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IMPORTANT: You must read the following before continuing.

The following applies to the prospectus (the "**Prospectus**") following this notice. You are advised to read this disclaimer carefully before reading, accessing or making any other use of the Prospectus. In accessing the Prospectus, you agree to be bound by the following terms and conditions, including any modifications made to them from time to time, each time you receive any information from the company described herein (the "**Company**") as a result of such access. You acknowledge that delivery of this electronic transmission and the Prospectus are confidential and intended for you only and you agree you will not forward, reproduce, copy, download or publish this electronic transmission and/or the Prospectus in any manner whatsoever to any other person. Nothing in this electronic transmission and/or the Prospectus constitutes an offer of securities for sale in any jurisdiction where it is unlawful to do so.

Defined terms in this disclaimer have the same meanings in the Prospectus unless otherwise indicated.

THIS ELECTRONIC TRANSMISSION AND THE PROSPECTUS MAY ONLY BE DISTRIBUTED OUTSIDE THE UNITED STATES TO PERSONS WHO ARE NOT US PERSONS ("US PERSONS", AS DEFINED IN REGULATION S UNDER THE US SECURITIES ACT OF 1933 ("REGULATION S"), AS AMENDED (THE "US SECURITIES ACT")). ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THIS ELECTRONIC TRANSMISSION AND/OR THE PROSPECTUS IN WHOLE OR IN PART IS UNAUTHORISED. FAILURE TO COMPLY WITH THIS NOTICE MAY RESULT IN A VIOLATION OF THE US SECURITIES ACT AND/OR THE APPLICABLE LAWS OF OTHER JURISDICTIONS.

THE SECURITIES REFERRED TO HEREIN (THE "SECURITIES") HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE US SECURITIES ACT OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, EXCEPT OUTSIDE THE UNITED STATES TO PERSONS WHO ARE NOT US PERSONS IN ACCORDANCE WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE US SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAW OF ANY STATE OF THE UNITED STATES AND IN A MANNER THAT WOULD NOT REQUIRE THE COMPANY TO REGISTER UNDER THE US INVESTMENT COMPANY ACT OF 1940 (THE "INVESTMENT COMPANY ACT"). THE COMPANY HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE INVESTMENT COMPANY ACT AND, AS SUCH, HOLDERS OF THE COMPANY'S SECURITIES WILL NOT BE ENTITLED TO THE BENEFITS OF THE INVESTMENT COMPANY ACT.

This electronic transmission and the Prospectus are only addressed to and directed at persons in member states of the European Economic Area ("**EEA**") who are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive (Directive 2003/71/EC) ("**Qualified Investors**"). In addition, in the United Kingdom, this electronic transmission and the Prospectus are addressed to, and directed only at, Qualified Investors who (i) are persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "**Order**"), (ii) are persons who are high net worth entities falling within Article 49(2)(a) to (d) of the Order, or (iii) are other persons to whom they may otherwise lawfully be communicated (all such persons together being referred to as "**relevant persons**"). This electronic transmission and the Prospectus must not be acted on or relied on (i) in the United Kingdom, by persons who are not relevant persons, and (ii) in any member state of the EEA other than the United Kingdom, by persons who are not Qualified Investors. Any investment or investment activity to which this electronic transmission and the Prospectus relate is available only to relevant persons in the United Kingdom and Qualified Investors in any member state of the EEA other than the United Kingdom, and will be engaged in only with such persons.

INFORMATION TO DISTRIBUTORS

Solely for the purposes of the product governance requirements contained within: (a) EU Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**"); (b) Articles 9 and 10 of Commission Delegated Directive (EU) 2017/593 supplementing MiFID II; and (c) local implementing measures (together, the "**MiFID II Product Governance Requirements**"), and disclaiming all and any liability, whether arising in tort, contract or otherwise, which any "manufacturer" (for the purposes of the MiFID II Product Governance Requirements) may otherwise have with respect thereto, the Issue Shares have been subject to a product approval process, which has determined that such Issue Shares are: (i) compatible with an end target market of retail investors and investors who meet the criteria of professional clients and eligible counterparties, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels as are permitted by MiFID II (the "**Target Market Assessment**").

Notwithstanding the Target Market Assessment, distributors should note that: the price of the Shares may decline and investors could lose all or part of their investment; the Issue Shares offer no guaranteed income and no capital protection; and an investment in the Issue Shares is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom. The Target Market Assessment is without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Issue.

For the avoidance of doubt, the Target Market Assessment does not constitute: (a) an assessment of suitability or appropriateness for the purposes of MiFID II; or (b) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to the Issue Shares.

Each distributor is responsible for undertaking its own target market assessment in respect of the Issue Shares and determining appropriate distribution channels.

PRIIPS REGULATION

In accordance with the Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and its implementing and delegated acts (the "**PRIIPs Regulation**"), key information documents in respect of the Ordinary Shares and the C Shares have been prepared by the Investment Manager and are available to investors at www.bpcruk.com. If you are distributing the Issue Shares, it is your responsibility to ensure that the relevant key information document is provided to any clients that are "retail clients".

The Investment Manager is the only manufacturer of the Issue Shares for the purposes of the PRIIPs Regulation and none of the Joint Bookrunners are manufacturers for these purposes. None of the Joint Bookrunners makes any representations, express or implied, or accepts any responsibility whatsoever for the contents of the key information documents prepared by the Investment Manager nor accepts any responsibility to update the contents of the key information documents in accordance with the PRIIPs Regulation, to undertake any review processes in relation thereto or to provide such key information documents to future distributors of Issue Shares. Each of the Joint Bookrunners and their respective Affiliates accordingly disclaim all and any liability whether arising in tort or contract or otherwise which it or they might have in respect of the key information documents prepared by the Investment Manager.

Confirmation of Your Representation: This electronic transmission and the Prospectus are delivered to you on the basis that you are deemed to have represented to the Company, the Investment Manager and each of the Joint Bookrunners that you have understood and agree to the terms set out herein, and (i) you are a person that is outside the United States for the purpose of Regulation S and not a US Person or (ii) you are a person in a member state of the EEA, other than the United Kingdom, and you are a Qualified Investor and/or a Qualified Investor acting on behalf of Qualified Investors or relevant persons, to the extent that you are acting on behalf of persons or entities in the EEA or the United Kingdom, or (iii) you are a

person in the United Kingdom and you are a relevant person and/or a relevant person acting on behalf of relevant persons or Qualified Investors, to the extent that you are acting on behalf of persons or entities in the United Kingdom or in the EEA, or (iv) you are an institutional investor that is otherwise eligible to receive this electronic transmission and the Prospectus. You shall also be deemed to have represented to the Company, the Investment Manager and each of the Joint Bookrunners that you consent to delivery by electronic transmission.

You are reminded that you have received this electronic transmission and the Prospectus on the basis that you are a person into whose possession the Prospectus may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located and you may not nor are you authorised to deliver the Prospectus, electronically or otherwise, to any other person. If a jurisdiction requires that the offering to which this electronic transmission and the Prospectus relates be made by a licensed broker or dealer and any Joint Bookrunner or any of their Affiliates is a licensed broker or dealer in that jurisdiction, the offering shall be deemed to be made by such Joint Bookrunner or such Affiliate on the behalf of the Company in such jurisdiction.

The Issue is subject to the Alternative Investment Fund Managers Directive ("**AIFMD**") as implemented by Member States of the European Economic Area. Outside of the United Kingdom, the Issue is directed only at professional investors in the following member states: Netherlands, Ireland, Belgium and Luxembourg (together with the United Kingdom, the "**Eligible Member States**"). The Investment Manager has not registered a passport for marketing under the passporting programme set out in the AIFMD in any other member state (each an "**Ineligible Member State**"). This electronic transmission and the Prospectus may not be distributed in any Ineligible Member State and no offers subsequent to it may be made or accepted in any Ineligible Member State. The attention of all prospective investors is drawn to disclosures required to be made under the AIFMD which are set out on the Company's website (including as set out in its most recent prospectus and annual report and accounts), which will also set out (if applicable) any periodic updates required under the rules in the FCA's Handbook (FUND 3.2.5R and 3.2.6R).

The Company may be deemed to be a "covered fund" for the purposes of Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and any implementing regulations and related guidance (the "**Volcker Rule**"). Further, the Issue Shares constitute an "ownership interest" for the purposes of the Volcker Rule. As a result, the Volcker Rule may, subject to certain exemptions, prohibit certain banking institutions from, directly or indirectly, acquiring or retaining the Issue Shares. This prohibition may adversely affect the liquidity and market price of the Issue Shares. In addition, any entity that is a "banking entity" under the Volcker Rule and is considering an investment in the Issue Shares should consider the potential impact of the Volcker Rule in respect of such investment and on its portfolio generally.

The Company believes that it is, and expects that it will continue to be, a Passive Foreign Investment Company for US federal income tax purposes. US shareholders should consult their tax advisers regarding the potential application of the PFIC regime.

You are reminded that documents transmitted electronically may be altered or changed during the process of transmission and consequently none of the Company, the Investment Manager or any Joint Bookrunner nor any of their respective Affiliates accepts any liability or responsibility whatsoever in respect of any difference between the Prospectus delivered by electronic transmission and the hard copy version. You are responsible for protecting against viruses and other destructive items.

None of the Joint Bookrunners nor any of their Affiliates accept any responsibility whatsoever for the contents of this electronic transmission or the Prospectus or for any other statement made or purported to be made by them, or on their behalf, in connection with the Company or the Issue Shares or the offering referred to herein. Each Joint Bookrunner and each of their Affiliates disclaim all and any liability whether arising in tort, contract, or otherwise which they might otherwise have in respect of the electronic transmission, the Prospectus or any such statement. No representation or warranty, express or implied, is made by any Joint Bookrunner

or any of their Affiliates as to the accuracy, completeness or sufficiency of the information set out in this electronic transmission or the Prospectus.

The Joint Bookrunners are acting exclusively for the Company and no one else in connection with the Issue. They will not regard any other person (whether or not a recipient of this document) as their client in relation to the Issue and will not be responsible to anyone other than the Company for providing the protections afforded to their clients nor for giving advice in relation to the Issue or any transaction or arrangement referred to herein.

THIS DOCUMENT AND ANY ACCOMPANYING DOCUMENTS ARE IMPORTANT AND REQUIRE YOUR IMMEDIATE ATTENTION. If you are in any doubt as to the action you should take or the contents of this document, you are recommended to seek your own independent financial advice immediately from your stockbroker, bank, solicitor, accountant, or other appropriate independent financial adviser, who is authorised under the Financial Services and Markets Act 2000, as amended (“FSMA”) if you are in the United Kingdom, or from another appropriately authorised independent financial adviser if you are in a territory outside the United Kingdom.

This document comprises a prospectus (the “Prospectus”) relating to BioPharma Credit plc (the “Company”), in connection with the admission of Issue Shares in the Company to the Specialist Fund Segment, prepared in accordance with the prospectus rules of the Financial Conduct Authority (the “FCA”) made pursuant to section 73A of FSMA (the “Prospectus Rules”). This Prospectus has been approved by the FCA and has been filed with the FCA and made available to the public in accordance with Rule 3.2 of the Prospectus Rules. This document also constitutes a listing document for the purposes of seeking admission of the Issue Shares to the Official List of The International Stock Exchange Authority Limited (“TISEA”).

The Issue Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio.

Applications will be made to the London Stock Exchange and TISEA for the New Ordinary Shares and C Shares to be issued in connection with the Issue (the “Issue Shares”) to be admitted to trading on the Specialist Fund Segment of the Main Market of the London Stock Exchange (the “Specialist Fund Segment”) and to listing and trading on the Official List of TISEA at the relevant Admission with applications to be made in connection with C Shares issued at the Initial Placing and Offer at the Initial Admission. It is not intended that any class of Issue Shares in the Company be admitted to listing in any other jurisdiction. In this Prospectus, the Placing Programme and the Offer are together referred to as the “Issue”. It is expected that Admission of C Shares issued in connection with the Initial Placing and Offer (“Initial Admission”) will become effective and dealings for normal settlement in the C Shares will commence on 16 April 2018.

This document includes particulars given in compliance with the listing rules of TISEA for the purpose of giving information with regard to the issuer. The Directors, whose names appear on page 87, accept full responsibility for the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading.

Specialist Fund Segment securities are not admitted to the Official List of the FCA. Therefore the Company has not been required to satisfy the eligibility criteria for admission to listing on the Official List and is not required to comply with the FCA’s Listing Rules. The London Stock Exchange has not examined or approved the contents of this document.

BioPharma Credit plc

(Incorporated in England and Wales with registered no.10443190 and registered as an investment company under section 833 of the Companies Act 2006)

Initial Placing and Offer for Subscription of up to 500 million C Shares

Placing Programme and Offer for Subscription of up to 2,000 million New Ordinary Shares and / or C Shares

Global Coordinators and Joint Bookrunners

Goldman Sachs International

J.P. Morgan Cazenove

Joint Bookrunner

BofA Merrill Lynch

The Company and each of the Directors whose name appears on page 87 of this Prospectus, accept responsibility for the information contained in this Prospectus. To the best of the knowledge of the Company and the Directors, who have taken all reasonable care to ensure that such is the case, the information contained in this Prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information.

Pharmakon Advisors L.P. (“Investment Manager”) accepts responsibility for the information and opinions contained in the Risk Factors, Part I (The Company), Part II (Investment Opportunity) and Part III (The Investment Manager) of this Prospectus and any other information or opinion related to or attributed to it, RP Management LLC (“Royalty Pharma”) or any other Affiliate of the Investment Manager. To the best of the Investment Manager’s knowledge, which has taken all reasonable care to ensure that such is the case, the information and opinions contained in this Prospectus related to or attributed to it, Royalty Pharma or any Affiliate of the Investment Manager are in accordance with the facts and do not omit anything likely to affect the import of such information or opinions.

Goldman Sachs International (“GSI”), J.P. Morgan Securities plc (which conducts its UK investment banking activities as J.P. Morgan Cazenove) (“JPMC” and together with GSI, the “Joint Global Coordinators”) and BofA Merrill Lynch (“BAML”, and together with the Joint Global Coordinators, the “Joint Bookrunners”) are authorised

by the Prudential Regulation Authority and regulated by the FCA and the Prudential Regulation Authority and are acting exclusively for the Company and for no one else in connection with the Issue and Admission and will not be responsible to anyone (whether or not a recipient of this Prospectus) other than the Company for providing the protections afforded to clients of the Joint Bookrunners or for affording advice in relation to the Issue and Admission, the contents of this Prospectus or any matters referred to herein. None of the Joint Bookrunners is responsible for the contents of this Prospectus. This does not exclude any responsibilities which any of the Joint Bookrunners may have under FSMA or the regulatory regime established thereunder.

Apart from the liabilities and responsibilities (if any) which may be imposed on any of the Joint Bookrunners by FSMA or the regulatory regime established thereunder, none of the Joint Bookrunners makes any representations, express or implied, or accepts any responsibility whatsoever for the contents of this Prospectus nor for any other statement made or purported to be made by either of them or on their behalf in connection with the Company, the Investment Manager, the Issue Shares, the Issue or Admission. Each of the Joint Bookrunners and their respective Affiliates accordingly disclaim all and any liability (save for any statutory liability) whether arising in tort or contract or otherwise which it or they might otherwise have in respect of this Prospectus or any such statement.

The Offer will remain open until 11:00 am on 12 April 2018 and the Initial Placing will remain open until 11:00 am on 12 April 2018. Persons wishing to participate in the Offer should complete the Application Form set out in Appendix 1 to this Prospectus. To be valid, Application Forms must be completed and returned with the appropriate remittance so as to reach Link Asset Services by post, or by hand (during business hours only), to Link Asset Services as soon as possible, and in any event by no later than 11:00 am on 12 April 2018.

The actual number of Issue Shares to be issued pursuant to the Initial Placing and Offer and any subsequent Placing under the Placing Programme will be determined by the Company, the Investment Manager and the Joint Bookrunners after taking into account the demand for the Issue Shares and prevailing economic market conditions at the relevant time. The Company does not envisage making an announcement regarding the amount to be raised in the Initial Placing and Offer or any subsequent Placing under the Placing Programme or the number of Issue Shares to be issued until determination of the number of Issue Shares to be issued and allotted, unless required to do so by law. Further details of the Issue and how the number of such Issue Shares is to be determined are contained in Part VI (Issue Arrangements) of this Prospectus.

The Company has not been and will not be registered under the United States Investment Company Act of 1940, as amended (the “**Investment Company Act**”), and as such investors will not be entitled to the benefits of the Investment Company Act. The Issue Shares have not been and will not be registered under the United States Securities Act of 1933, as amended (the “**Securities Act**”), or with any securities regulatory authority of any state or other jurisdiction of the United States, and may not be offered, sold, resold, pledged, transferred or delivered, directly or indirectly, into or within the United States or to, or for the account or benefit of, any “US persons” as defined in Regulation S under the Securities Act (“**US Persons**”), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in compliance with any applicable securities laws of any state or other jurisdiction of the United States and in a manner which would not require the Company to register under the Investment Company Act. In connection with the Issue, subject to certain exceptions, offers and sales of the Issue Shares will be made only outside the United States in “offshore transactions” to non-US Persons pursuant to Regulation S under the Securities Act. There has been and will be no public offer of the Issue Shares in the United States.

Neither the United States Securities and Exchange Commission (the “SEC”) nor any state securities commission has approved or disapproved of the Issue Shares or passed upon or endorsed the merits of the offering of the Issue Shares or the adequacy or accuracy of this Prospectus. Any representation to the contrary is a criminal offence in the United States.

The Investment Manager may engage in trading instruments subject to US Commodity Futures Trading Commission (“**CFTC**”) jurisdiction (collectively, “**commodity interests**”) for the Company. The Investment Manager will be exempt from registration as a commodity pool operator (“**CPO**”) with the CFTC because the Investment Manager has filed a notice of exemption from registration pursuant to Rule 4.13(a)(3). The Investment Manager will comply with CFTC Rule 4.13(a)(3) either: (a) by not committing more than 5 per cent. of the liquidation value of the Company’s portfolio, directly or indirectly, to establish commodity interest positions, whether entered into for *bona fide* hedging purposes or otherwise; or (b) where the aggregate net notional value of the Company’s commodity interest positions does not exceed 100 per cent. of the Company’s liquidation value. Consequently, the Investment Manager is not required to provide Shareholders with a disclosure document or certified annual report meeting the requirements of the CFTC rules otherwise applicable to registered CPOs. This Prospectus has not been, and is not required to be, filed with the CFTC, and the CFTC has not reviewed or approved this Prospectus and the offering of the Issue Shares.

The Issue Shares may not be acquired by: (i) investors using assets of: (A) an “employee benefit plan” as defined in Section 3(3) of the United States Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) that is subject to Title I of ERISA; (B) a “plan” as defined in Section 4975 of the United States Internal Revenue Code of 1986, as amended (the “**US Tax Code**”), including an individual retirement account or other arrangement that is subject to Section 4975 of the US Tax Code; or (C) an entity whose underlying assets are considered to include “plan assets” by reason of investment by an “employee benefit plan” or “plan” described in preceding clause (A) or (B) in such entity pursuant to the US Plan Assets Regulations; or (ii) a governmental, church, non-US or other employee benefit plan that is subject to any federal, state, local or non-US law that is substantially similar to the provisions of Title I of ERISA or Section 4975 of the US Tax Code (collectively, “**Benefit Plan Investors**”), unless

its purchase, holding, and disposition of the Issue Shares will not constitute or result in a non-exempt violation of ERISA, Section 4975 of the US Tax Code or any such substantially similar law. Each investor acquiring Issue Shares shall be deemed by such acquisition to represent that it is not a Benefit Plan Investor.

In addition, the Issue Shares are subject to restrictions on transferability and resale in certain jurisdictions and may not be transferred or resold except as permitted under applicable securities laws and regulations and under the Articles. Investors may be required to bear the financial risks of their investment in the Issue Shares for an indefinite period of time. Any failure to comply with such restrictions may constitute a violation of applicable securities laws and may subject the holder to the forced transfer provisions set out in the Articles. For further information on restrictions on offers, sales and transfers of the Issue Shares, please refer to the sections entitled “United States transfer restrictions” and “Representations, Warranties and Undertakings” in Part VI (Issue Arrangements) of this Prospectus.

In connection with the Issue, the Joint Bookrunners and their respective Affiliates, acting as investor(s) for its (or their) own account(s), may acquire Issue Shares and, in that capacity, may retain, purchase, sell, offer to sell or otherwise deal for its (or their) own account(s) in such securities of the Company, any other securities of the Company or other related investments in connection with the Issue or otherwise. Accordingly, references in this Prospectus to the Issue Shares being issued, offered, acquired, subscribed or otherwise dealt with, should be read as including any issue or offer to, acquisition of, or subscription or dealing by, the Joint Bookrunners and any of their respective Affiliates acting as investor(s) for its (or their) own account(s). Neither the Joint Bookrunners nor any of their respective Affiliates intend to disclose the extent of any such investment or transactions otherwise than in accordance with any legal or regulatory obligation to do so.

The Issue Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio. Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of, the potential risks from investing in the Company. It should be remembered that the price of the Issue Shares and the income from them can go down as well as up.

This Prospectus does not constitute or form part of any offer or invitation to sell, or the solicitation of an offer to acquire or subscribe for, any securities other than the securities to which it relates or any offer or invitation to sell or issue, or any solicitation of any offer to purchase or subscribe for such securities by any person in any circumstances in which such offer or solicitation is unlawful or would impose any unfulfilled registration, qualification, publication or approval requirements on the Company, the Investment Manager, or any of the Joint Bookrunners.

Neither the admission of the Issue Shares to the Official List of TISEA nor the approval of the listing document pursuant to the listing rules of TISEA shall constitute a warranty or representation by TISEA as to the competence of the service providers to or any other party connected with the Company, the adequacy and accuracy of the information contained in this Prospectus or the suitability of the Company for investment or for any other purpose.

Capitalised terms contained in this Prospectus shall have the meanings set out in Part XIII (Definitions) of this Prospectus, save where the context indicates otherwise.

Prospective investors should read this entire Prospectus and, in particular, the section headed “Risk Factors” beginning on page 47 when considering an investment in the Company.

This Prospectus is dated 14 March 2018.

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SUMMARY

Summaries are made up of disclosure requirements known as “Elements”. These Elements are numbered in Sections A – E (A1 – E7). This summary contains all the Elements required to be included in a summary for this type of security and issuer. Because some Elements are not required to be addressed, there may be gaps in the numbering sequence of the Elements. Even though an Element may be required to be inserted in the summary because of the type of security and issuer, it is possible that no relevant information can be given regarding the Element. In this case a short description of the Element is included in the summary with the mention of “not applicable”.

