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

FORM 10-Q

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

For the quarterly period ended September 30, 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 November 1, 2019, the registrant had 8,752,269 shares of common stock, $0.0075 par value per share, outstanding.

XOMA CORPORATION
FORM 10-Q
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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

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

	September 30, 2019 (unaudited)	December 31, 2018 (Note 1)
ASSETS		
Current assets:		
Cash	$ 39,744	$ 45,780
Trade and other receivables	3,783	1,468
Prepaid expenses and other current assets	519	378
Total current assets	44,046	47,626
Property and equipment, net	40	59
Operating lease right-of-use assets	5,929	—
Long-term royalty receivables	34,375	15,000
Long-term equity securities	873	392
Other assets	832	708
Total assets	$ 86,095	$ 63,785
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 923	$ 1,244
Accrued and other liabilities	1,100	2,382
Contingent consideration under royalty purchase agreements	75	—
Operating lease liabilities	2,353	—
Unearned revenue recognized under units-of-revenue method	859	490
Contract liabilities	798	798
Current portion of long-term debt	3,981	789
Total current liabilities	10,089	5,703
Unearned revenue recognized under units-of-revenue method – long-term	15,876	17,017
Long-term debt	28,698	21,690
Long-term operating lease liabilities	5,189	—
Other liabilities – long-term	457	590
Total liabilities	60,309	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 September 30, 2019 and December 31, 2018	—	—
Common stock, $0.0075 par value, 277,333,332 shares authorized, 8,752,269 and 8,690,723 shares issued and outstanding at September 30, 2019 and December 31, 2018, respectively	65	65
Additional paid-in capital	1,215,784	1,211,122
Accumulated deficit	(1,190,063)	(1,192,402)
Total stockholders' equity	25,786	18,785
Total liabilities and stockholders' equity	$ 86,095	$ 63,785

The accompanying notes are an integral part of these condensed consolidated financial statements.
(Note 1) The 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 INCOME (LOSS)
(unaudited)
(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Revenues:				
Revenue from contracts with customers	$ 8,525	$ 775	$ 17,176	$ 3,518
Revenue recognized under units-of-revenue method	330	121	772	96
Total revenues	8,855	896	17,948	3,614
Operating expenses:				
Research and development	143	637	1,123	1,445
General and administrative	5,821	4,657	16,709	14,236
Restructuring	—	909	—	1,368
Total operating expenses	5,964	6,203	17,832	17,049
Income (loss) from operations	2,891	(5,307)	116	(13,435)
Other income (expense), net:				
Interest expense	(484)	(209)	(1,336)	(557)
Other income, net	771	938	3,559	3,661
Net income (loss) and comprehensive income (loss)	$ 3,178	$ (4,578)	$ 2,339	$ (10,331)
Net income (loss) and comprehensive income (loss) available to common stockholders, basic	$ 1,851	$ (4,578)	$ 1,362	$ (10,331)
Net income (loss) and comprehensive income (loss) available to common stockholders, diluted	$ 1,911	$ (4,578)	$ 1,403	$ (10,331)
Basic net income (loss) per share available to common stockholders	$ 0.21	$ (0.55)	$ 0.16	$ (1.24)
Diluted net income (loss) per share available to common stockholders	$ 0.20	$ (0.55)	$ 0.15	$ (1.24)
Weighted average shares used in computing basic net income (loss) per share available to common stockholders	8,731	8,386	8,721	8,354
Weighted average shares used in computing diluted net income (loss) per share available to common stockholders	9,441	8,386	9,379	8,354

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

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

	Nine Months Ended September 30, 2019						
	Convertible Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Equity
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
Exercise of stock options	—	—	24	—	122	—	122
Stock-based compensation expense	—	—	—	—	1,494	—	1,494
Net income and comprehensive income	—	—	—	—	—	3,178	3,178
Balance, September 30, 2019	6	$ —	8,752	$ 65	$ 1,215,784	$ (1,190,063)	$ 25,786

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

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

	Nine Months Ended September 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
Exercise of stock options	—	—	8	—	32	—	32
Stock-based compensation expense	—	—	—	—	847	—	847
Net loss and comprehensive loss	—	—	—	—	—	(4,578)	(4,578)
Balance, September 30, 2018	5	$ —	8,387	$ 63	$ 1,190,480	$ (1,189,390)	$ 1,153

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

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

	Nine Months Ended September 30,	
	2019	2018
Cash flows from operating activities:		
Net income (loss)	$ 2,339	$ (10,331)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Fair value of Rezolute common stock shares received as consideration for license agreement	—	(955)
Stock-based compensation expense	4,233	3,033
Common stock contribution to 401(k)	102	20
Depreciation and amortization	19	23
Amortization of debt issuance costs, debt discount and final payment on debt	390	36
Loss on sublease	—	1,421
Non-cash lease expense	(170)	—
Change in fair value of long-term equity securities	(481)	608
Other	—	(20)
Changes in assets and liabilities:		
Trade and other receivables	(2,358)	(918)
Prepaid expenses and other assets	(265)	(117)
Accounts payable and accrued liabilities	232	(1,778)
Unearned revenue recognized under units-of-revenue method	(772)	(96)
Income tax payable	—	(1,637)
Other liabilities	594	779
Net cash provided by (used in) operating activities	3,863	(9,932)
Cash flows from investing activities:		
Purchase of property and equipment	—	(6)
Payments related to purchase of royalty rights	(19,300)	(15,000)
Net cash used in investing activities	(19,300)	(15,006)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net of issuance costs	17	2,331
Proceeds from exercise of options	776	513
Proceeds from issuance of long-term debt	9,500	7,500
Payment of preferred and common stock issuance costs	(377)	—
Debt issuance costs and loan fees	—	(217)
Principal payments – finance lease	(11)	(10)
Taxes paid related to net share settlement of equity awards	(504)	(237)
Net cash provided by financing activities	9,401	9,880
Effect of exchange rate changes on cash	—	20
Net decrease in cash	(6,036)	(15,038)
Cash at the beginning of the period	45,780	43,471
Cash at the end of the period	$ 39,744	$ 28,433
Supplemental Cash Flow Information:		
Cash paid for interest	$ 357	$ —
Cash paid for taxes	$ —	$ 1,637
Non-cash investing and financing activities:		
Fair value of Rezolute common stock shares received as consideration for license agreement	$ —	$ 955
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	$ 75	$ —

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. XOMA's business is to acquire royalty rights from other biotech companies, hold on to these rights and let them mature in the hands of these partners. 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 September 30, 2019, the Company had cash of $39.7 million. Based on the Company's current cash balance and its ability to control discretionary spending, such as royalty acquisitions, the Company has evaluated and concluded its financial condition is sufficient to fund its planned operations for a period of at leastone 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, operating lease right-of-use assets, legal contingencies, contingent consideration under royalty purchase agreements, royalty receivables, 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 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 nine months ended September 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.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the three months ended September 30, 2019, two partners represented 68% and 28% of total revenues. For the nine months ended September 30, 2019, two partners represented 78% and 14% of total revenues. For the three months ended September 30, 2018, three partners represented 56%, 28% and 14% of total revenues. For the nine months ended September 30, 2018, three partners represented 50%, 21% and 17% of total revenues. As of September 30, 2019, one partner represented 99% 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. Adoption of the standard requires using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date to align existing credit loss methodology with the new standard. ASU 2016-13 is currently effective for all public companies for fiscal years beginning after December 15, 2019, with early adoption permitted. In October 2019, the FASB affirmed a proposed ASU deferring the effective date of ASU 2016-13 for all entities except public companies that are not smaller reporting companies to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. This proposed ASU has not been finalized as of the date of this report. When finalized, the Company plans to adopt ASU 2016-13 effective January 1, 2023. The Company is currently evaluating the impact of this standard on its consolidated financial statements, including accounting policies, processes, and systems.

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, but does not expect the standard will have a material impact on its consolidated financial statements.

3. Condensed Consolidated Financial Statements Details

Long-term Equity Securities

As of September 30, 2019 and December 31, 2018, long-term equity securities consisted of an investment in Rezolute's common stock of $0.9 million and $0.4 million, respectively (see Note 4). During the three and nine months ended September 30, 2019 and 2018, the Company recognized a loss of $0.3 million and gains of $0.5 million, and losses of $0.2 million and $0.6 million, respectively, in the other income (expense), net line item of the condensed consolidated statements of operations and comprehensive income (loss) due to the change in fair value of its investment in Rezolute's common stock.

Accrued and Other Liabilities

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

	September 30, 2019	December 31, 2018
Accrued legal and accounting fees	$ 315	$ 396
Accrued restructuring	—	1,361
Accrued incentive compensation	294	152
Accrued payroll and other benefits	282	155
Other	209	318
Total	$ 1,100	$ 2,382

Net Income (Loss) Per Share Available to Common Stockholders

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Numerator				
Net income (loss)	$ 3,178	$ (4,578)	$ 2,339	$ (10,331)
Less: Allocation of undistributed earnings to participating securities	(1,327)	—	(977)	—
Net income (loss) available to common stockholders, basic	1,851	(4,578)	1,362	(10,331)
Add: Adjustments to undistributed earnings allocated to participating securities	60	—	41	—
Net income (loss) available to common stockholders, diluted	$ 1,911	$ (4,578)	$ 1,403	$ (10,331)
Denominator				
Weighted average shares used in computing basic net income (loss) per share available to common stockholders	8,731	8,386	8,721	8,354
Effect of dilutive stock options	708	—	657	—
Effect of dilutive warrants	2	—	1	—
Weighted average shares used in computing diluted net income (loss) per share available to common stockholders	9,441	8,386	9,379	8,354

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Convertible preferred stock	—	5,003	—	5,003
Common stock options and RSUs	893	1,644	926	1,638
Warrants for common stock	15	24	15	21
Total	908	6,671	941	6,662

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

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

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.

Rezolute License Agreement - First Amendment

In March 2018, the Company and Rezolute amended the license agreement and common stock purchase agreement. Pursuant to the as-amended terms of the license agreement and common stock purchase agreement, the Company was eligible to receive $6.0 million in cash, $8.5 million of Rezolute's common stock, and 7,000,000 shares of Rezolute's common stock, contingent on the completion of Rezolute's financing activities. Further, in the event that Rezolute did not complete a financing that raised at least $20.0 million in aggregate gross proceeds ("Qualified Financing") by March 31, 2019 (the "2019 Closing"), the Company would have received an additional number of shares of Rezolute's common stock equal to $8.5 million divided by the weighted average of the closing bid and ask prices or the average closing prices of Rezolute's common stock on the ten-day trading period prior to March 31, 2019. Finally, in the event that Rezolute was unable to complete a Qualified Financing by March 31, 2020, the Company would have been eligible to receive $15.0 million in cash in order for Rezolute to maintain the license. Under the common stock purchase agreement, Rezolute granted the Company the right and option to sell the greater of (i) 5,000,000 shares of common stock or (ii) one third of the aggregate shares held by the Company upon failure by Rezolute to list its shares of its common stock on the Nasdaq Stock Market or a similar national exchange on or prior to December 31, 2018.

During the three months ended March 31, 2018, the Company completed the delivery of the license and related materials, product data/filing, process and know-how to Rezolute. However, the Company determined that it was not probable that the Company would collect substantially all of the consideration to which it was entitled in exchange for the goods 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 represented substantially all consideration for the delivered license and technology to Rezolute. Therefore, the Company determined that a contract existed between Rezolute and XOMA under ASC 606 on April 3, 2018.

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

On April 3, 2018, the Company determined that the transaction price under the arrangement was $1.8 million, which consisted of the 8,093,010 shares of Rezolute's common stock valued at $1.0 million, $0.5 million in cash, and reimbursable technology transfer expenses of $0.3 million. During the year ended December 31, 2018, the Company recognized the entire transaction price of $1.8 million as revenue upon completion of the delivery of the licenses and related materials, product data/filing, process and know-how. The change in fair value of Rezolute's common stock after the contract inception date was due to the form of the consideration and therefore, not included in the transaction price pursuant to the accounting guidance. The Company accounts for the change in the fair value of its investment in Rezolute's common stock in the other income (expense), net line item of the condensed consolidated statement of operations and comprehensive 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 the inception of the arrangement. Any consideration related to commercial milestones (including royalties) will be recognized when the related sales occur as they were determined to relate predominantly to the licenses granted to Rezolute and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether the estimate of variable consideration is constrained and update the estimated transaction price accordingly.

Rezolute License Agreement - Second Amendment

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

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

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

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

In July and August 2019, Rezolute received additional cash through two common stock financing events, which triggered early payment of $3.4 million of the unrecognized $6.0 million of total Future Cash Payments. In addition, the Company received the $1.5 million payment due September 30, 2019, resulting in a total of $4.9 million cash received from Rezolute in the third quarter of 2019. The Company re-assessed the outstanding $3.6 million of Future Cash Payments and determined that a significant revenue reversal is not probable to occur due to Rezolute's recent common stock financing events. Therefore, during the three months ended September 30, 2019, the Company recognized $6.0 million as revenue related to the remaining Future Cash Payments. As of September 30, 2019, the Company has an outstanding receivable of $3.6 million representing its current estimate of the Future Cash Payments expected to be received from Rezolute.

During the nine months ended September 30, 2019, the Company recognized $14.0 million as revenue from Rezolute, which consisted of the $5.5 million consideration paid upon the Qualified Financing event and $8.5 million of the Future Cash Payments. As

of September 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.

The Company reassessed the development and regulatory milestones and concluded that such variable consideration is fully constrained and excluded from the transaction price as of September 30, 2019 and December 31, 2018.

Janssen Biotech

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

The Company concluded that the new agreement should be accounted for separately from any prior arrangements with Janssen and that the license grant is the only performance obligation under the new agreement. The Company recognized the entire one-time payment of $2.5 million as revenue in the condensed consolidated statement of comprehensive income for the three months ended September 30, 2019 as it had completed its performance obligation.

The Company concluded that the development and regulatory milestone payments are solely dependent on Janssen's performance and achievement of specified events and thus it is not probable that a significant cumulative revenue reversal will not occur in future periods for these future payments. Therefore, the development and regulatory milestones are fully constrained and excluded from the transaction price as of September 30, 2019. Any consideration related to royalties will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Janssen and therefore, have also been excluded from the transaction price. At the end of each reporting period, the Company will update its assessment of whether an estimate of variable consideration is constrained and update the estimated transaction price accordingly.

