United States Code. No step has been taken or is intended by Seller or, to the Knowledge of Seller, any other Person to make Seller subject to a Bankruptcy Event.

Section 3.8 **Tax Matters.** Seller has filed (or caused to be filed) all tax returns and reports required by Applicable Law to have been filed by it and has paid all taxes required to be paid by it, except for any such taxes that are not yet due or delinquent or are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

Section 3.9 **No Brokers' Fees.** Seller has not taken any action that would entitle any person or entity to any commission or broker's fee in connection with the transactions contemplated by the Transaction Documents.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 3.10 Compliance with Laws. Seller (a) has not violated or is in violation of or has been given notice of any violation of, or, to the Knowledge of Seller, is under investigation with respect to or has been threatened to be charged with any violation of, any Applicable Law or any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by any Governmental Authority and (b) is not subject to any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by any Governmental Authority, in each case with respect to clause (a) and (b) above, that could reasonably be expected to result in an Adverse Change. Seller is in material compliance with the requirements of all Applicable Laws a breach of any of which could reasonably be expected to result in an Adverse Change.

Section 3.11 Intellectual Property Matters.

(a) Exhibit D sets forth an accurate and complete list of all Product Patents and patent applications, including for each such Product Patent: (i) the jurisdictions in which such Product Patent is pending, allowed, granted or issued, (ii) the patent number or pending patent application serial number, (iii) the scheduled expiration date of such issued Product Patent, including extensions granted and applied for, and (iv) the owner of such Product Patent.

(b) Each claim of any issued Product Patent or patent application that covers a Product is, to the K nowledge of Seller, a Valid Claim.

(c) To Seller's Knowledge, there are no unpaid maintenance or renewal fees payable to any Third Party that currently are overdue for any of the Product Patents. No Product Patents have lapsed or been abandoned, cancelled or expired. Each individual associated with the filing and prosecution of the Patents, including the named inventors of the Product Patents, has to Seller's Knowledge complied in all material respects with all applicable duties of candor and good faith in dealing with any Patent Office, including any duty to disclose to any Patent Office all information known by such inventors to be material to the patentability of each of the Product Patents (including any relevant prior art), in each case, in those jurisdictions where such duties exist.

(d) Subsequent to the issuance of any of the Product Patents, neither Seller nor, to the Knowledge of Seller (without a duty of reasonable inquiry), Bayer or any Sublicensee has filed any disclaimer or made or permitted any other voluntary reduction in the scope of such Product Patent. Seller has not been and is not currently involved in any interference, re-examination, opposition, derivation or other post-grant proceedings involving any of the Product Patents, and to Seller's Knowledge (without a duty of reasonable inquiry) no allowable or allowed subject matter of the Product Patents is subject to any competing conception claims of allowable or allowed subject matter of any Product Patents of any Third Party.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

(e) To the Knowledge of Seller, there is no opposition, interference, reexamination, derivation or other post-grant proceeding, injunction, claim, suit, action, citation, summon, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, disagreement, proceeding or claim (collectively, "**Disputes**") pending or, to the Knowledge of Seller, threatened, involving Seller, or, to the Knowledge of Seller, pending or threatened against any other Person (including Bayer and any Sublicensees) challenging the legality, validity, enforceability or ownership of or otherwise relating to any of the Product IP Rights (including the Product Patents) or that could give rise to any Set-off against the Purchased Payments. There are no Disputes pending, or to the Knowledge of Seller, threatened, involving Seller and any Product, or, to the Knowledge of Seller, pending or threatened against any other Person (including Bayer and any Sublicensees) and relating to any Product. To the Knowledge of Seller, neither any of the Product IP Rights (including the Patents) nor any Products is subject to any outstanding injunction, judgment, order, decree, ruling, settlement or other disposition of a Dispute.

(f) There is no pending or, to the Knowledge of Seller (without a duty of reasonable inquiry), threatened, and no event has occurred or circumstance exists that (with or without notice or lapse of time, or both) could reasonably be expected to give rise to or serve as a basis for any, action, suit or proceeding, or any investigation or claim by any Person to which Seller or, to the Knowledge of Seller (without a duty of reasonable inquiry), Bayer or any Sublicensee is or could be a party, and Seller has not received any written notice of the foregoing, and, to the Knowledge of Seller (without a duty of reasonable inquiry), neither Bayer nor any Sublicensees have received any written notice of the foregoing, that claims that the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product by Seller or Bayer or any of their Affiliates and/or Sublicensees pursuant to the Bayer License Agreement does or could infringe on any patent or other intellectual property rights of any other Person or constitute misappropriation of any other Person's trade secrets or other intellectual property rights. To the Knowledge of Seller (without a duty of reasonable inquiry), there are no issued Patents owned by any Third Party that limit or would be infringed by the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product, and, to the Knowledge of Seller (without a duty of reasonable inquiry), there are no pending patent applications owned by any Third Party containing claims that, if a Patent issues thereon, would limit or be infringed by the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product.

(g) To the Knowledge of Seller (without a duty of reasonable inquiry), there is no Third Party infringing any Product IP Rights. Seller has not received any notice of infringement of any Product IP Rights.

(h) Each of Seller and, to the Knowledge of Seller, Bayer has taken all reasonable precautions to protect the secrecy, confidentiality and/or value of any Product IP Rights that are know-how or other trade secrets, except where the failure to do so could not reasonably be expected to result in an Adverse Change.

(i) Except for the Product Patents, to the Knowledge of Seller, neither Seller nor any of Seller's Affiliates controls any Patents that, absent a license, would be infringed by the manufacture, use, sale, offer for sale or importation of any Product.

(j) Seller has not received and is not otherwise in possession of any written legal opinion with respect to anyThird Party intellectual property rights relating to any Product or Product Patent, including any freedom-to-operate, product clearance, patentability or right-to-use opinion.

Section 3.12 Bayer License Agreement.

(a) Other than the Transaction Documents and the Bayer License Agreement, there is no contract, agreement or other arrangement (whether written or oral) to which Seller or any of its Subsidiaries is a party or by which any of their respective assets or properties is bound or committed (i) that affects or otherwise relates to the Subject Assets, the License Agreement as it relates to the Subject Assets or the Product IP Rights, or (ii) for which breach, nonperformance, termination, cancellation or failure to renew could reasonably be expected to result in an Adverse Change. The Bayer License Agreement does not create a Lien on the Subject Assets or the Product IP Rights.

(b) Seller has provided to Purchaser true, correct and complete copies of the Bayer License Agreement and any confidentiality agreement relating thereto.

(c) The Bayer License Agreement is in full force and effect and is the legal, valid and binding obligation of Seller and, to the Knowledge of Seller, Bayer, enforceable against Seller and, to the Knowledge of Seller, Bayer in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally and general equitable principles. The execution and delivery of, and performance of obligations under, the Bayer License Agreement were and are within the powers of Seller, and to the Knowledge of Seller, Bayer. The Bayer License Agreement was duly authorized by all necessary action on the part of, and validly executed and delivered by, Seller and, to the Knowledge of Seller, Bayer. Seller is not in breach or violation of or in default under and has not previously been in breach or violation of or in default under, the Bayer License Agreement. To the Knowledge of Seller, Bayer is not in breach or violation of or in default under and has not previously been in breach or violation of or in default under, the Bayer License Agreement. No event or circumstance has occurred that, upon notice or the passage of time, or both, would constitute or give rise to any breach or default in the performance of the Bayer License Agreement by Seller or, to the Knowledge of Seller, Bayer. Following the execution and delivery of the Transaction Documents and the performance of the Parties' rights and obligations under this Agreement and the other Transaction Documents, to the Knowledge of Seller, the Bayer License Agreement will continue in full force and effect, without modification, except as expressly set forth in the Bayer Consent as specified in the Transaction Documents, and shall remain the legal, valid and binding obligation of Seller and, to the Knowledge of Seller, Bayer, enforceable against Seller and, to the Knowledge of Seller, Bayer in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally and general equitable principles. Bayer has not notified Seller, in writing or otherwise, that it believes the transactions contemplated by the Transaction Documents will result in a breach, violation, cancellation or termination of, constitute a default under, or give Bayer the right to exercise any remedy or obtain any additional rights under, the Bayer License Agreement. Except as set forth in the Bayer Consent, neither Bayer nor any other Person has any right to consent to, approve, review or receive notice of the execution and delivery of the Transaction Documents and the performance of the Parties' rights and obligations hereunder and thereunder.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

(d) Seller has not waived any rights or defaults under the Bayer License Agreement or released Bayer, in whole or in part, from any of its obligations thereunder. There are no waivers or modifications (or pending requests therefor) in respect of the Bayer License Agreement. Other than those modifications in place at the time of this Agreement, neither Seller nor Bayer has agreed to further amend or waive any provision of the Bayer License Agreement, and there is no current proposal to do so.