PART A – THE COMPANY

<i>Section A – Introduction and warnings</i>		
Element	Disclosure requirement	Disclosure
A1	Warning	This summary should be read as an introduction to this Prospectus. Any decision to invest in the Issue Shares should be based on consideration of this Prospectus as a whole by the investor. Where a claim relating to the information contained in this Prospectus is brought before a court, the plaintiff investor might, under the national legislation of the member states of the European Union, have to bear the costs of translating this Prospectus before the legal proceedings are initiated. Civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of this Prospectus or it does not provide, when read together with the other parts of this Prospectus, key information in order to aid investors when considering whether to invest in the Issue Shares.
A2	Use of prospectus by financial intermediaries	Not applicable. The Company has not given its consent to the use of this Prospectus for subsequent resale or final placement of securities by financial intermediaries.
<i>Section B – Issuer</i>		
Element	Disclosure requirement	Disclosure
B1	Legal and commercial name	BioPharma Credit plc (the “ Company ”)
B2	Domicile and legal form	The Company is a public limited company incorporated in the United Kingdom under the Act on 24 October 2016 with registered number 10443190.
B5	Group description	The Company has a wholly owned subsidiary, BPCR Ongdapa Ltd, a private limited liability company which was registered under the laws of Ireland on 5 October 2017 (as at the date of this Prospectus, the Company and BPCR Ongdapa Ltd together constituting the “ Group ”).

B6	Notifiable interests / voting rights	As at the date of this Prospectus, in so far as is known to the Company, the major shareholders of the Company are as follows:				
		Name	Number of Ordinary Shares	Percentage of Voting Rights		
		Invesco Limited	180,002,730	19.69		
		Prudential plc	137,258,520	15.01		
		Pharmaceutial Investors LP	71,990,100	7.87		
		Inteligo Bank Ltd	66,293,782	7.25		
		Interseguro Compania de Seguros S.A.	44,008,384	4.81		
		Pablo Legorreta	34,767,015	3.80		
B7	Key financial information	STATEMENT OF COMPREHENSIVE INCOME (AUDITED) For the period from 24 October 2016 (date of incorporation) to 31 December 2017				
		(In US dollars \$000s except per share amounts)	Note	Revenue	Capital	Total
		Income				
		Investment income	3	33,218	—	33,218
		Other income	3	3,774	—	3,774
		Net gains on investments at fair value	7	—	2,265	2,265
		Currency exchange gains		—	51	51
		Total income		36,992	2,316	39,308
		Expenses				
		Management fee	4	(5,830)	—	(5,830)
		Directors' fees	4	(250)	—	(250)
		Other expenses	4	(1,062)	(471)	(1,533)
		Total expenses	4	(7,142)	(471)	(7,613)
		Return on ordinary activities before finance costs and taxation	4	29,850	1,845	31,695
		Finance costs	4	(4)	—	(4)
		Return on ordinary activities after finance costs and before taxation		29,846	1,845	31,691
		Taxation on ordinary activities	5	—	—	—
		Return on ordinary activities after finance costs and taxation		29,846	1,845	31,691
		Net revenue and capital return per ordinary share (basic and diluted)	11	US\$0.0389	US\$0.0024	US\$0.0413

STATEMENT OF CHANGES IN EQUITY (AUDITED)
For the period from 24 October 2016 (date of incorporation) to 31 December 2017

(In US dollars \$000s except per share amounts)	Note	Share capital	Share premium account	Special distributable reserve	Capital reserve	Revenue reserve	Total equity attributable to shareholders of the Company
Net assets attributable to shareholders at 24 October 2016		—	—	—	—	—	—
Gross proceeds of share issue		9,143	906,847	—	—	—	915,990
Share issue costs		—	(17,447)	—	—	—	(17,447)
Transfer to special distributable reserve	13	—	(739,021)	739,021	—	—	—
Share premium cancellation costs	13	—	—	(41)	—	—	(41)
Return on ordinary activities after finance costs and taxation		—	—	—	1,845	29,846	31,691
Dividends paid	6	—	—	(4,624)	—	(2,995)	(7,619)
Net assets attributable to shareholders at 31 December 2017		9,143	150,379	734,356	1,845	26,851	922,574

STATEMENT OF FINANCIAL POSITION (AUDITED)
As at 31 December 2017

(In US dollars \$000s except per share amounts)	Note	31 December 2017
Non-current assets		
Investments at fair value through profit or loss	7	569,630
Current assets		
Trade and other receivables	8	5,038
Cash and cash equivalents	9	350,822
		355,860
Total assets		925,490
Current liabilities		
Trade and other payables	10	2,916
Total liabilities		2,916
Total assets less current liabilities		922,574
Net assets		922,574
Represented by:		
Share capital	13	9,143
Share premium account	13	150,379
Special distributable reserve	13	734,356
Capital reserve		1,845
Revenue reserve		26,851
Total equity attributable to shareholders of the Company		922,574
Net asset value per ordinary share (basic and diluted)	12	US\$1.0091

STATEMENT OF CASH FLOW (AUDITED)		
For the period from 24 October 2016 (date of incorporation) to 31 December 2017		
(In US dollars \$000s except per share amounts)	Note	Period ended 31 December 2017
Cash flows from operating activities		
Investment income received		28,872
Other income received		3,384
Investment management fee paid		(3,826)
Finance costs paid		(2)
Other expenses paid		(1,515)
Cash generated from operations	15	26,913
Taxation paid		—
Net cash flow generated from operating activities		26,913
Cash flow from investing activities		
Purchase of investments		(548,728)
Redemption of investments		115,474
Sales of investments		19,385
Net cash flow used in investing activities		(413,869)
Cash flow from financing activities		
Gross proceeds of share issue	13	762,508
Share issue costs		(17,121)
Dividends paid	6	(7,619)
Share premium cancellation costs		(41)
Net cash flow generated from financing activities		737,727
Increase in cash and cash equivalents for the period		350,771
Cash and cash equivalents at start of period		—
Revaluation of foreign currency balances		51
Cash and cash equivalents at end of period	9	350,822
The Company was incorporated on 24 October 2016. It held its IPO in March 2017, when it issued 761,877,359 Ordinary Shares at US\$1.00 each and raised gross proceeds of c.US\$761.9 million, and was admitted to trading on the Specialist Fund Segment of the Main Market of the London Stock Exchange (the “Specialist Fund Segment”) and to listing and trading on the Official List of The International Stock Exchange Authority Limited (“TISEA”). The Company launched with seed assets of US\$338.6 million, together with US\$423.3 million of cash. The opening NAV was US\$746.6 million or US\$0.98 per Ordinary Share. Between 13 September 2017 and 31 October 2017, the Company purchased 2.5 per cent. senior unsecured convertible notes issued by Depomed Inc. (NASDAQ: DEPO) with a face value of US\$23.5 million, at an average price of 72.9 cents, for a total		

		consideration of US\$17.2 million. Between 5 December 2017 and 8 December 2017, the Company sold the entire position at an average price of 83.4 cents and received proceeds of US\$19.7 million including accrued interest, generating a net gain of US\$2.5 million. On 21 September 2017, the Company declared an interim dividend in respect of the financial period ending 30 June 2017 of US\$0.01 per Ordinary Share payable on 31 October 2017 to the holders of Ordinary Shares on the register on 29 September 2017. The ex-dividend date was 28 September 2017. On 21 November 2017, the Company and BioPharma IV entered into a definitive loan agreement for up to US\$500 million with Tesaro, Inc. (NASDAQ: TSRO) ("Tesaro"). Under the terms of the transaction, the Company will invest up to US\$370 million (US\$222 million in the first tranche and up to an additional US\$148 million by 20 December 2018 at Tesaro's option) and BioPharma IV will invest up to US\$130 million in parallel with the Company acting as collateral agent. The first tranche was funded on 6 December 2017. On 4 December 2017, the Company and BioPharma IV entered into a definitive term loan agreement for up to US\$200 million with Lexicon Pharmaceuticals, Inc. (NASDAQ: LXRX) ("Lexicon") a fully integrated biopharmaceutical company with a market capitalisation of approximately US\$1.0 billion as at 31 December 2017. On 7 December 2017, the Company declared an interim dividend in respect of the financial period ending 30 September 2017 of US\$0.01 per Ordinary Share payable on 31 January 2018 to holders of Ordinary Shares on the register on 15 December 2017. The ex-dividend date was 14 December 2017. On 8 December 2017, the Company's wholly-owned subsidiary, BPCR Ongdapa Ltd, entered into a purchase, sale and assignment agreement with a wholly-owned subsidiary of Royalty Pharma Investments ("RPI"), for the purchase of a 50 per cent. interest in a stream of payments (the "Purchased Payments") acquired by RPI's subsidiary from Bristol Myers Squibb (NYSE: BMY) through a purchase agreement dated 14 November 2017. The Purchased Payments are linked to tiered worldwide sales of Onglyza and Farxiga, diabetes agents marketed by AstraZeneca, and related products. On 18 December 2017, the Company placed an additional 152,375,471 Ordinary Shares at an issue price of US\$1.0114, raising gross proceeds of approximately US\$154.1 million. After taking into account expenses relating to the placing, these Ordinary Shares were issued at a price that was NAV accretive. As at 31 December 2017, the Company had 914,252,831 Ordinary Shares in issue and the closing NAV was US\$922.6 million, or US\$1.0091 per Ordinary Share, representing an increase of approximately 3.0 per cent over the period between IPO and 31 December 2017. The unaudited NAV per Ordinary Share as at 31 January 2018 was US\$1.0056. On 7 February 2018, the Company entered into a senior secured loan agreement for US\$150 million with NovoCure Limited ("NovoCure") for a term of five years. NovoCure is a commercial

		stage oncology company with a current market capitalisation of approximately US\$1.9 billion. NovoCure is publicly listed and trades on the NASDAQ Stock Market (NASDAQ: NVCR). On 1 March 2018, the Company declared an interim dividend in respect of the financial period ending 31 December 2017 of US\$0.021 per Ordinary Share, payable on 29 March 2018 to holders of Ordinary Shares on the register as at 9 March 2018. The US\$0.021 return comprised an ordinary dividend of US\$0.01, the Company's third quarterly dividend since the IPO, and a special dividend of US\$0.011 which includes additional consideration received on some investments in the form of structuring fees, which are paid on completion of the transaction. There have been no other significant changes to the Company's financial condition or operating results during or subsequent to the period covered by the historical financial information.
B8	Key <i>pro forma</i> financial information	Not applicable. No <i>pro forma</i> information is included in this Prospectus.
B9	Profit forecast	Not applicable. No profit estimate or forecast has been made for the Company.
B10	Description of the nature of any qualifications in the audit report on the historical financial information	Not applicable.
B11	Explanation if working capital not sufficient for present requirements	Not applicable. The Company is of the opinion that, taking into account the commitment letter available to the Company, the working capital available to the Group is sufficient for the present requirements of the Group, that is for at least 12 months from the date of this Prospectus.
B34	Investment objective and policy	<i>Investment objective</i> The Company will seek to generate long-term shareholder returns, predominantly in the form of sustainable income distributions from exposure to the life sciences industry. <i>Investment policy</i> The Company will seek to achieve its investment objective predominantly through direct or indirect exposure to Debt Assets (as defined below). The Company may acquire Debt Assets: ● directly from the entity issuing the Debt Asset (a "Borrower"), which may be: (i) a company operating in the life sciences industry (a "LifeSci Company"); or (ii) an entity other than a LifeSci Company which directly or indirectly holds an interest in royalty rights to certain Products, including any investment vehicle or special purpose vehicle (a "Royalty Owner"); or ● in the secondary market. The Company may also invest in equity issued by a LifeSci Company, acquired directly from the LifeSci Company or in the secondary market.

		“Debt Assets” will typically comprise: ● <i>Royalty Debt Instruments</i> Debt issued by a Royalty Owner where the Royalty Owner’s obligations in relation to the Debt are secured as to repayment of principal and payment of interest by Royalty Collateral, including the RPS Note (as defined below). ● <i>Priority Royalty Tranches</i> Contract with a Borrower that provides the Company with the right to receive payment of all or a fixed percentage of the future royalty payments receivable in respect of a Product (or Products) that would otherwise belong to the Borrower up to a fixed monetary amount or a pre-set rate of return, with such royalty payment being secured by Royalty Collateral in respect of that Product (or Products). ● <i>Senior Secured Debt</i> Debt issued by a LifeSci Company, and which is secured as to repayment of principal and payment of interest by a first priority charge over some or all of such LifeSci Company’s assets, which may include: (i) Royalty Collateral; or (ii) other intellectual property and marketing rights to the Products of that LifeSci Company. ● <i>Unsecured Debt</i> Debt issued by a LifeSci Company which is not secured or is secured by a second lien on assets of the Borrower. ● <i>Credit Linked Notes</i> Derivative instruments referencing Debt Assets, being a synthetic obligation between the Company and another party where the repayment of principal and/or the payment of interest is based on the performance of the obligations under the underlying Debt Assets. “Royalty Collateral” means, with respect to a Debt Asset, (i) future payments receivable by the Borrower on a Product (or Products) in the form of royalty payments or other revenue sharing arrangements; or (ii) future distributions receivable by the Borrower based on royalty payments generated from a Product (or Products); or (iii) both limb (i) and limb (ii). “Debt” includes loans, notes, bonds and other debt instruments and securities, including convertible debt, and Priority Royalty Tranches. Borrowers will predominantly be domiciled in the US, Europe and Japan, though the Company may also acquire Debt Assets issued by Borrowers in other jurisdictions. <i>Investment restrictions and portfolio diversification</i> The Company will seek to create a diversified portfolio of investments by investing across a range of different forms of Debt Assets issued by a variety of Borrowers. In particular, the Company will observe the following restrictions when making investments in accordance with its investment policy: ● no more than 30 per cent. of the Company’s gross assets will be exposed to any single Borrower, other than in the case of the RPS Note (as defined below); ● no more than 35 per cent. of the Company’s gross assets will be invested in Unsecured Debt; and

		no more than 15 per cent. of the Company's gross assets will be invested in equity securities issued by LifeSci Companies. Each of these investment restrictions will be calculated as at the time of investment. In the event that any of the above limits are breached at any point after the relevant investment has been made (for instance, as a result of any movements in the value of the Company's total assets), there will be no requirement to sell any investment (in whole or in part). Cash management The Company's uninvested capital may be invested in cash instruments or bank deposits for cash management purposes. Hedging The Company does not propose to enter into any hedging or other derivative arrangements other than as may from time to time be considered appropriate for the purposes of efficient portfolio management and managing any exposure through its investments to currencies other than the US Dollar.
B35	Borrowing limits	The Company may incur indebtedness of up to a maximum of 50 per cent. of its net asset value ("Net Asset Value" or "NAV"), calculated at the time of drawdown, for investment and for working capital purposes. Although not forming part of the investment policy of the Company, under the investment management agreement between the Company and Pharmakon Advisors LP (the "Investment Manager") dated 1 March 2017 (the "Investment Management Agreement"), the Investment Manager will not incur aggregate borrowings greater than 25 per cent. of the Net Asset Value, calculated as at the time of drawdown, without prior Board approval.
B36	Regulatory status	The Company operates under the UK Companies Act 2006, as amended from time to time (the "Act"), and is not regulated as a collective investment scheme by the FCA. The Company intends to conduct its affairs so as to qualify, at all times, as an investment trust for the purposes of section 1158 of the Corporation Tax Act 2010 (as amended).
B37	Typical investors	The C shares of US\$0.01 each in the capital of the Company ("C Shares") and the new ordinary shares of US\$0.01 each in the capital of the Company (the "New Ordinary Shares") to be issued: (a) in the case of the C Shares, pursuant to the placing programme (the "Placing Programme") and offer for subscription (the "Offer"), and together with the Placing Programme, the "Issue") contemplated by this Prospectus; and (b) in the case of the New Ordinary Shares, pursuant to the Placing Programme (the C Shares and/or the New Ordinary Shares as the context so requires issued pursuant to the Issue being the "Issue Shares") are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio.

		Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of, the potential risks from investing in the Company.
B38	Investment of more than 20 per cent. in single underlying asset or investment company	As at the date of this Prospectus, the Company currently holds a Senior Secured Debt issued by Tesaro (the “Tesaro Debt Asset”), an oncology focused LifeSci Company for up to US\$500 million, of which the Company has agreed to fund up to US\$370 million. The Company funded US\$222 million of the first tranche of Tesaro Debt Asset on 6 December 2017. As at the date of this Prospectus, the Tesaro Debt Asset constitutes approximately 24 per cent. of the gross assets of the Company (calculated by reference to the first tranche funded). Depending on the proceeds raised from the Issue, whether the second tranche is drawn by Tesaro and the amount of loan amount to be funded by the Company as part of the second tranche, the Tesaro Debt Asset may continue to constitute more than 20 per cent. of the gross assets of the Company in the future. Tesaro is an oncology focused biopharmaceutical company incorporated in the state of Delaware in the United States, with its headquarters located at 1000 Winter Street, Suite 3300, Waltham, Massachusetts 02451, United States. Tesaro is listed on the NASDAQ Stock Market. Part B of this Summary contains further information on Tesaro.
B39	Investment of more than 40 per cent. in single underlying asset or investment company	Not applicable – no single asset will represent more than 40 per cent. of the gross assets of the Company on the initial admission, and is not expected for any subsequent admissions, of any Issue Shares to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA (each, an “ Admission ”).
B40	Applicant's service providers	Investment Manager The Investment Manager, Pharmakon Advisors L.P., a limited partnership established under the laws of the State of Delaware, is the Company's alternative investment fund manager, within the meaning of the AIFM Directive. It is registered as an investment adviser with the SEC under the United States Investment Advisers Act of 1940, as amended (the “Advisers Act”). The Investment Manager is entitled to a management fee (the “Management Fee”) calculated on the following basis: (1/12 of 1 per cent. of the Net Asset Value on the last business day of each calendar month in respect of which the Management Fee is to be paid (calculated before deducting any accrued Management Fee in respect of such calendar month)) minus (1/12 of US\$100,000). The Management Fee payable in respect of any quarter will be reduced by an amount equal to the aggregate of: (i) the Company's <i>pro rata</i> share of any transaction fees, topping fees, break-up fees, investment banking fees, closing fees, consulting fees or other similar fees which the Investment Manager (or an affiliate) receives in connection with transactions involving investments of the Company (“Transaction Fees”); and (ii) any Carried Forward Amount (as defined below) from the previous quarter. The Company's <i>pro rata</i> share of any Transaction Fees will be in proportion to the Company's economic interest in the investment(s) to which such Transaction Fees relate.

		To the extent the aggregate of: (i) the Company's <i>pro rata</i> share of Transaction Fees in respect of any quarter; and (ii) any Carried Forward Amount from the previous quarter, exceeds the Management Fee payable in respect of any quarter, the Management Fee payable in respect of such quarter shall be reduced to zero, and the excess amount shall be carried forward to the following quarter (the "Carried Forward Amount"). Performance Fee Subject to the satisfaction of the Performance Conditions, in respect of each Performance Period, the Investment Manager (or, where the Investment Manager so directs, any associate of the Investment Manager) shall be entitled to receive: (i) 50 per cent. of the Excess Total Return relating to the Performance Period until the Investment Manager has been allocated amounts under this sub-paragraph (i) which, in aggregate, are equal to 10 per cent. of the Total Return relating to such Performance Period; and (ii) thereafter, 10 per cent. of the Excess Total Return relating to the Performance Period, the amounts payable to the Investment Manager (or its associate) in accordance with this paragraph, being the "Performance Fee". The Investment Manager's entitlement to a Performance Fee in respect of any Performance Period shall be conditional on the Closing NAV per Ordinary Share in respect of the Performance Period (adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances since First Admission) being in excess of: (i) an amount representing, as at the end of the relevant Performance Period, an increase of 6 per cent. per annum (calculated from First Admission and compounded annually) of the IPO Issue Price; and (ii) the Closing NAV per Ordinary Share in respect of the last Performance Period in respect of which a Performance Fee was payable to the Investment Manager (or an associate) by the Company (adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances from First Admission to the end of such Performance Period), (the "Performance Conditions"). For the purpose of calculating the Performance Fee: (iii) "Closing NAV per Ordinary Share" means the NAV per Ordinary Share on the last Business Day of the relevant Performance Period (which shall not, for the avoidance of doubt, be adjusted for any Performance Fee accrued in relation to such Performance Period); (iv) "Excess Total Return" means, in relation to each Performance Period, the amount by which the Total Return exceeds the Performance Hurdle; (v) "First Performance Period" means the period from First Admission up to and including 31 December 2017; (vi) "Month" means a calendar month;