As of September 30, 2019, there were no contract assets or contract liabilities related to this arrangement. None of the costs to obtain or fulfill the contract were capitalized.

NIAID

Prior to the sale of the Company's biodefense business discussed in Note 7, the Company performed services under a $64.8 million multiple-year contract funded with federal funds from NIAID (Contract No. HHSN272200800028C), for development of anti-botulinum antibody product candidates. The contract work was being performed on a cost-plus fixed fee basis over a three-year period. The Company recognized revenue under the arrangement as the services were performed on a proportional performance basis. Consistent with the Company's other contracts with the U.S. government, invoices were provisional until finalized. The Company operated under provisional rates from 2010 through 2014, subject to adjustment based on actual rates upon agreement with the government. In 2014, upon completion of NIAID's review of hours and external expenses, XOMA agreed to exclude certain hours and external expenses resulting in a $0.4 million receivable and $0.8 million deferred revenue balances. As of December 31, 2017, the Company wrote off the $0.4 million receivable from NIAID as the likelihood of collection is remote. The Company classified $0.8 million as contract liabilities on the condensed consolidated balance sheets as of September 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 were 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 $0.8 million as revenue under units-of-revenue method under these arrangements during the three and nine months ended September 30, 2019, respectively. During the three and nine months ended September 30, 2018, the Company recognized $0.1 million and $0.1 million, respectively, of revenue under the units-of-revenue method. During the second quarter of 2018, the Company reversed revenue recognized in prior periods under the units-of-revenue method by $0.1 million due to lower than projected product sales. The change in estimate of product sales resulted in net revenue of $0.1 million during the nine months ended September 30, 2018. During the three months ended September 30, 2018, the Company recognized $0.1 million as revenue under the units-of-revenue method.

As of September 30, 2019, the current and non-current portion of the remaining unearned revenue recognized under units-of-revenue method was $0.9 million and $15.9 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

Royalty Purchase Agreement with Agenus, Inc.

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

In addition, the Company purchased from Agenus the right to receive 33% of the future royalties on 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 September 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 September 30, 2019 and December 31, 2018.

Royalty Purchase Agreement with Bioasis Technologies Inc.

On February 25, 2019, the Company entered into a Royalty Purchase Agreement (the "Bioasis Royalty Purchase Agreement") with Bioasis Technologies Inc. and certain affiliates (collectively "Bioasis"). Under the Bioasis Royalty Purchase Agreement, the Company purchased potential future milestone and royalty rights from Bioasis for product candidates that are being developed

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

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 income (loss). As of September 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 and nine months ended September 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 September 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 was required to make a contingent future cash payment of $1.0 million for each of the three Bayer Products that were active on September 1, 2019 (up to a total of $3.0 million, the "Aronora Contingent Consideration"). Pursuant to the Aronora Royalty Purchase Agreement, if the Company 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. In September 2019, the Company paid the $3.0 million contingent consideration to Aronora. During the three and nine months ended September 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 September 30, 2019.

Royalty Purchase Agreement with Palobiofarma, S.L.

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

Under the terms of the Palo Royalty Purchase Agreement, the Company paid Palo a $10.0 million payment at the close of the transaction which occurred simultaneously upon parties' entrance in the Palo Royalty Purchase Agreement on September 26, 2019. The Company financed $5.0 million of the payment with a term loan under its Loan and Security Agreement with SVB (see Note 9).

At the inception of the agreement, the Company recorded $10.0 million as long-term royalty receivables in its condensed consolidated balance sheet. Under the cost recovery method, the Company does not expect to recognize any income related to royalties received until the investment has been fully collected. No impairment was recorded as of September 30, 2019.

The following table summarizes the acquisition of royalty rights as of September 30, 2019 (in thousands):

Balance at December 31, 2018	$	15,000
Acquisition of royalty rights:		
Bioasis		375
Aronora		9,000
Palobiofarma		10,000
Balance at September 30, 2019	$	34,375

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 September 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	$ —	$ —	$ 873	$ 873
Liabilities:				
Contingent consideration	$ —	$ —	$ 75	$ 75

	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 September 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 nine months ended September 30, 2019 (in thousands):

Balance at December 31, 2018	$ 392
Change in fair value	481
Balance at September 30, 2019	$ 873

The equity securities consisted of an investment in Rezolute's common stock and are classified as long-term assets on the condensed consolidated balance sheets as of September 30, 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 statements of operations and comprehensive income (loss).

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 was 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 %

In the first quarter of 2019, the Company changed the methodology used to value the equity securities due to Rezolute's completion of a Qualified Financing (see Note 4). As of September 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 September 30, 2019:

Closing common stock price on the Over-the-counter (OTC) exchange	$	0.15
Tranche 1:		
Discount for lack of marketability		17 %
Estimated time to liquidity of shares		0.5 years
Tranche 2:		
Discount for lack of marketability		33 %
Estimated time to liquidity of shares		1.5 years

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 September 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 represented the future consideration that was contingent upon the active status of Bayer Product programs on September 1, 2019. The fair value measurement for the contingent consideration was based on significant Level 3 inputs such as management's expectation for the success and development of each of the products. During the three and nine months ended September 30, 2019, there were no changes in the estimated fair value of the contingent consideration from its initial value of $3.0 million. In September 2019, the Company paid the $3.0 million contingent consideration to Aronora.

Debt

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

	September 30, 2019		December 31, 2018	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Novartis note	$ 15,570	$ 15,487	$ 15,193	$ 14,825
SVB Loans	17,109	17,104	7,286	7,281
Total	$ 32,679	$ 32,591	$ 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 $0.5 million and $2.5 million during the three and nine months ended September 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. In addition, in connection with a sublease agreement executed in April 2018, the Company recognized a loss on the sublease of $0.6 million during the second quarter of 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 nine months ended September 30, 2019, no lease-related restructuring charges were recognized in the condensed consolidated statements of operations and comprehensive income (loss). During the three and nine months ended September 30, 2018, the Company recorded $0.9 million and $1.4 million of restructuring costs in its condensed consolidated statements of operations and comprehensive loss, respectively.

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 was allowed to borrow advances under the Term Loan from the Effective Date until the earlier of March 31, 2019 or an event of default (the "Draw Period"). In 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 4.00% 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 September 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 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.

During the nine months ended September 30, 2019, the Company borrowed advances totaling $9.5 million under the Loan Agreement in connection with the Aronora Royalty Purchase Agreement, Palo Royalty Purchase Agreement and payment of the Aronora Contingent Consideration (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 $0.2 million and $0.4 million of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three and nine months ended September 30, 2019, respectively. The Company recorded $11,000 of non-cash interest expense resulting from the amortization of the discount and accretion of the final payment for the three and nine months ended September 30, 2018.

As of September 30, 2019, the carrying value of the debt under the Loan Agreement was $17.1 million. Of this amount, $4.0 million is classified as current portion of long-term debt and $13.1 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 September 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 September 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.

Payments of Long-Term Debt

Aggregate future principal, final payment fees and discounts of the Company's long-term debt as of September 30, 2019, are as follows (in thousands):

Three months ending December 31, 2019	$	1,146
Year ending December 31, 2020		6,086
Year ending December 31, 2021		8,576
Year ending December 31, 2022		21,950
Thereafter		-
Total payments		37,758
Less: interest, final payment fees, discount and issuance cost		(5,079)
Total payments, net of interest, final payment fees, discount and issuance cost		32,679
Less: current portion of long-term debt		(3,981)
Long-term debt	$	28,698

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 income (loss) relates to the following debt instruments (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
SVB loans	$ 314	$ 35	$ 791	$ 47
Novartis note	168	171	540	453
Other	2	3	5	57
Total interest expense	$ 484	$ 209	$ 1,336	$ 557

10. Common Stock Warrants

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

Issuance Date	Expiration Date	Balance Sheet Classification	Exercise Price per Share	September 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 and legal fees to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and commercial milestones by the Company's licensees. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $7.6 million 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. In September 2019, the Company paid the Aronora Contingent Consideration of $3.0 million. The liability for future Royalty Milestones will be recorded when the amounts by product are estimable and probable. As of September 30, 2019, none of these Royalty Milestones were assessed to be probable and as such, none was recorded on the condensed consolidated balance sheet.

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 September 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 September 30, 2019 is as follows (in thousands):

Undiscounted lease payments	Operating Leases
2019 (excluding the nine months ended September 30, 2019)	$ 653
2020	2,736
2021	2,268
2022	1,944
2023	620
Thereafter	—
Total undiscounted lease payments	8,221
Present value adjustment	(679)
Total net lease liabilities	$ 7,542

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 $1.8 million for the three and nine months ended September 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 $1.3 million for the three and nine months ended September 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):

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

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

	September 30, 2019
Weighted-average remaining lease term	
Operating leases	3 years
Weighted-average discount rate	
Operating leases	5.51 %

Sublease Agreements

In connection with the restructuring events in 2017 and 2018the Company completely vacated its leased facilities in Berkeley, California and subleased the space in the vacated buildings to four subtenants. 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 September 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 nine months ended September 30, 2019, the Company recognized $0.4 million and $1.1 million, respectively, of sublease income under this agreement. During the three and nine months ended September 30, 2018, the Company recognized $0.4 million and $1.1 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 nine months ended September 30, 2019, the Company recognized $0.1 million and $0.3 million, respectively, of sublease income under this agreement. During the three and nine months ended September 30, 2018, the Company recognized $0.1 million and $0.2 million of sublease income under this agreement, respectively.

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 $0.1 million. During the three and nine months ended September 30, 2019, the Company recognized $0.2 million and $0.5 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 nine months ended September 30, 2019, the Company recognized $0.2 million and $0.4 million, respectively, of sublease income under this agreement.

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

Sublease income	September 30, 2019
2019 (excluding the nine months ended September 30, 2019)	$ 560
2020	2,280
2021	1,906
2022	1,644
2023	556
Total minimum lease payments	$ 6,946

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Dividend yield	0 %	0 %	0 %	0 %
Expected volatility	101 %	101 %	103 %	101 %
Risk-free interest rate	1.71 %	2.76 %	2.49 %	2.72 %
Expected term	5.47 years	5.60 years	5.60 years	5.60 years

Stock option activity for the nine months ended September 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	400,814	14.49		
Exercised	(50,513)	4.86		
Forfeited, expired or cancelled	(165,432)	33.83		
Outstanding at end of period	1,809,615	$ 20.71	7.05	$ 16,127
Exercisable at end of period	1,347,408	$ 23.16	6.47	$ 12,921

The aggregate intrinsic value of stock options exercised during the nine months ended September 30, 2019 and 2018 was $0.6 million and $1.0 million, respectively.

The weighted-average grant-date fair value per share of the options granted during the nine months ended September 30, 2019 and 2018 was $11.45 and $18.74, respectively.

As of September 30, 2019, $3.7 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted average period of 1.69 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 September 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 nine months ended September 30, 2019, the Company determined that all remaining options were probable of achievement in fiscal year 2019 and therefore the related expense of $0.1 million and $0.2 million was recognized during the three and nine months ended September 30, 2019, respectively. As of September 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.

Modification of Stock Options

In September 2019, the Company entered into a separation agreement with its former Chief Business Officer which resulted in the extension of the exercise period for all of her vested options. As a result of the modification, the Company recorded stock-based compensation expense of $0.5 million during the three months ended September 30, 2019 to reflect the revised expected term based on the modified exercise period for these stock options.

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 nine months ended September 30, 2019, all remaining RSUs were forfeited and there was no unvested balance as of September 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 income (loss) (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Research and development	$ 66	$ 97	$ 174	$ 296
General and administrative	1,428	750	4,059	2,737
Total stock-based compensation expense	$ 1,494	$ 847	$ 4,233	$ 3,033

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 September 30, 2019, BVF owned approximately 20.53% 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 53.66% of the Company's total outstanding shares of common stock. As of September 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 nine months ended September 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.

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

Palobiofarma, S.L.

On September 26, 2019, we entered into a Royalty Purchase Agreement (the "Palo Royalty Purchase Agreement") with Palobiofarma, S.L, ("Palo"). Pursuant to the Palo Royalty Purchase Agreement, we acquired the rights to potential royalty payments in low single digit percentages of aggregate Net Sales (as defined in the Palo Royalty Purchase Agreement) associated with six drug candidates in various clinical development stages, targeting the adenosine pathway with potential applications in solid tumors, non-hodgkin's lymphoma, asthma/chronic obstructive pulmonary disease, inflammatory bowel disease, idiopathic pulmonary fibrosis, lung cancer, psoriasis and nonalcoholic steatohepatitis and other indications (the "Palo Licensed Products") that are being developed by Palo. Novartis Pharma AG (the "Licensee") is a development partner on NIR178, one of the Palo Licensed Products, and NIR178 is being developed pursuant to a license agreement between Palo and the Licensee. Under the terms of the Palo Royalty Purchase Agreement, we paid Palo $10.0 million for the rights to potential royalty payments on future sales of the Palo Licensed Products.

Janssen Biotech

In August of 2019, our portfolio of potential future royalty and milestone payments increased with the addition of Janssen Biotech, Inc. ("Janssen") drug candidates for which XOMA could receive future milestone and royalty payments. As such, Janssen made a one-time payment of $2.5 million to us and we are entitled to receive milestone payments of up to $3.0 million for each drug candidate upon Janssen's achievement of certain clinical development and regulatory approval events. Upon commercialization, we are eligible to receive 0.75% royalty on net sales of each product. Janssen's obligation to pay royalties with respect to a particular product and country will continue until the eighth-year and sixth-month anniversary of the first commercial sale of the product in such country.

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 option to obtain a license to one of our preclinical monoclonal antibody fragments expired unexercised.

In July and August 2019, Rezolute closed two common stock financing events for total net proceeds of $22.6 million. As such, we received 15% of the net proceeds, or $3.4 million, which was credited against the portion of Future Cash Payments due in 2020. In addition, in September 2019, we received $1.5 million of the Future Cash Payments due in 2019.