(e) To the Knowledge of Seller, no event has occurred that would (i) give Bayer the right to terminate the Bayer License Agreement or cease paying Purchased Payments thereunder or (ii) to the Knowledge of Seller, give Seller the right to terminate the Bayer License Agreement. Seller has not received any notice of an intention by Bayer to terminate or breach its License Agreement, in whole or in part, or from Bayer or any other Person challenging the legality, validity or enforceability of the License Agreement or the obligation to pay the Purchased Payments thereunder, or asserting that Seller or Bayer is in default of its obligations thereunder. Seller has no intention of terminating the Bayer License Agreement and has not given Bayer any notice of termination or breach of its Bayer License Agreement, in whole or in part, or challenging the legality, validity or enforceability thereof.

(f) Except as provided in the Bayer License Agreement and/or the Applicable Agreements, Seller is not a party to any agreement providing for a sharing of, or providing for, or permitting any Set-off against, the Purchased Payments. Except as provided in the Bayer License Agreement and/or the Applicable Agreements, Bayer does not have any right of Set-off under any contract or other agreement with Seller against the Purchased Payments or any other amounts payable to Seller pursuant to the Bayer License Agreement. Bayer has not exercised, and, to the Knowledge of Seller, has not had the right to exercise, and no event or condition exists that, upon notice or passage of time or both, could reasonably be expected to permit it to exercise, any Set-off against the Purchased Payments or any other amounts payable to Seller under the Bayer License Agreement with respect to any Bayer Product.

(g) Except as contemplated by Section 2.1 hereof, Seller (i) has not assigned, sold, conveyed, granted or otherwise transferred any of its rights or obligations, in whole or in part, under the Bayer License Agreement and (ii) has not granted, incurred or suffered to exist any Liens (other than Permitted Liens) on the Bayer License Agreement or any of its rights thereunder or on any of the Subject Assets. Except as contemplated by Section 2.1 hereof and under the Applicable Agreements, no Person other than Seller and its successors, assigns, and heirs is entitled to receive any of the royalties and other amounts payable by Bayer under the Bayer License Agreement.

(h) Seller has not consented to any assignment, pledge, sale or other transfer (including licenses) by Bayer of any of Bayer's rights or obligations under the Bayer License Agreement, and, to the Knowledge of Seller there is not any such assignment, pledge, sale or other transfer (including licenses) by Bayer. Seller has not received any notice from Bayer of Bayer's intent to pledge, assign, sell, convey, grant, or otherwise transfer (including license) any of Bayer's rights or obligations under the Bayer License Agreement.

(i) Neither Seller nor Bayer has made any claim of indemnification under the Bayer License Agreement.

(j) Seller has not exercised its rights to conduct an audit under the Bayer License Agreement.

(k) To the Knowledge of Seller, Bayer has complied with its obligations to develop the Bayer Products and to seek to obtain Regulatory Approval for the Bayer Products pursuant to the Bayer License Agreement.

Section 3.13 UCC Matters.

(a) Seller's exact legal name is "Aronora, Inc.", and prior to May 5, 2012, was "Aronora, LLC". Seller's principal place of business is, and since such date of organization has been, located in, and its jurisdiction of organization is, and since such date of organization has been, Oregon. Since such date of organization, Seller has not been the subject of any merger or corporate or other reorganization in which its identity or status was materially changed, except in each case when it was the surviving or resulting Person.

(b) claims and rights of Purchaser created by the Transaction Documents in and to the Subject Assets are not and shall not be subordinated to any creditor of Seller or any other Person (other than as a result of Purchaser's own election).

Section 3.14 Margin Stock. Seller is not engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no portion of the Purchase Price shall be used by Seller for a purpose that violates Regulation T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time.

Section 3.15 Grants. Except for the US governmental or other grants obtained by Seller as of the date hereof (as to which Purchaser acknowledges the existence of obligations thereunder, e.g., US government "march-in rights" under certain circumstances), no other grants have been obtained by Seller. In the future, Seller may enter into or accept additional US governmental or other grants, including certain march-in rights, provided that such grants would not reasonably be expected to have a material and adverse effect on Purchaser's interest in the Subject Assets acquired hereunder.

Section 3.16 License Agreements. The Bayer License Agreement and the Applicable Agreements attached hereto as **Exhibit E**, are true, correct and complete copies of each such agreements, as in effect on the date hereof, and there have been no amendments or modifications to such agreements which are not reflected in such Exhibit E.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the date hereof as follows:

Section 4.1 Organization. Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all powers and authority, and all licenses, permits, franchises, authorizations, consents and approvals of all Governmental Authorities, required to own its property and conduct its business as now conducted.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 4.2 No Conflicts. None of the execution and delivery by Purchaser of any of the Transaction Documents to which Purchaser is party, the performance by Purchaser of the obligations contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby will contravene, conflict with, result in a breach, violation, cancellation or termination of, constitute a default (with or without notice or lapse of time, or both) under, require prepayment under, give any Person the right to exercise any remedy or obtain any additional rights under, or accelerate the maturity or performance of or payment under, in any respect, (i) any Applicable Law 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, (ii) any term or provision of any contract, agreement, indenture, lease, license, deed, commitment, obligation or instrument to which Purchaser is a party or by which Purchaser or any of its assets or properties is bound or committed or (iii) any term or provision of any of the organizational documents of Purchaser.

Section 4.3 Authorization. Purchaser has all corporate power and authority to execute, deliver and perform its obligations under, the Transaction Documents to which it is party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of each of the Transaction Documents to which Purchaser is a party and the performance by Purchaser of its obligations hereunder and thereunder have been duly authorized by Purchaser. Each of the Transaction Documents to which Purchaser is party has been duly executed and delivered by Purchaser. Each of the Transaction Documents to which Purchaser is or will be a party constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditors' rights generally and general equitable principles.

Section 4.4 Governmental and Third-Party Authorizations. The execution and delivery by Purchaser of the Transaction Documents to which Purchaser is party, the performance by Purchaser of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereunder and thereunder do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority or any other Person, except as described in Section 3.5.

Section 4.5 No Litigation. There is no (a) action, suit, arbitration proceeding, claim, demand, citation, summons, subpoena, investigation or other proceeding (whether civil, criminal, administrative, regulatory, investigative or informal) pending or, to the knowledge of Purchaser, threatened by or against Purchaser, at law or in equity, or (b) inquiry or investigation (whether civil, criminal, administrative, regulatory, investigative or informal) by or before a Governmental Authority pending or, to the knowledge of Purchaser, threatened against Purchaser, that, in each case, challenges or seeks to prevent, enjoin, alter, delay, make illegal or otherwise interfere with the consummation of any of the transactions contemplated by any of the Transaction Documents to which Purchaser is or will be party.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

ARTICLE V
COVENANTS

The Parties covenant and agree as follows:

Section 5.1 Notices; Books and Records; Audit Right.

(a) **Notices**.