		(vii) “NAV per Ordinary Share” means the Net Asset Value attributable to the Ordinary Shares divided by the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) at the relevant time; (viii) “Performance Hurdle” means, in relation to each Performance Period, “A” multiplied by “B”, where: “A” is 6 per cent. of the Starting NAV per Ordinary Share for such Performance Period; and “B” is the weighted average of the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) as at the end of each day during the Performance Period; (ix) “Performance Period” means the First Performance Period and/or a Subsequent Performance Period, as the context so requires; (x) “Starting NAV per Ordinary Share” means the NAV per Ordinary Share on the first Business Day of each Performance Period (which, for the avoidance of doubt, shall be net of any accrued but unpaid Performance Fees for any previous Performance Periods but shall not be reduced by any dividends paid during such Performance Period which were declared in respect of any previous Performance Period); (xi) “Subsequent Performance Period” means each 12-Month period subsequent to the First Performance Period, commencing on the relevant 1 January and ending on the relevant 31 December (inclusive); (xii) “Total Return” means, in relation to each Performance Period, “C” multiplied by “D”, where: “C” is the difference between the Starting NAV per Ordinary Share and the Closing NAV per Ordinary Share (with the Closing NAV per Ordinary Share being adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances during the relevant Performance Period); and “D” is the weighted average of the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) as at the end of each day during the Performance Period. The Performance Fee for a Performance Period shall be paid as soon as practicable after the end of the relevant Performance Period and, in any event, within three calendar months as of the end of such Performance Period. If, during the last Month of a Performance Period, the Ordinary Shares have, on average, traded at a discount of 1 per cent. or more to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each Business Day in the Month to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the Month), the Investment Manager shall (or shall procure that its associate does) apply 50 per cent. of any Performance Fee paid by the Company to the Investment Manager (or its associate) in respect of that Performance Period (net of all taxes and charges applicable to such portion of the Performance Fee) to make market acquisitions of Ordinary Shares (the “Performance Shares”) as soon as

		practicable following the payment of the Performance Fee by the Company to the Investment Manager (or its associate) and at least until such time as the Ordinary Shares have, on average, traded at a discount of less than 1 per cent. to the Net Asset Value per Ordinary Share over a period of five Business Days (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each such Business Day to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the period of five Business Days). The Investment Manager's obligation: (i) shall not apply to the extent that the acquisition of the Performance Shares would require the Investment Manager to make a mandatory bid under Rule 9 of the Takeover Code; and (ii) shall expire at the end of the Performance Period which immediately follows the Performance Period to which the obligation relates. Pursuant to the terms of the Investment Management Agreement, except in certain specified circumstances, the Investment Manager shall not offer, sell, contract to sell, pledge, mortgage, charge, assign, grant options over, or otherwise dispose of, directly or indirectly, the Performance Shares nor mandate a third party to do so on its behalf, or announce the intention to do so for a period of 12 months immediately following the acquisition of the relevant Performance Shares. The Investment Manager intends to seek the Board's approval to amend the terms of the Performance Fee in the Investment Management Agreement. The purpose of the amendment would be to address more fairly the consequence on future performance fees of the returns generated during the company's first year of investment ramp up which, as expected, were lower than the medium-term target of 8 per cent. to 9 per cent. The Company achieved an almost 4 per cent. return on NAV during 2017 even though returns were weighed down by high levels of uninvested cash. This return is, however, reduced to 2 per cent. when calculated on the IPO Issue Price as a result of the 2 per cent. initial discount caused by the capped issue expenses incurred at the IPO. The proposed amendment would stipulate that when the Company has achieved a return that is greater than 6 per cent. in a given year (the "one-year test") but has not yet achieved a 6 per cent. per annum compounded return on the IPO Issue Price from First Admission (the "cumulative test") as a result of factoring in the returns of a prior year in which the Company achieved a less than 6 per cent. return, the incentive compensation payable based on the one-year test will not be forfeited but will instead be deferred until the cumulative test is satisfied. This amendment would only affect any Performance Fee earned from 2018 onward. Any such change in the Performance Fee in the Investment Management Agreement will be subject to approval by the Board as well as the shareholders of the Company ("Shareholders") at a general meeting. Bookrunners Under the terms of the Placing Agreement dated 14 March 2018 between the Company, the Investment Manager and J.P. Morgan Cazenove ("JPMC"), Goldman Sachs International ("GSI" and together with JPMC, the "Joint Global Coordinators") and BofA Merrill Lynch ("BAML", together with the Joint Global Coordinators,

		the “Joint Bookrunners”), the Joint Bookrunners will each be entitled to a commission in respect of the Issue together with an equity structuring fee payable to JPMC. The Joint Bookrunners will also be entitled to reimbursement of all costs, charges and expenses incurred by them of, or incidental to, the Issue, Admission of Issue Shares issued pursuant to such Issue and satisfaction of any of the conditions under the Placing Agreement. Company Secretary Under the Company Secretarial Services Agreement, Link Market Services Limited is entitled to an hourly fee of between £150 and £400 per hour (plus VAT and disbursements), depending on the seniority of the personnel, for additional services (as defined in the agreement) and an annual fee of £60,000 (plus VAT and disbursements) for ongoing company secretarial services. Link Market Services Limited will also be entitled to reimbursement of all reasonable out of pocket expenses. Administrator Under the terms of the Fund Administration Services Agreement, the Administrator is entitled to an annual fee (exclusive of any applicable VAT) of: (i) £65,900 for the first US\$1 billion of the Company’s net assets; and (ii) an <i>ad valorem</i> fee of 0.95 basis points of the Company’s net assets in excess of US\$1 billion, payable monthly in equal instalments. The Administrator is also entitled to be reimbursed expenses and disbursements, provided that these are properly incurred and documented. Registrar Under the terms of the Registrar Services Agreement, the Registrar is entitled to receive an annual maintenance fee of £1.80 per Shareholder account per annum, subject to a minimum charge of £4,500 per annum. The Registrar will also be entitled to reimbursement of all reasonable out of pocket expenses properly incurred and documented. Receiving Agent Under the terms of the Receiving Agent Services Agreement, the Receiving Agent is entitled to an hourly fee for professional advisory services at a minimum charge of £300 during normal business hours (9:00 am to 5:30 pm) on any Business Day and £400 outside normal business hours and on any non-Business Day, subject to a minimum charge of £3,000. The Receiving Agent is also entitled to a fee of £35,000 to cover all processing work and AML requirements for the Offer and for each Company Placing that may occur, as well as being entitled to reimbursement of all reasonable out of pocket expenses properly incurred and documented.
B41	Regulatory status of investment manager and investment adviser	Investment Manager The Investment Manager is a limited partnership established under the laws of the State of Delaware and is a registered investment adviser under the Advisers Act and is regulated by the SEC.
B42	Calculation of Net Asset Value	The unaudited NAV is calculated in US Dollars by the Administrator (on the basis of information provided by the Investment Manager relating to the valuation), on a monthly basis, and is notified to the market via a Regulatory Information Service on a monthly basis and is published on the Company’s website within 45 days of the month end.

B43	Cross liability	Not applicable. The Company is not an umbrella collective investment undertaking.
B44	No financial statements have been made up	Not applicable. The Company has commenced operations and the Company's annual financial statements for the period from incorporation to 31 December 2017 have been incorporated by reference in this Prospectus.
B45	Portfolio	As at the date of this Prospectus, the Company's portfolio consists of: (i) a limited partnership interest in BioPharma III Holdings, LP (the " BioPharma III Interest "), which provides the Company with indirect exposure to four Debt Assets; a. a Priority Royalty Tranche issued by Vivus Inc.; b. Senior Secured Debt issued by Valneva Austria GMBH, a subsidiary of Valneva SE; c. Senior Secured Debt issued by Depomed Inc.; and d. Senior Secured Debt issued by iRhythm Technologies, Inc.; (ii) a credit agreement (the " RPS Credit Agreement ") entered into between the Company and RPS BioPharma Investments, LP (the " RPS Borrower "), pursuant to which the RPS Borrower has issued a promissory note in favour of the Company (together with the RPS Credit Agreement, the " RPS Note ") secured by units of Royalty Pharma Select held by the RPS Borrower which represent the right to receive a proportion of ongoing royalties generated from 21 Products; (iii) a Debt Asset in the form of Senior Secured Debt issued by Tesaro; (iv) a Debt Asset in the form of Senior Secured Debt issued by Lexicon; (v) a Debt Asset in the form of Senior Secured Debt issued by NovoCure; and (vi) a Debt Asset acquired by BPCR Ongdapa Ltd from a subsidiary of RPI, representing 50 per cent. of a stream of payments acquired by RPI's subsidiary from Bristol Myers Squibb linked to tiered worldwide sales of Onglyza and Farxiga, diabetes agents marketed by AstraZeneca, and related products.
B46	Net Asset Value	As at 31 January 2018, being the last practicable date before the publication of this Prospectus, the unaudited NAV of the Company was US\$919.4 million and the unaudited NAV per Ordinary Share was US\$1.0056.
<i>Section C – Securities</i>		
Element	Disclosure requirement	Disclosure
C1	Type and class of securities	The Issue Shares being offered under the Issue are ordinary shares with a nominal value of US\$0.01 in the capital of the Company and redeemable C Shares with a nominal value of US\$0.01 in the capital of the Company. The Company may issue

		up to 2,000 million New Ordinary Shares and / or C Shares pursuant to the Issue, out of which up to 500 million C Shares may be issued through the Initial Placing and Offer at an Issue Price of US\$1.00. No New Ordinary Shares will be issued pursuant to the Initial Placing and Offer. Subject to the maximum limit on Issue Shares, there is no limit on the number of New Ordinary Shares and C Shares that may be issued pursuant to any single issuance under the Issue. The Company may, at its discretion, issue new classes of C Shares prior to the conversion of existing classes of C Shares for various reasons. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. The number of Issue Shares to be issued over the course of the Placing Programme cannot be determined as at the date of this Prospectus. Applications will be made for the Issue Shares to be admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA at the relevant Admission with applications to be made in connection with C Shares issued pursuant to each Initial Placing and Offer at Initial Admission. The ISIN of the Ordinary Shares is GB00BDGKMY29 and the SEDOL is BDGKMY2. The ISIN of the C Shares to be issued pursuant to the Initial Placing and Offer is GB00BDRNW621 and the SEDOL is BDRNW62. The ticker symbol of the Ordinary Shares is BPCR and the ticker symbol of the C Shares to be issued pursuant to the Initial Placing and Offer is BPC1. Each class of C Shares represented by subsequent issues of C Share classes will have separate ISINs, SEDOLs and ticker symbols issued. The announcement of each subsequent Placing of C Shares will contain details of the relevant ISIN, SEDOL and ticker symbol for such class of C Shares being issued.
C2	Currency of the securities issue	US Dollars.
C3	Number of securities in issue	As at the date of this Prospectus, the issued share capital of the Company (which is fully paid) is 914,252,831 Ordinary Shares. There are no non-paid up Ordinary Shares in issue.
C4	Description of the rights attaching to the securities	<i>Life</i> Although the Company has been established with an indefinite life, the articles of association of the Company (the “Articles”) provide that a continuation vote be put to Shareholders (i) at the first annual general meeting of the Company to be held following the fifth anniversary of First Admission (being 27 March 2017) and, if passed, at the annual general meeting of the Company held every third year thereafter; and (ii) within two months of the expiration of any 12 month rolling period where the Ordinary Shares have, on average, traded at a discount in excess of 10 per cent. to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each month in the relevant period to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at such month end and averaging this comparative figure over the relevant period). <i>Dividends</i> Subject to the provisions of the Act and the Articles, all dividends shall be declared and paid according to the amounts paid-up on the shares of any class in the capital of the Company in issue at any

		time (“Shares”) on which the dividend is paid. If any Share is issued on terms that it ranks for dividend as at a particular date, it shall rank for dividend accordingly. In any other case, dividends shall be apportioned and paid proportionately to the amount paid-up on the Shares during any portion(s) of the period in respect of which the dividend is paid. Holders of any class of C Shares will be entitled to receive such dividends as the Directors may resolve to pay to holders of that class of C Shares out of assets attributable to holders of that class of C Shares. <i>Distribution of assets on a winding up</i> If the Company is wound up, the liquidator may, with the sanction of a special resolution and any other sanction required by law and subject to the Act, divide among the Shareholders, <i>in specie</i>, the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the Shareholders or different classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the Shareholders as he may with the like sanction determine, but no Shareholder shall be compelled to accept any assets upon which there is a liability. The capital and assets of the Company shall on a winding up or on a return of capital prior, in each case, to Conversion be applied as follows: - the surplus assets attributable to Ordinary Shares shall be divided amongst the holders of the Ordinary Shares <i>pro rata</i> according to their holdings of Ordinary Shares; and - the surplus assets attributable to a class of C Shares shall be divided amongst the holders of the C Shares of such class <i>pro rata</i> according to their holdings of that class of C Shares. <i>Voting rights</i> For Shareholder resolutions in respect of amendments to the Articles or in respect of a winding up of the Company, each class of Shares will vote as a separate class. For all other resolutions, the holders of Ordinary Shares and each class of C Shares shall vote as one class. Subject to any rights or restrictions attached to any class of Shares, on a show of hands every Shareholder present in person at a meeting has one vote and every proxy present who has been duly appointed by a Shareholder entitled to vote has one vote, and on a poll every Shareholder (whether present in person or by proxy) has one vote for every Share of which it is the holder. A Shareholder entitled to more than one vote need not, if it votes, use all its votes or cast all the votes it uses the same way. In the case of joint holders, the vote of the senior who tenders a vote shall be accepted to the exclusion of the vote of the other joint holders, and seniority shall be determined by the order in which the names of the holders appear in the Register. No Shareholder shall have any right to vote at any general meeting or at any separate meeting of the holders of any class of Shares, either in person or by proxy, in respect of any Share held by its unless all amounts payable by its in respect of that Share have been paid.

		In respect of any resolution of members concerning the appointment or removal of one or more directors of the Company (a “Director Resolution”), each Shareholder shall be required, as set out in the Articles, to make certain certifications with regard to their status (and, to the extent they hold Shares for the account or benefit of any other person, the status of such other person) as a non-US resident (each Shareholder that does not so certify, being a “Non-Certifying Shareholder”). If the aggregate total of votes which Non-Certifying Shareholders would otherwise be entitled to cast on a Director Resolution is greater than 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution, then, pursuant to the Articles, the aggregate number of votes which Non-Certifying Shareholders are entitled to cast on such Director Resolution shall be scaled down so as to not exceed 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution.
C5	Restrictions on the free transferability of the securities	Subject to the Act, the Directors may, in their absolute discretion, refuse to register the transfer of a Share in certificated form which is not fully paid provided that, if the Share is traded on a regulated market, such refusal does not prevent dealings in the Shares from taking place on an open and proper basis. The Directors may also refuse to register a transfer of a Share in certificated form, unless the instrument of transfer: ● is lodged, duly stamped, at the registered office of the Company or such other place as the Directors may appoint and is accompanied by the certificate for the Share to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and/or the transferee to receive the transfer (including such written certifications in form and substance satisfactory to the Company as the Directors may determine in accordance with applicable law); ● is in respect of only one class of Share; ● is not in favour of more than four transferees, and ● is not in favour of any Non-Qualified Holder (as defined below). Subject to the Act, the Directors may refuse to register a transfer of a Share in uncertificated form to a person who is to hold it thereafter in certificated form in any case where the Company is entitled to refuse (or is excepted from the requirement) under the UK Uncertificated Securities Regulations 2001 to register the transfer. The Directors may, in their absolute discretion, decline to transfer, convert or register any transfer of Shares to any person: (i) whose ownership of Shares may cause the Company’s assets to be deemed “plan assets” for the purposes of the United States Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or the United States Internal Revenue Code of 1986, as amended (the “US Tax Code”); (ii) whose ownership of Shares may cause the Company to be required to register as an “investment company” under the United States Investment Company Act of 1940, as amended (the “Investment Company Act”), or to lose an exemption or a status thereunder to which it might otherwise be entitled (including because the holder of Shares is not a “qualified purchaser” as defined in the Investment Company Act); (iii) whose ownership of Shares may cause the Company to be required to register under the United States

		Securities Exchange Act of 1934, as amended (the “Exchange Act”), or any similar legislation; (iv) whose ownership of Shares may cause the Company to be a “controlled foreign corporation” for the purposes of the US Tax Code, or may cause the Company to suffer any pecuniary disadvantage (including any excise tax, penalties or liabilities under ERISA or the US Tax Code); (v) whose ownership of Shares may cause the Company to cease to be considered a “foreign private issuer” for the purposes of the Securities Act or the Exchange Act; or (vi) whose ownership of Shares would or might result in the Company not being able to satisfy its obligations under the new global standard for the automatic exchange of financial information between tax authorities, developed by Organisation for Economic Co-operation and Development or such similar reporting obligations on account of, <i>inter alia</i>, non-compliance by such person with any information request made by the Company, (each person described in (i) through (vi) above, being a “Non-Qualified Holder”).
C6	Admission to trading on a regulated market	Applications will be made for the Issue Shares to be admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA at the relevant Admission with applications to be made in connection with C Shares issued pursuant to each Initial Placing and Offer at Initial Admission.
C7	Dividend policy	The Company has, since the IPO, paid and intends to continue paying dividends in US Dollars on a quarterly basis. The Company will also be giving Shareholders the opportunity to receive dividend payments in Sterling. The Company may, where the Directors consider it appropriate, use the reserve created by the cancellation of its share premium account to pay dividends. The Company currently complies and intends to continue complying with the requirements for maintaining investment trust status for the purposes of section 1158 of the Corporation Tax Act 2010 (as amended) regarding distributable income. As such, the Company will distribute amounts such that it does not retain in respect of an accounting period an amount greater than 15 per cent. of its income (as calculated for UK tax purposes) for that period. The Directors do not currently intend to pay any dividend to the holders of C Shares in respect of the period from the Admission of such C Shares up to the Conversion Calculation Date. The Directors may, nevertheless, at their sole discretion, resolve to pay to such holders such dividend out of the assets attributable to such class of C Shares as the Directors may determine. Whilst not forming part of the Company’s investment objective or investment policy, on the basis of market conditions as at the date of this Prospectus, the Company will target an annual dividend yield of 7 per cent. on the Ordinary Shares (calculated by reference to the IPO Issue Price) (the “Target Dividend”), together with a net NAV total return of 8 to 9 per cent. per annum on the Ordinary Shares in the medium term (the “Target Return”). The Target Dividend and Target Return are targets only and are not profit forecasts. There can be no assurance that these targets will be met and they should not be taken as an indication of the Company’s expected or actual future results. Potential investors

		should decide for themselves whether or not these targets are reasonable or achievable in deciding whether to invest in the Company.
<i>Section D – Risks</i>		
Element	Disclosure requirement	Disclosure
D1	Key information on the key risks specific to the issuer or its industry	● The Company has a limited operating history, and investors have a limited basis on which to evaluate the Company's ability to achieve its investment objective. ● Returns on the Shareholders' investments will depend upon the Investment Manager's ability to source and make successful investments on behalf of the Company. ● Net Asset Value figures published by the Company will be estimates only and may be materially different from actual results and figures appearing in the Company's financial statements. ● The success of the Company depends on the ability and expertise of the Investment Manager. The Company does not have employees and all of its Directors are appointed on a non-executive basis. All of its investment management decisions will be made by the Investment Manager (or any delegates thereof) and not by the Company and, accordingly, the Company will be completely reliant upon, and its success will depend on, the Investment Manager and its personnel, services and resources. ● The Investment Manager, its principals and their respective affiliates (the "Manager Affiliated Parties") are involved in other financial, investment or professional activities that may, on occasion, give rise to conflicts of interest with the Company. In particular, the Manager Affiliated Parties provide investment management and related services to other funds and managed accounts that have similar investment policies to that of the Company. ● No reliance should be placed by investors on the past performance of other investment vehicles or accounts managed by the Investment Manager (together with investment vehicles or accounts managed by other Manager Affiliated Parties, the "Managed Entities") as an indicator of the future performance of the Company. ● There is no guarantee that the Group will have sufficient working capital from 30 May 2019 onwards. If during any period beyond the period covered by the working capital statement, the Group's working capital should prove insufficient for its requirements (whether or not as a result of any failure to refinance the Group's bank facilities), there may be shortfalls in the Company's ability to fund future tranches under one or more Debt Assets or to meet its working capital requirements. This may have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the Net Asset Value and the interests of the Shareholders. ● The Company may be required to fund up to US\$148 million as part of the second tranche of the loan committed under the

		Tesaro Debt Asset at any time from 30 June 2018 to 20 December 2018 with 90 days' prior notice. If the Company receives such notice from Tesaro prior to raising sufficient capital under the Issue, upon the funding of such second tranche, the Company's exposure to the Tesaro Debt Asset may exceed 30 per cent. of the Company's gross assets at that time. An increased concentration of the Company's assets could result in greater losses to the Company in adverse market conditions than would have been the case with a less concentrated portfolio. ● The Company may acquire Debt Assets which involve loan amounts funded in several tranches which are funded or drawn by reference to fixed dates or on an ad hoc basis over a fixed period of time depending on a Borrower's business needs (and in some cases, at its discretion). It is not possible for the Company to limit its investments in such Debt Assets by taking into account all of the tranches together as it may result in a long period where cash is committed but uninvested bearing no returns, a result that would adversely affect the Company's ability to deliver returns to the Shareholders. Consequently, when the Company acquires such a Debt Asset, the potential investment commitment (being the maximum amount of loan to be given under the Debt Asset) may exceed the uninvested cash available to the Company at the time of making such an investment. To the extent that the Company is unable to fund certain tranches and unable to transfer the obligation to do so to a third party, the Company may be in breach of its obligations under that Debt Asset and such breach may adversely affect the Company, the Net Asset Value and the interests of the Shareholders. ● The investment allocation policy of the Investment Manager could prejudice investment opportunities available to, and investment returns achieved by the Company. The Manager Affiliated Parties may have conflicts of interest in allocating investments among the Company and other Managed Entities (including any co-investment opportunities between the Company and the other Managed Entities) and in effecting transactions between the Company and other Managed Entities, including transactions in which the Manager Affiliated Parties may have a financial interest. ● The Company may utilise borrowings of up to 50 per cent. of the Net Asset Value (calculated at the time of drawdown) in order to increase its investment exposure. While such leverage presents opportunities for increasing total returns, it can also have the opposite effect of increasing losses. ● Concentration in the Company's portfolio may affect the Company's ability to achieve its investment objective. The Company's published investment policy allows the Company to invest up to 30 per cent. of the Company's assets in a single Debt Asset or in Debt Assets issued by a single borrower. While the investment limits in the investment policy have been set keeping in mind the debt capital requirements of the life sciences industry and the investment opportunities available to the Investment Manager, it is possible that the Company's portfolio may be significantly concentrated at any given point in time.

D3	Key information on the key risks specific to the securities.	● The Shares and, in the case of C Shares, the Correspondent Ordinary Shares arising on Conversion, may trade at a discount to the Net Asset Value per share of the relevant class of Shares and, therefore, Shareholders disposing of their interests in the secondary market may realise returns that are lower or higher than they would have if an amount equivalent to the Net Asset Value were distributed by the Company. ● The price that can be realised for the Ordinary Shares, the C Shares or the Correspondent Ordinary Shares arising on Conversion can be subject to market fluctuations. Potential investors should not regard an investment in the Ordinary Shares or the C Shares as a short-term investment. Shareholders may not recover the full amount initially invested, or any amount at all. ● Admission should not be taken as implying that there will be an active and liquid market for the Ordinary Shares or the C Shares. Consequently, the Share price may be subject to significant fluctuation on small volumes of trading. ● Each class of C Shares will constitute a separate class of Shares, with a separate underlying pool of assets and each class shall be independent of each other. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. Each class of C Shares will have a separate Net Asset Value per C Share (calculated by reference to the assets attributable to that class of C Shares divided by the number of C Shares issued in that class). There can be no guarantee that a liquid market in any class of C Shares will develop or be sustained or that the C Shares of any class will trade at prices close to their respective underlying net asset values. ● Each class of Shares will constitute a separate pool of assets and liabilities. The investment restrictions set out in the Company's investment policy, however, are measured against the gross assets of the Company as a whole without regard to which class of Shares they are attributable to. Consequently, each class of Shares may have a higher concentration in its portfolio than the investment limits set out in the Company's investment policy. ● It is possible that the Company may decide to issue further New Ordinary Shares or C Shares in the future (whether pursuant to subsequent Placings under the Placing Programme or otherwise after the expiry of the Placing Programme). Any such issue may dilute the holdings of the Company's existing Shareholders. Additionally, such issues could have an adverse effect on the market price of the Shares.