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. 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 made an additional $3.0 million payment for the three Bayer Products that are active as of September 1, 2019 in September 2019.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 $2500 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.

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.

Silicon Valley Bank Loan Agreement

In May 2018, we executed a Loan and Security Agreement (the "Loan Agreement") with Silicon Valley Bank ("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 September 30, 2019, we had an outstanding principal balance of $17.0 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 nine months ended September 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 nine months ended September 30, 2019 and 2018, were as follows (in thousands):

	Three Months Ended September 30,		2018-2019	Nine Months Ended September 30,		2018-2019
	2019	2018	Change	2019	2018	Change
Revenue from contracts with customers	$ 8,525	$ 775	$ 7,750	$ 17,176	$ 3,518	$ 13,658
Revenue recognized under units-of-revenue method	330	121	209	772	96	676
Total revenues	$ 8,855	$ 896	$ 7,959	$ 17,948	$ 3,614	$ 14,334

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 increases for the three and nine months ended September 30, 2019, as compared to the same periods in 2018, was primarily due to $8.0 million and $6.0 million recognized under our license agreement with Rezolute in the first and third quarter of 2019, respectively, and $2.5 million under our license agreement with Janssen in the third 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 nine months ended September 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 months ended June 30, 2018, we reversed revenue recognized in prior periods under the units-of-revenue method under these arrangements by $0.1 million. The change in estimate of product sales resulted in net revenue of $0.1 million during the nine months ended September 30, 2018. During the three months ended September 30, 2018, we recognized $0.1 million as revenue under the units-of-revenue method.

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 $0.1 million and $1.1 million for the three and nine months ended September 30, 2019, compared with $0.6 million and $1.4 million for the same periods in 2018. The decrease of $0.5 million for the three months ended September 30, 2019, compared to the same period of 2018, was primarily due to a $0.3 million pass-through license fee incurred based on the achievement of a development milestone by one of our partners in the third quarter of 2018 and a $0.2 million decrease in salary and related expenses . The decrease of $0.3 million for the nine months ended September 30, 2019, compared to the same period of 2018, was primarily due to a $0.5 million decrease in salary and related expenses, partially offset by an increase of $0.3 million in pass-through license fee expense. The decreases in salary and related expense is due to a decrease in R&D headcount.

We expect our R&D spending during the remainder of 2019 to be lower than 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 $5.8 million and $16.7 million for the three and nine months ended September 30, 2019, compared with $4.7 million and $14.2 million for the same periods in 2018. The increase of $1.1 million for the three months ended September 30, 2019, as compared to the same period of 2018, was primarily due to $0.9 million for expenses incurred in connection with a separation agreement with our Chief Business Officer, which included $0.5 million in stock-based compensation expense for modifications to her vested stock options and $0.4 million in separation benefits. In addition, stock-based compensation expense increased $0.2 million over the comparative period in the prior year. The increase of $2.5 million for the nine months ended September 30, 2019, as compared to the same period of 2018, was primarily due to increases of $1.3 million in stock-based compensation expense, $0.3 million in operating expenses for our building leases, and $0.3 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 nine months ended September 30, 2019 and 2018 (in thousands):

	Three Months Ended September 30,		2018-2019	Nine Months Ended September 30,		2018-2019
	2019	2018	Change	2019	2018	Change
SVB loans	$ 314	$ 35	$ 279	$ 791	$ 47	$ 744
Novartis note	168	171	(3)	540	453	87
Other	2	3	(1)	5	57	(52)
Total interest expense	$ 484	$ 209	$ 275	$ 1,336	$ 557	$ 779

The increase in interest expense compared with 2018 is primarily due to the increase in outstanding loan balance with SVB. 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 and September of 2019, in connection with the Aronora and Palo Royalty Purchase Agreements, we borrowed an additional $9.5 million in aggregate. 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 nine months ended September 30, 2019 and 2018 (in thousands):

	Three Months Ended September 30,		2018-2019	Nine Months Ended September 30,		2018-2019
	2019	2018	Change	2019	2018	Change
Other income, net						
Income under the agreement with Ology Bioservices	$ —	$ 470	$ (470)	$ —	$ 2,470	$ (2,470)
Sublease income	827	506	321	2,354	1,286	1,068
Change in fair value of long-term equity securities	(265)	(206)	(59)	481	(608)	1,089
Other	209	168	41	724	513	211
Total other income, net	$ 771	$ 938	$ (167)	$ 3,559	$ 3,661	$ (102)

In 2018, we received income from Ology Bioservices related to the disposition of our biodefense business in March 2016. The scheduled payments concluded in 2018; therefore, there was no corresponding income received in 2019. In 2019, we are party to four sublease agreements as compared with three sublease agreements in 2018, resulting in increased sublease income for the three and nine months ended September 30, 2019 as compared with the same periods of 2018. In addition, we own long-term equity securities consisting of shares of Rezolute's common stock which are remeasured at fair value at each reporting period.

Total other income for the three months ended September 30, 2019 decreased $0.2 million as compared to the same period of 2018 primarily due to $0.5 million we received from Ology Bioservices in the third quarter of 2018, partially offset by an increase of $0.3 million in our sublease income.

Total other income for the nine months ended September 30, 2019 decreased $0.1 million as compared with the same period of 2018. The decrease was primarily due to receipts in 2018 of $2.5 million from Ology Bioservices partially offset by an increase in sublease income of $1.1 million. For the nine months ended September 30, 2019 and 2018, we remeasured the fair value of the long-term equity securities and we recognized a gain of $0.5 million and a loss of $0.6 million, respectively.

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):

	September 30, 2019	December 31, 2018	Change
Cash	$ 39,744	$ 45,780	$ (6,036)
Working capital	$ 33,957	$ 41,923	$ (7,966)

	Nine Months Ended September 30,		2018-2019
	2019	2018	Change
Net cash provided by (used in) operating activities	$ 3,863	$ (9,932)	$ 13,795
Net cash used in investing activities	(19,300)	$ (15,006)	(4,294)
Net cash provided by financing activities	9,401	9,880	(479)
Effect of exchange rate changes on cash	—	20	(20)
Net decrease in cash	$ (6,036)	$ (15,038)	$ 9,002

Cash Provided by (Used in) Operating Activities

The change in net cash from operating activities for the nine months ended September 30, 2019, as compared with the same period in 2018, was primarily due to the $10.7 million cash receipts under the license and common stock purchase agreement with Rezolute in the first and third quarters of 2019, and the $2.5 million cash receipt from Janssen in the third quarter of 2019.

Cash Used in Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2019 was due to the purchases of milestone and royalty rights of $16.3 million in connection with the Bioasis Royalty Purchase Agreement executed in February 2019, the Aronora Royalty Purchase Agreement executed in April 2019, and the Palo Royalty Purchase Agreement executed in September 2019. In addition, in September 2019, we paid $3.0 million to Aronora for the contingent consideration due under the Aronora Royalty Purchase Agreement.

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

Cash Provided by Financing Activities

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

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

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 September 30, 2019, we have borrowed advances of $17.0 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 nine months ended September 30, 2019.

* * *

We have incurred significant operating losses since our inception and have an accumulated deficit of $1.2 billion as of September 30, 2019. As of September 30, 2019, we had $39.7 million in cash, which we anticipate will enable us to maintain our operations for a period of at least 12 months following the filing date of this report.

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 Commitment and Contingencies

Our commitment and contingencies 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 commitment and contingencies 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 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, all of which was paid in September of 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. As of September 30, 2019, none of these milestone payments are assessed to be probable and as such, none was recorded. We will retain royalties per product in excess of $250.0 million.

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 September 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.

We have marked with an asterisk (*) those risks described below that reflect substantive changes from, or additions to, the risks described in our Annual Report on Form 10-K for the year ended December 31, 2018.

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 accordancewith the Investment Company Act of 1940.

The rules and interpretations of the SEC and the courts, relating to the definition of "investment company" are very complex. While we currently intend to conduct our operations so that we will not be an investment company under applicable SEC interpretations, we can provide no assurance that the SEC would not take the position that the Company would be required to register under the Investment Company Act of 1940 (the "'40 Act") and comply with the '40 Act's registration and reporting requirements, capital structure requirements, affiliate transaction restrictions, conflict of interest rules, requirements for disinterested directors, and other substantive provisions. We monitor our assets and income for compliance under the '40 Act and seek to conduct our business activities to ensure that we do not fall within its definitions of "investment company" or qualify under one of the exemptions or exclusions provided by the '40 Act and corresponding SEC regulations. If we were to become an "investment company" and be subject to the restrictions of the '40 Act, those restrictions would likely require 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 nine months ended September 30, 2019, we had net income of $3.2 million and $2.3 million, respectively. For the three and nine months ended September 30, 2018, we had net losses of $4.6 million and $10.3 million, respectively. As of September 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 ourevised 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 thesubject 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 November 1, 2019, the share price of our common stock has ranged from a high of $22.00 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 September 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, immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits 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 10 employees as of November 1, 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.

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

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

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

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with applicable regulations, provide accurate information to regulatory authorities, comply with federal and state fraud and abuse laws and regulations, report financial information or data accurately or disclose unauthorized activities to us. In particular, the health care industry is subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with these laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

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

Our 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 partnersand 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 experienc ed 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 and any products as to which we own milestone and royalty interests, 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 September 26, 2019 between XOMA (US) LLC and Palobiofarma, S.L.				
10.2+ #	Separation Agreement dated August 31, 2019 between the Company and Dee Datta				
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)				

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: November 5, 2019

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

Date: November 5, 2019

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

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

Exhibit 10.1

ROYALTY PURCHASE AGREEMENT

dated as of September 26, 2019

between

PALO BIOFARMA, S.L., as Seller,

and

XOMA (US) LLC, as Purchaser

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ROYALTY PURCHASE AGREEMENT

This **ROYALTY PURCHASE AGREEMENT** (this "**Agreement**") dated as of September 26, 2019 (the "Effective Date"), is between **PALO BIOFARMA**, **S.L.**, a company organized and existing under the laws of Spain, located at Plaza Cein, Polingo Industrial Mocholi, 3110, Noain, Navarra, Spain ("**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 Novartis License Agreement, the existence and receipt of which is acknowledged by Purchaser, Seller has the right to receive certain royalty payments from Novartis based on Net Sales arising from the sale of Novartis 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 (as defined below), and Purchaser desires to purchase, acquire and accept from Seller, full title to the Purchased Royalty Payments (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:

"Accounts (as defined in the UCC)" means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables.

"**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(c); (b) the right or ability of Seller to perform any of its obligations under any of the Transaction Documents or under any License Agreement; (c)

the right or ability of Seller to exercise any of its rights or remedies 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 right or ability of Purchaser to exercise any of its rights or remedies under any of the Transaction Documents; (f) the Purchased Royalty Payments, including, without limitation, a material adverse effect on the timing, amount or duration of the Purchased Royalty Payments or the right of Purchaser to receive the Purchased Royalty Payments; or (g) the Product IP Rights or the Products.

"**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 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 inability to regularly pay its debt as they come due; (c) 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, corporate resolutions to address capital impairment events, 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, corporate or corporation law, or other similar Applicable Law now or hereafter in effect (including, but not limited to any proceedings under Spanish Act 22/2003, of July 9, on Insolvency; the Spanish Act 1/2010, of July 2, on Corporations and Limited Liability Companies; or the European Regulation 2015/848, of May 20, 2015, on Insolvency Proceedings; or similar or related regulation enacted in the state where such Person has assets, sufficient connection or centre of main interests to seek or be declared under any such proceedings), 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, insolvency administrator, trustee, custodian, liquidator, examiner, assignee, sequestrator or other similar official for such Person or for any substantial part of its property; (d) corporate or other entity action taken by such Person to authorize any of the actions set forth in clause (a) or clause (c) above; or (e) 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, pre-insolvency, corporate, corporation 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.

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

"**CDA**" has the meaning set forth in Section 8.9.

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

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

"**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 Person 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 Person 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(f).

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

"**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.

"**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.

"**IFRS**" means International Financial Reporting Standards.

"**Joint Escrow Account"** shall mean the joint escrow account established and maintained at the Depository Bank into which payments of the Novartis 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 (a) any licensee under the Novartis License Agreement or a Palobiofarma License Agreement and any successor or assignee thereunder, and (b) 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 Novartis License Agreement, any Palobiofarma 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 Novartis 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, excluding loss of profit.

"**Net Sales**" means:

(A) with respect to the Novartis License Agreement, the definition of "Net Sales" as contained therein as of the date hereof.

(B) With respect to any Palobiofarma License Agreement or New License Agreement, the definition of "Net Sales" as defined therein.

(C) With respect to any internal development and sale by Seller of a Palobiofarma Product or a Terminated Novartis Licensed Product, the definition of "Net Sales" shall have the same meaning as the definition of "Net Sales" in the Novartis License Agreement as of the date hereof, with the necessary changes being made to replace all references to Novartis with Seller.

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

"Novartis" means Novartis Pharma AG, a corporation (Aktiengesellschaft) organized and existing under the laws of Switzerland, located at Lichtstrasse 35, CH-4056 Basel, Switzerland.

"**Novartis Consent**" means the Consent executed by Novartis substantially in the form attached hereto as Exhibit D.

"**Novartis License Agreement**" means (a) that certain License Agreement by and between Seller and Novartis made as of September 30, 2015, as amended from time to time (the "Existing Novartis License Agreement"), and (b) any New License Agreement relating to one or more of the Products licensed under the Existing Novartis License Agreement (either now or in the future), as amended from time to time.

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

"**Novartis Licensed Product**" means (a) each "Product" as defined in the Novartis License Agreement, and (b) 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 (a), the analogous term for "product," "licensed product," "compound" or any comparable concept as defined in the related New License Agreement.