(i) As promptly as possible (but in no event more than five (5) Business Days) after receipt by Seller or Purchaser of notice of (1) any action, suit, claim, demand, dispute, investigation, arbitration or other proceeding (commenced or threatened) relating to the transactions contemplated by the Transaction Documents, the Subject Assets or a License Agreement or (2) any violation, breach, default or termination (or notice of any other event or circumstance that with the passage of time or additional notice or both could result in any such violation, breach, default or termination) by any Person under a License Agreement, the party receiving such notice shall provide to the other Party (A) written notice thereof (including reasonable details to enable such party to understand the applicable matters involved, the events or circumstances that gave rise to such matters, the relief and/or remedies being sought, any proposed corrective action to be taken, and relevant timelines), together with a copy of such written notice received by such party along with any related materials, and (B) such other information as to enable the non-receiving party to participate meaningfully in discussions with the other party or Licensee or otherwise regarding such matters.

(ii) As promptly as possible (but in no event more than five (5) Business Days) after receipt by Seller of any written notice, demand, certificate, correspondence, report or other communication relating to a potential Adverse Change to the Subject Assets, the Products, the Product IP Rights, or a License Agreement (other than a Royalty Report), Seller shall provide to Purchaser written notice thereof (including reasonable details to enable Purchaser to understand the applicable matters involved, the events or circumstances that gave rise to such matters, the relief and/or remedies being sought, any proposed correction action to be taken, and relevant timelines), together with a copy of such written notice, demand, certificate, correspondence, report or other communication received by Seller.

(iii) As promptly as possible (but in no event more than five (5) Business Days) after acquiring knowledge (without a duty of reasonable inquiry) of an infringement by a Third Party of any of the Product IP Rights, or of the existence of any facts, circumstances or events that, alone or together with other facts, circumstances or events, could reasonably be expected to result in an infringement by a Third Party of any Product IP Rights (other than any infringement resulting out of a breach or default by Seller under a License Agreement), Seller shall provide to Purchaser written notice describing in reasonable detail such infringement, including such information as to enable Purchaser to participate meaningfully in discussions with Seller or such Third Party or otherwise regarding such matters.

(iv) Seller shall provide Purchaser with written notice as promptly as possible (but in no event more than three (3) Business Days) after acquiring Knowledge of any of the following: (1) the occurrence of a Bankruptcy Event in respect of Seller; (2) any uncured breach or default by Seller of or under any covenant, agreement or other provision of any Transaction Document; (3) any representation or warranty made by Seller in any of the Transaction Documents or in any certificate delivered to Purchaser pursuant to this Agreement proving to be untrue, inaccurate or incomplete in any material respect on the date as of which such representation or warranty was made; or (4) any change, effect, event, occurrence, statement of facts, development or condition that could reasonably be expected to result in an Adverse Change.

(v) Seller shall provide Purchaser with written notice not less than thirty (30) days prior to any change in, or amendment or alteration of, Seller's (1) legal name, (2) form or type of organization, or (3) jurisdiction of organization.

(vi) Purchaser shall provide Seller with written notice as promptly as possible (but in no event more than three (3) Business Days) after acquiring Knowledge of any of the following: (1) the occurrence of a Bankruptcy Event in respect of the Purchaser, (2) an uncured material breach or default by Purchaser of or under any covenant, agreement or other provision of any Transaction Document, (3) representation or warranty made by Purchaser in any of the Transaction Documents or in any certificate delivered to Seller pursuant to this Agreement proving to be untrue, inaccurate or incomplete in any material respect on the date as of which such representation or warranty was made; or (4) any change, effect, event, occurrence, statement of facts, development or condition that could reasonably be expected to result in an Adverse Change.

(b) **Summary of Set-offs**. To the extent not directly provided to Purchaser by a Licensee, Seller shall promptly deliver to Purchaser, accompanied by reasonable documentation, a summary of any Set-offs included in the calculation of royalties and other amounts payable to Seller for any period, the amount of any milestone payments paid pursuant to a License Agreement and any indemnity or reimbursements.

(c) **Royalty Reports & Milestone Notifications**. To the extent not directly provided to Purchaser by a Licensee, Seller shall promptly deliver to Purchaser a complete copy of any Bayer or Non-Bayer Royalty Report required to be delivered and delivered by such Licensee to Seller for the applicable Royalty Quarter under a License Agreement. With respect to any Non-Bayer Products or Bayer Products returned to Seller that are developed internally and sold by Seller or Third Parties on Seller's behalf, Seller shall prepare and deliver quarterly Royalty Reports to Purchaser detailing the quarterly Net Sales thereof and the corresponding royalties payable to Purchaser within forty-five days after the end of each Royalty Quarter. In addition, upon becoming aware of the achievement of any milestones under a License Agreement, Seller shall promptly notify Purchaser of same.

(d) **Seller Books and Records; Audit Right**. Seller shall keep and maintain at all times complete and accurate books and records relating to the royalties and other payments (including the Purchased Payments) received or entitled to be received by Seller under a License Agreement or payable directly by Seller to Purchaser (the "**Seller Books and Records**"), which books and records shall be maintained for [*] years following their creation or such longer period as required by Applicable Law. For so long as Purchaser is entitled to receive Purchased Payments hereunder and for a period of [*] years thereafter, upon prior written notice to Seller, Purchaser has the right to inspect and, at Purchaser's expense, to audit the Seller Books and Records to verify the accuracy of the Purchased Payments made to the Purchaser hereunder and the accuracy of any Royalty Report. Any such audit shall occur (i) not more than once in any calendar year, unless such audit reveals an underpayment of [*]or more in Purchased Payments for [*], in which case, Purchaser shall be permitted an additional audit right in such calendar year pursuant to this Section 5.1(d), and (ii) upon not less than 30 days' prior written notice to Seller. If any such audit results in a determination that for any Royalty Quarter covered by the audit, there was an underpayment of Purchased Payments to the Purchaser, the amount of such deficiency shall be promptly paid, or cause to be paid, by Seller to Purchaser, plus interest for the period from and including the date when such amount should have been paid by Licensee or Seller to Purchaser in accordance with this Agreement through but excluding the date of payment of such amount, at a rate, calculated on a 365-day or 366-day basis, as applicable, equal to the then current prime rate of interest quoted in the Money Rates section of the on-line edition of the Wall Street Journal (at http://www. markets.wsj.com) plus [*]. If any such audit reveals an underpayment of [*] or more in Purchased Payments for [*], then in addition to promptly paying the amount of such underpayment plus interest as provided in the immediately prior sentence, Seller shall also pay to Purchaser an amount equal to the fees and expenses incurred by Purchaser in connection with such audit.

(e) Seller shall promptly make available to Purchaser such other information as Purchaser may, from time to time, reasonably request with respect to a License Agreement, the Products, the Product IP Rights, and the Subject Assets subject to compliance with any applicable confidentiality requirements, including, without limitation, providing Purchaser with a summary of the current status of the Products within thirty (30) days after the end of each calendar quarter.

Section 5.2 Public Announcement. Seller and Purchaser agree that, after the execution of this Agreement, public announcements may be issued in the form of one or more press releases, and in disclosures contained in documents to be filed with or furnished to the SEC, in each case subject to Purchaser or Seller having a reasonable prior opportunity to review such public announcement, and which announcement shall be in a form mutually acceptable to Purchaser and Seller acting in their reasonable discretion. Any party hereto may thereafter disclose any information contained in such press release or SEC documents at any time without the consent of the other party hereto, provided, however, that a party may at any time make any public disclosure required by Applicable Law. Purchaser will make a Confidential Treatment Request to the SEC covering the portions of this Agreement that are properly categorized as proprietary or trade secret information.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 5.3 Commercially Reasonable Efforts; Further Assurances.

(a) Subject to the terms and conditions of this Agreement, each Party hereto will use 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 Law to consummate the transactions contemplated by the Transaction Documents to which Seller or Purchaser, as applicable, is party, including to (i) perfect the sale, assignment, transfer, conveyance and granting of the Subject Assets to Purchaser pursuant to this Agreement, (ii) execute and deliver such other documents, certificates, instruments, agreements and other writings and to take such other actions as may be necessary or desirable, or reasonably requested by the other Party hereto, in order to consummate or implement expeditiously the transactions contemplated by any Transaction Document to which Seller or Purchaser, as applicable, is party, (iii) perfect, protect, more fully evidence, vest and maintain in Purchaser good, valid and marketable rights to and interests in the Subject Assets free and clear of all Liens (other than Permitted Liens), (iv) create, evidence and perfect Purchaser's back-up security interest granted pursuant to Section 2.1(d), and (v) enable Purchaser to exercise or enforce any of Purchaser's rights under any Transaction Document to which Seller or Purchaser, as applicable, is party.