Section E – Offer

Element	Disclosure requirement	Disclosure
E1	The total net proceeds and an estimate of the total expenses of the issue/offer, including estimated expenses charged to the investor by the issuer or the offeror	Initial Expenses The costs and expenses in relation to the Initial Placing and Offer and Initial Admission (“Initial Expenses”) will be paid on or around Initial Admission and will include, without limitation, registration, listing and admission fees; the cost of settlement arrangements; printing, advertising and distribution costs; placing commissions; professional services fees; and any other applicable expenses. The Initial Expenses will be capped at 2 per cent. of the Gross Initial Proceeds and accordingly the expected Net Asset Value per C Share immediately following Initial Admission will be US\$0.98 per C Share. On the basis that the Gross Initial Proceeds are US\$300 million, the Initial Expenses will therefore be capped at US\$6 million and the Net Initial Proceeds will be approximately US\$294 million. The Joint Bookrunners and the Investment Manager have agreed that, in the event that the Initial Expenses exceed 2 per cent. of the Gross Issue Proceeds, such excess (the “Excess”) will be split equally between the Joint Bookrunners on the one hand and the Investment Manager on the other. Subsequent Expenses It is expected that arrangements of a similar nature as outlined above will apply in relation to subsequent Placings of the Issue Shares, with the costs and expenses that will be borne by investors being set at the time of the relevant Placing (“Subsequent Expenses”). It is not possible to ascertain the exact costs and expenses of such subsequent Placings. The Subsequent Expenses may or may not be capped in the same manner as the Initial Expenses. In relation to each subsequent Placing, depending on the Subsequent Expenses applicable to that Placing, the Gross Placing Proceeds may be applied to repay the Excess borne by the Joint Bookrunners and the Investment Manager in connection with the Initial Placing and Offer and Initial Admission until this such Excess is fully extinguished.
E2a	Reasons for the offer and use of proceeds	The Issue is being made in order to provide investors with exposure to a diversified portfolio of investments through participation in an investment trust company. The Company intends to use the net proceeds of the Initial Placing and Offer and net proceeds of all Placings other than the Initial Placing to acquire further investments in accordance with the Company’s investment objective and investment policy.
E3	Terms and Conditions of the Offer	In this Prospectus, the Placing Programme and the Offer are together referred to as the Issue. The Company may issue up to 2,000 million New Ordinary Shares and / or C Shares pursuant to the Issue, out of which up to 500 million C Shares may be issued through the Initial Placing and Offer at an Issue Price of US\$1.00. The maximum size of the Issue should not be taken as an indication of the number of Issue Shares to be issued. No New Ordinary Shares will be issued pursuant to the Initial Placing and Offer. Subject to the maximum limit on Issue Shares, there is no

		limit on the number of New Ordinary Shares and C Shares that may be issued pursuant to any single issuance under the Issue. The Issue is not being underwritten. Each placing of Issue Shares (“Placing”) may consist of a placing of Issue Shares by the Joint Bookrunners on behalf of the Company or by the Company itself as principal. The Company may, at its discretion, issue new classes of C Shares prior to the conversion of existing classes of C Shares for various reasons. Each allotment of Issue Shares pursuant to the Placing Programme and the Offer is conditional on: (i) in the case of an issue of New Ordinary Shares, the Issue Price, after taking account of issue expenses, being not less than the latest published Net Asset Value per Ordinary Share; (ii) in relation to the Initial Placing and Offer only, the minimum gross proceeds being at least US\$120 million; (iii) in relation to the Initial Placing and Offer, Initial Admission occurring not later than 8:00 a.m. on 16 April 2018 or such other date as may be agreed between the Company and the Joint Global Coordinators, not being later than the Long Stop Date; (iv) in relation to any subsequent Placing, Admission of the relevant Issue Shares occurring; and (v) the Placing Agreement not being terminated in accordance with its terms or a particular Placing (whether the Initial Placing or any subsequent Placing) not being suspended or terminated in accordance with the terms of the Placing Agreement. The latest time and date for receipt of Application Forms under the Offer is 11:00 am on 12 April 2018. The latest time and date for receipt of placing commitments under the Initial Placing is 11:00 am on 12 April 2018. If an issuance under the Issue does not proceed, the relevant subscription monies received will be returned without interest at the risk of the applicant.
E4	Material interests	Not applicable. No interest is material to the Issue.
E5	Name of person or entity offering to sell securities Lock-up arrangements, the parties involved and indication of the period of the lock-up	Not applicable – there are no selling entities. The investors who acquired Ordinary Shares at IPO through the acquisition of the BioPharma III Interest and the RPS Note and Pablo Legorreta (with respect to his cash subscription at IPO) are subject to a lock-up with respect to the Ordinary Shares acquired by them at the time of the IPO, which is due to expire on the first anniversary of the date on which such Ordinary Shares were admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA, being 27 March 2018 for Ordinary Shares issued pursuant to the acquisition of the BioPharma III Interest and the cash subscription of Pablo Legorreta and 30 March 2018 with respect to Ordinary Shares issued in relation to the acquisition of the RPS Note.
E6	Dilution	The Issue is not being made on a pre-emptive basis and accordingly existing Shareholders who do not participate in the

		Issue may have their percentage holding of the Shares diluted on issue of the Issue Shares. Assuming that 500 million C Shares are issued pursuant to the Initial Placing and Offer, a Shareholder holding 1.00 per cent. of the Company's issued share capital who does not subscribe for any C Shares pursuant to the Initial Placing and Offer would hold Shares representing approximately 0.65 per cent. of the Company's issued share capital. The potential dilution in any subsequent Placing will be communicated by a Regulatory Information Service announcement in connection with such Placing. Further, on Conversion of C Shares, any dilution resulting from the issue of C Shares, whether under the Placing Programme or Offer, may increase or decrease depending on the Conversion Ratio used for such Conversion.
E7	Estimated expenses charged to the investor by the issuer or the offeror	Investors subscribing for Issue Shares will bear the costs and expenses of the Issue which are capped at 2 per cent. of the Gross Initial Proceeds for the Initial Placing and Offer.

PART B – TESARO

Section B – Issuer (Tesaro)		
Element	Disclosure requirement	Disclosure
B1	Legal and commercial name	Tesaro, Inc. (for the purposes of this Part B of the Summary of this Prospectus (which represents a reproduction of extracts from Tesaro, Inc.'s United States regulatory filings), “ Tesaro ”, “ we ”, “ us ” or “ our ”, as the context may require)
B2	Domicile and legal form	Tesaro is an oncology focused biopharmaceutical company incorporated in the state of Delaware in the United States, with its headquarters located at 1000 Winter Street, Suite 3300, Waltham, Massachusetts 02451, United States.
B3	Description of current operations and principal activities	Overview We are a commercial-stage biopharmaceutical company devoted to providing transformative therapies to people bravely facing cancer. Our primary focus is to develop treatments for solid tumors using various approaches, including small molecules and immuno-oncology antibodies, as monotherapies or in combinations. We have in-licensed and are developing several oncology-related product candidates, and we have entered into several research collaborations with third parties for the discovery of new candidates. We have also entered into arrangements with other companies for the development and commercialization of certain of our product candidates in specific indications and/or geographies. To date, we have received regulatory approvals for the following products, which are currently marketed and sold in the U.S. and in certain countries in Europe: ● The U.S. Food and Drug Administration, or FDA, approved ZEJULA[®] (niraparib) in March 2017 for the maintenance treatment of women with recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in a complete or partial response to platinum-based chemotherapy. The

		European Commission, or EC, approved ZEJULA in November 2017 as a monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed high grade serous epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. ● VARUBI® (rolapitant) is a potent and long-acting neurokinin-1, or NK-1, receptor antagonist for the prevention of chemotherapy induced nausea and vomiting, or CINV. The FDA approved VARUBI in oral formulation in September 2015 for use in combination with other antiemetic agents in adults for the prevention of delayed (24 to 120 hours after chemotherapy administration) nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. The EC approved VARUBY®, the brand name of oral rolapitant in Europe, in April 2017 for the prevention of delayed nausea and vomiting associated with highly and moderately emetogenic chemotherapy in adults. The FDA approved the intravenous, or IV, formulation of VARUBI in October 2017. In January 2018, after postmarketing reports of side effects experienced following the commercial introduction of VARUBI IV, we updated the VARUBI IV package insert, including modifications to the contraindications, warnings and precautions, and adverse reactions sections, and issued a “Dear Healthcare Professional Letter” to healthcare providers to highlight the updates. In February 2018, we determined that we would cease marketing and distribution of VARUBI IV and pursue strategic alternatives for the VARUBI brand, including potentially out-licensing the VARUBI product line. Development Programs <i>Niraparib</i> Niraparib is an orally active and potent poly (ADP-ribose) polymerase, or PARP, inhibitor. Based on research related to PARP inhibitors generally, we believe niraparib may also be active in the treatment of several tumor types. We are conducting several ongoing clinical trials evaluating niraparib for the treatment of various tumor types, as a monotherapy and in combination with other therapeutics, including our own immuno-oncology assets. We expect to initiate additional clinical trials of niraparib during 2018. We are also collaborating with various other organizations to evaluate niraparib in combination with other therapeutics for the treatment of various cancers. <i>Immuno-Oncology</i> Pursuant to our collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, we are developing several antibodies for immuno-oncology targets. The antibodies and related development activities are summarized as follows: ● TSR-042 (anti-PD-1): We initiated a Phase 1, dose escalation study of TSR-042 in March 2016. We have also initiated expansion cohorts in patients with advanced solid tumors, including non-small cell lung cancer, or NSCLC, endometrial cancer and metastatic microsatellite instability-high, or MSI-H, tumors. We plan to pursue an accelerated registration path for TSR-042 in metastatic MSI-H tumors.

		● TSR-022 (anti-TIM-3): We initiated a Phase 1, dose escalation study of TSR-022 in July 2016, evaluating TSR-022 as a monotherapy and in combination with TSR-042 in multiple tumor types. ● TSR-033 (anti-LAG-3): We initiated a Phase 1, dose escalation study of TSR-033 in August 2017 in multiple tumor types. We plan to initiate a combination trial of TSR-033 plus TSR-042 in 2018. ● We have initiated pre-clinical research for TSR-075, our bi-specific anti-PD-1/LAG-3 candidate. In addition, we are evaluating our immuno-oncology anti-tumor agents in combination studies with niraparib and other anti-tumor agents. We have also entered into agreements with other third parties for the discovery of other potential oncology product candidates. In addition to potential candidates arising from such agreements, we intend to continue to leverage the experience and competencies of our senior management team to identify, acquire, develop and commercialize cancer therapeutics, including those that are potentially safer and more effective than existing treatments. Upon successful development and regulatory approval of any of our product candidates, we intend to pursue commercialization of them in key product markets. At this time, we intend to focus on commercializing our products directly in North America and Europe, and in partnership with established companies in other key markets. Clinical Development Our current clinical development program includes the following trials: ● QUADRA is a Phase 2, potential registration trial of niraparib for the treatment of patients with ovarian cancer who have received three or four regimens of therapy. Enrollment in this trial is now complete. ● PRIMA is a Phase 3 clinical trial of niraparib in the first-line maintenance setting in ovarian cancer patients. This study includes patients who have responded to first-line platinum chemotherapy. ● OVARIO is a Phase 2 trial of niraparib in combination with bevacizumab in patients with first-line ovarian cancer. ● AVANOVA is an investigator-sponsored collaboration with the Nordic Society of Gynaecological Oncology (in collaboration with the European Network for Gynaecological Oncological Trial groups) in their Phase 1/2 trial, evaluating niraparib plus bevacizumab against bevacizumab alone, in ovarian cancer patients. ● TOPACIO is a Phase 2 trial conducted in collaboration with Merck Sharp & Dohme Corp., a subsidiary of Merck, or Merck, to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® (pembrolizumab) in patients with triple negative breast cancer and patients with ovarian cancer. In June 2017, we announced that initial data demonstrated a disease control rate of 69% in patients with platinum-resistant ovarian cancer. ● GARNET is a Phase 1 dose escalation and cohort expansion study of TSR-042 in patients with advanced solid tumors,

		including NSCLC, endometrial cancer and metastatic MSI-H tumors. ● AMBER is Phase 1 dose escalation and cohort expansion study evaluating TSR-022, as a monotherapy and in combination with TSR-042, in patients with advanced solid tumors. ● CITRINO is a Phase 1 dose escalation trial of TSR-033. ● Phase 2 studies of niraparib in combination with TSR-042 in ovarian cancer and in NSCLC. ● Pursuant to our collaboration with Janssen Biotech, Inc., or Janssen, Janssen is conducting clinical trials of niraparib for the treatment of prostate cancer. In March 2017, following an interim analysis of data by the independent data monitoring committee, we ceased enrollment in our BRAVO study (assessing niraparib in patients with breast cancer who are germline BRCA mutation carriers) after a determination that it is unlikely to produce data that is interpretable and therefore suitable for registration in this indication. We expect our future clinical development of our current product portfolio to include a Phase 3 study of niraparib in combination with TSR-042 in first-line ovarian cancer, and a combination study of TSR-033 with TSR-042. Licensing Agreements <i>License for Rolapitant</i> In December 2010, we entered into a license agreement with OPKO Health, Inc., or OPKO, to obtain an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell rolapitant. Under the OPKO license, we are obligated to use commercially reasonable efforts to conduct all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant. <i>License for Niraparib</i> In May 2012, we entered into a license agreement with Merck, under which we obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib for all therapeutic and prophylactic uses in humans. Under the Merck license, we are obligated to use diligent efforts to develop and commercialize a licensed product. In April 2016, we entered into an amendment to the license agreement with Merck in connection with the entry into our collaboration agreement with Janssen to develop and commercialize niraparib in prostate cancer patients. Under the terms of the amendment, Merck agreed to waive or modify certain rights, including co-promotion, exclusivity, commercialization and diligence, solely with respect to products in prostate cancer developed or commercialized by Janssen. <i>License for Immuno-Oncology Platform</i> In March 2014, we entered into a collaboration and exclusive license agreement with AnaptysBio, a therapeutic antibody company. We executed an amendment in November 2014 to add an additional bi-specific antibody product candidate. We entered into another amendment in February 2016 to extend the term of the initial discovery period and our and AnaptysBio's associated activities under the agreement. Under the terms of the agreement, we possess an exclusive, royalty-bearing,

		sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of certain specified immunotherapy antibodies. Specifically, we received exclusive rights to monospecific antibody product candidates targeting PD-1 (TSR- 042), TIM-3 (TSR-022), LAG-3 (TSR-033) and certain bi-specific antibody product candidates, including TSR-075, a bispecific anti-PD-1/ LAG-3 candidate. Under the agreement, AnaptysBio was responsible for performing initial discovery and development of therapeutic antibodies against immune checkpoint proteins, with the goal of generating immunotherapy antibodies for use in the treatment of cancer. We were required to reimburse AnaptysBio for specified costs incurred by AnaptysBio for these activities, which are now complete. We are responsible for all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs, and we are obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program. Commercial Operations Our U.S.-based commercial operations team consists of approximately 190 employees. Our European commercial operations team consists of approximately 55 employees in nine countries including those at our international headquarters office in Zug, Switzerland. The commercial infrastructure includes a targeted, oncology sales force to establish relationships with a focused group of oncologists, oncology nurses and pharmacists. Personnel in sales management, internal sales training, sales operations, marketing, marketing operations and distribution support the sales force. Additionally, the sales, marketing and market access teams manage relationships with key accounts such as managed care organizations, group purchasing organizations, hospital systems, oncology group networks, and government accounts. To further develop our commercial infrastructure in the event that any other product candidates receive regulatory approval, we expect to invest significant financial and management resources, much of which will be committed at the risk that any such product candidate may not be approved by any regulatory agency.
B4a	Most significant trends	Overview of the Market for Cancer Therapeutics and Oncology Supportive Care Products Cancer is a group of diseases characterized by uncontrolled growth and spread of abnormal cells. In January 2018, the American Cancer Society projected that there will be an estimated 1.7 million new cancer cases diagnosed and 609,640 cancer deaths in the United States in 2018. Current treatments for cancer include surgery, radiation therapy, chemotherapy, hormone therapy, targeted therapy and immunotherapy. The IQVIA Institute for Human Data Science reported in 2017 that total global spending on oncology medicines, including therapeutic treatments and supportive care, reached US\$113 billion in 2016. More recently, targeted anti-cancer agents have been designed by scientists to inhibit the action of specific molecules within cancer cells that are driving the aberrant growth responsible for tumor development. Some of these targeted agents are developed in

		conjunction with companion diagnostic tests that are used by clinicians to determine if a patient's cancerous tumor contains these specific molecules and is, therefore, more likely to respond to a particular targeted therapy. Recent advances in cancer immunology have led to the development and availability of effective immunotherapies for the treatment of certain cancers. We have acquired product candidates for which we believe diagnostics or specific clinical criteria may allow us to identify cancer patients who will be more likely to be responsive to treatment. In the future, our preference will be to in-license or acquire cancer therapeutics that can be developed in a targeted patient population selected for those who may respond to the drug candidate. We expect that the characteristics of these compounds will permit us to design clinical trials that, if successful, may allow us to achieve clinical outcomes that will support regulatory approval for targeted patient groups and reimbursement by healthcare payors due to attractive risk/benefit metrics in the targeted population. Treatment centers (such as hospitals and community cancer centers) and the healthcare professionals who treat cancer patients (physicians, nurse practitioners, physician assistants, nurses and pharmacists) utilize various combinations of cancer therapeutics and oncology supportive care products to extend and improve the quality of life of these patients. All of these approaches may be associated with various side effects experienced by cancer patients that result from the treatments having an adverse impact on normal functioning cells and organ systems. Some of the more common side effects of cancer therapy include nausea, vomiting or emesis, infections, fatigue and diarrhea. Supportive care products are frequently prescribed or administered to cancer patients to prevent or treat these side effects thereby allowing the patients to continue to receive potentially life prolonging cancer therapies. Our strategy is aligned with these trends in cancer care; that is, to acquire, in-license and develop product candidates and to commercialize products that selectively treat cancers. Competition While we believe that our development experience and scientific knowledge provide us with competitive advantages, our industry is highly competitive and subject to rapid and significant technological change. Compared to TESARO, many of our competitors may have significantly greater financial, technical and human resource capabilities. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. We may also face competition from smaller pharmaceutical and biotechnology companies, including specialty pharmaceutical companies and generic drug companies, academic institutions, government agencies and research institutions and others. The acquisition or licensing of pharmaceutical products is also very competitive, and numerous other companies, including more established companies, have acknowledged strategies to in-license or acquire products. Other companies taking similar or different approaches to product acquisitions, including more established companies, may have competitive advantages.

		Our commercial opportunity could be reduced or eliminated if our competitors develop or market products or other novel technologies that are more effective, safer or less costly than any that will be commercialized by us, or obtain regulatory approval for their products more rapidly than we may obtain approval for ours. Our success will be based in part on our ability to identify, develop, and manage a portfolio of drugs that are safer and more effective in the treatment and support of cancer patients. <i>Niraparib Competition</i> In addition to ZEJULA, there are currently two other commercially available PARP inhibitors. AstraZeneca Plc's LYNPARZA (olaparib) was approved in December 2014 by the FDA for use in ovarian cancer patients with a germline BRCA mutation who have been treated with three or more prior lines of chemotherapy, and in August 2017 for the maintenance treatment of adult patients with recurrent epithelial ovarian, fallopian tube or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. LYNPARZA was also approved by the EC following a positive opinion by the European Medicines Agency, or EMA, for use as a monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed BRCA-mutated (germline and/or somatic) high grade serous epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. LYNPARZA was also approved in patients with deleterious or suspected deleterious germline BRCA-mutated, human epidermal growth factor receptor 2 (HER2)-negative metastatic breast cancer who have previously been treated with chemotherapy in the neoadjuvant, adjuvant or metastatic setting. In February 2018, LYNPARZA received a positive opinion from the EMA's Committee for Medicinal Products for Human Use, or CHMP, for a new tablet formulation and a broad maintenance label, which is expected to lead to an EC marketing authorization in the near future. In July 2017, AstraZeneca and Merck announced a global oncology collaboration to co-develop and co-commercialize LYNPARZA for multiple cancer types. Clovis Oncology, Inc.'s RUBRACA (rucaparib) was approved in December 2016 by the FDA for use as a monotherapy for the treatment of patients with deleterious BRCA mutation (germline and/or somatic) associated with advanced ovarian cancer who have been treated with two or more chemotherapies. RUBRACA is currently under FDA review for maintenance treatment following complete or partial response to platinum-based chemotherapy, and is under EMA review as a third-line treatment in advanced ovarian cancer patients with a deleterious BRCA-mutation. In February 2018, the CHMP communicated a positive trend vote (meaning more voted yes than no) for RUBRACA to be authorized for the treatment of a subpopulation of platinum-sensitive ovarian cancer patients who also harbor a BRCA mutation. A final vote will occur at the CHMP's March 2018 meeting. We believe the additional products in clinical development targeting the PARP pathway consist of: Pfizer's talazoparib (MDV3800) and AbbVie's veliparib (ABT-888), both currently in Phase 3 clinical trials; and AbbVie's ABT-767, BeiGene/EMD Serono (Merck KGaA)'s pamiparib (BGB-290), Checkpoint Therapeutics' CK-102 (formerly CEP-9722) and Hengrui's fluzoparib, each currently in Phase 1 clinical trials. Both LYNPARZA and rucaparib have received "orphan drug

		designation” from the EMA, which provides certain benefits including market exclusivity for up to ten years in the approved indication post-approval. In addition to other PARP inhibitors, ZEJULA also competes with AVASTIN (bevacizumab), Roche’s angiogenesis inhibitor. AVASTIN is FDA- and EMA-approved in combination with chemotherapy for the treatment of recurrent ovarian cancer following platinum-containing chemotherapy (platinum-sensitive and platinum-resistant) and has been approved by the EMA, in combination with chemotherapy, for front-line treatment. In the U.S., it is currently under FDA review for the front-line setting. Government Regulation As a biopharmaceutical company that operates in the United States, we are subject to extensive regulation by the FDA and other federal, state, and local regulatory agencies. The Federal Food, Drug, and Cosmetic Act, or the FDC Act, and the Public Health Service Act, or PHSA, and their implementing regulations set forth, among other things, requirements for the testing, development, manufacture, quality control, safety, effectiveness, approval, labeling, storage, record keeping, reporting, distribution, import, export, advertising and promotion of our products and product candidates. Although the discussion below focuses on regulation in the United States, we develop and market our products in other countries, including throughout Europe. Generally, our activities in other countries will be subject to regulation that, although similar in nature and scope in some respects to that imposed in the United States, includes important differences. Additionally, some significant aspects of regulation in the European Union, or the EU, are addressed in a centralized way through the EMA and the EC, but the specific regulation of EU Member States remains essential in many respects for certain types of authorization processes, pricing and reimbursement and promotional activities. Patents and Proprietary Rights We have in-licensed and continue to develop several patent portfolios, including for our rolapitant, niraparib, and immunotherapeutic antibodies programs. Our NK-1 receptor antagonist portfolio, which relates to rolapitant, consists of patent families currently being prosecuted or maintained, including applications and patents directed to compositions of matter, formulations (including oral and IV), solid forms, methods of treatment (including both delayed and acute onset nausea and/or vomiting and timing of administration in relation to chemotherapy) and methods of preparing rolapitant. Rolapitant is a NK-1 receptor antagonist being developed for the prevention of chemotherapy induced nausea and/or vomiting. The portfolio for rolapitant consists of a number of issued U.S. patents and issued non-U.S. patents across the families. Our PARP inhibitor portfolio includes patent families relating to niraparib. The patent families in-licensed from Merck are being prosecuted or maintained by Merck in consultation with us. Our patent families relating to niraparib include applications and patents directed to compositions of matter, methods of treatment (including treatment of cancer and other diseases), particular salts of niraparib, niraparib formulations, and methods of preparing niraparib. The Merck portfolio for niraparib comprises of a number of issued United States and non-United States patents.