"**Novartis Royalty Payments**" means:

(a) royalty payments of [*]% of the aggregate Net Sales of each Novartis Licensed Product, or a Terminated Novartis Licensed Product (as such royalties are paid by Novartis or the applicable payor), in any calendar year during the Novartis Royalty Term (or the applicable royalty term for a New License Agreement, or if a Terminated Novartis Licensed Product is developed internally and sold by Seller or Third Parties on Seller's behalf, then during the Royalty Term) up to and including a maximum of $[*] and [*]% of the portion of Net Sales of such Product above $[*], payable on a Product-by-Product basis for the Novartis Royalty Term (or the applicable royalty term for a New License Agreement, or if a Terminated Novartis Licensed Product is developed internally and sold by Seller or Third Parties on Seller's behalf, then during the Royalty Term), including Purchaser's applicable portion of any payments under a License Agreement in lieu of such royalty payments (including any amounts payable pursuant to indemnification obligations in lieu of such royalty payments), and any overdue interest on any such royalty payments;

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

(c) all Proceeds (as defined under the UCC) of any of the foregoing.

For the avoidance of doubt, Novartis Royalty Payments shall exclude (i) the Upfront Payment and (ii) the Milestone Payments, as defined in the Novartis License Agreement. Should the Novartis Royalty Payments on a Novartis Licensed Product be reduced as described in [*] the Novartis License Agreement, the Novartis Royalty Payments made to the Purchaser will be reduced proportionally to the reduction. Notwithstanding the foregoing, in no event shall the Novartis Royalty Payments be reduced to less than [*]% as a result of those reductions and Seller shall not be required to make any Novartis Royalty Payments after the expiration of the Novartis Royalty Term.

"Novartis Royalty Report" means "Sales & Royalty Report" as defined in the Novartis Agreement as of the date hereof.

"Novartis Royalty Term" means "Royalty Term" as defined in Section 8.3 of the Novartis License Agreement as of the date hereof.

"**Palobiofarma License Agreement**" means any license agreement entered into with respect to the Palobiofarma Products, as amended from time to time (which may include a License Agreement with Novartis as the Licensee if such Palobiofarma Product is out-licensed to Novartis).

"**Palobiofarma Licensee**" means (a) any Licensee under a Palobiofarma License Agreement and (b) 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.

"**Palobiofarma Products**" means [*].

"**Palobiofarma Royalty Payments**" means:

(a) royalty payments of [*]% of the aggregate Net Sales of any and all Palobiofarma Products, in any calendar year during the Royalty Term (or the applicable royalty term for a Palobiofarma License Agreement or a New License Agreement), including Purchaser's applicable portion of any payments under a License Agreement in lieu of such royalty payments (including any amounts payable pursuant to indemnification obligations in lieu of such royalty payments), and any overdue interest on any such royalty payments;

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

(c) all Proceeds (as defined under the UCC) of any of the foregoing.

For the avoidance of doubt, Palobiofarma Royalty Payments shall exclude any equivalent to the Upfront Payment or the Milestone Payments as defined in the Novartis License Agreement.

"**Palobiofarma 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 Palobiofarma Licensee to Seller pursuant to the applicable Palobiofarma License Agreement.

"**Party**" and "**Parties**" has the meaning set forth in the preamble.

"**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: (a) any United States and foreign patent applications and patents; (b) any national, regional and international patent applications filed from patent applications and patents included in (a), including any divisional and continuation applications of the patent applications and patents included in (a) and any continuation-in-part applications to the extent dominated by patent applications and patents included in (a); (c) any and all patents that have issued or in the future issue from patent applications included in (a) and (b); and (d) 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 Liens created, permitted or required by the Transaction Documents in favor of Purchaser or its Affiliates.

"**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.

"Proceeds (as defined in the UCC)" means the following property: (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral; (B) whatever is collected on, or distributed on account of, collateral; (C) rights arising out of collateral; (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

"**Product**" means each of the Novartis Licensed Products and Palobiofarma Products.

"**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: (a) 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"); (b) 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"); (c) copyrights (registered and unregistered) and applications for registration (collectively, "Copyrights"); (d) 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 (e) 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 in Exhibit C.

"**Purchased Royalty Payments**" means Novartis Royalty Payments and Palobiofarma Royalty Payments, as applicable.

"**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.

"**Recoveries**" has the meaning set forth in Section 5.5(e)(iii).

"**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 Quarter**" means the three-month period ending on the last day of each of March, June, September and December of each calendar year (or, with respect to any Product subject to a Palobiofarma License Agreement, such other definition of Royalty Quarter as contained in a Palobiofarma License Agreement as is applicable).

"**Royalty Report**" means any report summarizing the Net Sales of each Product during the relevant Royalty Quarter on a country-by-country basis, and the royalties payable, which shall have accrued hereunder with respect to such Net Sales.

"**Royalty Term**" means, with respect to any Product, on a Product-by-Product and country-by-country basis, the term commencing on the date of the first commercial sale of such Product in such country until the later of (a) the expiration of the last to expire Valid Claim of the applicable Product Patents and (b) ten (10) years from the date of such first commercial sale of such Product in such country.

"**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 CaixaBank 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, credit, reduction, or deduction, including any such item caused by Seller's breach of a License Agreement that reduces the amount of royalties payable by the applicable Licensee under the applicable License Agreement.

"**Sublicensee**" means any licensee of the Licensee under the Novartis License Agreement, a Palobiofarma License Agreement or a 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.

"**Tax**" or "**Taxes**" means any federal, state, local or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, abandoned property, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

"**Terminated Novartis Licensed Product**" means a Novartis Licensed Product that is terminated by Novartis pursuant to Section 12.3 of the Novartis License Agreement such that it is no longer a Novartis Licensed Product under the Novartis License Agreement.

"**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 Bill of Sale, the CDA, the Disclosure Letter (if any) and the Novartis 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 IFRS.

(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 PURCHASED ROYALTY PAYMENTS

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 and conveys to Purchaser, and Purchaser hereby purchases, acquires and accepts from Seller, full title to all of Seller's rights, title and interest in and to the Purchased Royalty Payments, free and clear of any and all Liens, other than Permitted Liens.

(b) Seller and Purchaser intend and agree that the sale, assignment, transfer and conveyance of the Purchased Royalty Payments under this Agreement shall be, and are, a true, complete, absolute and irrevocable assignment and sale by Seller to Purchaser of the Purchased Royalty Payments and that such assignment and sale shall provide Purchaser with the full benefits of ownership of the Purchased Royalty Payments. Neither Seller nor Purchaser

intends the transactions contemplated under the Transaction Documents to be, or for any purpose to be characterized as, a loan from Purchaser to Seller or a pledge or assignment. 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 Purchased Royalty Payments under Applicable Law, which waiver shall be enforceable against Seller in any Bankruptcy Event in respect of Seller, except if applicable U.S. law requires otherwise. The sale, assignment, transfer, conveyance and granting of the Purchased Royalty Payments shall be reflected on Seller's financial statements and other records as a sale of assets to Purchaser.

(c) Notwithstanding the foregoing Section 2.1(b), if the transfer contemplated by this Agreement is held by a Third Party not to be a true sale, and despite the Parties' right and obligation to challenge such recharacterization, Seller hereby grants and pledges to Purchaser, as security for its obligations created hereunder, a first priority security interest in and to all of Seller's right, title and interest in, to and under the Purchased Royalty Payments, 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. In furtherance of such grant of security interest, Seller hereby authorizes Purchaser or its designee, and Seller shall reasonably cooperate with Purchaser, 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 and perfect the sale of the Purchased Royalty Payments and the back-up security interest in the Purchased Royalty Payments granted by Seller to Purchaser under this Section 2.1(c).

Section 2.2 Purchase Price.

In full consideration for the sale, assignment, transfer and conveyance of the Purchased Royalty Payments, 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 Ten Million Dollars ($10,000,000), in immediately available funds by wire transfer to Seller Account (the "**Purchase Price**") of which [*] will be wired directly to Seller (net of the amount specified in Section 5.11(e) if so elected by Purchaser) and [*] will be wired to the United States Internal Revenue Service to cover potential withholding obligations. Purchaser acknowledges and agrees that [*] of the Purchase Price may be [*].

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 Purchased Royalty Payments 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, whether known or unknown (including any liability or obligation of Seller under a License Agreement and any payments required to be made to Third Parties). 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 Purchased Royalty 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 Spain 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 Novartis 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, (1) any Spanish Applicable Law (except applicable bankruptcy legislation) or any judgment, order, writ, decree, permit or license of any Governmental Authority, in any case, applicable to Seller or any of its Affiliates, the Purchased Royalty Payments, or to which Seller's or any of its Affiliates' respective assets or properties may be subject or bound, (2) any term or provision of any contract, agreement, indenture, lease, license, deed, commitment, obligation or instrument to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates or any of their respective assets or properties is bound or committed (including a License Agreement) or (3) any term or provision of any of the organizational documents of Seller; (ii) except for the filing of the UCC-1 financing statements required hereunder, require any notification to, filing with, or consent of, any Person or Governmental Authority; (iii) give rise to any additional right of termination, cancellation or acceleration of any right or obligation of Seller or any of its Affiliates or any other Person, or to a loss of any benefit relating to the Purchased Royalty Payments; or (iv) 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 Novartis License Agreement, the Purchased Royalty Payments.

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

Section 3.3 Authorization.

(a) Seller has the legal right to enter into this Agreement and each of the other Transaction Documents, including, without limitation, upon receipt of the Novartis Consent in proper form, the right to sell, assign, transfer and convey the Purchased Royalty Payments 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. Seller has passed all corporate resolutions at shareholder or board level for these purposes (including, but not limited to, where applicable, to the shareholders meeting resolution under article 160(f) of the Spanish Act 1/2010, of July 2, on Corporations and Private Limited Companies). 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 (as applicable), duly executed and delivered by Seller. Each of the Transaction Documents constitutes and will constitute (as applicable) when executed and delivered by Seller, 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 Purchased Royalty Payments and has good and valid title thereto, free and clear of all Liens (other than Permitted Liens). The Purchased Royalty Payments, in whole or in part, have not been pledged, sold, subjected to a call option, assigned, transferred, conveyed or granted by Seller to any Person other than Purchaser. Upon receipt of the Novartis Consent in proper form, Seller has full right to sell, assign, transfer and convey the Purchased Royalty Payments to Purchaser. Upon the sale, assignment, transfer and conveyance by Seller of the Purchased Royalty Payments to Purchaser, Purchaser shall acquire good, valid and marketable title to the Purchased Royalty Payments 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 Purchased Royalty Payments.

(b) No Person other than Purchaser shall have any right to receive the Purchased Royalty Payments payable under this Agreement and the License Agreements (other than to the extent Purchaser assigns its right to receive such Purchased Royalty 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 and conveyance of the Purchased Royalty Payments 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 Novartis Consent, and any consent, approval, license, order, authorization or declaration previously obtained.

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 Purchased Royalty Payments, 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, relating to or affecting any Product, any Product IP Rights, or the Purchased Royalty Payments, 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 occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such action, suit, arbitration, proceeding, claim, demand, citation, summons, subpoena, investigation, or other proceeding.

Section 3.7 Solvency; No Adverse Change.

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 Closing, (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 regularly pay its debts, liabilities and other obligations, including contingent obligations, as they mature, (d) Seller will not be rendered insolvent, will have under Applicable Law sufficient capital with which to engage in its business and will not be unable to pay its debts as they mature (and Seller's net worth is not and shall not become lower than the capital stock as a result of its entering into the transactions contemplated by the Transaction Documents), (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. 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. To the Knowledge of Seller, no event has occurred and no condition exists that could reasonably be expected to result in an Adverse Change.

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 all such Tax returns and reports are true, correct and complete, and Seller has paid all Taxes required to be paid by it, except for any such Taxes that are not yet due or delinquent. There are no Liens for Taxes upon the Purchased Royalty Payments.

Section 3.9 No Brokers' Fees.

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

Section 3.10 Compliance with Laws.

Seller (a) has not violated, is not in violation of, or has not been given notice of any violation of, and (b) is not subject to, is not under investigation with respect to, or has not been threatened to be charged with or been given notice of any violation of, any Applicable Law, 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 clauses (a) and (b) above, that could reasonably be expected, individually or in the aggregate, 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 C sets forth an accurate and complete list of all Product Patents, 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) To the Knowledge of Seller, the Product Patents are valid and enforceable, and in full force and effect. Each claim of any issued Product Patent is a Valid Claim.

(c) Seller is the exclusive owner of all right, title and interest in each of the Product Patents, subject to the Permitted Liens and rights granted to Novartis under the Novartis License Agreement. Other than pursuant to 35 U.S.C. § 200 et seq. and the License Agreement, Seller has not pledged, assigned, sold, licensed, conveyed, granted, or otherwise transferred any rights to any of the Product Patents to any Person.

(d) 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. To the Knowledge of Seller, there is no Person who is or claims to be an inventor of any of the Product Patents who is not a named inventor thereof.

(e) Subsequent to the issuance of any of the Product Patents, neither Seller nor, to the Knowledge of Seller, Novartis 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 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 Patents of any Third Party.

(f) With the exception of: (i) *ex parte* patent prosecution with respect to the Product Patents and (ii) and proceedings before any Regulatory Agency with respect to the Products being prosecuted by Seller or a Licensee, 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, 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 Royalty 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 Novartis and any Sublicensees) and relating to any Product. 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. Seller has not commissioned, nor has it received, any written legal opinion that alleges that an issued Patent within the Product Patents is invalid or unenforceable.

(g) There is no pending or, to the Knowledge of Seller, 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 that claims that the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product 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, there are no issued Patents owned by any Third Party that limit or would be infringed by or otherwise violated by the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product, and, to the Knowledge of Seller, 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 or otherwise violated by the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product.

(h) To the Knowledge of Seller, no Person has infringed or otherwise violated, or is infringing or otherwise violating, any Product IP Rights. Seller has not received any notice of infringement of any Product IP Rights.

(i) Each of Seller and, to the Knowledge of Seller, Novartis 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.

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

(k) Seller has not commissioned, nor has it received, any written legal opinion relating to any Product or Product Patent, including any freedom-to-operate, product clearance, patentability or right-to-use opinion.

Section 3.12 Novartis License Agreement.

(a) Other than the Transaction Documents and the Novartis License Agreement, there is no contract, agreement or other arrangement (whether written or oral) to which Seller or any of its Affiliates 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 Purchased Royalty Payments or the Novartis License Agreement as it relates to the Purchased Royalty Payments (ii) that affects or otherwise relates to the Product IP Rights other than [*], or (ii) for which breach, nonperformance, termination, cancellation or failure to renew could reasonably be expected to result in an Adverse Change. The Novartis License Agreement does not create a Lien on the Purchased Royalty Payments or the Product IP Rights.