(b) Seller and Purchaser shall cooperate and provide assistance as reasonably requested by the other party hereto, at such other party's expense (except as otherwise set forth herein), in connection with any litigation, arbitration, investigation or other proceeding (whether threatened, existing, initiated or contemplated prior to, on or after the date hereof) to which the other party hereto, any of its Affiliates or controlling Persons or any of their respective directors, officers, equity-holders, controlling persons, managers, agents or employees is or may become a party or is or may become otherwise directly or indirectly affected or as to which any such Persons have a direct or indirect interest, in each case relating to any Transaction Document, the Subject Assets or the transactions described herein or therein but in all cases excluding any litigation (i) brought by Seller (for itself or on behalf of any Seller Indemnified Party) against Purchaser or (ii) brought by Purchaser (for itself or on behalf of any Purchaser Indemnified Party) against Seller.

(c) Seller and Purchaser shall comply with all Applicable Laws with respect to the Transaction Documents, the Subject Assets, the License Agreements, all ancillary agreements related thereto.

(d) Seller shall not enter into any contract, agreement or other legally binding arrangement (whether written or oral), or grant any right to any other Person, in each case that would conflict with the Transaction Documents or the rights granted to Purchaser hereunder or thereunder, impair Seller's ability to perform its obligations under the Transaction Documents, or serve or operate to limit, circumscribe or impair any of Purchaser's rights under the Transaction Documents (or Purchaser's ability to exercise any such rights). For avoidance of doubt, no grant applied for and received by Seller in the future will be considered a contract, agreement or other legally binding arrangement for purposes of this Section 5.3(d) unless it has the potential to constitute an Adverse Change with respect to Purchaser's interest in the Subject Assets. For purposes of this Agreement, typical government march-in rights under a US government grant shall not be considered or classified as an Adverse Change with respect to the Purchaser's interest in the Subject Assets.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

(e) Seller will take Commercially Reasonable Efforts to enter into license agreements with appropriate Third Parties covering the Non-Bayer Products and/or develop them internally. In addition, Seller will not sell the rights to research, develop, commercialize or otherwise exploit any of the Non-Bayer Products or any of the Bayer Products returned to Seller by a Licensee without (i) consultation with Purchaser and (ii) making Commercially Reasonable Efforts to provide Purchaser with royalties and milestone payment terms (on an as-combined basis) no less favorable than those provided hereunder on a Product by Product basis. To the extent that Seller enters into a Non-Bayer License Agreement or a New License Agreement, it will ensure that such Non-Bayer License Agreement or New License Agreement includes provisions requiring the applicable Licensee to make Non-Bayer Purchased Payments directly to Purchaser which payments will be made separately from, and in addition to, any payments required to be made to Seller thereunder.

Section 5.4 Purchased Payments on Account of the Subject Assets.

(a) If a Licensee, any Sublicensee or any other Person (notwithstanding the terms of the Bayer Consent) makes any payment in respect of the Subject Assets that is owed to Purchaser as a Purchased Payment hereunder, to Seller (or to any of its Affiliates) instead of to Purchaser, then (i) the portion of such payment that represents the Purchased Payment owed to Purchaser at such time shall be held by Seller (or such Affiliate) in trust for the benefit of Purchaser, (ii) Seller (or such Affiliate) shall have no right, title or interest whatsoever in such portion of such payment and shall not create or suffer to exist any Lien thereon and (iii) Seller (or such Affiliate) promptly, and in any event no later than five (5) Business Days following the receipt by Seller (or such Affiliate) of such portion of such payment, shall remit, or cause to be remitted, such portion of such payment to the Purchaser Account, without Set-off, by wire transfer of immediately available funds, in the exact form received with all necessary endorsements.

(b) Seller shall not amend, modify, supplement, restate, waive, cancel or terminate the executed Bayer Consent without the prior written consent of Purchaser.

Section 5.5 License Agreements; Grants

(a) Seller (i) shall perform and comply in all respects with its duties and obligations under each License Agreement and shall not, without the prior written consent of Purchaser, amend, modify or terminate a License Agreement or any of the Applicable Agreements, in whole or in part (including by merger, operation of law or otherwise), or any of its rights and obligations under a License Agreement if such action could be reasonably expected to have an Adverse Change to Purchaser's interest in the Subject Assets, (ii) shall not grant, incur or suffer to exist any Liens (other than Permitted Liens) on the Subject Assets or a License Agreement, (iii) shall not forgive, release or compromise any milestones, royalties or other amounts owed to or becoming owing to it under a License Agreement, (iv) shall not assign (including by merger, operation of law or otherwise), amend, modify, supplement, restate, waive, cancel or terminate (or consent to any cancellation or termination of), in whole or in part, any rights under a License Agreement constituting or involving, affecting or relating to the Subject Assets, or any provision thereof or right thereunder with respect to the right to receive the Purchased Payments, including any assignment, amendment, modification, supplement, restatement, waiver, cancellation or

termination of a License Agreement or any rights thereunder which action could reasonably be expected to have constitute an Adverse Change with respect to Purchaser's interest in the Subject Assets other than as expressly contemplated by the Transaction Documents, (v) except pursuant to Section 5.6, shall not enter into any new agreement or legally binding arrangement in respect of, in connection with, or related to any of the Subject Assets, the Products, or a License Agreement, (vi) shall not waive any obligation of, or grant any consent to, the applicable Licensee under or in respect of, in connection with, or relating to a License Agreement, any Product, or any of the Subject Assets which action could reasonably be expected to constitute an Adverse Change with respect to the Purchaser's interest in the Subject Assets, and (vii) shall not accept any assignment, amendment, modification, supplement, restatement, waiver, cancellation or termination of an Applicable Agreement or any rights thereunder which action could reasonably be expected to constitute an Adverse Change with respect to on Purchaser's interest in the Subject Assets.

(b) Seller shall not, without the prior written consent of Purchaser and subject in all respects to Section 5.5(a), withhold any consent, grant any consent, exercise or waive (or fail to exercise or waive) any right or option, or take or fail to take any action in respect of, affecting or relating to the Subject Assets, a Product, any of the Applicable Agreements or a License Agreement, in any manner that could reasonably be expected to, in each case, (i) result in an Adverse Change, or (ii) conflict with or cause a default under, or breach or termination of, this Agreement, any other Transaction Document or a License Agreement.

(c) If Seller receives any notice from a Licensee or any other Person (i) alleging any breach of or default under a License Agreement by Seller or (ii) asserting the existence of any facts, circumstances or events that, 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 a License Agreement by Seller or the right to terminate a License Agreement (in whole or in part) by a Licensee, Seller shall promptly provide notice thereof in accordance with Section 5.1(a)(i) hereof. If Seller acquires Knowledge that Seller is (or, with the giving of notice, the passage of time, or both, would be) in breach of or default under a License Agreement, Seller shall promptly (and in any case within five (5) Business Days) provide notice to Purchaser thereof, and after consultation with Purchaser shall use Commercially Reasonable Efforts (at Seller's expense) to promptly cure such breach or default; provided, however, that if Seller fails to promptly make best efforts to cure any such breach or default, Purchaser shall, to the extent permitted by a License Agreement, be entitled to take any and all actions it deems reasonably necessary to cure such breach or default, and Seller agrees to cooperate with Purchaser for such purpose and to reimburse Purchaser promptly (but in no event later than two (2) Business Days) upon demand for all reasonable Third Party costs and expenses incurred in connection therewith.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

(d) If Seller acquires Knowledge, without a duty of reasonable inquiry, of a breach of or default under (or an alleged breach of or default under) a License Agreement by a Licensee, as applicable, or of the existence of any facts, circumstances or events that, 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 a License Agreement by a Licensee, as applicable, or the right to terminate a License Agreement (in whole or in part) by Seller, in each case, Seller shall provide notice thereof in accordance with Section 5.1(a)(i) hereof and following prompt consultation with Purchaser take such Commercially Reasonable Efforts to remedy such situation (including commencing legal actions against a Licensee using legal counsel reasonably satisfactory to Purchaser) and to exercise any or all rights and remedies available to Seller, whether under a License Agreement or by operation of law or equity. If Seller makes a reasonable decision not to take such action, Purchaser shall have the right to take such action with counsel appointed by Purchaser; provided, that the reasonable fees and expenses of Purchaser's outside counsel in connection therewith shall be borne 100% by Seller if such breach, default or termination event results from, or is caused directly by a breach or default by Seller, otherwise such fees and expenses shall be borne by Purchaser. Any rights granted hereunder shall be in addition to and not in derogation of any step-in rights that Third Parties may have under the Applicable Agreements and Purchaser shall cooperate with such Third Parties to avoid any conflicts between them.