		Our immunotherapeutic antibodies portfolios presently consist of patent and patent applications pending in multiple jurisdictions, which cover particular antibodies and binding fragments thereof to identified targets of interest, as well as their use individually and in combination. We have rights to all patents owned or controlled by our collaborator, AnaptysBio, to the extent that they claim the manufacture, composition, or use of an antagonist antibody developed under the program. Manufacturing We contract with third parties for the manufacture of ZEJULA and VARUBI, and for the manufacture of our product candidates for preclinical studies and clinical trials, and we intend to continue to do so in the future. We currently work with one contract manufacturing organization, or CMO, for the production of VARUBI drug substance used for oral drug product and VARUBI IV, and one other CMO for the commercial production of oral drug product. We currently work with one CMO for the production of VARUBI IV drug product for our commercial needs. We currently work with two CMOs for the production of ZEJULA drug substance, and one other CMO for niraparib drug product supply, for our clinical and commercial needs. We contract with one CMO for the manufacture of TSR-042, TSR-022, TSR-033 and other antibody products, and may contract with additional CMOs that have biologics capabilities. For each of our product candidates, we may elect to pursue relationships with other CMOs for manufacturing clinical supplies for later-stage trials and for commercialization. We do not own or operate manufacturing facilities for the production of clinical quantities of our product candidates. We currently have no plans to build our own clinical or commercial scale manufacturing capabilities. To meet our projected needs for clinical supplies to support our activities through regulatory approval and commercial manufacturing, the CMOs with which we currently work will need to increase scale of production or we will need to secure alternate suppliers. We have not currently qualified alternate suppliers in the event the current CMOs we utilize are unable to scale production. We have personnel with pharmaceutical development and manufacturing experience who are responsible for the relationships with our CMOs.																								
B5	Group description	As at 31 December 2017, Tesaro has the following subsidiaries: <table><thead><tr><th>Legal Name</th><th>Jurisdiction of Organization</th></tr></thead><tbody><tr><td>TESARO Securities Corporation*</td><td>Massachusetts</td></tr><tr><td>TESARO UK Limited*</td><td>United Kingdom</td></tr><tr><td>TESARO Development, Ltd.*</td><td>Bermuda</td></tr><tr><td>TESARO Bio GmbH*</td><td>Switzerland</td></tr><tr><td>TESARO Bio Germany GmbH*</td><td>Germany</td></tr><tr><td>TESARO Bio Italy S.r.l.*</td><td>Italy</td></tr><tr><td>TESARO Bio France SAS*</td><td>France</td></tr><tr><td>TESARO Bio Spain, S.L.*</td><td>Spain</td></tr><tr><td>TESARO Bio Netherlands B.V.*</td><td>Netherlands</td></tr><tr><td>TESARO Bio Sweden AB*</td><td>Sweden</td></tr><tr><td>TESARO Bio Austria GmbH*</td><td>Austria</td></tr></tbody></table> *The above named subsidiary does business only under its legal name.	Legal Name	Jurisdiction of Organization	TESARO Securities Corporation*	Massachusetts	TESARO UK Limited*	United Kingdom	TESARO Development, Ltd.*	Bermuda	TESARO Bio GmbH*	Switzerland	TESARO Bio Germany GmbH*	Germany	TESARO Bio Italy S.r.l.*	Italy	TESARO Bio France SAS*	France	TESARO Bio Spain, S.L.*	Spain	TESARO Bio Netherlands B.V.*	Netherlands	TESARO Bio Sweden AB*	Sweden	TESARO Bio Austria GmbH*	Austria
Legal Name	Jurisdiction of Organization																									
TESARO Securities Corporation*	Massachusetts																									
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TESARO Bio Italy S.r.l.*	Italy																									
TESARO Bio France SAS*	France																									
TESARO Bio Spain, S.L.*	Spain																									
TESARO Bio Netherlands B.V.*	Netherlands																									
TESARO Bio Sweden AB*	Sweden																									
TESARO Bio Austria GmbH*	Austria																									
B6	Notifiable interests / voting rights	<i>Our principal stockholders and management own a significant percentage of our stock and are collectively able to exert significant influence over matters subject to stockholder approval.</i>																								

Our executive officers, directors and their respective affiliates beneficially owned approximately 29.7% of our voting stock as of December 31, 2017. This group of stockholders has the potential ability to control us through their ownership position. Acting together, these stockholders may be able to influence the outcomes of certain matters requiring stockholder approval. For example, this group may be able to influence elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other stockholders, and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

The major stockholders of Tesaro with notifiable interests are as follows:

(As listed in the Tesaro 2017 Proxy Statement dated 7 April 2017)

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Percentage of Class
5% Stockholders		
Entities affiliated with New Enterprise Associates(1)	10,275,113	19.1%
FMR LLC(2)	8,011,003	14.9%
T. Rowe Price Associates, Inc.(3)	7,119,254	13.2%
BlackRock, Inc.(4)	3,515,441	6.5%
Wellington Management Company, LLP(5)	3,442,523	6.4%
Franklin Resources, Inc.(6)	3,042,844	5.7%
Entities affiliated with Kleiner Perkins Caufield & Byers(7)	2,913,523	5.4%
Vanguard Group, Inc.(8)	2,812,373	5.2%
Directors and Named Executive Officers		
Leon O. Moulder, Jr.(9)	2,112,211	3.8%
Mary Lynne Hedley, Ph.D.(10)	1,544,991	2.8%
David M. Mott(11)	10,330,595	19.2%
Lawrence M. Alleva(12)	98,404	*
James O. Armitage, M.D.(13)	58,500	*
Earl M. (Duke) Collier, Jr.(14)	38,666	*
Garry A. Nicholson(15)	21,602	*
Arnold L. Oronsky, Ph.D.(16)	2,065,882	3.8%
Kavita Patel, M.D.(17)	9,163	*
Beth Seidenberg, M.D.(18)	2,977,590	5.5%
Timothy R. Pearson(19)	137,125	*
Martin H. Huber, M.D.(20)	48,429	*
Jeffrey H. Hanke, Ph.D.(21)	32,335	*
All of our directors and executive officers as a group (15 persons)(22)	19,566,021	34.6%

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Key financial information

Consolidated Balance Sheets (Audited)

As of 31 December 2016 (as revised) and 31 December 2017

(all amounts in 000's, except share and per share data)

	December 31,	
	2016	2017
	(as revised)	
Assets		
Current assets:		
Cash and cash equivalents	\$ 785,877	\$ 643,095
Accounts receivable	6,195	53,416
Inventories	14,700	57,939
Other current assets	10,515	33,511
Total current assets	817,287	787,961
Intangible assets, net	12,877	56,384
Property and equipment, net	6,640	9,652
Restricted cash	1,694	2,552
Other assets	3,795	5,636
Total assets	\$ 842,293	\$ 862,185
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 5,236	\$ 4,172
Accrued expenses	68,700	154,808
Deferred revenue, current	95	324
Other current liabilities	2,978	6,902
Total current liabilities	77,009	166,206
Convertible notes, net	131,775	143,446
Long-term debt, net	—	293,659
Deferred revenue, non-current	305	211
Other non-current liabilities	5,086	9,577
Total liabilities	214,175	613,099
Commitments and contingencies (Notes 12 and 14)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized at both December 31, 2016 and December 31, 2017; no shares issued or outstanding at both December 31, 2016 and December 31, 2017	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized at both December 31, 2016 and December 31, 2017; 53,621,679 and 54,464,039 shares issued and outstanding at December 31, 2016 and December 31, 2017, respectively	\$	\$
Additional paid-in capital	1,604,798	1,724,850
Accumulated other comprehensive loss	(2,924)	(5,882)
Accumulated deficit	(973,761)	(1,469,887)
Total stockholders' equity	628,118	249,086
Total liabilities and stockholders' equity	\$ 842,293	\$ 862,185

As of 31 December 2015 and 31 December 2016

(all amounts in 000's, except share and per share data)

	December 31, 2015	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	\$ 230,146	\$ 785,877
Accounts receivable	679	5,343
Inventories	1,106	14,700
Other current assets	4,560	8,919
Total current assets	236,491	814,839
Intangible assets, net	14,732	12,877
Property and equipment, net	2,779	6,640
Restricted cash	500	1,694
Other assets	779	3,795
Total assets	\$ 255,281	\$ 839,845
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 8,019	\$ 5,236
Accrued expenses	36,628	68,271
Deferred revenue, current	500	288
Other current liabilities	1,534	2,978
Total current liabilities	46,681	76,773
Convertible notes, net	121,325	131,775
Deferred revenue, non-current	288	—
Customer deposit	—	15,000
Other non-current liabilities	113	5,086
Total liabilities	168,407	228,634
Commitments and contingencies (Notes 12 and 13)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized at both December 31, 2015 and December 31, 2016; no shares issued or outstanding at both December 31, 2015 and December 31, 2016	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized at both December 31, 2015 and December 31, 2016; 40,279,783 and 53,621,679 shares issued and outstanding at December 31, 2015 and December 31, 2016, respectively	4	5
Additional paid-in capital	688,788	1,604,798
Accumulated other comprehensive loss	—	(2,924)
Accumulated deficit	(601,918)	(990,668)
Total stockholders' equity	86,874	611,211
Total liabilities and stockholders' equity	\$ 255,281	\$ 839,845

Consolidated Statements of Operations and Comprehensive Loss for the Years ended 31 December 2015, 2016 and 2017 (Audited)

(all amounts in 000's, except per share data)

	Years Ended December 31,		
	2015 (as revised)	2016 (as revised)	2017
Revenues:			
Product revenue, net	\$ 2,026	\$ 5,174	\$ 120,700
License, collaboration and other revenues	2,012	52,844	102,626
Total revenues	4,038	58,018	223,326
Expenses:			
Cost of sales – product	62	1,203	41,137
Cost of sales – intangible asset amortization	268	1,855	6,158
Research and development	155,390	235,144	308,742
Selling, general and administrative	78,701	158,578	336,808
Acquired in-process research and development	2,000	18,940	10,000
Total expenses	236,421	415,720	702,845
Loss from operations	(232,383)	(357,702)	(479,519)
Interest expense	(15,414)	(16,487)	(19,758)
Interest income	48	1,440	4,147
Other income	—	—	328
Loss before income taxes	(247,749)	(372,749)	(494,802)
Provision for income taxes	—	1,475	1,324
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Net loss per share applicable to common stockholders - basic and diluted	\$ (6.29)	\$ (7.85)	\$ (9.17)
Weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted	39,387	47,652	54,080
Comprehensive loss:			
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Other comprehensive loss:			
Unrealized loss on pension obligation	—	(2,782)	(3,359)
Foreign currency translation adjustments	—	(142)	401
Other comprehensive loss	—	(2,924)	(2,958)
Comprehensive loss	\$ (247,749)	\$ (377,148)	\$ (499,084)

Consolidated Statements of Stockholders' Equity for the Years ended 31 December 2015, 2016 and 2017 (Audited)

(all amounts in 000's, except share data)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2014	36,110,082	\$ 4	\$ 474,562	\$ —	\$ (350,510)	\$ 124,056
Issuance of common stock, net of issuance costs of \$11,752	3,755,000	—	179,753	—	—	179,753
Issuance of common stock resulting from exercise of stock options	382,580	—	7,930	—	—	7,930
Issuance of common stock resulting from Employee Stock Purchase Plan	20,601	—	830	—	—	830
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	8,091	—	(201)	—	—	(201)
Issuance of common stock as payment of Board of Directors fees in lieu of cash	3,429	—	266	—	—	266
Stock-based compensation expense	—	—	25,648	—	—	25,648
Net loss (as revised)	—	—	—	—	(247,749)	(247,749)
Balance at December 31, 2015 (as revised)	40,279,783	\$ 4	\$ 688,788	\$ —	\$ (598,259)	\$ 90,533
Retroactive adjustment to beginning accumulated deficit and additional paid-in capital resulting from adoption of ASU 2016-09	—	—	1,278	—	(1,278)	—
Issuance of common stock, net of issuance costs of \$36,305	12,632,356	1	838,090	—	—	838,091
Issuance of common stock resulting from exercise of stock options	643,035	—	25,958	—	—	25,958
Issuance of common stock resulting from Employee Stock Purchase Plan	42,478	—	2,229	—	—	2,229
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	18,000	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	6,027	—	345	—	—	345
Stock-based compensation expense	—	—	48,110	—	—	48,110
Other comprehensive loss	—	—	—	(2,924)	—	(2,924)
Net loss (as revised)	—	—	—	—	(374,224)	(374,224)
Balance at December 31, 2016 (as revised)	53,621,679	\$ 5	\$ 1,604,798	\$ (2,924)	\$ (973,761)	\$ 628,118
Issuance of common stock resulting from exercise of stock options	597,209	—	25,883	—	—	25,883
Issuance of common stock resulting from Employee Stock Purchase Plan	42,386	—	3,743	—	—	3,743
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	199,654	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	3,111	—	464	—	—	464
Stock-based compensation expense	—	—	89,962	—	—	89,962
Other comprehensive loss	—	—	—	(2,958)	—	(2,958)
Net loss	—	—	—	—	(496,126)	(496,126)
Balance at December 31, 2017	54,464,039	\$ 5	\$ 1,724,850	\$ (5,882)	\$ (1,469,887)	\$ 249,086

Consolidated Statements of Cash Flows for the Years ended 31 December 2015, 2016 and 2017 (Audited)

(all amounts in 000's)

	Years Ended December 31,		
	2015 (as revised)	2016 (as revised)	2017 (as revised)
Operating activities			
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Adjustments to reconcile net loss to net cash used in operating activities:			
Acquired in-process research and development	2,000	18,940	10,000
Depreciation and amortization expense	1,037	3,113	9,530
Stock-based compensation expense	25,914	48,455	90,426
Non-cash interest expense	9,360	10,450	11,734
Write-down of inventory to net realizable value	—	—	16,730
Changes in operating assets and liabilities:			
Accounts receivable	(2,562)	(3,634)	(47,134)
Inventories	(1,106)	(13,594)	(59,968)
Other assets	(3,639)	(7,770)	(20,214)
Accounts payable	1,924	(2,835)	(1,036)
Accrued expenses	20,077	31,896	80,837
Deferred revenues	92	309	134
Other liabilities	121	1,223	4,966
Net cash used in operating activities	(194,531)	(287,671)	(400,121)
Investing activities			
Acquisition of product candidates, technology licenses and milestone payments	(17,000)	(18,940)	(59,665)
Purchase of property and equipment	(2,305)	(2,895)	(5,978)
Change in restricted cash	(500)	(1,489)	(870)
Net cash used in investing activities	(19,805)	(23,324)	(66,513)
Financing activities			
Proceeds from sale of common stock, net of issuance costs	179,753	838,099	(8)
Proceeds from term loan, net of issuance costs	—	—	293,596
Proceeds from exercise of stock options and Employee Stock Purchase Plan	7,868	28,785	29,719
Net cash provided by financing activities	187,621	866,884	323,307
Effect of exchange rate changes on cash and cash equivalents	—	(158)	545
Increase (decrease) in cash and cash equivalents	(26,715)	555,731	(142,782)
Cash and cash equivalents at beginning of period	256,861	230,146	785,877
Cash and cash equivalents at end of period	\$ 230,146	\$ 785,877	\$ 643,095
Non-cash investing and financing activities			
Stock option exercise proceeds receivable as of period end	\$ 691	\$ 93	\$ —
Leasehold improvement assets funded by lessor	\$ —	\$ 2,230	\$ 585
Purchase of property and equipment - cash not paid as of period end	\$ 238	\$ 230	\$ 40
Supplemental disclosure of cash flow information			
Cash paid for interest	\$ 6,071	\$ 6,038	\$ 6,038
Income taxes paid	\$ 1	\$ 1,430	\$ 573

The Company is not aware of any significant change in the financial or trading position of Tesaro and its group entities which has occurred during or since the period covered by the historical key financial information set out above.

B8	Key <i>pro forma</i> financial information	Not applicable.
B9	Profit forecast	Not applicable.
B10	Description of the nature of any qualifications in the audit report on the historical financial information	Not applicable.
Section C – Securities		
Element	Disclosure requirement	Disclosure
C3	Number of securities in issue	As of December 31, 2017, the authorized capital stock of Tesaro consisted of 10,000,000 shares of preferred stock and 100,000,000 shares of common stock, both with a par value of US\$0.0001, of which no shares of preferred stock were issued or outstanding and 54,464,039 shares of common stock were issued and outstanding.

C7	Dividend policy	Dividends We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. We do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, contractual restrictions, business prospects and other factors our board of directors may deem relevant.
<i>Section D – Risks</i>		
Element	Disclosure requirement	Disclosure
D1	Key information on the key risks specific to the issuer or its industry	Risks Related to Our Financial Position and Capital Needs ● We have incurred significant losses since our inception and anticipate that we will continue to incur losses in the future. Although we have obtained approval from regulatory authorities and launched ZEJULA[®] (niraparib) in the U.S. and European Union, or the EU, VARUBI[®] (rolapitant) IV and tablets in the United States and VARUBY[®] (rolapitant) tablets in the EU, we expect to continue to incur losses for the foreseeable future. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. ● We have recognized limited revenues from sales of our products, and we may never become profitable. Even if we are able to generate revenues from the sale of our current and future products, we may not become profitable and may need to obtain additional funding to continue operations. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then- we may be unable to continue our operations at planned levels and be forced to reduce our operations. ● We may require additional capital to fund our operations, and if we fail to obtain necessary financing, we may be unable to successfully complete the development and commercialization of our product candidates. ● Servicing our debt will require significant amounts of cash, and we may not have sufficient cash flow from our business to pay our debt. Risks Related to Our Business and Industry ● Our current business plan relies heavily on our ability to successfully commercialize ZEJULA. Our products may not achieve market acceptance or be commercially successful. ● Our future success is dependent primarily on our ability to obtain regulatory approvals for and successfully commercialize our product candidates, including additional indications for niraparib as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets. If we do not obtain regulatory approvals for niraparib in the various additional indications and/or combinations for which it is being developed, or do not obtain such approvals in a timely manner, it would negatively affect our ability to

		generate revenue in the future, our ability to become profitable, and our growth prospects. ● We face substantial competition for our marketed products, ZEJULA and VARUBI/VARUBY, which could limit our ability to generate significant product sales. Our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. Our competitors may also develop drugs that are more effective, more widely used and less costly than ours, and may also be more successful than us in manufacturing and marketing their products. ● Even if our product candidates receive regulatory approval, they may still face future development and regulatory difficulties. ● Because the results of preclinical testing or clinical studies are not necessarily predictive of future results, product candidates we advance into clinical trials may not have favorable results in later clinical trials or receive regulatory approval for any particular use, if at all. ● Clinical drug development involves a lengthy and expensive process with an uncertain outcome. Failure can occur at any time during the clinical trial process. If we experience delays in the completion of, or the termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process, and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates. ● The regulatory approval processes of the FDA and comparable foreign regulatory authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed. ● Certain of our product candidates, including ZEJULA in additional indications, as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets, could be approved or deemed approvable by the FDA or equivalent foreign regulatory authorities only in combination with a diagnostic test for certain uses, which could increase the risk that the product candidate does not receive approval by the relevant regulatory authorities, or receives approval under conditions that adversely impact the commercial potential of the product candidate. ● Any one of our products or product candidates may cause undesirable side effects or have other properties that could delay or prevent its regulatory approval, limit its commercial viability, or result in significant negative consequences following any marketing approval.

		● Failure to obtain regulatory approval in international jurisdictions would prevent our product candidates from being marketed abroad. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the United States, it is required that the product be approved for reimbursement before the product can be approved for sale in that country. If we are unable to obtain approval of any of our product candidates by regulatory authorities in Europe or other foreign territories, the commercial prospects of that product candidate may be diminished and our business prospects could be adversely impacted. ● Our products and any product candidates we are able to commercialize may become subject to unfavorable pricing regulations, third-party reimbursement practices or pricing pressure due to healthcare reform initiatives, which could harm our business. ● If we fail to comply with our reporting and payment obligations under U.S. governmental pricing and contracting programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects. The shifting commercial compliance environment and the need to build and maintain robust and expandable systems to comply with different compliance or reporting requirements in multiple jurisdictions increase the possibility that a healthcare or pharmaceutical company may fail to comply fully with one or more of these requirements. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could harm our financial condition and divert resources and the attention of our management from operating our business. ● Our ability to successfully commercialize our products and generate revenues outside of the U.S. depends heavily on the availability of adequate pricing and reimbursement from government and other third-party payors. ● If we breach the license agreements for our products or product candidates, we could lose the ability to continue the development and commercialization of our product candidates. ● We may not be successful in obtaining necessary rights to additional product candidates for our development pipeline through acquisitions and in-licenses. ● Product liability lawsuits against us could cause us to incur substantial liabilities and could limit commercialization of any products that we may develop. ● We market our products in certain countries and territories outside of the United States, including Europe, and are

		subject to the risks of doing business outside of the United States, including our own limited experience operating internationally, the cost and time required to develop an international sales, marketing and distribution organization, changes in a specific country's or region's political, cultural or economic condition, unexpected changes in foreign laws and regulations, inadequate intellectual property protection in foreign countries, difficulty of effective enforcement of contractual provisions in local jurisdictions, and significant adverse changes in foreign currency exchange rates. ● Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited. ● Taxing authorities could challenge our historical and future tax positions or our allocation of taxable income among our subsidiaries, and tax laws to which we are subject could change in a manner adverse to us. ● Any changes to existing accounting pronouncements or taxation rules or practices may cause adverse fluctuations in our reported results of operations or affect how we conduct our business. ● We will need to continue to grow the size of our organization, and we may experience difficulties in managing this growth. Our future financial performance and our ability to commercialize our current and future products and product candidates and to compete effectively will depend, in part, on our ability to manage our growth effectively. To that end, we must be able to manage our development and commercialization efforts effectively and hire, train and integrate additional management, administrative, sales, and marketing personnel. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company. ● If we are unable to attract and retain highly qualified personnel, we may not be able to grow effectively. ● In addition to in-licensing or acquiring product candidates, we may engage in future acquisitions that could disrupt our business, cause dilution to our stockholders and harm our financial condition and operating results. ● Our business and operations would suffer in the event of system failures. ● Our failure to comply with data protection laws and regulations could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results. ● The results of the United Kingdom's referendum on withdrawal from the EU may have a negative effect on global economic conditions, financial markets and our business. We currently hold the European marketing authorizations for both ZEJULA and VARUBY through a subsidiary in the UK. ● We derive, and may continue to derive, a substantial amount of our product revenue from a limited number of customers and the loss of one or more of these customers or a decline in revenue from one or more of these customers could have an adverse impact on our results of operations and financial condition.

		● Wholesaler and distributor buying patterns and other factors may cause our quarterly results to fluctuate, and these fluctuations may adversely affect our short-term results. Risks Related to Our Dependence on Third Parties ● We have no manufacturing facilities, and we are dependent on a limited number of third-party manufacturers for the manufacture and supply of ZEJULA, VARUBI (oral and IV), VARUBY and our product candidates, including our immuno-oncology assets. If we experience problems with any of these third parties, the manufacturing of our products or our product candidates could be delayed, which could harm our ability to generate revenues from our approved products, our ability to obtain regulatory approval for our product candidates, and our results of operations. ● We rely on third parties to conduct preclinical and clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to obtain regulatory approval for, or commercialize, our product candidates, and our business could be substantially harmed. Risks Related to Our Intellectual Property ● If we are unable to protect our intellectual property rights, our competitive position could be harmed, and we could be required to incur significant expenses to enforce our rights. ● We may become involved in lawsuits to protect or enforce our intellectual property, which could be expensive, time consuming and unsuccessful. ● Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain and could have a material adverse effect on the success of our business. ● If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed. Risks Related to Ownership of Our Common Stock ● The price of our stock has been, and may continue to be, volatile, and you could lose all or part of your investment. ● Forecasting sales of ZEJULA, VARUBI/VARUBY, and if approved our other product candidates, may be difficult, and if our revenue projections are inaccurate, our business may be harmed and our stock price may decline. ● An adverse determination in any securities class action lawsuit against us could have a material adverse effect on us. ● Our principal stockholders and management own a significant percentage of our stock and are collectively able to exert significant influence over matters subject to stockholder approval. ● If we fail to maintain an effective system of internal control over financial reporting in the future, we may not be able to accurately report our financial condition, results of operations or cash flows, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

		● Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain. ● Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall. ● Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud. ● Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall. ● Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management. Risks Related to Our Indebtedness ● Despite our current debt levels, we may still incur additional debt. If we incur substantial additional debt, these higher levels of debt may affect our ability to pay the principal of and interest on the Convertible Notes and our borrowings under the Loan Agreement. ● The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results. ● The accounting method for convertible debt securities that may be settled in cash, such as the Convertible Notes, could have a material effect on our reported financial results. ● To the extent we issue shares of our common stock to satisfy all or a portion of our conversion obligation, conversions of the Convertible Notes may dilute the ownership interest of our existing stockholders. ● The fundamental change purchase feature of the Convertible Notes may delay or prevent an otherwise beneficial attempt to take over our Company. The terms of our Loan Agreement place restrictions on our operating flexibility.
<i>Section E – Offer</i>		
Element	Disclosure requirement	Disclosure
E7	Estimated expenses charged to the investor by the issuer or the offeror	Not applicable.