(b) Attached hereto as Exhibit D, are (i) true, correct and complete copies of the Novartis License Agreement and any confidentiality agreement relating thereto, 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 D, and (ii) all material notices and correspondence with Novartis since January 1, 2015.

(c) The Novartis License Agreement is in full force and effect and is the legal, valid and binding obligation of Seller and Novartis, enforceable against Seller and Novartis 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 Novartis License Agreement were and are within the powers of Seller and Novartis. The Novartis License Agreement was duly authorized by all necessary action on the part of, and validly executed and delivered by, Seller and, to Seller's Knowledge, Novartis. 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, the Novartis License Agreement will continue in full force and effect, without modification, except as expressly set forth in the Novartis Consent as specified in the Transaction Documents, and shall remain the legal, valid and binding obligation of Seller and Novartis, enforceable against Seller and Novartis in accordance with its terms, subject, as to the enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar Spanish Applicable Laws affecting creditors' rights generally and general equitable principles. Novartis has not notified Seller, in writing or otherwise, that the transactions contemplated by the Transaction Documents could result in a breach, violation, cancellation or termination of, constitute a default under, or give Novartis the right to exercise any remedy or obtain any additional rights under, the Novartis License Agreement, or that the Novartis License Agreement is not enforceable against Novartis, in whole or in part. Except as set forth in the Novartis Consent, neither Novartis 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.

(d) Neither Seller, and to the Knowledge of Seller, nor Novartis are in breach or violation of or in default under or have previously been in breach or violation of or in default under, the Novartis License Agreement. Seller has not received or sent any notice (i) regarding the termination, breach, default or violation of, or the intention to terminate, breach, default, or violate, the Novartis License Agreement, in whole or in part; (ii) that any event has occurred that, with notice or the passage of time or both, would constitute a default under the Novartis License Agreement; (iii) challenging the legality, validity or enforceability of the Novartis License Agreement or Novartis' obligation to pay the Novartis Royalty Payments thereunder; (iv) asserting that Seller or Novartis is in default of their obligations thereunder; or (v) regarding infringement under the Novartis License Agreement. Seller has no intention of terminating the Novartis License Agreement. To the Knowledge of Seller, no event has occurred that, with notice or the passage of time or both, would (1) give Novartis the right to cease paying Novartis Royalty Payments, (2) give Novartis or Seller the right to terminate the Novartis License Agreement, or (3) constitute or give rise to any breach or default in the performance of the Novartis License Agreement by Seller or Novartis.

(e) Seller has not waived any rights or defaults under the Novartis License Agreement or released Novartis, 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 Novartis License Agreement. Other than those modifications in place at the time of this Agreement, neither Seller nor Novartis has agreed to further amend or waive any provision of the Novartis License Agreement, and there is no current proposal to do so.

(f) Except as provided in the Novartis License Agreement, Seller is not a party to any agreement providing for a sharing of, or providing for, or permitting any Set-off against, the Novartis Royalty Payments. Except as provided in the Novartis License Agreement, Novartis does not have any right of Set-off under any contract or other agreement with Seller against the Novartis Royalty Payments or any other amounts payable to Seller pursuant to the Novartis License Agreement. Novartis 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 Novartis to exercise, any Set-off against the Novartis Royalty Payments or any other amounts payable to Seller under the Novartis License Agreement.

(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 Novartis License Agreement and (ii) has not granted, incurred or suffered to exist any Liens (other than Permitted Liens) on the Novartis License Agreement or any of its rights thereunder or on any of the Purchased Royalty Payments. Except as contemplated by Section 2.1 hereof, no Person other than Seller and its successors, assigns, and heirs is entitled to receive any of the royalties and other amounts payable by Novartis under the Novartis License Agreement.

(h) Seller has not consented to any assignment, pledge, sale or other transfer (including licenses) by Novartis of any of Novartis's rights or obligations under the Novartis License Agreement, and, to the Knowledge of Seller there is not any such assignment, pledge, sale or other transfer (including licenses) by Novartis. Seller has not received any notice from Novartis, nor does Seller have any Knowledge, of Novartis's intent to pledge, assign, sell,

convey, grant, or otherwise transfer (including license) any of Novartis's rights or obligations under the Novartis License Agreement.

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

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

(k) To Seller's Knowledge, Novartis has complied with any applicable obligations to develop the Novartis Licensed Products and to seek to obtain Regulatory Approval for the Novartis Licensed Products pursuant to the Novartis License Agreement.

Section 3.13 Other Matters.

(a) Seller's exact legal name is PALO BIOFARMA, S.L. 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, Spain. 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) The claims and rights of Purchaser created by the Transaction Documents in and to the Purchased Royalty Payments are not and shall not be subordinated by Seller or any agreements to which Seller is subject to any creditor of Seller or any other Person (other than as a result of Purchaser's own election).

(c) Neither Seller nor any of its Affiliates has exercised any right of Set-off, upon or with respect to the Purchased Royalty Payments or agreed to do or suffer to exist any of the foregoing. Neither Seller nor any of its Affiliates are aware of any such Set-off right having been asserted or claimed by Novartis.

Section 3.14 Margin Stock.

(a) Seller is not engaged in the business of extending credit for the purpose of buying or carrying margin stock.

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 limited liability company, 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.

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 for the filing of UCC financing statements, the Novartis Consent, and any consent, approval, license, order, authorization or declaration previously obtained.

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, 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.

Section 4.6 Novartis License Agreement.

Purchaser represents that it has received and reviewed the Novartis License Agreement.

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 seven (7) Business Days) after Seller receives notice of, or otherwise acquires Knowledge of any of the following: (1) any action, suit, claim, demand, dispute, investigation, arbitration or other proceeding (whether commenced or threatened) relating to the transactions contemplated by the Transaction Documents, the Purchased Royalty Payments, the Product IP Rights, the Products, or a License Agreement; (2) any material violation, breach, default or termination (or any other fact, 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; (3) any change, event, occurrence, state of facts, development or condition that would reasonably be expected to result in an Adverse Change; (4) any allegation or claim by a Third Party that the manufacturing, having manufactured, using, marketing, selling, offering for sale, importing or distributing of any Product infringes any intellectual property rights of such Third Party; (5) any Third Party manufacturing, having manufactured, using, marketing, selling, offering for sale, importing or distributing of any Product in a manner that infringes any intellectual property rights underlying any of the Products; or (6) any other correspondence relating to the foregoing, Seller shall provide to Purchaser (A) written notice thereof (including reasonable details to enable Purchaser to understand the applicable matters involved, the facts, 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) to which Seller may require an additional term of five (5) Business Days, together with a copy of such written notice received by Seller along with any related materials, and (B) such other information as to enable Purchaser to participate meaningfully in discussions with Seller or Licensee or otherwise regarding such matters.

(ii) As promptly as possible (but in no event more than ten (10) Business Days) after receipt by Seller of any material notice, demand, certificate, correspondence, report or other communication relating to the Purchased Royalty Payments, 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 facts, 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 notice, demand, certificate, correspondence, report or other communication received by Seller.

(iii) As promptly as possible (but in no event more than ten (10) Business Days) after acquiring Knowledge 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, 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) Each of Seller and Purchaser shall provide the other Party 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 itself; (2) any uncured material breach or default by it of or under any covenant, agreement or other provision of any Transaction Document; (3) any material breach in any respect of any representation or warranty made by it in any of the Transaction Documents to which it is a party or in any certificate delivered by it pursuant to this Agreement; 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 five (5) Business 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.

(b) **Summary of Set-offs**. Seller shall promptly (but in no event more than ten (10) days after receipt of the applicable Royalty Report) deliver to Purchaser, accompanied by reasonable documentation, a summary of the amount and nature of any Set-offs affecting the calculation of the Purchased Royalty Payments and other amounts payable to Seller under any License Agreement for any period, and any indemnity or reimbursements.

(c) **Royalty Reports**. Following the completion of each Royalty Quarter, Seller shall promptly (but in no event more than ten (10) days after Seller receives a Novartis Royalty Report or a Palobiofarma Royalty Report, as applicable, for such Royalty Quarter) deliver to Purchaser a complete copy of such Novartis Royalty Report or Palobiofarma Royalty Report for the applicable Royalty Quarter. With respect to any Palobiofarma Products or Terminated Novartis Licensed Products 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 (and if such Products are sold directly by Seller remit such royalties to Purchaser) within forty-five days after the end of each Royalty Quarter.

(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 Royalty 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, at minimum, as long as Purchaser is entitled to receive Purchased Royalty Payments hereunder and for a period of [*] years thereafter, or such longer period as required by Applicable Law. For so long as Purchaser is entitled to receive Purchased Royalty 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 Royalty Payments

made to Purchaser hereunder and the accuracy of any Royalty Report or other report or information provided by Seller to Purchaser pursuant to this Article V. 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 Royalty Payments, 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 15 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 Royalty Payments to 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 Royalty Payments, 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. If any such audit reveals an overpayment in the Purchased Royalty Payments to Purchaser, the amount of such excess shall be promptly paid, or cause to be paid, by Purchaser to Seller.

(e) Seller shall promptly (but in no event more than five (5) Business Days) make available to Purchaser such other information as Purchaser may, from time to time, reasonably request with respect to (i) a License Agreement, (ii) the Products, (iii) the Product IP Rights, (iv) the Purchased Royalty Payments, and (v) Seller's compliance with the terms, provisions and conditions of this Agreement, the other Transaction Documents to which it is a party and the License Agreements; provided that if Seller is advised in writing by its counsel that the provision by Seller to Purchaser of such information would constitute a breach of its confidentiality obligations, then Seller shall provide promptly (but in no event more than five (5) Business Days) a material summary of such information to Purchaser to the extent providing such summary would not itself constitute a breach of Seller's confidentiality obligations. If Seller is advised in writing by its counsel that providing Purchaser such material summary will constitute a breach of its confidentiality obligations, then Seller shall paraphrase or otherwise describe the substance for Purchaser of such information to the maximum extent possible, as Seller is advised in writing by its counsel, without causing a breach of its confidentiality obligations. Seller shall provide 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; Use of Names.

Section 5.3

(a) Seller and Purchaser agree that, after the execution of this Agreement, no press release or public announcements concerning any of the transactions contemplated by, or the existence or terms of, the Transaction Documents shall be issued or made by either Party hereto without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed), except for such press release, disclosure or announcement as may be required by Applicable Law or the rules and regulation of the SEC or any securities exchange or trading system, in which case the disclosing Party shall, to the extent practicable, allow the other

Party reasonable time to review and comment on such release or announcement (or to seek a protective order against disclosure) in advance of its issuance. Notwithstanding anything herein to the contrary, the foregoing shall not apply to the issuance of a joint press release announcing this Agreement substantially in the form attached hereto as Exhibit F or any other public announcement using substantially the same text as such press release.

(b) Except as required by law or regulation, neither Party shall use the name, trademark, service mark, trade name, or symbol or any adaptation thereof of the other Party or of any of its directors, officers, employees, inventors, agents and representatives, or Affiliates for advertising, marketing, endorsement, promotional or sales literature, publicity, public announcement or disclosure or in any document employed to obtain funds or financing without the specific prior written consent of an authorized representative of the other Party.

(c) 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 Purchased Royalty Payments 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 5.4 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) effect the sale, assignment, transfer and conveyance of the Purchased Royalty Payments 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, evidence, vest and maintain in Purchaser good, valid and marketable title in and to the Purchased Royalty Payments 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(c), and (v) enable Purchaser to exercise or enforce any of Purchaser's rights under the Transaction Documents.

(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 Purchased Royalty Payments, 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 Purchased Royalty Payments, the License Agreements, and 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 (i) conflict with the Transaction Documents or the rights granted to Purchaser hereunder or thereunder, (ii) impair Seller's ability to perform its obligations under the Transaction Documents, (iii) 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), or (iv) result in an Adverse Change.

(e) Seller will take Commercially Reasonable Efforts to enter into license agreements with appropriate Third Parties covering the Terminated Novartis Licensed Products and Palobiofarma Products and/or develop them internally. In addition, Seller will not sell the rights to research, develop, commercialize or otherwise exploit any of the Palobiofarma Products or any of the Terminated Novartis Licensed Products without (i) non-binding consultation with Purchaser and (ii) making Commercially Reasonable Efforts to provide Purchaser with royalty payment terms (on an as-combined basis) no less favorable than those provided hereunder on a Product-by-Product basis corresponding to the amount of Novartis Royalty Payments for any Terminated Novartis Licensed Products and the amount of Palobiofarma Royalty Payments for any Palobiofarma Products. To the extent that Seller enters into a Palobiofarma License Agreement or a New License Agreement, it will make Commercially Reasonable Efforts to ensure that such License Agreement includes provisions (i) requiring the applicable Licensee to make Palobiofarma Royalty Payments directly to Purchaser which payments will be made separately from, and in addition to, any payments required to be made to Seller thereunder, and (ii) that convey to Purchaser shared rights in any rights of Seller under such License Agreement (1) to request inspection of or to audit or otherwise review the books, records and accounts of such applicable Licensee, and to receive any related audit reports, (2) to receive reports, worksheets, notices and other associated information, (3) to enforce any rights with respect to the Palobiofarma Royalty Payments (including with respect to any development, commercialization or similar obligations of such applicable Licensee), including without limitation the right to sue third parties for actual or threatened infringement of any rights relating to any Product IP Rights, (4) to make any indemnification claim against such Licensee and (5) to sell, assign, pledge or otherwise transfer the foregoing, in whole or in part, and the payments, proceeds and income of, and the rights to enforce, each of the foregoing.

Section 5.5 Royalty Payments.

(a) **Erroneous Payments**.