(e) If Seller acquires Knowledge, without a duty of reasonable inquiry, of an infringement by a Third Party of any of the Product IP Rights, or of the existence of any facts, circumstances or events that, alone or together with other facts, circumstances or events, could reasonably be expected to result in an infringement by a Third Party of the Product IP Rights (other than any infringement resulting out of a breach or default by Seller under the License Agreement), Seller shall provide written notice thereof to Purchaser in accordance with Section 5.1(a)(iii) and after prompt consultation with Purchaser take such Commercially Reasonable Efforts (including commencing legal actions against a Licensee using legal counsel reasonably satisfactory to Purchaser) to abate such infringement and to exercise any or all rights and remedies available to it, whether under a License Agreement or by operation of law or equity. If Seller makes a commercially reasonable decision not to bring or institute such action (including legal action), then, in coordination with other parties' available enforcement rights under the Applicable Agreements, Purchaser shall be permitted to initiate any such action in the name and on behalf of Seller and itself and the costs of such action shall be borne by the Purchaser. In connection with any such action brought by Purchaser in the name and on behalf of Seller and itself, Seller agrees to cooperate and provide assistance as reasonably requested by Purchaser.

(f) Seller shall: (i) subject to the applicable License Agreement and/or Applicable Agreements, take any and all Commercially Reasonable Efforts for which Seller is responsible party, and prepare, execute, deliver and file any and all agreements, documents and instruments, that are reasonably necessary to diligently preserve and maintain the Product IP Rights, including payment of maintenance fees or annuities, and (ii) with respect to the Product IP Rights for which Seller is responsible, file patents and any corrections, substitutions, reissues and reexaminations thereof and any other forms of patent term restoration in any jurisdiction and obtain, or cause the obtainment of, patent listing in the FDA Electronic Orange Book. The costs and expenses of Seller incurred in connection with the foregoing actions shall be borne by Seller. Seller shall not disclaim or abandon or fail to take any action necessary or desirable to prevent the disclaimer or abandonment of, any Product IP Rights without prior consultation with the Purchaser. If, after consultation with Purchaser, Seller determines to disclaim, abandon or not to take preventative action related to any of the Product IP Rights, Purchaser may take such preventative actions at its sole expense and Seller shall provide commercially reasonable assistance to Purchaser with respect thereto.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

(g) Subject to the applicable License Agreement and/or Applicable Agreements, Purchaser shall have the right to participate in, with counsel appointed by it, any meeting, discussion, action, suit or other proceeding involving the infringement, legality, validity or enforceability of the Product IP Rights proposed to be undertaken by Seller in the exercise of its rights under the applicable License Agreement with respect to the Product IP Rights; provided that the fees and expenses of Purchaser's outside counsel in connection therewith shall be borne by Seller if such infringement, legality, validity or enforceability directly results from, or is directly caused by Seller's gross negligence or willful misconduct; otherwise, such fees and expenses shall be borne by Purchaser.

(h) Seller (i) shall make available its relevant records and personnel to Purchaser in connection with any litigation commenced by Seller or Purchaser against a Licensee to enforce any of Seller's or Purchaser's rights under this Agreement or a License Agreement, and (ii) shall use Commercially Reasonable Efforts to provide reasonable assistance and authority, at Purchaser's expense, to file and bring the litigation, including, at Purchaser's expense, being joined as a party plaintiff.

(i) From and after the date hereof, neither Seller nor its Affiliates shall grant any license in or to the Product IP Rights in any geographic territory, for the Products subject to this Agreement, unless such license becomes a "License Agreement" hereunder and the Purchased Payments under such license become part of the "Subject Assets."

(j) Seller may enter into grants with march-in or other rights or obligations after the Effective Date hereof, provided that they would not reasonably be expected to have an Adverse Change with respect to the Purchased Payments.

Section 5.6 Termination of a License Agreement.

(a) Without limiting the provisions of Section 5.5, if (a) Seller or a Licensee terminates, or provides written notice of termination of, a License Agreement (in whole or in part), or (b) such License Agreement is otherwise terminated (in whole or in part) other than solely by virtue of the expiration of any of the applicable Product Patents (the "**Terminated License Agreement**"), then Seller shall use Commercially Reasonable Efforts promptly to pursue a new license arrangement or arrangements with one or more substitute licensees for the applicable Product(s) and providing for the most favorable economic terms (to the licensor) reasonably practicable at such time and use Commercial Reasonable Efforts to negotiate royalty and milestone payment terms no less favorable to Purchaser than those contained in the Terminated License Agreement (a "**New Arrangement**"). For purposes of clarity, this section 5.6 will not apply in the event that [*] is not optioned by Bayer and in which case [*] will be deemed a Non-Bayer Product for purposes of this Agreement.

(b) Should Seller identify any New Arrangement(s), Seller shall present the material terms of the New Arrangement(s) to Purchaser and, upon the express written consent of Purchaser (such consent not to be unreasonably withheld), Seller shall enter into a new license agreement(s) effecting such New Arrangement(s) (each, a "**New License Agreement**"), which New License Agreement upon due execution and delivery will be deemed a "License Agreement" hereunder as if originally incorporated herein. Seller shall comply with the provisions of this Agreement in connection with identifying and entering into the New License Agreement(s) by including such New License Agreement(s) (including the royalties and milestones payable thereunder which shall be deemed to be Purchased Payments) in the Subject Assets. Thereafter any references herein to the "Subject Assets" and the "License Agreement" shall be deemed to include the New License Agreement(s) (including the royalties and milestones payable thereunder which shall be deemed to be Purchased Payments) and the New License Agreement(s), and all references in the Transaction Documents shall be deemed to be references to the New License Agreement(s) without any further action by the Parties hereto to amend the Transaction Documents provided such documents and/or agreements are specifically incorporated by reference into the New License Agreement(s).

Section 5.7 Purchaser's Audits of Non-Bayer Licensee Books and Records.

(a) The Parties acknowledge and agree that, with respect to any Non-Bayer License Agreement, Seller shall control and enforce any inspection or audit right of the applicable Licensee's books and records as provided under such Non-Bayer License Agreement as reasonably requested by Purchaser. The Parties agree that Seller shall not cause any inspection or audit of a Non-Bayer Licensee's books and records to be conducted (whether pursuant to the terms of the Non-Bayer License Agreement or otherwise) without first consulting with the Purchaser. If Seller elects to cause an inspection or audit of a Non-Bayer Licensee's books and records pursuant to this Section 5.7, then both Parties shall be entitled to participate in such audit or inspection, with Seller having sole authority (in consultation with Purchaser) to select such Third Party representatives (including any public accounting firm) as it deems appropriate to undertake such audit or inspection. The costs and expenses of any such Third Party inspection or audit carried out pursuant to this Section 5.7(a) shall be borne equally by Seller and Purchaser. If Purchaser decides to hire its own representatives other than the Third Party representatives selected by Seller (in consultation with Purchaser), Purchaser shall be free to do so solely at its own cost.

(b) In addition, Seller shall, upon the reasonable written request and at the sole expense of Purchaser, initiate an inspection or audit of a Non-Bayer Licensee's books and records with respect to any Product in accordance with the terms of (and subject to the limitations set forth in) the applicable Non-Bayer License Agreement.