RISK FACTORS

An investment in the Issue Shares carries a number of risks including the risk that the entire investment may be lost. In addition to all other information set out in this Prospectus, the following specific factors should be considered when deciding whether to make an investment in the Issue Shares. The risks set out below are those that are considered to be the material risks relating to the Company and to an investment in the Issue Shares but are not the only risks relating to the Company and to such investment in the Issue Shares. No assurance can be given that Shareholders will realise profit on, or recover the value of, their investment in the Issue Shares. It should be remembered that the price of securities and the income from them can go down as well as up.

Prospective investors should note that the risks relating to the Company, its investment strategy and the Issue Shares summarised in the section of this Prospectus headed “Summary” are the risks that the Directors believe to be the most essential to an assessment by a prospective investor of whether to consider an investment in the Issue Shares. However, as the risks which the Company faces relate to events and depend on circumstances that may or may not occur in the future, prospective investors should consider not only the information on the key risks summarised in the section of this Prospectus headed “Summary” but also, among other things, the risks and uncertainties described in this “Risk Factors” section of this Prospectus. Additional risks and uncertainties not currently known to the Company or the Directors or that the Company or the Directors consider to be immaterial as at the date of this Prospectus may also have a material adverse effect on the Company’s financial condition, business, prospects and results of operations and, consequently, the Company’s NAV and/or the market price of the Issue Shares.

The Issue Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio. Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of, the potential risks from investing in the Company.

Potential investors in the Issue Shares should review this Prospectus carefully in its entirety and consult with their professional advisers prior to making an application to subscribe for Issue Shares.

RISKS RELATING TO THE COMPANY

The Company has a limited operating history, and investors have a limited basis on which to evaluate the Company’s ability to achieve its investment objective

The Company has a limited operating history. As such, investors have a limited basis on which to evaluate the Company’s ability to achieve its investment objective and provide a satisfactory investment return. There can be no assurance that the Company will be able to achieve its investment objective and any failure by the Company to do so may adversely affect its business, financial condition, results of operations, NAV and the market price of the Shares. Past performance of the Company, and past performance of other investment vehicles managed by the Investment Manager, should not be taken as a guide to the Company’s future performance.

The Company will be an investment of a long term nature, and will involve a high degree of risk. A Shareholder could lose all or a substantial portion of their investment in the Company. Shareholders must have the financial ability, sophistication, experience and willingness to bear the risks of an investment in the Company.

The Company’s returns and operating cash flows will depend on many factors, including the price and performance of its investments, the availability and liquidity of investment opportunities falling within the Company’s investment objective and policy, the level and volatility of interest rates, conditions in the life sciences industry and the Company’s ability to successfully operate its business and execute its investment strategy.

There can be no assurance that the Company's investment strategy will be successful. See also "Risks relating to the Debt Assets and the Investment Strategy", "Risks relating to LifeSci Companies" and "Risks relating to the Products" and "Risks relating to the Investment Manager" for the various factors that could affect the Company's performance and ability to achieve its investment objective.

There can be no guarantee that the Company will achieve its investment objective or that investors will get back the full value of their investment

The investment objective of the Company is a target only and should not be treated as an assurance or guarantee of future performance. There is no assurance that any appreciation in the value of the Shares will occur or that the investment objective of the Company will be achieved. The Company may fail to realise value from its investments and could lose all or part of its investments. The value of investments and the income derived therefrom may fall as well as rise and investors may not recoup the original amount invested in the Company.

The success of the Company will depend on the ability of the Investment Manager to pursue the Company's investment policy successfully and on broader market conditions as discussed in this "Risk Factors" section. There can be no assurance that the Investment Manager will be successful in pursuing the Company's investment policy or that the Investment Manager will be able to invest the Company's assets on attractive terms, generate any investment returns for the Company's investors or avoid investment losses.

The Company has no employees and is reliant on the performance of third party service providers

The Company has no employees and all of the Directors have been appointed on a non-executive basis. Whilst the Company has taken all reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations, the Company is reliant upon the performance of third party service providers for its executive functions. In particular, the Investment Manager, the Company Secretary, the Administrator and the Registrar will be performing services which are integral to the operation of the Company (please see section below entitled "Risks relating to the Investment Manager"). Failure by any service provider to carry out its obligations to the Company in accordance with the terms of its appointment or the termination of these agreements may have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the NAV and/or the market price of the Shares.

There may be circumstances in which a Director has a conflict of interests

There may be circumstances in which a Director has, directly or indirectly, a material interest in a transaction being considered by the Company or a conflict of interest with the Company. Any of the Directors and/or any person connected with them may, from time to time, act as a director or employee of, or invest in or be otherwise involved with: (i) other investment vehicles that have investment objectives and policies similar to those of the Company; or (ii) entities or other vehicles that are the subject of transactions with the Company, subject, in both cases and at all times, to the provisions governing such conflicts of interest both in law and in the Articles.

The Company's investments will be subject to various political and economic risks

The Company will be subject to various risks incidental to investing generally. Factors affecting economic conditions, including, for example, currency devaluation, exchange rate fluctuations, competition, domestic, transnational, international and worldwide political, military and diplomatic events and trends and innumerable other factors, none of which will be in the control of the Company, can substantially and adversely affect the business and prospects of the Company.

There is no guarantee that the Group will have sufficient working capital from 30 May 2019 onwards

In accordance with the Prospectus Rules, this document includes a statement that the Company is of the opinion that, taking into account the Commitment Letter available to the Company, the working capital available to it is sufficient for the present requirements of the Group, that is for at least 12 months from the date of this Prospectus (the "**Working Capital Statement**").

Assuming the Group exercises its option to draw down on the term loan facility available to it as at the date of this Prospectus pursuant to the Commitment Letter, such term loan facility will expire

by 30 May 2019 and there can be no assurance that the Group will be able to renew or replace this facility such that there can be no assurance that the Group will have sufficient working capital beyond that point.

In order to meet its working capital requirements after 30 May 2019, the Company may issue further Shares, renew or replace its bank facilities or sell down a Debt Asset or any portion thereof or take such other steps as may be appropriate. The success of any such measures, however, cannot be guaranteed.

If during any period beyond the period covered by the Working Capital Statement the Group's working capital should prove insufficient for its requirements (whether or not as a result of any failure to refinance the Group's bank facilities), there may be shortfalls in the Company's ability to fund future tranches under one or more Debt Assets or to meet its working capital requirements. Please also see risk below entitled "The Company may acquire Debt Assets involving a commitment to fund multiple tranches of loans to be issued by a Borrower over a period of time which tranches, when added together, may exceed the uninvested cash available to the Company at the time of making such commitment". This may have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the Net Asset Value and the interests of the Shareholders.

Concentration in the Company's portfolio may affect the Company's ability to achieve its investment objective

The Company's published investment policy allows the Company to invest up to 30 per cent. of the Company's assets in a single Debt Asset or in Debt Assets issued by a single borrower. While the investment limits in the investment policy have been set keeping in mind the debt capital requirements of the life sciences industry and the investment opportunities available to the Investment Manager, it is possible that the Company's portfolio may be significantly concentrated at any given point in time.

For example, the Company currently has:

- Senior Secured Debt issued by Tesaro (the "**Tesaro Debt Asset**") which, on taking into account the first tranche of the loan amount funded, constitutes over 24 per cent. of the Company's gross assets as at the date of this Prospectus (see the risk factor below entitled "*The Company may be exposed to a single Borrower in excess of 30 per cent. of its gross assets in relation to the Tesaro Debt Asset in certain circumstances*").
- Senior Secured Debt issued by NovoCure which is fully funded and constitutes over 16 per cent. of the Company's gross assets as at the date of this Prospectus; and
- Senior Secured Debt issued by Lexicon Pharmaceuticals, Inc ("**Lexicon**") which, on the basis of the initial loan amount funded, constitutes over 13 per cent. of the Company's gross assets as at the date of this Prospectus. With the funding of the remaining tranches, the absolute exposure of the Company to Lexicon will increase by an additional US\$41.5 million.

Concentration in the Company's portfolio may increase certain risks to which the Company is subject, some or all of which may be related to events outside the Company's control. These would include risks around the creditworthiness of the relevant Borrower, the nature of the Debt Asset and of any Product(s) in question. The occurrence of these situations may result in greater volatility in the Company's investments and, consequently, its Net Asset Value, and may materially and adversely affect the performance of the Company and the Company's returns to Shareholders.

Such increased concentration of the Company's assets could also result in greater losses to the Company in adverse market conditions than would have been the case with a less concentrated portfolio, and have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the Company's Net Asset Value and/or the market price of the Shares.

The Company may be exposed to a single Borrower in excess of 30 per cent. in relation to the Tesaro Debt Asset in certain circumstances

As at the date of this Prospectus, the Tesaro Debt Asset constitutes over 24 per cent. of the Company's gross assets by virtue of the first tranche of the loan. Depending on the net proceeds raised on Initial Admission, the Tesaro Debt Asset may fall below 20 per cent. on Initial Admission. However, the Company may be required to fund up to US\$148 million as part of the second tranche of the loan at any time from 30 June 2018 to 20 December 2018 with 90 days' prior

notice. The Company cannot anticipate when the second tranche of the loan will be drawn, how much of the second tranche will be drawn, or if such tranche will be drawn at all.

As the Company increases its gross assets through the Issue, there will be a reduction in the potential level of investment concentration the Company could be exposed to in relation to the Tesaro Debt Asset. If, however, the Company receives a 90 days' funding notice from Tesaro prior to raising sufficient capital under the Issue and / or using borrowing to increase the gross assets of the Company, upon the funding of such second tranche, the Company's exposure to the Tesaro Debt Asset may exceed 30 per cent. of the Company's gross assets at that time. If such a situation were to arise, the Company will identify potential solutions and execute a plan to remediate by diluting the investment to a permissible level including potentially selling a portion of the Tesaro Debt Asset to a third party.

An increased concentration of the Company's assets could result in greater losses to the Company in adverse market conditions than would have been the case with a less concentrated portfolio, and could have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the Company's NAV and/or the market price of the Shares.

The Company may acquire Debt Assets involving a commitment to fund multiple tranches of loans to be issued by a Borrower over a period of time which tranches, when added together, may exceed the uninvested cash available to the Company at the time of making such commitment

The Company may acquire Debt Assets which involve loan amounts funded in several tranches which are funded or drawn by reference to fixed dates or on an ad hoc basis over a fixed period of time depending on a Borrower's business needs (and in some cases, at its discretion). Each tranche of the loan may involve a range and not a fixed loan amount and the amount actually drawn from the tranche may depend on a number of factors, including the Borrower's funding needs. Further, each drawdown of a tranche is typically subject to a number of conditions precedent being satisfied including no default of the terms of the relevant Debt Asset by and the continued solvency of the Borrower. If a condition precedent is not satisfied or the Borrower decides (after taking stock of its business needs) that it does not require funding of all or any part of the unfunded loan tranches, the Company may not be required to fund unfunded tranches or may be required to fund only a small proportion thereof. Accordingly, although a Debt Asset may be of up to a large maximum loan amount, the Company may not end up funding the Debt Asset up to such maximum amount.

The period during which the Company may be called on to fund tranches in a Debt Asset may be an extended one and in some cases, may run for 6 months or more. In other cases, such period may be a short one but may not commence until a future date which may or may not be known at the time when the Debt Asset is entered into. In each of the above cases, while there may be some charges payable to the Company for allowing such flexibility under the terms of the Debt Asset, no interest is typically payable on undrawn tranches.

In light of the above, it is not possible for the Company to limit its investments in such Debt Assets by taking into account all of the tranches together as it may result in a long period where cash is committed but uninvested bearing no returns, a result that would adversely affect the Company's ability to deliver returns to the Shareholders. Consequently, when the Company acquires such a Debt Asset, the potential investment commitment (being the maximum amount of loan to be given under the Debt Asset) may exceed the uninvested cash available to the Company at the time of making such an investment. The Investment Manager will take into account the potential and expected duration between the funding of multiple tranches and the anticipated cash position of the Company going forward. Beyond 30 May 2019, there may be shortfalls in the Company's ability to fund future tranches under one or more Debt Assets that may be met through repayments from other existing Debt Assets, a further issue of Shares or through leverage (see Risk relating to Leverage for more information). Please also see the risk above entitled "There is no guarantee that the Group will have sufficient working capital from 30 May 2019 onwards".

If the Company is unable to fund certain tranches, the Investment Manager will seek to sell down the undrawn tranches to a third party (which may or may not be a Managed Entity) prior to the tranches being drawn. Such sale of unfunded tranches, however, cannot be guaranteed. After 30 May 2019, to the extent that the Company is unable to fund certain tranches and unable to transfer the obligation to do so to a third party, the Company may be in breach of its obligations

under that Debt Asset. Such a breach may damage the Company's reputation, result in litigation and require the Company to pay damages and penalties depending on the terms of the Debt Asset. Consequently, any such breach may adversely affect the Company, its financial condition, business, prospects and results of operation, the Net Asset Value and the interests of the Shareholders.

The Company may acquire Debt Assets involving multiple tranches of loans to be issued by the Borrower which, in aggregate, may breach the investment restrictions of the Company at the time of commitment

As discussed above, the Company may invest in Debt Assets which involve loan amounts funded in several tranches. Each tranche will typically be subject to certain precedent conditions being satisfied (including no default of the terms of the relevant Debt Asset by and the continued solvency of the Borrower) and may or may not be ultimately drawn. The maximum loan amount for some of these Debt Assets, determined by aggregating all of the tranches (whether funded or not), may exceed limits set out in the Company's investment policy around exposure to a Borrower. Provided that the tranches cannot be unconditionally drawn at the Borrower's discretion, the Company and the Investment Manager will calculate the exposure of the Company to a Borrower for the purposes of complying with its investment restrictions only by reference to the tranches that are drawn and funded by the Company. For the avoidance of doubt, where a Debt Asset involves multiple tranches of loans that may be funded at different points of time, the "time of investment" for these purposes will be the time when a tranche is funded by the Company. Unfunded tranches will not be considered for the purposes of complying with the investment restrictions. In the event that any of the limits set out in the Company's investment policy around exposure to a Borrower are breached as a result of the funding of a later tranche of loan in a Debt Asset acquired, the Company will take reasonable steps to reduce concentration including selling an appropriate portion of the relevant investment.

When the Company is acquiring such a Debt Asset, the Investment Manager will take into account the gross assets of the Company and the uninvested cash of the Company at that time, the expected timetable for the funding of tranches, the availability of borrowings as a source of increasing the Company's gross assets and the potential changes in the cash position of the Company (through repayments on other Debt Assets and any further issue of Shares) during that period. If anticipated increases in the gross assets of the Company during such period (whether through a further issue of Shares or otherwise) do not materialise, the Investment Manager will seek to sell down such undrawn tranches which, if funded, would trigger a breach of the concentration limits, to a third party (which may or may not be a Managed Entity) prior to the tranches being drawn. Such sale of unfunded tranches, however, cannot be guaranteed. To the extent that the Company is unable to increase its gross assets prior to the funding of all tranches of the relevant Debt Assets or unable to transfer the obligation to fund such tranches to a third party, the Company may be in breach of the concentration limits set out in its investment policy once the relevant Debt Asset is fully or substantially funded (and until such time as any potential solution or remediation plan is identified and successfully implemented) and such breach may adversely affect the Company, the Net Asset Value and the interests of the Shareholders.

The Company may invest in Debt Assets through one or more investment vehicles or companies

The Company may invest in Debt Assets indirectly through a Managed Entity, another company or one or more investment vehicles or other structures alongside other investors. The Company currently holds one such indirect interest in BioPharma III Holdings, LP whereby it has a *pro rata* exposure to four Debt Assets. The Company holds another Debt Asset through a wholly owned subsidiary, BPCR Ongdapa Ltd, a company registered under the laws of Ireland. While such investments will provide the Company diversification on a look-through basis, the Company will be exposed to certain risks associated with the vehicle as a whole and the other investors which may affect its return profile. For example:

- any change in the laws and regulations including any tax laws and regulations applicable to the investment vehicle or company or to the Company in relation to the receipts from any such investment vehicle or company may adversely affect the Company's ability to realise all or any part of its interest in Debt Assets held through such structures; or
- any failure of the investment vehicle or company, its management or the other investors in such investment vehicle or company to meet their respective obligations may have a material adverse effect on the Debt Assets held through such structures (for example, triggering

breach of contractual obligations) and the Company's exposure to the Debt Assets held through such structures and / or the returns generated from such Debt Assets for the Company. This could, in turn, have a material adverse effect on the performance of the Company and affect its ability to achieve its investment objective.

Further, where Debt Assets are acquired indirectly as described above, the value of the Managed Entity, company or investment structure may not be the same as the value of the underlying asset due, for example, to tax, contractual, contingent and other liabilities, or structural considerations. To the extent that valuations of the Company's investments in Managed Entities or other investment structures prove to be inaccurate or do not fully reflect the value of the underlying assets, whether due to the above factors or otherwise, this may have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the NAV and/ or the market price of the Shares.

Net Asset Value figures published by the Company will be estimates only and may be materially different from actual results and figures appearing in the Company's financial statements

Generally, there will be no readily available market for a substantial number of the Company's investments and hence, most of the Company's investments will be difficult to value. The valuations used to calculate the Net Asset Value will be based on the Investment Manager's unaudited estimated fair market values of the Company's investments. It should be noted any such estimates may vary (in some cases materially) from the results published in the Company's financial statements (as the figures are published at different times) and that they, and any Net Asset Value figure published, may vary (in some cases materially) from realised or realisable values.

Further, the Company intends to publish monthly Net Asset Value figures by reference to the Ordinary Shares and C Shares in US Dollars. The Net Asset Value figures issued by the Company should be regarded as indicative only and the actual, realisable Net Asset Value per Ordinary Share and Net Asset Value per C Share may be materially different.

RISKS RELATING TO THE DEBT ASSETS AND THE INVESTMENT STRATEGY

Failure to achieve target returns

The target returns set out in Part I (*The Company*) of this Prospectus are targets only and are based on financial projections that are themselves based on assumptions regarding market conditions, economic environment, availability of investment opportunities and investment-specific assumptions that may not be consistent with conditions in the future. In particular, the risks described in the section below entitled "Risks relating to the Products and the Life Sciences Industry" apply to some or all of the Products (and the related Debt Assets and other investments of the Company) upon which the projections in this Prospectus are based. These assumptions involve a significant element of subjective judgement and may be proved incorrect by post-investment changes in market conditions.

Accordingly, the target returns of the Company may not be achieved at the level set out in this Prospectus. A variety of factors, including lack of attractive investment opportunities, defaults and prepayments under Debt Assets, inability of the Company to obtain debt at an appropriate rate, changes in the life sciences industry, exchange rates, government regulations, the non-performance (or underperformance) of any Product (or any LifeSci Company), or the occurrence of risks described elsewhere in this Prospectus could adversely impact the Company's ability to achieve its investment objective and deliver the target returns. Potential investors should not place any reliance on such target returns in deciding whether to invest in the Company. A failure by the Company to achieve its target returns could adversely impact the value of the Shares and lead to a loss of investment.

In addition, some or all revenues earned by the Company may be subject to income or corporate tax liabilities (including withholdings) which cannot be reclaimed or credited by the Company. This may apply, for instance, as a result of taxation levied in the jurisdictions in which revenues are earned (or are otherwise connected), or as a result of tax authorities taking a different view to that of the Company in respect of the application of relevant tax laws to those investments. If applicable, such taxes may reduce the net returns on the Company's investments and consequently diminish the potential value of the Debt Assets.

Lender liability considerations and equitable subordination

In recent years, courts in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed “lender liability”). Generally, lender liability arises when an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in a creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. Because of the nature of the Debt Assets, the Company (or any entity through which the Company invests) could be subject to allegations of lender liability.

In addition, under common law principles that in some cases form the basis for lender liability claims, if a lending institution: (a) intentionally takes an action that results in the undercapitalisation of a borrower to the detriment of other creditors of such borrower; (b) engages in other inequitable conduct to the detriment of such other creditors; (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors; or (d) uses its influence as a stockholder to dominate or control a borrower to the detriment of other creditors of such borrower, a court may elect to subordinate the claim of the offending lending institution to the claims of the disadvantaged creditor or creditors, a remedy called “equitable subordination”. Because of the nature of certain of the Debt Assets, where the Borrower is based in the US or the agreements related to the Debt Asset are governed by US state and federal laws, the Company (or any entity through which the Company invests) could be subject to claims from creditors of a Borrower that Debt Assets issued by such Borrower that are held by the Company (or any entity through which the Company invests) should be equitably subordinated. A significant number of the Debt Assets will involve investments in which the Company would not be the lead creditor. It is, accordingly, possible that lender liability or equitable subordination claims affecting the Debt Assets could arise without the direct involvement of the Company.

Investments in debt obligations are subject to credit and interest rate risks

Debt instruments are subject to credit and interest rate risks. “Credit risk” refers to the likelihood that the Borrower will default in the payment of principal and/or interest on an instrument. Financial strength and solvency of a Borrower are the primary factors influencing credit risk. In addition, lack or inadequacy of collateral or credit enhancement for a Debt Asset may affect its credit risk. Credit risk may change over the life of an instrument, and debt obligations, which are rated by rating agencies, are often reviewed and may be subject to downgrade. “Interest rate risk” refers to the risks associated with market changes in interest rates. Interest rate changes may affect the value of a Debt Asset indirectly (especially in the case of fixed rate Debt Assets) and directly (especially in the case of Debt Assets whose rates are adjustable). In general, rising interest rates will negatively impact the price of a fixed rate Debt Asset and falling interest rates will have a positive effect on price. Adjustable rate instruments also react to interest rate changes in a similar manner although generally to a lesser degree (depending, however, on the characteristics of the reset terms, including the index chosen, frequency of reset and reset caps or floors, among other factors). Interest rate sensitivity is generally more pronounced and less predictable in instruments with uncertain payment or prepayment schedules. In addition, interest rate increases generally will increase the interest carrying costs to the Company (or any entity through which the Company invests) of leveraged investments.