(i) If a Licensee, any Sublicensee or any other Person (notwithstanding the terms of the Novartis Consent or any payment instructions for a Palobiofarma License

Agreement or a New License Agreement) makes any payment in respect of the Purchased Royalty Payments that is owed to Purchaser as a Purchased Royalty Payment hereunder, to Seller (or to any of its Affiliates) instead of to Purchaser, then (1) Seller shall hold (or cause such Affiliate to hold) such payment in trust for the sole benefit of Purchaser, (2) Seller (or such Affiliate) shall have no right, title or interest whatsoever in such payment and shall not create or suffer to exist any Lien thereon and (3) 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 payment, shall remit, or cause to be remitted, an amount equal to such payment to the Purchaser Account, without Set-off or netting of any costs or taxes, by wire transfer of immediately available funds.

(ii) If a Licensee, any Sublicensee or any other Person (notwithstanding the terms of the Novartis Consent or any payment instructions for a Palobiofarma License Agreement or a New License Agreement) makes any payment due under a License Agreement that does *not* constitute a Purchased Royalty Payment or Purchaser's portion of any Recoveries, to Purchaser (or to any of Purchaser's Affiliates) instead of to Seller, then: (1) Purchaser shall hold (or shall cause such Affiliate to hold) such payment in trust for the sole benefit of Seller, (2) Purchaser (or such Affiliate) shall have no right, title or interest whatsoever in such payment and shall not create or suffer to exist any Lien thereon, and (3) Purchaser (or such Affiliate) promptly, and in any event no later than ten (10) Business Days following the receipt by Purchaser (or such Affiliate) of such payment, shall remit, or cause to be remitted, an amount equal to such payment to the Seller Account, without Set-off, by wire transfer of immediately available funds.

(iii) If a Licensee takes (1) any Set-off in full or partial satisfaction of a judgment against Seller or a settlement with Seller or (2) any other Set-off, in any case where such Set-off has the effect of reducing amounts required to be paid to Purchaser hereunder, then Seller shall pay, or cause to be paid, to the Purchaser Account (but in no event later than ten (10) Business Days after Seller acquires Knowledge of such Set-off) an amount equal to the amount of such Set-off without deducting any costs or taxes.

(iv) If either Seller or Purchaser fails to timely comply with their respective obligations under the foregoing clauses (i), (ii), or (iii) then all amounts not timely paid by the due date provided therein shall accrue interest from and including the date such amount was due through but excluding the date such payment in full (together with all interest thereon) is made to the applicable Party, 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 [*], compounded annually, not to exceed the maximum interest that may be charged under Applicable Law.

(b) **Payments**.

(i) Seller shall make all payments required to be made by it to Purchaser pursuant to this Agreement by wire transfer of immediately available funds, without Set-off or deduction or withholding for or on account of any Taxes, to Purchaser Account.

(ii) Purchaser shall make all payments required to be made by it to Seller pursuant to this Agreement by wire transfer of immediately available funds, without Set-off or deduction to Seller Account.

(c) Purchaser shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any Applicable Law relating to Tax. To the extent that any amounts are so deducted and withheld and paid over to or deposited with the relevant Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller in respect to which such deduction and withholding was made.

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

Section 5.6 License Agreements

(a) **Performance of License Agreement**. Seller (i) shall perform and comply in all respects with its duties and obligations under each License Agreement, (ii) shall not, without the prior written consent of Purchaser, assign (including by merger, operation of law or otherwise), amend, modify, supplement, restate, waive, cancel or terminate (or consent to any of the foregoing) a License Agreement, in whole or in part in any manner which would result in an Adverse Change (provided that Seller's prior written consent shall not be required by Seller's assignment of a License Agreement which could not reasonably be expected to result in an Adverse Change), (iii) shall not grant, incur or suffer to exist any Liens (other than Permitted Liens) on the Purchased Royalty Payments, or a License Agreement, (iv) shall not forgive, release or compromise any of the Purchased Royalty Payments or Recoveries , or grant any rights to a Licensee that would have the effect of doing any of the foregoing, (v) shall not, without Purchaser's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), consent to a Licensee's assignment (but not including by merger, or operation of law or assignments as to which Seller's prior consent to any such assignment is not required by the applicable License Agreement) of, in whole or in part, any rights under a License Agreement, (vi) except for the [*] or pursuant to Section 5.6 or with Purchaser's prior written consent, shall not enter into any new agreement or legally binding arrangement in respect of, in connection with, or related to any of the Novartis Royalty Payments, the Novartis Licensed Products, or the Novartis License Agreement, (vii) 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 in any manner which could be reasonably expected to result in an Adverse Change, (viii) shall take Commercially Reasonable Efforts not permit a Licensee to take any Set-off against the Purchased Royalty Payments, and (ix) shall not agree to do anything in contravention of the foregoing .

(b) **Non-Impairment of Purchaser's Rights**. Seller shall not, without the prior written consent of Purchaser and subject in all respects to Section 5.5(a): (i) forgive, release or reduce any amount, or delay or postpone any amount, owed to Seller or Purchaser relating to the Purchased Royalty Payments; (ii) waive, amend, cancel or terminate, exercise or fail to exercise, any material rights constituting or relating to the Purchased Royalty Payments; or (iii)

withhold any consent, grant any consent, exercise or waive (or fail to exercise or waive) any right or option, send (or refrain from sending) any notice, or take or fail to take any action in respect of, affecting or relating to the Purchased Royalty Payments, a Product, or a License Agreement .

(c) **Breach of License Agreement by Seller**. 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 in accordance with Section 5.1(a)(i), 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 use Commercially Reasonable 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 ten (10) Business Days) upon demand for all reasonable Third Party costs and expenses incurred in connection therewith.

(d) **Breach of License Agreement by Licensee**. If Seller acquires Knowledge that a Licensee is (or with the giving of notice or 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 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 such 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.

(e) **Infringement of the Product IP Rights**.

(i) If Seller acquires Knowledge 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, 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 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.

(ii) If a Licensee (either directly, or indirectly through a Sublicensee) exercises its right to police the applicable Product IP Rights against infringement by any Third Party, then Seller shall exercise its right to voluntarily join any applicable suit, or not exercise such right, and take such other reasonable actions related thereto, as Purchaser reasonably requests of Seller. The portion of all settlement, damages, or other amounts recovered by such Licensee and paid to Seller, in excess of litigation costs, (such portion, the "**Licensee**

Recoveries") shall be allocated between Seller and Purchaser pro-rata to the applicable proportional distribution of the royalty payments with regard to the applicable Product.

(iii) If, however, (1) a Licensee fails to timely exercise its option to police the applicable Product IP Rights against infringement, (2) a Licensee fails to take action to abate such infringement within the applicable time period specified the applicable License Agreement, or (3) a Licensee does not have the right to take action to abate such infringement, then Seller shall, after prompt consultation with Purchaser, promptly take (or refrain from taking) actions to abate such infringement (including commencing legal action against the infringing Third Party using legal counsel reasonably satisfactory to Purchaser) and exercise rights and remedies available to it to abate such infringement, whether under the applicable License Agreement or by operation of law or equity, as Purchaser, acting reasonably, requests of Seller. The portion of all settlement, damages, or other amounts recovered by Seller, in excess of litigation costs (such portion, the "**Seller Recoveries**", and together with Licensee Recoveries, the "**Recoveries**"), shall be allocated between Seller and Purchaser pro-rata to the applicable proportional distribution of the royalty payments with regard to the applicable Product.

(iv) Each of Seller and Purchaser shall bear its own fees and expenses incurred in any action taken under this Section 5.5(e) against any infringer. The Parties agree that the Recoveries shall be shared equally between Seller and Purchaser hereunder. Seller shall pay Purchaser pursuant to Section 5.5(b)(i) the portion of any Recoveries to which Purchaser is entitled promptly (but in no event more than 10 Business Days) after Seller receives such Recoveries .

(f) **Preservation and Defense of Patents**. Subject to the License Agreements, Seller shall: (i) take such actions 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, (ii) prosecute patents and any corrections, substitutions, reissues, reviews and reexaminations of the Product IP Rights 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, (iii) diligently defend the Product IP Rights against any interference or claim of invalidity or unenforceability, in any jurisdiction (including by defending any counterclaim of invalidity or action of a Third Party for declaratory judgment of non-infringement or non- interference), and (iv) 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 prosecute and maintain such Product IP Rights or take such preventative actions at its sole expense and Seller shall provide commercially reasonable assistance to Purchaser with respect thereto. Further to the foregoing, Seller (1) shall consult with Purchaser regarding any action or inaction contemplated by this Section 5.5(f), and then give Purchaser an opportunity to review the text of, any filing related thereto prior to its submission, (2) shall consult with Purchaser with respect thereto, including to consider in good faith any comments from Purchaser in respect thereof, and (3) shall promptly after making such filing or other submission provide Purchaser with the final version thereof. The costs and expenses of Seller incurred in connection with the foregoing actions shall be borne

by Seller. The costs and expenses of Purchaser incurred in connection with the foregoing actions shall be borne by Purchaser.

(g) Subject to the applicable License Agreement, 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) **No Further Grant of Rights**. From and after the Effective Date, 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 (1) such license becomes a "License Agreement" hereunder, (2) the running or minimum royalty and other payments generated under such license no less favorable than those provided hereunder corresponding to the amount of Novartis Royalty Payments for any Terminated Novartis Licensed Products and the amount of Palobiofarma Royalty Payments for any Palobiofarma Products, and (3) the applicable portion of royalty payments thereunder become "Purchased Royalty Payments."

Section 5.7 Termination of a License Agreement.

(a) Without limiting the provisions of Section 5.5 or any other rights or remedies Purchaser may have under this Agreement, if (i) Seller or a Licensee terminates, or provides written notice of termination of, a License Agreement (in whole or in part) (it being understood that Seller shall not terminate any License Agreement without the prior written consent of Purchaser), or (ii) 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 (1) pursue a new license arrangement or arrangements with one or more substitute licensees for the applicable Product(s), and (2) negotiate terms, conditions and limitations in the most favorable economic terms to Seller and Purchaser reasonably practicable at the time and with the same proportional split of royalties as contained in the Terminated License Agreement, including with respect to obligations and costs imposed on Seller, disclaimers of Seller's liability, intellectual property ownership and control, indemnification of Seller and royalty rates (each such replacement licensing arrangement, a "**New Arrangement**").

(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 (which consent [*] not to be unreasonably withheld, conditioned or delayed), Seller shall execute and deliver a new license agreement(s) effecting such New Arrangement(s) (each, a "**New License Agreement**"). Thereafter, each New License Agreement shall be included for all purposes in the definition of "License Agreement" hereunder, any payments that are equivalent to the Purchased Royalty Payments due under such New License Agreement shall be included as "Purchased Royalty Payments" hereunder, and Seller's rights and obligations under the Transaction Documents in respect of the License Agreements shall apply in respect of its rights and obligations under the New License Agreement *mutatis mutandis*, in each case without any further action by the Parties hereto to amend this Agreement, the Bill of Sale or any of the other Transaction Documents.

Section 5.8 Audits of Licensee Books and Records.

(a) The Parties acknowledge and agree that, with respect to any License Agreement, Seller shall control and, if needed in the good-faith judgment of Seller, enforce any inspection or audit right of the applicable Licensee's books and records as provided under such License Agreement. The Parties agree that Seller shall not cause any inspection or audit of a Licensee's books and records without first consulting with the Purchaser. If Seller elects to cause an inspection or audit of a Palobiofarma 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 authority (in consultation with Purchaser) to select such Third Party representatives (including any public accounting firm) to undertake such audit or inspection. If Seller elects to cause an inspection or audit of Novartis' books and records pursuant to this Section 5.7, then only Seller shall be entitled to participate in such audit or inspection, with Seller having authority (in consultation with Purchaser) to select such Third Party representatives (including any public accounting firm) 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 by Seller. If Purchaser decides to hire its own representatives other than the Third Party representatives selected by Seller (in consultation with Purchaser) with respect to the inspection or audit of a Palobiofarma Licensee's book and records, 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 any 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 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 a

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, provided that if Seller is advised in writing by its counsel that the provision by Seller to Purchaser of such report would constitute a breach of its confidentiality obligations, then Seller shall provide promptly (but in no event more than five (5) Business Days after receipt of such audit report) a material summary of such audit report to Purchaser to the extent providing such summary would not itself constitute a breach of Seller's confidentiality obligations. If Seller is advised in writing by its counsel that providing Purchaser such material summary will constitute a breach of its confidentiality obligations, then Seller shall paraphrase or otherwise describe the substance for Purchaser of such report to the maximum extent possible, as Seller is advised in writing by its counsel, without causing a breach of its confidentiality obligations. Seller shall, upon Purchaser's reasonable request, in writing, exercise Seller's rights under any License Agreement to cause the applicable Licensee to cure, in accordance with the applicable License Agreement, any discrepancy identified by such inspection or audit.

Section 5.9 Tax Matters.

(a) Notwithstanding anything to the contrary in the Transaction Documents, Seller and Purchaser shall treat the transactions contemplated by the Transaction Documents as a sale of the Purchased Royalty Payments for United States federal, state, local and non-U.S. Tax purposes. Accordingly, any and all Purchased Royalty 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 non-U.S. Tax purposes. The Parties shall cooperate to effect the foregoing treatment for United States federal, state, local and non-U.S. Tax purposes in the event that, notwithstanding the Novartis Consent or other Licensee instructions, a Licensee, any Sublicensee or any other Person makes any future remittance of Purchased Royalty Payments to Seller or Purchaser which Seller or Purchaser must remit to the other Party pursuant to Section 5.4 of this Agreement. Seller shall report the Purchased Royalty Payments hereunder on Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding or other applicable form as royalties for United States federal, state and local income T ax purposes.

(b) To the extent any amount is withheld at source from a payment made pursuant to a License Agreement, as applicable, such withheld amount shall for all purposes of this Agreement be treated as paid to Seller and Purchaser; e.g., with respect to Purchaser, amounts so withheld shall be attributed to Purchaser, and deemed paid to Purchaser, in accordance with the Purchased Royalty Interests. Any amounts withheld pursuant to this Section 5.8(b) attributable to Purchaser shall be credited for the account of Purchaser. If there is an inquiry by any Governmental Authority of Purchaser related to this Section 5.8(b), Seller shall cooperate with Purchaser in responding to such inquiry in a reasonable manner consistent with this Section 5.8. Neither Party shall have any obligation to gross-up or otherwise pay the other party any amounts with respect to source withholding. All amounts withheld at source as described herein shall for all purposes of this Agreement be deemed to have been received by the party to which they are attributed as provided above or to which the payment subject to such withholding was made.