(c) For the purposes of exercising Purchaser's rights pursuant to this Section 5.7 in circumstances where Purchaser is requesting that Seller cause an inspection or audit to be made, Seller shall select such public accounting firm as Purchaser shall reasonably recommend for such purpose. Seller and Purchaser agree that all of the expenses of any inspection or audit carried out at the request of Purchaser shall be borne by Purchaser, including fees and expenses of such public accounting firm and either party's reasonable out-of-pocket costs. To the extent that disclosure of an inspection or audit report prepared by any qualified Third Party representative (whether or not a public accounting firm) is made to one Party but not the other Party following the exercise of an inspection or audit initiated by either Party pursuant to the Non-Bayer License Agreement, each Party will furnish to the other any inspection or audit report prepared in connection with such inspection or audit to the extent such report was not delivered to both Seller and Purchaser. Purchaser shall have the right to reasonably request Seller, in writing, to exercise Seller's rights under the Non-Bayer License Agreement to cause the Non-Bayer Licensee to cure, in accordance with the Non-Bayer License Agreement, any discrepancy identified by such inspection or audit. If Seller declines to take any such curative action, then Purchaser shall have the right to take all available curative actions and Seller shall undertake Commercially Reasonable Efforts to cooperate with Purchaser at Purchaser's sole cost and expense.

Section 5.8 Tax Matters.

(a) Notwithstanding the accounting treatment thereof, Seller and Purchaser shall treat the transactions contemplated by the Transaction Documents as a sale for United States federal, state, local and foreign tax purposes. Accordingly, any and all Purchased Payments made pursuant to a License Agreement after the Closing Date shall be treated as made to Purchaser or Seller, as applicable, for United States federal, state, local and foreign tax purposes. The Parties shall cooperate to effect the foregoing treatment for United States federal, state, local and foreign tax purposes in the event that, notwithstanding the Bayer Consent, the Licensee, any Sublicensee or any other Person makes any future remittance of Purchased Payments to Seller which Seller must remit to Purchaser pursuant to Section 5.4 of this Agreement. Seller shall report the Purchased Payments hereunder on Form 1099-MISC or other applicable form as royalties for United States federal, state and local income tax purposes.

(b) The Parties hereto agree not to take any position that is inconsistent with the provisions of this Section 5.8 on any tax return or in any audit or other administrative or judicial proceeding unless (i) the other Party hereto has consented to such actions or (ii) the Party hereto that contemplates taking such an inconsistent position has been advised by nationally recognized tax counsel in writing that there is no "reasonable basis" (within the meaning of Treasury Regulation Section 1.6662-3(b)(3)) for the position specified in this Section 5.8. If there is an inquiry by any Governmental Authority of Seller or Purchaser related to this Section 5.8, the parties hereto shall cooperate with each other in responding to such inquiry in a reasonable manner consistent with this Section 5.8.

Section 5.9 Existence. Seller shall (a) preserve and maintain its existence, (b) preserve and maintain its rights, franchises and privileges, except to the extent that failure to do so could not reasonably be expected to result in an Adverse Change, and (c) qualify and remain qualified in good standing in each jurisdiction in which it is organized or qualified to do business except to the extent that failure to do so could not reasonably be expected to result in an Adverse Change.

Section 5.10 Protective Rights Agreement. For protective purposes only and to secure Seller's performance of its obligations hereunder to the extent the true and absolute sale hereunder, as evidenced by the Bill of Sale, becomes subject to a Recharacterization despite the Parties' intentions, Seller shall execute and deliver the Protective Rights Agreement at the Closing as contemplated by Section 6.2(d).

Section 5.11 Third-Party Royalty Payments. Seller shall make all royalty payments required to be paid by Seller to Third Parties under the Applicable Agreements in conformance with the requirements contained therein.

Section 5.12 Remittance to Joint Escrow Account.

(a) Not later than sixty (60) Business Days following the Effective Date, Seller and Purchaser shall establish a 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 shall instruct and use Commercially Reasonable Efforts to cause the payor of any Bayer Royalty Payments and Bayer Non-Royalty Payments to pay such Bayer Royalty Payments and Bayer Non-Royalty Payments directly into the Joint Escrow Account. Without in any way limiting the foregoing, commencing on the Closing Date and at any time thereafter, any and all Bayer Purchased Payments received by Seller or any of its Affiliates shall be transferred to the Joint Escrow Account within five (5) Business Days of Seller's or its Affiliate's knowledge of its receipt thereof. The Joint Escrow Account will be structured in such a manner that all Bayer Royalty Payments and Non-Royalty Payments will be deposited into the Joint Escrow Account and then the Purchaser's Bayer Purchased Payments shall be transferred to a deposit account designated by Purchaser and any remaining amounts shall be transferred to a deposit account designated by Seller for further distribution to the Third Parties under the Applicable Agreements. For the avoidance of doubt, all Non-Bayer Royalty Payments and Non-Bayer Non-Royalty Payments shall be paid directly to a deposit account designated by Purchaser and not into the Joint Escrow Account.

ARTICLE VI
THE CLOSING

Section 6.1 Closing. Subject to the closing conditions set forth in Sections 6.2 and 6.3, and unless otherwise mutually agreed by the Parties, the closing of the transactions contemplated under this Agreement (the "**Closing**") shall take place upon the fulfillment of all the Closing Conditions which may be fulfilled remotely via electronic delivery of the executed Transaction Documents and other deliverables (the "**Closing Date**"); provided that if the Closing does not occur within ninety (90) days of the execution date of this Agreement, then this Agreement shall automatically terminate and become null and void unless mutually agreed otherwise by the Parties.

Section 6.2 Conditions Applicable to Purchaser.

The obligations of Purchaser to effect the Closing and pay the Purchase Price pursuant to Section 2.3 hereof, shall be subject to the satisfaction of the following conditions, as of the Closing Date, any of which may be waived in writing by Purchaser in its sole discretion:

(a) The representations and warranties set forth in the Transaction Documents shall be true, correct and complete in all material respects on and as of the Closing Date (except that representations and warranties that refer to a specific earlier date shall be true and correct on such earlier date).

(b) All notices to and consents, approvals, authorizations and waivers from Third Parties and Governmental Authorities that are required for the consummation of the transactions contemplated by this Agreement or any of the Transaction Documents shall have been obtained or provided for and shall remain in effect.

(c) All of the Transaction Documents shall have been executed and delivered by Seller to Purchaser, and Purchaser shall have received the same.

(d) The Protective Rights Agreement shall have been duly executed and delivered by all the parties thereto, together with UCC-1 financing statements for filing under the UCC in Oregon, and such agreement shall be in full force and effect.

(e) Bayer shall have executed and delivered a fully executed copy of the Bayer Consent to Purchaser substantially in the form set forth in Exhibit B.

(f) Seller shall have complied in all material respects with its obligations hereunder and under the other Transaction Documents.

(g) There shall not have occurred any event or circumstance that could reasonably be expected to have an Adverse Change.

(h) The Parties and the Escrow Agent shall have executed the Joint Escrow Agreement and established the Joint Escrow Account.

Section 6.3 Conditions Applicable to Seller.

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

(a) The representations and warranties of Purchaser set forth in the Transaction Documents shall be true, correct and complete in all material respects on and as of the Closing Date (except that representations and warranties that refer to a specific earlier date shall be true and correct in all material respects on such earlier date).

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

Section 6.4 Closing Deliverables of Seller. At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following:

(a) this Agreement as previously executed by Seller;

(b) the Bill of Sale executed by Seller;

(c) the Disclosure Letter if any;

(d) the Bayer Consent with respect to the License Agreement duly executed by the Licensee;

(e) a certificate of an executive officer of Seller (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 (A) the constitutive documents of Seller and (B) resolutions of the board of directors or other governing body of Seller authorizing and approving the execution, delivery and performance by Seller of the Transaction Documents and the transactions contemplated herein and therein and (ii) setting forth the incumbency of the officer(s) of Seller who have executed and delivered the Transaction Documents, including therein a signature specimen of each such officer(s);

(f) the Protective Rights Agreement; and

(g) such other certificates, documents and financing statements as Purchaser may reasonably request, including a UCC financing statement reasonably satisfactory to Purchaser to create, evidence and perfect the sale, assignment, transfer, conveyance and grant of the Subject Assets pursuant to Section 2.1 and the first priority security interest granted pursuant to Section 2.1(d).