Senior loans risk

The Company may, directly or indirectly, gain exposure to Debt Assets that are senior secured loans. Senior secured loans are usually rated below investment grade or may also be unrated. As a result, the risks associated with senior secured loans are similar to the risks of below investment grade fixed income instruments, although senior secured loans are senior and secured in contrast to other below investment grade fixed income instruments, which are often subordinated or unsecured. Investment in Senior Secured Debt rated below investment grade can be considered speculative because of the credit risk of the relevant Borrowers. Such Borrowers are more likely than investment grade issuers to default on their payments of interest and principal owed to the Company (or any entity through which the Company invests) and such defaults could, directly or indirectly, have a material adverse effect on the Company’s performance. An economic downturn would generally lead to a higher non-payment rate, and a Senior Secured Debt may lose significant market value before a default occurs. Moreover, any specific collateral used to secure a Senior Secured Debt may decline in value or become illiquid, which would adversely affect the

Senior Secured Debt's value. Senior secured loans are subject to a number of risks, including liquidity risk and the risk of investing in below investment grade fixed income instruments.

There may be less readily-available and reliable information about most senior secured loans than is the case for many other types of securities, including securities issued in transactions registered under the Securities Act, or registered under the United States Securities Exchange Act of 1934, as amended (the "**Exchange Act**"). As a result, when investing in Senior Secured Debt, the Investment Manager will rely primarily on its own evaluation of a Borrower's credit quality rather than on any available independent sources. Therefore, the Company will be particularly dependent on the analytical abilities of the Investment Manager.

As at the date of this Prospectus, the Company holds three Debt Assets that are senior secured loans: the Tesaro Debt Asset, the Senior Secured Debt issued by NovoCure and the Senior Secured Debt issued by Lexicon. The Company also has exposure to Senior Secured Debt through the BioPharma III Interest.

Subordinated debt and unsecured debt

The Company may, directly or indirectly, gain exposure to Debt Assets that are junior in ranking and/or that are subordinated to senior debt, including subordinated debt that ranks below other obligations of the Borrower in right of payment such as "last out" or "second lien" debt. Subordinated investments are subject to greater risk of loss than senior investments as a result of adverse changes in the financial condition of the Borrower or in general economic conditions. Subordinated investments may expose the Company (directly or through any entity through which the Company gains such exposure) to particular risks in a distress situation, such as the risk that the interests of creditors are not aligned as holders of the senior debt outstanding will generally be entitled to determine the remedies to be exercised. Remedies pursued by holders of the senior debt could be adverse to the interests of the Company. In addition, if an event of default has occurred and is continuing, holders of junior investments, including subordinated debt, may not be entitled to any payments until interest and principal of the senior debt is paid in full.

Convertible securities

The Company may, directly or indirectly, gain exposure to convertible securities such as convertible bonds and notes. The value of convertible securities may be adversely affected by changes in interest rates or the price of the Borrower's shares. Furthermore, the investment value of convertible securities may generally be adversely affected by the credit rating of the Borrower and the Borrower's ability to make payments of principal and interest (in the case of Debt Assets). Convertible securities may be subject to mandatory prepayment or redemption, either of which could have an adverse effect on the ability of the Company (or any entity through which the Company gains such exposure) to fully realise the value of a convertible security.

Counterparty risk

The Company intends to hold Debt Assets that will generate an interest payment. There is no guarantee that any Borrower will honour its obligations and the default or insolvency of such Borrowers may substantially affect the Company's business, financial condition, results of operations, the Net Asset Value and Shareholder returns. While the Company will often seek to be a secured lender for each Debt Asset, there is no guarantee that the relevant Borrower will repay the loan or that the collateral will be sufficient to satisfy the amount owed under the relevant Debt Asset. The failure by a Borrower to repay the loan may substantially affect the Company's business, financial condition, prospects, results of operations, Net Asset Value and Shareholder returns.

Structuring risk

The Company may invest in Debt Assets in a number of jurisdictions, including the United States, Japan and Europe, and such investments are or may be subject to different laws and regulation dependent on the jurisdiction in which the Borrower is incorporated and the jurisdictions where the Products are sold. In order to invest in such Debt Assets, the Company may be required to adopt particular contractual arrangements and structures in order to satisfy the legal and regulatory requirements of a particular jurisdiction. This may affect the contractual rights acquired by the Company. Please also see risk factor "The Company may invest in Debt Assets through one or more investment vehicles" above.

Currency risk

The Company will make investments in US Dollars and the payment of interest and repayments of principal in relation to any Debt Asset will be made in US Dollars. However, the collateral underlying a Debt Asset (whether Royalty Collateral or otherwise) may be denominated in a currency other than US Dollars. In some cases, such collateral may be denominated in multiple currencies. This would expose the Company to currency fluctuations. For example, where the sales of Products occur in jurisdictions outside the United States, royalty payments generated from such sales, upon conversion into US Dollars, may be lower than expected due to adverse currency movements. Such adverse currency movements may adversely affect the Borrower's ability to pay interest and repay the principal amount for the relevant Debt Asset on time, or at all. There can be no guarantee that such arrangements will provide sufficient protection to the Company against adverse currency movements. Such currency exposure could materially and adversely impact the Company's return profile and its ability to achieve its investment objective for Shareholders.

Risks associated with leverage

The Company may utilise borrowings in order to increase its investment exposure. Pursuant to its investment policy and the terms of the Investment Management Agreement, it is intended that the Investment Manager may borrow on behalf of the Company an aggregate amount equivalent to 25 per cent. of the Net Asset Value, calculated at the time of drawdown. This borrowing limit may be increased to 50 per cent. of the Net Asset Value, calculated at the time of drawdown, with the approval of the Board (and in no case will borrowings exceed more than 50 per cent. of the Net Asset Value calculated at the time of drawdown, without the prior approval of Shareholders by an ordinary resolution). Although the Company has not incurred any borrowings as at the date of this Prospectus, the Investment Manager may arrange such borrowings quickly if an opportunity to invest in Debt Asset(s) arise and the investible cash of the Company is or may be insufficient to acquire such Debt Asset(s). While such leverage presents opportunities for increasing total returns, it can also have the opposite effect of increasing losses. If income and capital appreciation on Debt Assets acquired with borrowed funds are less than the costs of the leverage, the Net Asset Value will decrease. The effect of the use of leverage is to increase the investment exposure, the result of which is that, in a market that moves adversely, the possible resulting loss to Shareholders' capital would be greater than if leverage were not used. The Company has entered into the Commitment Letter on 6 March 2018 with Bank of America N.A. and Goldman Sachs Bank USA whereby the Company may at its option, and subject to entry into appropriate loan documentation, put in place a term loan facility for up to US\$250 million for the purposes of funding further obligations under its existing investments and a pipeline investment (which may or may not materialise) for a maximum period of 364 days from the date of the first loan advance which must be made on or before the earlier of: (i) 31 May 2018; or (ii) the date on which the pipeline investment is abandoned. The amount which may be drawn under the facility will be reduced on a dollar for dollar basis to reflect the amount raised under the Initial Placing and Offer.

In addition, the Company may enter into transactions or other derivative arrangements for efficient portfolio management purposes. Leverage may be generated through the use of options, futures, options on futures, swaps and other synthetic or derivative financial instruments, which contain greater leverage than a non-margined purchase of the underlying security or instrument. This is due to the fact that, generally, only a small portion (and in some cases none) of the value of the underlying security or instrument is required to be paid in order to make such leveraged investments. As a result of leverage employed by the Company, small changes in the value of the underlying assets may cause a relatively large change in the Net Asset Value. Often instruments such as those cited above are subject to variation or other interim margin requirements, which may force premature liquidation of investment positions.

Risk of counterparty default and custodial risk

Although the Company does not hold any such investments as at the date of this Prospectus, to the extent that the Company invests in swaps, "synthetic" or derivative instruments, including Credit Linked Notes, or other customised financial instruments and over-the-counter transactions, the Company takes the risk of non-performance by the other party to the contract. This risk may include credit risk of the counterparty, the risk of settlement default, and generally, the risk of the inability of counterparties to perform with respect to transactions, whether due to insolvency, bankruptcy or other causes, which could subject the Company to substantial losses. This risk may differ materially from those entailed in exchange traded transactions that generally are supported

by guarantees of clearing organisations, daily marking to market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered into directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default. In an effort to mitigate such risks, the Company will attempt to limit its transactions to counterparties which are established, well-capitalised and creditworthy.

Although it is not anticipated that the Company will utilise a custodian, there are risks involved in dealing with any custodians that may be utilised or with brokers who settle the Company's trades, particularly with respect to non-US investments. It is expected that any securities and other assets deposited with custodians or brokers will be clearly identified as being assets of the Company, and so the Company should not be exposed to a credit risk with respect to such parties. However, it may not always be possible to achieve this segregation and there may be practical or timing problems associated with enforcing the Company's rights to its assets in the case of insolvency of any such party.

Small or mid-sized LifeSci Companies

The Company may invest in Debt Assets where the Borrowers are small or mid-sized LifeSci Companies. Whilst small or mid-sized LifeSci Companies are expected to have the potential to meet their debt obligations, such companies often represent a higher degree of risk because they may lack the experience, financial resources, product diversification and competitive strength of larger LifeSci Companies. These Debt Assets are also generally less liquid than Debt Assets made to larger, more established LifeSci Companies. These risks may influence the value of the Company's investment in Debt Assets issued by such Borrowers.

The Company may have investments for which no liquid market exists due to legal or other restrictions on transfer, or lack of demand

Liquidity risk, which includes the risk of the Company's failure to liquidate or trade investments in a timely manner at a reasonable price, may arise in the Company's activities. The Company may invest in Debt Assets and other assets, including derivatives for the purposes of efficient portfolio management and managing currency risk, which are subject to legal or other restrictions on transfer, which are thinly-traded or for which no liquid market exists or which otherwise become illiquid or difficult to trade. The Company may also invest in Debt Assets indirectly through investment vehicles such as limited partnerships. The BioPharma III Interest is an example of such indirect interest. The market prices, if any, for such investments tend to be volatile and may not be readily ascertainable and the Company may not be able to trade them when it desires to do so or to realise what it perceives to be their fair value. Interests in investment vehicles are often subject to strict transfer restrictions and are therefore highly illiquid. Trading restricted and illiquid investments often requires more time and results in higher brokerage charges or dealer discounts, considerably worse pricing and other expenses than does trading eligible investments on national securities exchanges or in the over-the-counter markets or markets that are otherwise more liquid. The Company may not readily be able to exit such illiquid positions and, in some cases, may be contractually prohibited from exiting such positions for a specified period of time. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale.

In certain circumstances, the Company may receive equity or equity related securities in a LifeSci Company

Where the Borrower is a LifeSci Company, as a part of the commercial negotiations, in addition to issuing or acquiring a Debt Asset, the Company may also acquire equity capital of the Borrower through conversion of convertible debt or otherwise. In accordance with its investment objective and policy, the Company's exposure to equity capital issued by LifeSci Companies shall not exceed 15 per cent. of its gross assets, calculated at the time of such investment. Therefore, the Company's exposure to equity capital will, at all times, be limited. Nevertheless, the value of such equity securities, whilst held by the Company, may be influenced by a variety of factors, internal and external, such as the performance of the relevant LifeSci Company and general economic and market conditions. In addition, the receipt of equity capital of the LifeSci Company by the Company may be detrimental to the Company, as creditors are entitled to be repaid in full before distributions can be made to equity holders in the event of an insolvency, liquidation, dissolution, reorganisation or bankruptcy of the Borrower, and the Company may not be able to realise any value for such equity or equity related securities.

RISKS RELATING TO PRODUCTS AND THE LIFE SCIENCES INDUSTRY

The Company may have limited information about the Products

The Company (or any entity through which the Company invests) may have limited information relating to the Products and other persons with an interest in the Products. Therefore, there may be information that relates to the Products or such persons that a prospective investor would like to know that the Company is not able to provide. For example, neither the Company nor the Investment Manager knows the results of studies conducted by marketers of the Products or others or the nature or amount of any complaints from doctors or users of such Products about which such persons may have knowledge.

The due diligence process that the Investment Manager undertakes in evaluating specific investment opportunities may not reveal all facts that may be relevant in connection with an investment in a Debt Asset

When conducting due diligence and making an assessment regarding an investment in a Debt Asset issued by a LifeSci Company, the Investment Manager will be required to rely on resources available to it, including internal sources of information as well as information provided by the LifeSci Company and any independent sources, including information filed with various government regulators and publicly available or made directly available to the Investment Manager by third parties. Although the Investment Manager will evaluate all such information and data and seek independent corroboration when it considers it appropriate and reasonably available, the Investment Manager may not be in a position to confirm the completeness, genuineness or accuracy of such information and data.

Accordingly, the Company cannot guarantee that the due diligence investigation the Investment Manager carries out with respect to any investment opportunity will reveal or highlight all relevant facts that may be necessary or helpful in evaluating such investment opportunity. Any failure by the Investment Manager to identify relevant facts through the due diligence process may cause it to make inappropriate investment decisions, which may have a material adverse effect on the Company's financial condition, business, prospects and results of operations and, consequently, the NAV and/or the market price of the Shares.

Due diligence may also be costly, which will decrease the Company's overall profit from an investment.

The Products are subject to intense competition and various other risks

The biopharmaceutical and pharmaceutical industries are highly competitive and rapidly evolving. The length of any Product's commercial life cannot be predicted. There can be no assurance that the Products will not be rendered obsolete or non-competitive by new products or improvements made to existing products, either by the current marketer of the Products or by another marketer. Adverse competition, obsolescence or governmental and regulatory life sciences policy changes could significantly impact royalty revenues of Products which serve as the collateral or other security for the repayment of obligations outstanding under the Company's investments.

Competitive factors affecting the market position and success of the Products include:

- effectiveness;
- side effect profile;
- price, including third party insurance reimbursement policies;
- timing and introduction of the Product;
- effectiveness of marketing strategy;
- governmental regulation;
- introduction of generic competition;
- new and improved medical procedures; and
- product liability claims.

If a Product is rendered obsolete or non-competitive by new products or improvements on existing products or governmental or regulatory action, such developments could have a material adverse effect on the ability of the Borrower under the relevant Debt Asset to make payment of interest on, and repayments of the principal of, that Debt Asset, and consequently could adversely affect the Company's performance. If additional side effects or complications are discovered with respect to a

Product, and such Product's market acceptance is impacted or it is withdrawn from the market, continuing payments of interest on, and repayment of the principal of, that Debt Asset may not be made on time, or at all.

It is possible that over time side effects or complications from one or more of the Products could be discovered, and, if such a side effect or complication posed a serious safety concern, a Product could be withdrawn from the market, which could adversely affect the ability of the Borrower under the relevant Debt Asset to make continuing payments of interest on, and repayment of the principal of, that Debt Asset, in which case the Company's ability to make distributions to investors may be materially and adversely affected.

Furthermore, if an additional side effect or complication is discovered that does not pose a serious safety concern, it could nevertheless negatively impact market acceptance and therefore result in decreased net sales of one or more of the Products, which could adversely affect the ability of Borrowers under the relevant Debt Asset(s) to make continuing payments of interest on, and repayment of the principal of, that Debt Asset(s), in which case the Company's ability to make distributions to investors may be materially and adversely affected.

Risks arising from US legislation relating to health care

In the United States, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, (the "**Medicare Modernization Act**"), changed the way that Medicare covers and pays for pharmaceutical products. The Medicare Modernization Act expanded Medicare coverage for drug purchases by the elderly by establishing Medicare Part D and introduced a new reimbursement methodology based on average sales prices for physician-administered drugs under Medicare Part B. In addition, the Medicare Modernization Act provided authority for limiting the number of drugs that will be covered in any therapeutic class under the new Part D programme. Such cost reduction initiatives and other provisions of the Medicare Modernization Act could decrease the coverage and reimbursement rate for a Product. Any reduction in reimbursement resulting from the Medicare Modernization Act may result in a similar reduction in payments from private payers for such Product. Such reductions in payments and cost-saving provisions could affect the returns from the sales of that Product which could, in turn, affect the relevant Borrower's ability to make payments of interest on, and repayment of the principal of, the related Debt Asset. This could have a material adverse effect on the Company's ability to successfully implement its investment objective and policy.

In March 2010, President Obama signed into law the US Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively "**PPACA**"), a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against healthcare fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. In 2012, the Supreme Court of the United States upheld the constitutionality of PPACA. Therefore, PPACA's drug-related cost-savings provisions will continue to be implemented.

Although final regulations under PPACA have been issued, it is unclear what effect the new regulations and guidance will have on the life sciences industry as a whole and on the Investment Manager's business.

Proposals have been made in the US Congress to repeal PPACA. It is not yet clear whether such repeal will occur and, if it does, what, if any, legislation will replace PPACA. It is also not clear what effect such repeal and possible replacement would have on the Company's portfolio of investments. However, pharmaceutical sales have increased following the passage of PPACA and it is possible that such increased sales volume may be adversely affected by any repeal of PPACA.

Sales of the Products are subject to regulatory actions that could harm the Company's ability to make distributions to investors

There can be no assurance that any regulatory approvals for indications granted to one or more Products will not be subsequently revoked or restricted. Such revocation or restriction may have a material adverse effect on the sales of such Products and on the ability of Borrowers under the relevant Debt Asset(s) to make continuing payments of interest on, and repayment of the principal of, that Debt Asset, in which case the Company's ability to make distributions to investors may be materially and adversely affected.

The Products are subject to governmental policy changes and managed care considerations, which could affect their pricing

The life sciences industry is likely to continue to change as the public, government, medical practitioners, and the pharmaceutical and biopharmaceutical industries focus on ways to expand medical coverage while controlling the growth in life sciences costs. In the United States, comprehensive legislative changes have been enacted and others may be proposed from time to time. These enactments and proposals could reduce the prices charged for pharmaceutical and biopharmaceutical products. See “Risks arising from US legislation relating to health care” above for more detail. In addition, the growth of large managed care organisations and prescription benefit managers as well as the prevalence of generic substitution has hindered price increases for prescription drugs. These conditions may have a material adverse effect on the Company. For example, in Europe, following approval by the European Agency for the Evaluation of Medicinal Products (“**EMA**”), the pricing of a new pharmaceutical or biopharmaceutical product is negotiated on a country-by-country basis with each national regulatory agency. In addition, each European country has an approved formulary for which it reimburses the cost of prescription drugs. The failure of any of the Products to be added to the formulary, or to achieve satisfactory pricing, could directly or indirectly have a material adverse effect on the Company.

Product liability claims may diminish Product sales

The manufacturers, developers or marketers of the Products could become subject to product liability claims. A successful product liability claim could adversely affect Product sales and the amount of royalty payment, and consequently, could adversely affect the ability of a Borrower to make payments of interest or principal. Although the Investment Manager believes neither it nor the Company (or any entity through which the Company invests) will bear responsibility in the event of a product liability claim against the company manufacturing, marketing and selling the Products, there can be no assurance that such claims would not materially and adversely affect the related Debt Asset and, ultimately, the Company.

Risks related to price gouging claims

Governmental and other pressures to reduce pharmaceutical costs, including from third party payers such as health-maintenance organisations and health insurers, have resulted in increased public scrutiny over life science product pricing, particularly in the US. Any legislation or regulations made to address the rising costs to consumers of life science products in the US or any other jurisdiction where a Product is sold could impact Product sales, which could cause the Product to generate insufficient royalties for the Company to be paid interest and principal in respect of the related Debt Asset. Furthermore, the manufacturers, developers or marketers of the Products could become subject to liability claims with respect to Product pricing. In addition to the manufacturers, developers or marketers bearing the costs associated with litigation, such claims could materially and adversely affect Product sales and the amount of royalty payments, and, consequently, could materially and adversely affect the ability of a Borrower to make payments of interest or repayments of principal.

Sales risk

Sales from Products may be lower than their historical levels or lower than the amounts projected due to pricing pressures, insufficient demand, product competition, lack of market acceptance, obsolescence, safety or efficacy issues, product manufacturing or commercialisation problems, loss of patent protection or statutory marketing protection, successful assertion of third party patent rights, or other factors, including those described elsewhere in this Prospectus. Lower sales from Products would materially and adversely affect the royalty payments generated from the Products which could materially and adversely affect the related Debt Asset and, ultimately, the Company.

Independent licensees

Some of the revenue received by the Company consists of royalties paid by the licensees or, in the case of bonds or other securities collateralised by Royalty Collateral, payments supported by royalties paid by the licensees. These licensees are not owned by or affiliated with the Company, any entity through which the Company invests, the Investment Manager, its principals, or the Board, and some of these licensees may have interests that are different from the Company's interests. These licensees may be motivated to maximise income by allocating resources to other products and, in the future, may decide to focus less attention on the Products. There can be no

assurance that each of these licensees has adequate resources and motivation to continue to produce, market and sell the Products. Aside from any limited audit rights relating to the activities of the licensees that the Company (or any entity through which the Company invests) may have in certain circumstances, neither the Company, any entity through which the Company invests, the Investment Manager, its principals, nor the Board, has oversight rights with respect to the licensees' operations. The Company also has limited information on the licensees' operations. While the Company may be able to receive certain information relating to sales of Products through the exercise of the audit rights and review of royalty reports, the Company will not have the right to review or receive certain other information relating to Products, including the results of any studies conducted by the licensees or others or complaints from doctors or users of Products, that the licensees may have. The market performance of the Products, therefore, may be diminished by any number of factors relating to the licensees that are beyond the control of the Company, the Investment Manager, its principals and the Board.

Generic substitutes

Although the Products are based upon patents and/or patent applications with exclusive rights, a regulatory authority may authorise marketing by a third party for a generic substitute for a Product, in which case the Product would become subject to competition from such generic substitute. The absence of marketing expenses generally permits generic substitutes to be sold at significantly lower prices than branded products. Governmental and other pressures to reduce pharmaceutical costs, including from third party payers such as health-maintenance organisations and health insurers, could result in physicians or pharmacies increasingly using generic substitutes for the Products. Availability of and competition with generic substitutes may affect the sales of a Product which could materially and adversely affect the value of the related Debt Asset and, ultimately, the Company.

Manufacturing and supply risk

Pharmaceutical products, and in particular biopharmaceutical products, are manufactured in specialised facilities that require the approval of, and ongoing regulation by, the FDA in the United States and, if manufactured outside of the United States, foreign regulatory agencies. With respect to the Products, to the extent operational standards set by such agencies are not adhered to, manufacturing facilities may be closed or the production of such Products interrupted until such time as any deficiencies noted by such agencies are remedied. Any such closure or interruption may interrupt, for an indefinite period of time, the manufacture and distribution of a Product.

In addition, manufacturers of such Products may rely on third parties for packaging of the Products or to supply bulk raw material used in the manufacture of the Products. In the United States, the FDA requires that all suppliers of pharmaceutical bulk materials and all manufacturers of pharmaceuticals for sale in or from the United States achieve and maintain compliance with the FDA's current "Good Manufacturing Practice" (or "GMP") regulations and guidelines.

Licensees generally rely on a small number of key, highly specialised suppliers, manufacturers and packagers. Any interruptions, however minimal, in the operation of these manufacturing and packaging facilities could have a material adverse effect on Product sales which, in turn, would adversely affect the royalty payments generated from the Products. A reduction or fall in the royalty payments would materially and adversely affect the value of the related Debt Asset and, ultimately, the Company.