(c) 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 5.10 Existence.

(a) 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. In no event shall this Agreement prevent the acquisition, merger or other similar transaction involving Seller and a Third Party, provided that any such Third Party agrees in writing to assume all obligations hereunder and is of a credit quality acceptable to XOMA in its reasonable good faith business judgement.

Section 5.11 Remittance to Joint Escrow Account; Partial Reimbursement of Expenses.

(a) Within ninety (90) days following Closing, 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. The escrow agreement applicable to the Joint Escrow Account shall provide that Seller and Purchaser shall provide joint written instructions to the Joint Escrow Account agent unless Seller incurs an Insolvency Event in which case Purchaser shall be the sole provider of written instructions to the Joint Escrow Account agent that are in accordance with the terms of this Agreement.

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

(c) In accordance with Section 6.4(d), at the Closing Seller shall instruct, and thereafter use Commercially Reasonable Efforts to cause, the payer of any Royalty Payments due under the Novartis License Agreement to deposit such Royalty Payments directly into the Joint Escrow Account. The Joint Escrow Account will be structured in such a manner that all such Royalty Payments will be deposited into the Joint Escrow Account and then the Novartis Royalty Payments and the Purchaser's portion of any Recoveries shall be transferred to the Purchaser Account and any remaining amounts shall be transferred to the Seller Account. For the avoidance of doubt, all Palobiofarma Royalty Payments shall, to the extent reasonably possible, be paid directly to the Purchaser Account and not into the Joint Escrow Account. After the Closing Seller shall pay and shall instruct and use Commercially Reasonable Efforts to cause the payer of any payments due under a License Agreement other than the Novartis License Agreement to deposit such payments, directly into the Purchaser Account.

(d) If not obtained prior to Closing, then as soon as reasonably practicable following Closing, Seller and Purchaser shall appear, duly represented, before [*] Notary with residence in [*], in order to grant the relevant public deed by virtue of which this Agreement will be notarized and granted into public. Seller and Purchaser shall diligently carry out and execute, in a coordinated manner, all actions and documents that may be necessary, advisable or useful to grant and make such public deed effective.

(e) Within three (3) Business Days after the Closing, Seller shall reimburse XOMA for [*] of actual documented out-of-pocket transaction-related expenses or, at Purchaser's option, Purchaser shall net such amount out of the Purchase Price at Closing.

ARTICLE VI
THE CLOSING

Section 6.1 Closing.

(a) Subject to satisfaction of 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; provided that if the Closing does not occur within ninety (90) days of the Effective Date, then this Agreement shall automatically terminate and become null and void unless mutually agreed otherwise by the Parties. The date on which the Closing occurs is referred to herein as the "**Closing Date**".

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 in all material respects on such earlier date) and Seller shall have certified to this in writing at the Closing;

(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 UCC-1 financing statement shall have been duly executed and delivered by all the parties thereto, for filing in the proper jurisdiction;

(e) Novartis shall have executed and delivered a fully executed copy of the Novartis Consent to Purchaser substantially in the form attached hereto as Exhibit B;

(f) Seller shall have complied in all material respects with its obligations hereunder and under the other Transaction Documents and Seller shall have certified to this in writing at the Closing; and

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

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) and Purchaser shall have certified to this in writing at the Closing.

(b) Purchaser shall have complied in all material respects with its covenants set forth in the Transaction Documents and Purchaser shall have certified to this in writing at the Closing.

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 executed by Seller;

(b) the Bill of Sale executed by Seller;

(c) the Disclosure Letter if any;

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

(e) a certificate executed by 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 (1) the constitutive documents of Seller and (2) 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) such other certificates, documents and financing statements, executed by Seller as applicable, 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 Purchased Royalty Payments pursuant to Section 2.1 and the first priority security interest granted pursuant to Section 2.1(c); and

(g) a legal opinion executed by Seller's outside counsel substantially in the form attached hereto as Exhibit E.

Section 6.5 Closing Deliverables of Purchaser.

At the Closing, Purchaser shall execute and deliver or cause to be delivered to Seller the following:

(a) this Agreement;

(b) the Bill of Sale; and

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

ARTICLE VII
INDEMNIFICATION

Section 7.1 Indemnification by Seller.

(a) 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 (a) 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), (b) any breach or default by Seller in respect of any covenant or agreement made by Seller in any Transaction Document or under the License Agreements, (c) any Excluded Liabilities and Obligations, (d) 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, (e) 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 (f) 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 (i) that results from the gross negligence or willful misconduct of such Purchaser Indemnified Party or (ii) to the extent resulting from acts or omissions of Seller 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 Sections [*], or any fraud, willful misconduct, intentional misrepresentation, or intentional breach, in no event shall the maximum aggregate amount of Losses that may be recovered by the Purchaser Indemnified Parties under this Agreement pursuant to this Section 7.1 be greater than [*].

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 (a) 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), (b) any breach or default by Purchaser in respect of any covenant or agreement made by Purchaser in any Transaction Document, (c) 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 (d) 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 (i) that results from the gross negligence or willful misconduct of such Seller Indemnified Party, (ii) to the extent resulting from the performance by Seller or any of its Affiliates or the failure of Seller or any of its Affiliates 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 (iii) 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 (a) a Bankruptcy Event has occurred with respect to Seller or (b) the back-up security interest granted to Purchaser pursuant to Section 2.1(c) 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 true sale, a valid, perfected, first priority security interest in the Purchased Royalty Payments, 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 the full satisfaction of any amounts due under the License Agreements and receipt by Purchaser of all payments of the Purchased Royalty Payments to which it is entitled hereunder. 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 Royalty Payments or other monetary payment on account of the Purchased Royalty Payments, or remain outstanding pursuant to the terms of this Agreement. Notwithstanding the foregoing, (a) the rights and obligations of the parties arising under Section 5.1(d), Section 5.2, Section 5.3 and Section 5.7 shall survive such termination until three (3) years after the termination of this Agreement; (b) Article I, Article VII, and Article VIII shall survive such termination; and (c) other than with respect to the surviving provisions enumerated in clause (a) and (b) above, 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 Closing and continue in full force and effect until the termination of this Agreement pursuant to Section 8.1 hereof. 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.

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:

Palo Biofarma, S.L.
Plaza Cein, Poligono Industrial Mocholí, Nave 52
Noain, Navarra, Spain 31110
Attention: Julio Castro, CEO
+34 948 346 255
jcastro@palobiofarma.com

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

Oscar Alegre, Partner
RCD Legal
Escoles Pies 102
Barcelona, Spain 08017
+34-93-503-48-68
oalegre@rcd.legal

if to Purchaser, to:

XOMA (US) LLC
2200 Powell Street
Suite 310
Emeryville, CA 94608 USA
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):

Karen Bertero
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197 USA
Telephone: (213) 229-7360
Facsimile: (213) 229-6360
Kbertero@gibsondunn.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 Royalty Payments hereunder, in whole or in part, to any Third Party. 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 for any purposes, including any Tax purposes. The Parties agree that they shall not take any inconsistent position with respect to such treatment in any filing with any Governmental Authority.

Section 8.7 Entire Agreement.

This Agreement together with the Exhibits hereto (which are incorporated herein by reference), the CDA, 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 (except for the CDA), 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.

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 July 10, 2019, 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 three (3) 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.

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.

{SIGNATURE PAGE FOLLOWS}

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

PALO BIOPHARMA, S.L.

By:_____
Name: Julio Castro
Title: CEO

XOMA (US) LLC

By:_____
Name: James Neal
Title: CEO

[Signature Page to Royalty Purchase Agreement]

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

Exhibit 10.2

August 31, 2019

Via Email

Dee Datta

Re: Separation Agreement

Dear Dee:

This letter sets forth the substance of our agreement ("***Agreement***") regarding the resignation of your employment with XOMA Corporation (the "***Company***") and associated release of claims related to the Company and affiliated entities and persons as specified in the definition of "***Releasees***" in Section 8 of this Agreement (collectively, the "***Releasees***"). This Agreement will become effective upon the "Effective Date" defined in Section 9 of this Agreement and, except to the extent specified herein, shall then supersede all prior agreements, engagements, employments, arrangements, and relationships, whether written or oral, between you and the Releasees. This Agreement is the product of our discussions and negotiations over the past several weeks.

1. **Separation**. You hereby resign your employment as an employee, officer, and any position you hold with the Company effective as of August 31, 2019 (the "***Separation Date***"), and your status as an employee and officer of the Company ends on the Separation Date. In exchange for your covenants and releases in this Agreement, and provided that this Agreement becomes effective in accordance with Section 9 hereof and that you satisfy the requirements of Sections 6, 7, and 8 hereof, the Company will cause to be paid to you or on your behalf the following benefits: (i) transition pay in the gross amount of $172,001.50, less required withholdings, paid in ten (10) equal monthly installments on the Company's regularly-scheduled payroll dates beginning with the first such payroll date following the Effective Date and reported as wages on form W-2; (ii) a lump sum payment of $140,728.50 payable within ten (10) days following the Effective Date and reported on form 1099; and iii) a payment of $87,270 to the firm of [*] in consideration of attorneys' fees incurred by you in connection with this Agreement payable within ten (10) days of the Effective Date (collectively, the "***Separation Benefits***").

2. **Accrued Salary and Bonus**. On the Separation Date, the Company shall pay to you via direct deposit all accrued salary earned through the Separation Date, subject to standard payroll deductions and withholdings. The Company will pay to you via direct deposit your second quarter CAGS bonus in the amount of $19,918, subject to standard payroll deductions, within three (3) business days of the Separation Date. You are entitled to these payments by law.

3. **Equity Awards**. The vesting of any equity awards granted to you by the Company, including but not limited to stock options or other equity awards, shall cease as of the Separation Date. In exchange for your promises and releases in this Agreement, and provided that this Agreement becomes effective, you shall have until December 31, 2020 to exercise any vested option shares priced at either $14.33 or $25.05 and you shall have until December 31, 2021 to exercise any option shares priced at $33.41 per share. You hereby agree to the amendment of your stock option grants and stock options agreements in conformity with this Section 3, and acknowledge and agree that you have sought independent advice regarding the potential tax consequences of this amendment. Attached as Exhibit 1 is an Options Statement confirming the number and strike price of the vested, exercisable options held by you effective as of the Separation Date. Within ten (10) days of the Effective Date the Company shall direct eTrade to make a manual override to the exercise dates of your options to conform to the terms of this Agreement. The override shall take effect within three (3) business days of the direction from the Company.

4. **Other Compensation or Benefits**. You acknowledge that, except as expressly provided in this Agreement, you will not receive any additional compensation, severance or benefits after the Separation Date. If an arbitrator pursuant to Section 11 of this Agreement determines that you materially breached any provision of this Agreement, including but not limited to Sections 5, 6, or 7 of this Agreement, you shall be required to repay any transition pay you received after the date of the breach, and the stock option exercise period specified in Section 3 shall automatically expire on the date of the arbitrator's determination. The prevailing party in an action brought to enforce this Section 4 shall be awarded attorneys' fees incurred in connection with the action.

5. **Protection of Confidential and Proprietary Information and Return of the Company's Property**. You acknowledge your covenants and continuing obligations to the Company pursuant to your Proprietary Information and Inventions Assignment Agreement (the "***PIIA***") and you agree that the PIIA shall continue to apply in full force and effect following the Separation Date, including but not limited to the provisions of Section 4 thereof. A copy of the PIIA is attached to this Agreement as Exhibit 2. You hereby represent that you will, not later than the Separation Date, perform a diligent, good faith search for and return to the Company, attention Chris Wells, all documents, data, and information of or relating to or prepared by or for the Company (and all copies thereof), regardless of how stored or maintained, and all other property of the Company in your possession or control, including, but not limited to, files, correspondence, email and text communications, memoranda, notes, notebooks, work papers, drawings, books and records, plans, forecasts, reports, proposals, studies, agreements, financial information, accounting information, personnel information, sales and marketing information, research and development information, data, systems information, specifications, computer-recorded information, tangible property and equipment, credit cards, entry cards, identification badges and keys, computers of any type, and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part) ("***Company Property***") and with respect to the laptop computer provided to you by the Company return said item not later than the Effective Date; provided, however, that the foregoing shall not apply to (i) information and documentation you received solely in your capacity as a shareholder, option holder or restricted stock unit holder of the Company, or as a participant in any employee benefit plan that is sponsored by the Company, or (ii) the mobile phone iPhone 10 that you currently use for personal and business purposes, provided that you shall first coordinate with Frank Bernard to

make arrangements satisfactory to the Company for the deletion of Company Property on such device and immediate transfer of responsibility for the cellular service/data plan for said phone out of the Company's name.

6. Non-disparagement; Communication. For a period of [*] after the Separation Date, you agree not to disparage, denigrate, or discredit the Releasees or any of them in any manner likely to be harmful to their or any of their business(es), business reputations or personal reputations. You agree that should you materially breach this Section 6 the damages resulting to the Releasees would be difficult to quantify, and, therefore, in the event of any such breach by you [*], you shall pay to the affected Releasee the sum of [*] as liquidated damages for each such breach, in addition to such other or further relief as may be awarded to the Releasee(s) for such breach. Notwithstanding the foregoing, you may respond accurately and fully to any question, inquiry or request for information when required by legal process or subpoena, provided that you shall give written notice within three business days after receipt of any such legal process by you to the affected Releasee(s) that such legal process or subpoena has been received. The Company agrees that it will instruct and direct the following of its Directors and/or officers that he or she shall not, for a period of [*] following the Separation Date, not to disparage, denigrate, or discredit you in any manner likely to be harmful to your or your business, business reputation or personal reputation: [*]. In the event any of the listed officers or directors should receive an inquiry regarding your employment by the Company or your professional capabilities, he or she shall refer the inquiring party to the Company's Form 8-K regarding your departure and shall decline any other or further comment.