(h) The Parties and the Escrow Agent shall have executed the Joint Escrow Agreement and established the Joint Escrow Account.

Section 6.5 Closing Deliverables of Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

(a) this Agreement as previously executed by Purchaser;

(b) the Bill of Sale executed by Purchaser; and

(c) payment of the Purchase Price in accordance with Section 2.2.

ARTICLE VII
INDEMNIFICATION

Section 7.1 Indemnification by Seller. Seller agrees to indemnify and hold each of Purchaser and its Affiliates and any and all of their respective partners, directors, managers, members, officers, employees, agents and controlling persons (each, a "**Purchaser Indemnified Party**") harmless from and against, and will pay to each Purchaser Indemnified Party the amount of, any and all Losses (including reasonable attorneys' fees) awarded against or incurred or suffered by such Purchaser Indemnified Party, arising out of, or involving any claim, demand, action or proceeding arising out of (i) any breach of any representation, warranty or certification made by Seller in, or pursuant to, any of the Transaction Documents (including certificates or other written documentation delivered thereunder), (ii) any breach or default by Seller in respect of any covenant or agreement made by Seller in any Transaction Document or under the License Agreement, (iii) any Excluded Liabilities and Obligations, (iv) Third Party claims arising on or after the Closing Date and asserted against a Purchaser Indemnified Party relating to the transactions contemplated in any Transaction Document or a License Agreement, (v) any fees, expenses, costs, liabilities or other amounts incurred or owed by Seller to any brokers, financial advisors or comparable other Persons retained or employed by it in connection with the transactions contemplated by the Transaction Documents and (vi) acts or omissions of Purchaser or any of its Affiliates based upon written instructions from any Seller Indemnified Party (unless Purchaser is otherwise liable for such Losses pursuant to the terms of this Agreement); provided, however, that the foregoing shall exclude any indemnification to any Purchaser Indemnified Party (A) that results from the gross negligence or willful misconduct of such Purchaser Indemnified Party or (B) to the extent resulting from acts or omissions of Seller or any of its Affiliates based upon written instructions from any Purchaser Indemnified Party (unless Seller is otherwise liable for such Losses pursuant to the terms of this Agreement). Any amounts due to any Purchaser Indemnified Party hereunder shall be payable by Seller to such Purchaser Indemnified Party upon demand. Other than with respect to a breach of Section 5.12 or any fraud or intentional breach by Seller of any representations, warranties or covenants contained herein, Seller shall not be liable under this Section 7.1 [*]

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 7.2 Indemnification by Purchaser. The Purchaser agrees to indemnify and hold each of Seller and its Affiliates and any and all of their respective partners, directors, managers, members, officers, employees, agents and controlling Persons (each, a "**Seller Indemnified Party**") harmless from and against, and will pay to each Seller Indemnified Party the amount of, any and all Losses (including reasonable attorneys' fees) awarded against or incurred or suffered by such Seller Indemnified Party, arising out of, or involving any claim, demand, action or proceeding arising out of (i) any breach of any representation, warranty or certification made by Purchaser in, or pursuant to, any of the Transaction Documents (including certificates or other written documentation delivered thereunder), (ii) any breach or default by Purchaser in respect of any covenant or agreement made by Purchaser in any Transaction Document, (iii) any fees, expenses, costs, liabilities or other amounts incurred or owed by Purchaser to any brokers, financial advisors or comparable other Persons retained or employed by it in connection with the transactions contemplated by the Transaction Documents, and (iv) acts or omissions of Seller or any of its Affiliates based upon written instructions from any Purchaser Indemnified Party (unless Seller is otherwise liable for such Losses pursuant to the terms of this Agreement); provided however, that the foregoing shall exclude any indemnification to any Seller Indemnified Party (A) that results from the gross negligence or willful misconduct of such Seller Indemnified Party, (B) to the extent resulting from the performance by Seller or any of its Affiliates (excluding Purchaser) or the failure of Seller or any of its Affiliates (excluding Purchaser) to perform any of its obligations under, or any breach of any of Seller's representations and warranties in, any of the Transaction Documents, or (C) 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 (unless Purchaser is otherwise liable for such Losses pursuant to the terms of this Agreement). Any amounts due to any Seller Indemnified Party hereunder shall be payable by Purchaser to such Seller Indemnified Party upon demand.

Section 7.3 Procedures. 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 Section 7.1 or Section 7.2, 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 failure to so notify such indemnifying party will not relieve the indemnifying party from any liability that it may have to any indemnified party under Section 7.1 or Section 7.2 unless, and only to the extent that, the indemnifying party is actually prejudiced by such failure. In the event that any such action is brought against an indemnified party and it notifies the indemnifying party of the commencement thereof in accordance with this Section 7.3, the indemnifying party will be entitled, at the indemnifying party's sole cost and expense, to participate therein and, to the extent that it may wish, to join in or assume (at the indemnified party's sole discretion) the defense thereof, with counsel selected by such indemnifying party. If assumed, counsel reasonably satisfactory to the indemnified party shall be selected, 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 Article VII for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof. 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 unless (a) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (b) 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 (c) 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 at the same time (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 prior written consent, but, if settled with such consent or if there is a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any Loss by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or discharge of any claim or 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, compromise or discharge, as the case may be, (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.

Section 7.4 Exclusive Remedy. Subject to Section 8.3, following the Closing, the indemnification afforded by this Article VII shall be the sole and exclusive remedy for any and all Losses awarded against or incurred or suffered by a Seller Indemnified Party or Purchaser Indemnified Party (as applicable) 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, or pursuant to, any of the Transaction Documents (including certificates or other written documentation delivered thereunder), or any breach or default in respect of any covenant or agreement by a party hereto pursuant to any Transaction Document or the License Agreement. Notwithstanding the foregoing, the limitations set forth in this Section 7.4 shall not apply to a party's claim for indemnification hereunder in the case of fraud, intentional misrepresentation, intentional wrongful acts, intentional breach, bad faith or willful misconduct. In addition, it is understood and agreed among Seller and Purchaser that, notwithstanding this Section 7.4, Purchaser may exercise any remedies available to it at law or in equity in the event that (i) a Bankruptcy Event has occurred with respect to Seller or (ii) the back-up security interest granted to Purchaser pursuant to Section 2.1(d) shall cease to create, or shall be asserted by Seller not to create, in the event that the transfer contemplated by this Agreement is held not to be a sale, a valid, perfected, first priority security interest in the Subject Assets, except to the extent that any such loss of perfection or priority results from the failure of Purchaser to make related filings or to continue previously filed financing statements and other documents prior to the expiration thereof.

Section 7.5 No Consequential Damages. IN NO EVENT SHALL A PARTY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, INCLUDING WITHOUT LIMITATION LOST PROFITS ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES. NOTHING IN THIS SECTION 7.5 IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF EITHER PARTY UNDER THIS ARTICLE VII.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Termination. Subject to Section 6.1, this Agreement shall terminate six (6) months following receipt by Purchaser of all payments of the Purchased Payments to which it is entitled hereunder. Seller may terminate this Agreement if Purchaser fails to make timely payment of the Purchase Price at Closing or the Royalty Milestones upon becoming aware that such Royalty Milestones are due and subject to a five (5) Business Day cure period. In the event of the termination of this Agreement pursuant to this Section 8.1, this Agreement shall become void and of no further force and effect, except for those rights and obligations that have accrued prior to the date of such termination or relate to any period prior thereto, including the payment in accordance with the terms hereof of the Purchased Payments or other monetary payment on account of the Subject Assets. Notwithstanding the foregoing, Article I, Article VII, and Article VIII shall survive such termination and there shall be no liability on the part of any Party hereto, any of its Affiliates or controlling Persons or any of their respective officers, directors, equity-holders, debtholders, members, partners, controlling Persons, managers, agents or employees, other than as provided for in this Section 8.1. Nothing contained in this Section 8.1 shall relieve any Party hereto from liability for any breach of this Agreement that occurs prior to such termination, which liability shall survive such termination.

Section 8.2 Survival. All representations, warranties and covenants made herein and in any other Transaction Document or any certificate or other written documentation delivered pursuant thereto shall survive the execution and delivery of this Agreement and the Closing. The rights hereunder to indemnification, payment of Losses or other remedies based on such representations, warranties and covenants shall not be affected by any investigation conducted with respect to, or any Knowledge of Purchaser, or knowledge with respect to any other Person, acquired (or capable of being acquired) at any time (whether before or after the execution and delivery of this Agreement or the Closing) in respect of the accuracy or inaccuracy of or compliance with, any such representation, warranty or covenant.

Section 8.3 Specific Performance; Equitable Relief. Each of the Parties acknowledges that the other party hereto 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 hereto agrees that the other Party hereto shall have the right, in addition to any other rights it may have (whether at law or in equity), to specific performance of this Agreement and to pursue any other equitable remedies including injunction. Each of the Parties hereto may pursue such specific performance or other equitable remedies without going through any of the procedures set forth in Article VII.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 8.4 **Notices.** All notices, consents, waivers and other communications hereunder shall be in writing and shall be effective (a) upon receipt when sent through registered, certified or first-class mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent or (d) on the date transmitted by facsimile or other electronic transmission with a confirmation of receipt, in each case, confirmed in writing as above with a copy emailed and addressed to the recipient as follows:

if to Seller, to:

Aronora, Inc.
4640 SW Macadam Ave.
Suite 200A
Portland, OR 97239
Attention: Andras Gruber
Telephone: (503) 530-6842
Facsimile: (503) 389-7330
Email: andras.gruber@aronorabio.com
Email: erik.tucker@aronorabio.com

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

Davis Wright Tremaine LLP
24th Floor
1300 SW Fifth Ave.
Portland, Oregon 97201
Attention: Michael C. Phillips
Telephone: 503-778-5214
Email: michaelphillips@dwt.com

if to Purchaser, to:

XOMA (US) LLC
2200 Powell Street
Suite 310
Attention: Legal Department
Telephone: (510) 204-7200
Facsimile: (510) 644-2011
Email: bob.maddox@xoma.com

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

Donahue & Fitzgerald LLP
1999 Harrison Street, 25th Floor
Oakland, CA 94612

Attention: Steven K. Lee, Esq.
Telephone: (510) 451-3300
Email: slee@donahue.com

Each Party may, by notice given in accordance herewith to the other party hereto, designate any further or different address to which subsequent notices, consents, waivers and other communications shall be sent. Notwithstanding the foregoing, Seller and Purchaser may deliver reports and notices required under Section 5.1 via email provided that the parties shall have agreed in writing upon mutually acceptable procedures for such delivery.

Section 8.5 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 permitted assigns. Seller shall not be entitled to assign any of Seller's obligations and rights under this Agreement without the prior written consent of Purchaser which shall not be unreasonably withheld provided that any such assignee agrees in writing to assume all obligations hereunder. Purchaser may assign any of its rights to receive the Purchased Payments hereunder, in whole or in part, to a Third-Party reasonably acceptable to Seller. Pursuant only to acceptance of such Third-Party by Seller, in writing, Purchaser shall give notice of any such assignment to Seller promptly after the occurrence thereof. Notwithstanding the foregoing, either Party may, without the written consent of the other, assign this Agreement and its rights and delegate its obligations hereunder to an entity that acquires all or substantially all of the business or assets of the assigning party to which this Agreement pertains in connection with the transfer or sale of all or substantially all of its business, or in the event of its merger, consolidation, change in control or similar transaction in which case any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 8.5 shall be null and void.

Section 8.6 Nature of Relationship. The relationship between Seller and Purchaser is solely that of seller and purchaser, and neither Seller nor Purchaser has any fiduciary or other special relationship with the other Party hereto or any of its Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute Seller and Purchaser as a partnership, an association, a joint venture or any other kind of entity or legal form.

Section 8.7 Entire Agreement. This Agreement together with the Exhibits hereto (which are incorporated herein by reference) and the other Transaction Documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties hereto 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 hereto or the other Transaction Documents) has been made or relied upon by either Party hereto. Neither this Agreement nor any provision hereof is intended to confer upon any Person other than the Parties hereto and the other Persons referenced in Article VII any rights or remedies hereunder.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 8.8 Governing Law.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) Each of the Parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of a court with applicable jurisdiction located in San Francisco, California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the Parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court located in San Francisco, California. Each of the Parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(c) Each of the Parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 8.8. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each of the Parties hereto irrevocably consents to service of process in the manner provided for notices in Section 8.4. Nothing in this Agreement will affect the right of any Party hereto to serve process in any other manner permitted by Applicable Law.

Section 8.9 Confidentiality. All Confidential Information exchanged by the Parties hereto, including third-party Confidential Information, for purposes of fulfilling this Agreement, shall remain in the ownership of the originating Party, shall be considered and be maintained as Confidential Information as specified in the Mutual Confidentiality Agreement ("CDA") dated [*], incorporated herein in its entirety by reference. The Parties agree that the term of the CDA shall be extended to run concurrently with the term of this Agreement and for a period of six (6) years thereafter, and expressly be amended to further include the obligation to use Confidential Information only for the purpose of fulfilling obligations hereunder, and shall not otherwise be used for the benefit of the Party receiving Confidential Information or for the benefit of a third-party without prior written approval from the Party disclosing the Confidential Information.

Section 8.10 Severability. If one or more provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, which shall remain in full force and effect, and the parties hereto shall replace such invalid, illegal or unenforceable provision with a new provision permitted by Applicable Law and having an economic effect as close as possible to the invalid, illegal or unenforceable provision. Any provision of this Agreement held invalid, illegal or unenforceable only in part or degree by a court of competent jurisdiction shall remain in full force and effect to the extent not held invalid, illegal or unenforceable.

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

Section 8.11 Counterparts. 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 facsimile or other electronic transmission, and such facsimile or other electronic transmission shall be deemed an original.

Section 8.12 Amendments; No Waivers. Neither this Agreement nor any term or provision hereof may be amended, supplemented, restated, waived, changed or modified except with the written consent of the parties hereto. No failure or delay by either Party hereto 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. No notice to or demand on either Party hereto in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval hereunder shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

Section 8.13 Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

Section 8.14 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

Section 8.15 No Presumption Against Drafting Party. Each of the Parties hereto acknowledges that each Party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or any other Transaction Document against the drafting party has no application and is expressly waived.

Section 8.16 Community of Interest. The Parties desire to avail themselves to the maximum extent possible of all applicable legal privileges. The Parties intend that information regarding the preparation, filing, prosecution, maintenance, and enforcement Product IP Rights that may otherwise be subject to one or more legal privileges or protections is and shall be subject to those same privileges and protections despite the fact that it has been developed by or exchanged between or among the Parties and/or their counsel. The Parties further intend that the Product IP Rights shall be subject to the joint defense doctrine and common interest/community of interest doctrine. Further, this Agreement shall not affect the ethical, fiduciary or other obligations inherent in those attorney-client relationships other than to extend the cloak of confidentiality and privilege as provided herein.

Section 8.17 No Other Rights. Except as otherwise expressly set forth in this Agreement, nothing (including but not limited to the disclosure of Confidential Information) shall be construed as conferring on a Party an express or implied license, option to license, or any other right with respect to any agreements, technology, information, patent application, patent, or intellectual property rights of the other Party.

[SIGNATURE PAGE FOLLOWS]

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

ARONORA, INC.

By: _____
Name:
Title:

XOMA (US) LLC

By: _____
Name:
Title

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

[*] = Certain confidential information contained in this document, marked by brackets, is omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed

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.

Date: August 6, 2019

/s/ JAMES R. NEAL

James R. Neal

Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Thomas Burns, certify that:

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

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

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

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) 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: August 6, 2019

/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 endedJune 30, 2019, 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 6th day of August 2019.

/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.