7. Cooperation and Assistance. You agree that you will not voluntarily provide assistance, information, encouragement, or advice, directly or indirectly (including through agents or attorneys), to any non-governmental person or entity in connection with any claim against the Company, nor shall you induce or encourage any person or entity to do so. The foregoing sentence shall not prohibit you from testifying truthfully under subpoena or from communicating with Government Agencies (as defined in Section 8 below). You warrant that you have not previously provided assistance, information, encouragement, or advice, directly or indirectly, to any non-governmental person or entity in connection with any claim by or against the Company. You agree to provide (voluntarily and without legal compulsion) prompt cooperation and accurate and complete information to the Company in the event of litigation involving the Company or its officers or directors and to respect and preserve all privileges held by or available to the Company.

8. Release. In exchange for the consideration provided to you by this Agreement that you are not otherwise entitled to receive, you hereby generally and completely release the Company and its directors, officers, employees, shareholders, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "***Releasees***") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to the date upon which you sign this Agreement. This general release includes, but is not limited to: (1) all claims arising from or in any way related to your relationship with, engagement by, or services provided by you to the Releasees or any of them; (2) all claims for breach of contract or any other agreement or arrangement between you and the Releasees or any of them; (3) all claims arising from or in any way related to your employment with the Releasees or any of them or the resignation of that employment; (4) all claims related to your compensation or benefits from the Releasees or

any of them, including, but not limited to, salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Releasees or any of them; (5) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (5) all tort claims, including, but not limited to, claims for fraud, misrepresentation, defamation, emotional distress, and discharge in violation of public policy; and (6) all federal, state, and local statutory claims, including, but not limited to, alleged claims for discrimination, harassment, retaliation, attorneys' fees, emotional distress, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), the California Fair Employment and Housing Act, and the California Labor Code.

a. **Civil Code Section 1542 waiver**. You also acknowledge that you have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release ad that if known by him or her, would have materially affected his or her settlement with the debtor or released party.**" You hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims you may have against the Releasees.

b. **Claims excluded from the Release**. The claims described above that you are releasing do not include: (1) any rights which cannot be waived as a matter of law; and (2) any claims arising from breach of this Agreement. Nothing in this Agreement prevents you from filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (collectively, the "***Government Agencies***"). You understand this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Releasees. While this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, to the maximum extent permitted by law, you are otherwise waiving any and all rights you may have to individual relief based on any claims that you have released and any rights you have waived by signing this Agreement.

9. **ADEA Waiver**. You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you may have under ADEA, and that the consideration given for the waiver and release in the preceding paragraph is in addition to anything of value to which you were already entitled. You further acknowledge that you have been advised by this writing that: (a) your waiver and release do not apply to any rights or claims that may arise after the execution date of this Agreement; (b) you should consult with an attorney prior to executing this Agreement; (c) you have twenty-one (21) days after the date of your receipt of this Agreement to consider this Agreement (although you may choose to voluntarily execute this Agreement earlier); (d) you have seven (7) days following the execution of this Agreement by the parties to revoke the Agreement; and (e) this Agreement will not be effective until the date upon which the revocation period has expired without your having revoked (the "***Effective Date***"), and you will not receive the benefits specified by this Agreement unless and until it becomes effective.

10. **Release by the Company.** In exchange for the consideration and covenants provided by you pursuant to this Agreement and provided that this Agreement becomes effective the Company hereby generally and completely releases you from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to the date upon which the Company signs this Agreement. This general release includes, but is not limited to: (1) all claims arising from or in any way related to your relationship with, engagement by, or services provided by you to the Releasees or any of them; (2) all claims for breach of contract or any other agreement or arrangement between you and the Releasees or any of them; (3) all claims arising from or in any way related to your employment with the Releasees or any of them or the resignation of that employment; (4) all claims related to your compensation or benefits from the Releasees or any of them, including, but not limited to, salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Releasees or any of them; (5) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (5) all tort claims, including, but not limited to, claims for fraud, misrepresentation, and defamation; and (6) all federal, state, and local statutory claims,.

a. **Civil Code Section 1542 waiver**. The Company also acknowledges that it has read and understands Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release ad that if known by him or her, would have materially affected his or her settlement with the debtor or released party.**" The Company You hereby expressly waives and relinquishes all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims it may have against you.

b. Claims excluded from the Release. The claims described above that the Company is releasing do not include: (1) any rights which cannot be waived as a matter of law; and (2) any claims arising from breach of this Agreement. Nothing in this Agreement prevents the Company from filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (collectively, the "***Government Agencies***"). This Agreement does not limit the Company's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to you.

11. **Disputes**. Any dispute or controversy between you and the Releasees arising out of or relating to this Agreement or the alleged breach of this Agreement shall be settled by binding arbitration conducted by and before a single arbitrator in Oakland, California administered by JAMS in accordance with its Employment Arbitration Rules (the "***JAMS Rules***") then in effect and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Both you and the Company hereby waive the right to a trial by jury or judge, or by administrative proceeding, for any covered claim or dispute. To the extent the JAMS Rules conflict with any provision or aspect of this Agreement, this Agreement shall control. The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, the issuance of an injunction.

However, either party may, without inconsistency with this arbitration provision, apply to any court having jurisdiction over such dispute or controversy and seek interim provisional, injunctive or other equitable relief until the arbitration award is rendered or the controversy is otherwise resolved. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, or to obtain interim relief, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the Company and you. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Sections 1-14) ("***FAA***") and will be construed and governed accordingly. It is the parties' intention that both the procedural and the substantive provisions of the FAA shall apply. Questions of arbitrability (that is whether an issue is subject to arbitration under this agreement) shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. However, where a party already has initiated a judicial proceeding, a court may decide procedural questions that grow out of the dispute and bear on the final disposition of the matter. Each party shall bear its or his costs and expenses in any arbitration hereunder and one-half of the arbitrator's fees and costs; provided, however, that the arbitrator shall have the discretion to award the prevailing party reimbursement of its or his reasonable attorney's fees and costs, unless such award is prohibited by applicable law. Notwithstanding the foregoing, you and the Releasees shall each have the right to resolve any dispute or cause of action involving trade secrets, proprietary information, or intellectual property (including, without limitation, inventions assignment rights, and rights under patent, trademark, or copyright law) by court action instead of arbitration.

12. Miscellaneous. This Agreement, together with the Exhibits hereto, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Releasees with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and the Chief Executive Officer of the Company or the Chairman of the Board of Directors of the Company. This Agreement includes a compromise of disputed claims; the parties hereto deny any liability to the other, whether as alleged or otherwise and expressly deny any violation of any contract, statute, regulation, or provision of common law, state, local or federal. This Agreement will bind your heirs, personal representatives, successors and assigns and inure to the benefit of both you and the Releasees, their heirs, successors and assigns. The failure to enforce any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. For purposes of construing this Agreement, any ambiguities shall not be construed against either party as the drafter. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement may be executed in counterparts or with facsimile or PDF signatures, which shall be deemed equivalent to originals.

Please sign and date below and return one original to me.

Sincerely,

XOMA CORPORATION

By: /s/ James R. Neal
James R. Neal, Chief Executive Officer

Agreed and Accepted:

/s/ Dee Datta
Dee Datta Date

EXHIBIT 1

XOMA CORP

PERSONNEL SUMMARY
AS OF 08/31/2019

[*]
Last Name is detta

Name	ID	Grant Number	Grant Date	Plan/Type	Granted Shares	Price	Exercised / Released	Vested
Detta, Deepskikha	[*]	[*]	[*]	[*]	[*]	$33.4100	[*]	[*]
		[*]	[*]	[*]	[*]	$33.4100	[*]	[*]
		[*]	[*]	[*]	[*]	$25,0500	[*]	[*]
		[*]	[*]	[*]	[*]	$14.3300	[*]	[*]
					[*]		[*]	[*]
	Account: Datta, Deepshikha							
		Total			[*]		[*]	[*]

EXHIBIT 2

XOMA CORPORATION
PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT
FOR THE STATE OF CALIFORNIA

In consideration of my employment as an employee, the continuance of such employment, the compensation paid to me by XOMA CORPORATION, or any of its predecessors or successors or its subsidiary or affiliate companies (all hereafter called "the Company") and other good and valuable consideration, I agree with the Company as follows:

1. I AGREE TO fully and promptly disclose to my immediate supervisor or to a member of the Legal Department of the Company all inventions. The word "inventions" as used herein shall include inventions, discoveries, improvements, ideas, conceptions, developments, and designs whether or not patentable or tested, including vectors, cell lines, hybridomas, antibodies, monoclonal or otherwise, proteins and fragments or portions thereof, and materials, techniques and processes for isolation, screening, preparation, cross-linking, and/or use of such materials, their conjugates or other derivatives thereof whether in applications to medical diagnostics and therapeutics or otherwise) which I may make, conceive, discover or develop, either solely or jointly with others, during my employment, whether or not during usual working hours, which relate to, result from or are suggested by any activities of the Company which I am exposed to or any work I may do for the Company. I agree that all such inventions shall be and remain the sole and exclusive property of the Company, and I agree to assign and hereby assign, all my right, title and interest in and to any such inventions of the Company. I agree to keep complete records of such inventions, which records shall be and remain the sole property of the Company, and to execute and deliver, either during or after my employment by the Company, all documents as the Company shall deem necessary or desirable to obtain Letters Patent, Utility Models, Inventor's Certificates, Copyrights or other appropriate legal rights of the United States and foreign countries as the Company may, in its sole discretion, elect and to vest title thereto in the Company, its successors, assignees or nominees.

2. I AGREE FULLY and promptly to disclose and offer to the Company all inventions which I may make, conceive, discover or develop, either solely or jointly with others, within one (1) year after termination of my employment by the Company, which are based on or related to confidential information of the Company to which I was exposed during my employment by the Company. At the request of the Company I agree to assign to the Company my entire right, title and interest in and to such inventions and agree to execute and deliver all documents as the Company shall deem necessary and desirable to obtain Letters Patent, Utility Models, Inventor's Certificates, Copyrights or other appropriate legal right of the United States and foreign countries as the Company may, in its sole discretion, elect and vest title thereto in the Company, its successors, assignees or nominees.

3. I UNDERSTAND THAT my employment results in a confidential relationship between myself and the Company. I agree to regard and preserve as confidential all information pertaining to the Company business known to me or that may be obtained by me including but not limited to information relating to the Company's products, inventions, trade secrets, know-how systems, formulae, processes, compositions, manufacturing techniques, machinery, equipment, research projects, drawings, models, data processing and computer software techniques, programs, systems and customer information, and I agree not to use, communicate or disclose or authorize any other person to use, communicate or disclose such information orally, in writing or by publication, either during my employment or thereafter, except as expressly authorized in writing by the Company or as required in the line of my employment by the Company, unless and until such information becomes generally known in the relevant trade or industry to which it relates without fault on my part. I

recognize that the Company has received and will receive confidential information from third parties, including customers. I will hold all such information in the strictest confidence and will not use the information or disclose it to anyone, except as necessary in carrying out my work for the Company. I agree to deliver to the Company all writings, drawings, models, equipment and other property of the Company within my custody and control upon termination of my employment by the Company.

4. I UNDERSTAND THAT the Company's business relationships with its employees, customers, vendors, suppliers, consultants, business associates, and other persons are valuable business assets, and that I would not have access to these persons or entities and information related thereto but for my employment with the Company. I further acknowledge that engaging in the conduct proscribed below would involve the use or disclosure of Company trade secrets in breach of this Agreement. Accordingly, to forestall any such use or disclosure, I agree that during my employment by the Company and for a period of one (1) year after the date my employment by the Company ends for any reason, including but not limited to voluntary termination by me or involuntary termination by the Company, I will not, directly or indirectly: (i) solicit or attempt to solicit any employee, independent contractor, or other provider of services to the Company to become an employee, independent contractor, or other provider of services to or for any other person or entity, or to otherwise alter their relationship with the Company; or (ii) solicit or attempt to solicit any customers or vendors or suppliers of the Company (including those persons or entities who were, at the time of my termination of employment, prospective customers or vendors or suppliers) of the Company with whom I had contact or whose identity I learned as a result of my employment with the Company to the fullest extent such restrictions are permissible under applicable law. I further agree that at anytime following my employment with the Company I shall not, directly or indirectly, use or attempt to use the Company's trade secrets or any other means that would amount to unfair competition to divert from the Company any business of any kind, including, without limitation, the solicitation or interference with any of its current or prospective customers, vendors, or suppliers, or employees, independent contractors, or other service providers with whom I came into contact or learned of during my employment.

5. THIS AGREEMENT SHALL not embrace or include inventions applications for and/or Letters Patent owned or controlled by me prior to the commencement of my employment by the Company, all of which, if any, are fully identified on the reverse side hereof.

6. THIS AGREEMENT DOES NOT APPLY to an invention which qualifies fully under the provisions of Section 2870 of the Labor Code of California**as an invention for which no equipment, supplies, facility or trade secret information of XOMA CORPORATION was used and which was developed entirely on the employee's own time, and (a) which does not relate (1) to the business of XOMA CORPORATION or (2) to XOMA CORPORATION's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by the employee for XOMA CORPORATION.

7. I COVENANT THAT I have no undisclosed obligation by reason of prior employment or otherwise, which might in any way affect my ability to perform under this agreement, except as fully identified on the reverse side hereof.

8. I ACKNOWLEDGE THAT nothing in this Agreement shall be construed to imply that the term of my employment is of any definite duration. Rather, I understand that I am employed by the Company on an "at-will" basis, which means that either the Company or I can terminate the employment relationship at anytime with or without advance notice or warning, and for any reason, with or without cause.

9. THIS AGREEMENT SHALL be binding upon me and my heirs, executors, administrators, and assigns. The Company shall have the right to assign this agreement to any successor to the business in which I am employed.

Name of Employee: Deepshikha Datta

Signature: /s/ Deepshikha Datta

Date: 12/18/2017

**Section 2870 of the Labor Code of California states:
(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision
is against the public policy of this state and is unenforceable.

Exhibit 31.1

CERTIFICATION

I, James R. Neal, certify that:

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

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

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

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

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

/s/ JAMES R. NEAL

Date: November 5, 2019

James R. Neal
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Thomas Burns, certify that:

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

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

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

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

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

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

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

Date: November 5, 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 endedSeptember 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 5th day of November 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.