The marketers of the Products are, generally, entirely responsible for the ongoing regulatory approval, commercialisation, manufacturing and marketing of the Products.

Generally, the holders of royalties on the Products have granted exclusive regulatory approval, commercialisation, manufacturing and marketing rights to the marketers of the Products. The marketers have full control over those efforts and sole discretion to determine the extent and priority of the resources it will commit to its program for a Product. Accordingly, the successful commercialisation of the Products depends on the marketer's efforts and is beyond the Company's or the Investment Manager's control. If a marketer does not devote adequate resources to the ongoing regulatory approval, commercialisation and manufacture of a Product for any reason, the Product's sales may not generate sufficient royalties for the Company to be paid interest and principal in respect of the related Debt Asset, and consequently, this may materially and adversely affect the Company's ability to make adequate distributions to Shareholders.

License agreements relating to the Products may, in some instances, be unilaterally terminated

Certain license agreements relating to the Products may be terminated, which may adversely affect sales of such Products. For example, under certain license agreements, licensees retain the right to unilaterally terminate the agreements with the licensors. When the last patent covering a Product expires or is otherwise invalidated in a country, a licensee may be economically motivated to terminate its license agreement, either in whole or with respect to such country, in order to terminate its relevant obligations. In the event of such a termination, a licensor may be unable to secure all of the necessary resources to continue developing and commercialising a Product in the countries as to which the license agreement has been terminated.

In addition, license agreements may fail to provide significant protection for failure to perform or in the event of disputes.

If a licensee were to default on its obligations under a license agreement, the licensor's remedy may be limited to either terminating certain licences related to certain countries or generally terminating the license agreement with respect to such country. In addition, if a licensee were to initiate or become subject to a bankruptcy proceeding, royalty payments relating to the applicable Product may be delayed during the pendency of such a proceeding, and may ultimately not be made in full, or at all.

Any such delays or disruptions in the development and commercialisation of a Product may adversely impact the sales from that Product. In turn, any fall or reduction in sales of a Product would adversely affect the royalty payments generated from that Product which would materially and adversely affect the related Debt Asset and, ultimately, the Company.

An insolvency of a marketer could adversely affect the rights of the Borrower to receive royalty payments

If a marketer were to become insolvent and seek to reorganise under Chapter 11 of Title 11 of the US Code, as amended (the "**Bankruptcy Code**"), or liquidate under Chapter 7 of the Bankruptcy Code, such event could delay the payment of the amounts due under a license agreement, pending a resolution of the bankruptcy proceedings. Any unpaid royalty payments due for the period prior to the filing of the bankruptcy proceeding would be unsecured claims against the marketer. While royalty payments due for periods after the filing may qualify as administrative expenses entitled to a higher priority, the actual payment of such post-filing royalty payments could be delayed for a substantial period of time and might not be in the full amount due under the license agreement. The licensor would be prevented by the automatic stay from taking any action to enforce their rights without the permission of the bankruptcy court. In addition, the marketer could elect to reject the license agreement, which would require the licensor to undertake a new effort to market the applicable Product with another distributor. Such proceedings could adversely affect the ability of the Borrower under the relevant Debt Asset to make payments of interest or principal on that Debt Asset, and could consequently materially and adversely affect the Company.

The Company depends on third parties to maintain, enforce and defend patent rights on the Products

The Company's right (or the right of any entity through which the Company invests) to receive royalty payments for Products (whether under the terms of any Debt Asset (for example, Priority Royalty Tranches) or upon enforcement of any security granted in relation to any Debt Asset) generally depends on the existence of valid and enforceable claims of registered and/or issued patents in the United States and elsewhere throughout the world. The Products in respect of which the Company receives the payments mentioned above are dependent on patent protection for the Products and on the fact that the manufacturing, marketing and selling of such Products does not infringe intellectual property rights of third parties. In most cases, the Company has no ability to control the prosecution, maintenance, enforcement or defence of patent rights, but must rely on the willingness and ability of the relevant Borrower to do so. While the Investment Manager believes that the parties required or entitled to maintain, enforce and defend the underlying patent rights are in the best position and have the requisite business and financial motivation to do so, there can be no assurance that these third parties will vigorously maintain, enforce or defend such rights. Even if such third parties seek to maintain, enforce or defend such rights, they may not be successful. Any failure to successfully maintain, enforce or defend such rights would have a material adverse effect on the ability of the relevant Borrower to make payments of interest and principal on its debt obligations, and could consequently materially and adversely affect the Company. The Company

could incur substantial litigation costs if it is necessary to assert its interest in intellectual property or contractual rights, or to participate in patent suits brought by third parties.

Infringement of third party patents

The commercial success of the Products depends, in part, on avoiding infringement of the proprietary technologies of others. Third party issued patents or patent applications claiming subject matter necessary to manufacture and market the Products could exist. Such third party patents or patent applications may include claims directed to the mechanism of action of the Products. There can be no assurance that a licence would be available to licensees for such subject matter if such infringement were to exist or, if offered, would be offered on reasonable and/or commercially feasible terms. Without such a license, it may be possible for third parties to assert infringement or other intellectual property claims against the licensees based on such patents or other intellectual property rights. An adverse outcome in infringement proceedings could subject the licensees to significant liabilities to third parties, require disputed rights to be licensed from third parties or require the licensees to cease or modify their manufacturing, marketing and distribution of the Products. Any such cessation would adversely impact the sales from that Product which in turn, would adversely affect the royalties generated from that Product. This would materially and adversely impact the related Debt Asset and, ultimately, the Company.

Trade secrets

The Company's right (or the right of any entity through which the Company invests) to receive payments in respect of royalties depends, in part, on trade secrets, know-how and technology, which are not protected by patents, to maintain the licensees' competitive position. This information is typically protected through confidentiality agreements entered into with parties that have access to such information, such as collaborative partners, licensors, employees and consultants. Any of these parties may breach their confidentiality agreement and disclose the confidential information, or competitors might learn of the information in some other way. Such breaches would adversely affect the competitiveness and marketability of the relevant Product which would in turn, impact the revenues generated from the sales of that Product. A fall in revenues would adversely affect the royalty payments generated from that Product, which would adversely affect the value of the related Debt Asset and, ultimately, the Company.

Finite terms

The rights to receive the payments in respect of royalties have limited terms that are generally not subject to extension. Following the expiration of the patent, or the termination of the licence or the contractual right to receive payments under any agreement pursuant to which the Company (or any entity through which the Company invests) has the right to receive payments in respect of royalties, the Company will not receive any revenue related to the sale of the related Product even if the Product continues to be sold.

RISKS RELATING TO THE INVESTMENT MANAGER

The success of the Company depends on the ability and expertise of the Investment Manager

In accordance with the Investment Management Agreement, the Investment Manager is responsible for the investment management of the Company's assets. The Company does not have employees and all of its Directors are appointed on a non-executive basis. All of its investment and asset management decisions are made by the Investment Manager (or any delegates thereof) and not by the Company and, accordingly, the Company is completely reliant upon, and its success will depend on, the Investment Manager and its personnel, services and resources. The Investment Manager is required, under the terms of the Investment Management Agreement, to perform in accordance with the Service Standard. However, the Company will only be entitled to terminate the Investment Management Agreement in the event that the Investment Manager has (i) committed fraud, gross negligence or wilful misconduct in the performance of its obligations under the Investment Management Agreement, or (ii) breached its obligations under the Investment Management Agreement (including the Service Standard), and the Company is reasonably likely to suffer a loss arising directly or indirectly out of or in connection with such breach of an amount equal to or greater than 10 per cent. of the NAV as at the date of the breach. Under the terms of the Investment Management Agreement, the Investment Manager is only liable to the Company (and will only lose its indemnity) if it has committed fraud, gross negligence or wilful misconduct or

acted in bad faith, or knowingly violated applicable securities laws. The Investment Manager will not submit individual investment decisions to the Board for approval.

In particular, the performance of the Company is dependent on the diligence, skill and judgment of certain key individuals at the Investment Manager, including Pedro Gonzalez de Cosio and other senior investment professionals and the information and investments pipeline generated through their business development efforts. On the occurrence of a Key Person Event, the Company may be entitled to terminate the Investment Management Agreement with immediate effect (subject to the Investment Manager's right to find an appropriate replacement to be approved by the Board (such approval not to be unreasonably withheld or delayed) within 180 days). However, if the Company elects to exercise this right, it would be required to pay the Investment Manager a termination fee equal to either 1 per cent. or 2 per cent. of the invested NAV (depending on the reason for the Key Person Event), as at the date of such termination. If the Company elects not to exercise this right, the precise impact of a Key Person Event on the ability of the Company to achieve its investment objective and target returns cannot be determined and would depend *inter alia* on the ability of the Investment Manager to recruit individuals of similar experience, expertise and calibre. There can be no guarantee that the Investment Manager would be able to do so and this could adversely affect the ability of the Company to meet its investment objective and target returns and may adversely affect the Net Asset Value and Shareholder returns and result in a substantial loss of a Shareholder's investment.

The Investment Manager's ability to source and advise appropriately on investments

Returns on the Shareholders' investments will depend upon the Investment Manager's ability to source and make successful investments on behalf of the Company. Notwithstanding the existing portfolio of Debt Assets, there can be no assurance that the Investment Manager will be able to do so on an on-going basis. Many investment decisions of the Investment Manager will depend upon the ability of its employees and agents to obtain relevant information. There can be no guarantee that such information will be available or, if available, can be obtained by the Investment Manager and its employees and agents. Further, the Investment Manager will often be required to make investment decisions without complete information or in reliance upon information provided by third parties that is impossible or impracticable to verify. For example, the Investment Manager may not have access to records regarding the complaints received regarding a given life science product or the results of research and development ("R&D") related to products. Furthermore, the Company may have to compete for attractive investments with other public or private entities, or persons, some or all of which may have more capital and resources than the Company. These entities may invest in potential investments before the Company is able to do so or their offers may drive up the prices of potential investments, thereby potentially lowering returns and, in some cases, rendering them unsuitable for the Company.

An inability to source investments would have a material adverse effect on the Company's profitability, its ability to achieve its target returns and the value of the Shares.

The Manager Affiliated Parties provide services to other clients that compete directly or indirectly with the activities of the Company and are subject to conflicts of interest in respect of its/their activities on behalf of the Company

The Manager Affiliated Parties, being the Investment Manager, its principals and their respective Affiliates, are involved in other financial, investment or professional activities that give rise to conflicts of interest with the Company. In particular, the Manager Affiliated Parties provide investment management and related services to other Managed Entities.

Consequently, the Investment Manager is not required to commit all of its resources to the Company's affairs. Insofar as the Investment Manager devotes resources to satisfy its responsibilities to other business interests, its ability to devote resources and attention to the Company's affairs will be correspondingly less.

Depending on the circumstances, the Manager Affiliated Parties may give advice or take action with respect to the Managed Entities that differs from the advice given or action taken with respect to the Company, even though their investment policies may be the same or similar as that of the Company.

The Investment Manager may from time to time encounter conflicts of interest where, for example, it or any of its Affiliates has a relationship with a Borrower, the royalty obligor for the Product, or the assignor of a Debt Asset in a given transaction it is executing for the Company. This is likely

to be the case, in particular, where the assignor or transferor of a Debt Asset to the Company is one of the Managed Entities (such as was the case for the BioPharma III Interest and the RPS Note).

Such conflicts could interfere with the investment management of the Company which, in turn, could adversely affect the Company's ability to achieve its investment objective, which could have a material adverse effect on the Company's profitability, Net Asset Value and returns to Shareholders.

The Investment Manager's information and technology systems may be vulnerable to cyber security breaches and there is a risk of identity theft

The Investment Manager's information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorised persons and security breaches, usage errors by its professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. If the Investment Manager's information and technology systems are compromised, become inoperable for extended periods of time or cease to function properly, the Investment Manager and/or the Company may have to make a significant investment to fix or replace them. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's and/or the Company's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors. Such a failure could harm the Investment Manager's and/or the Company's reputation, subject any such entity and their respective affiliates to legal claims and otherwise affect their business and financial performance.

The Manager Affiliated Parties may come into possession of material, non-public information that may constrain the Company's investment flexibility

The Manager Affiliated Parties may come into possession of material, non-public information that will limit the ability to buy and sell investments. The Company's investment flexibility may be constrained because of the Investment Manager's inability to use such information for investment purposes.

The Board may not be able to find a replacement investment manager if the Investment Manager resigns

Under the terms of the Investment Management Agreement, the Investment Management Agreement may be terminated by: (A) the Investment Manager on not less than 6 months' notice to the Company, such notice not to expire earlier than 18 months following First Admission; or (B) the Company on not less than 6 months' notice to the Investment Manager, such notice not to expire earlier than: (i) 36 months following First Admission, unless approved by Shareholders by ordinary resolution; and (ii) 18 months following First Admission, in any event.

In the event of termination, the Board would have to find a replacement investment manager for the Company. A replacement with the necessary skills and experience may not be available and/or may not be able to be appointed on terms acceptable to the Company. In this event, the Board may have to formulate and put forward to Shareholders proposals for the future of the Company which may include its merger with another investment company, reconstruction or winding up.

Following the termination of the Investment Manager's appointment, the Investment Manager may continue to have a role in the investment management of certain assets, where a Debt Asset is shared with one or more other Managed Entities that continue to retain the Investment Manager's services. In such a situation, the Investment Manager may act in a way that may benefit the relevant Managed Entity but is adverse to the Company's interests in that Debt Asset. Such actions may have a material adverse effect on the Company's returns from such a Debt Asset.

The investment allocation policy of the Investment Manager could prejudice investment opportunities available to, and investment returns achieved by, the Company

The Manager Affiliated Parties have conflicts of interest in allocating investments among the Company and other Managed Entities (including any co-investment opportunities between the Company and other Managed Entities) and in effecting transactions between the Company and other Managed Entities, including transactions in which the Manager Affiliated Parties may have a financial interest.

The Investment Manager has discretion to allocate the capital of the Company and other Managed Entities. The Investment Manager's approach to allocation is set out in paragraph 7 under "Allocation of Investment Opportunities" of Part III (The Investment Manager) of this Prospectus. It may not always be possible to allocate to the Company every investment opportunity that the Investment Manager believes would be appropriate and desirable for the Company. The allocation policy may affect the Company's access to investment opportunities, which in turn may adversely impact its performance, and, by extension, the Company's business, financial condition, results of operations, Net Asset Value and Shareholder returns.

Furthermore, the Investment Manager has the discretion to co-invest the capital of the Company with the capital of a Managed Entity. In such circumstances, the Investment Manager may decide to make such investments that are in the best interests of the Company and the co-investing Managed Entities as a whole, which may be in conflict with the best interests of the Company itself. The Company may not hold the controlling interest in such co-investment and therefore may have limited rights in relation to the Debt Assets (for example in relation to decisions as to disposal).

No reliance should be placed by investors on the past performance of the Company or other investment vehicles or accounts managed by the Investment Manager

This Prospectus contains historical financial performance information in relation to the Company and other Managed Entities. The past performance of the investments in the Company and these Managed Entities cannot be relied upon as an indicator of the future performance of the Company. The Company's investment strategy, and the nature and risks associated with the Company's assets, may differ from those of the Managed Entities. Although in many cases the Company's assets will be the same or similar to those held in the Managed Entities, the Company cannot guarantee that this will be the case at all times and in all circumstances and can offer no assurance that the assets (or any part thereof) will perform as well as the past investments made by the Investment Manager for the Managed Entities; that gains and income will be generated; or that any gains or income that may be generated on particular assets will be sufficient to offset any losses sustained.

Performance fees may create incentives for speculative investments by the Investment Manager

The performance fee payable to the Investment Manager may result in substantially higher payments to the Investment Manager than would have arisen had alternative arrangements, sometimes found in other investment vehicles, been entered into instead. The existence of the performance fee may create an incentive for the Investment Manager to make riskier or more speculative investments than it would make in the absence of such a fee.

Operational risks may disrupt the Investment Manager's businesses, result in losses or limit the Company's growth

The Company relies heavily on the financial, accounting and other data processing systems of the Investment Manager. If any of these systems do not operate properly or are disabled, the Company could suffer financial loss or reputational damage. In addition, the Company may invest in businesses that are highly dependent on information systems and technology. A disaster or a disruption in the infrastructure that supports the Debt Assets or their underlying Products, or a disruption involving electronic communications or other services used by the Investment Manager or third parties with whom the Company conducts business, could have a material adverse impact on the ability of the Company to continue to operate its business without interruption. The disaster recovery programmes used by the Investment Manager or third parties with whom the Company conducts business may not be sufficient to mitigate the harm that may result from such disaster or disruption.

Litigation against the Investment Manager or the Company may disrupt its investment strategy and growth

It is also possible that, from time to time, the Investment Manager or the Company will be named as parties to litigation or become involved in regulatory inquiries, which could cause substantial reputational damage to the Investment Manager or the Company or disrupt its investment strategy, businesses or potential growth and have a material adverse effect on the Net Asset Value and returns to Shareholders.

Failure of the Investment Manager to comply with US regulatory requirements could prevent the Investment Manager from providing services to the Company to the detriment of investors in the Company

The Investment Manager is registered as an investment adviser under the United States Investment Advisers Act of 1940, as amended (the “**Advisers Act**”). Accordingly, the Investment Manager will be required to comply with all of the provisions of the Advisers Act and the rules thereunder that apply to registered advisers. While these provisions and rules are designed to protect investors, if the Investment Manager were to fail to comply with its obligations under the Advisers Act, the Investment Manager may be prohibited from engaging in a securities-related business. The occurrence of such a failure to comply may mean that the Investment Manager would be unable to fulfil its obligations under the Investment Management Agreement. Any interruption to the provision of investment management services to the Company could indirectly adversely impact the value of the Company’s existing investments and compromise its ability to make new investments.

RISKS RELATING TO REGULATION AND TAXATION

Changes in laws or regulations governing the Company’s or the Investment Manager’s operations may adversely affect the business and performance of the Company

The Company and Investment Manager are subject to laws and regulations enacted by national and local governments.

The Company is subject to, and will be required to comply with, certain legal and regulatory requirements that are applicable to UK investment trusts. The Company is subject also to the continuing obligations imposed on all investment companies whose shares are admitted to trading on the Specialist Fund Segment. The Company voluntarily complies with many of the Listing Rules applicable to closed-ended investment companies which are listed on the Premium Listing Segment of the Official List of the UK Listing Authority. However, the UK Listing Authority will not monitor the Company’s voluntary compliance with the Listing Rules nor will it impose sanctions in respect of any failure of such compliance by the Company.

The Investment Manager is subject to, and will be required to comply with, certain regulatory requirements of the SEC, some of which affect the investment management of the Company.

The laws and regulations affecting the Company and/or the Investment Manager are evolving and any changes in such laws and regulations may have an adverse effect on the ability of the Company and/or the Investment Manager to carry on their respective businesses. For example, in the future it is also possible that the Investment Manager, notwithstanding that it is established and operating in the US, will be required to comply with domestic European regulations such as the AIFM Directive. Any such changes may have an adverse effect on the ability of the Company to pursue its investment policy, and may adversely affect the Company’s business, financial condition, prospects, results of operations, Net Asset Value and/or the market price of the Shares. In such event, the target returns of the Company may be materially affected.

Changes in taxation legislation or practice may adversely affect the Company and the tax treatment for Shareholders investing in the Company

Any change in the Company’s tax status, or in taxation legislation or practice in the UK or elsewhere, could affect the value of the Company’s portfolio of investments and the Company’s ability to achieve its investment objective, or alter the post-tax returns to Shareholders. Statements in this Prospectus concerning the taxation of the Company and taxation of Shareholders are based upon current UK tax law and published practice, any aspect of which is, in principle, subject to change that could adversely affect the ability of the Company to successfully pursue its investment policy and/or which could adversely affect the taxation of the Company and the Shareholders.

It is the intention of the Directors to continue to conduct the affairs of the Company so as to satisfy the conditions for approval of the Company by HMRC as an investment trust under section 1158 of the Corporation Tax Act 2010 (as amended) and pursuant to regulations made under section 1159 of the Corporation Tax Act 2010. However, although HMRC approval has been obtained, neither the Investment Manager nor the Directors can guarantee that this approval will be maintained at all times. The Company will continue to have investment trust status unless the Company fails to meet the requirements to maintain investment trust status so as to be treated as no longer approved by HMRC as an investment trust, pursuant to the regulations. For example, it is not possible to guarantee that the Company will remain a non-close company, which is a

requirement to maintain investment trust status, as the Shares are freely transferable. Failure to maintain investment trust status could, as a result, (*inter alia*) lead to the Company being subject to UK tax on its chargeable gains.

Potential investors should consult their tax advisers with respect to their particular tax situations and the tax effects of an investment in the Company.

Passive foreign investment company status

The Company believes that it is, and expects that it will continue to be, a passive foreign investment company (a “**PFIC**”) for US federal income tax purposes, which could result in materially adverse consequences for US investors, including additional tax liability and tax filing obligations for a US investor. The Company generally expects to make available to US investors certain information necessary to permit investors to make a “qualified electing fund” election with respect to the Company, which could mitigate some of the adverse tax consequences arising from the Company’s status as a PFIC to US investors. In addition, depending on whether the London Stock Exchange qualifies as a “qualified exchange or other market” for purposes of the PFIC rules and the actual trading volume of the Company’s Shares, a mark-to-market election may be available, which could also mitigate some of the adverse tax consequences arising from the Company’s status as a PFIC to US investors. US investors may also be affected by the rules applicable to a “controlled foreign corporation” (“**CFC**”) for US federal income tax purposes.

The CFC and PFIC rules may operate to disallow the benefits of tax deferral and to re-characterise as ordinary income certain income derived from an investment in a non-US corporation, such as the Company, that otherwise might have been characterised as capital gain for US federal income tax purposes, if any. Various US filing requirements may also apply.

Prospective US taxable and tax-exempt investors should consult with their own tax advisers regarding the potential application of the PFIC and CFC rules to them as a result of their investment in the Company and any lower-tier entities in which the Company may invest, in their particular circumstances.

The Company has taken certain steps to help maintain its status as a foreign private issuer which could materially adversely affect the trading price and liquidity of the Shares

The Company has a significant number of Shareholders who may be resident in the United States and such proportion could increase in the future. As the Investment Manager is based in the United States, the Company could lose its status as a “foreign private issuer” under the Securities Act and the Exchange Act if US residents come to own more than 50 per cent. of the Company’s voting securities, which for this purpose means securities the holders of which are presently entitled to vote in respect of the election of Directors. If the Company ceases to be a “foreign private issuer”, this could have materially adverse consequences for the Company—for example, the Company could be required to register with the SEC under the Exchange Act and/or under the Investment Company Act, which would subject the Company to potentially onerous and costly reporting requirements and substantive regulation with which the Company is not currently structured to comply.

The Company intends to conduct its business so far as possible so as to maintain its status as a foreign private issuer. As a result, the Company has taken steps such as imposing limitations on the voting rights attaching to Shares held by US residents and imposing certain restrictions on the ownership and transfer of Shares. Such steps could materially affect the ability of some investors to hold Shares, as well as the trading price and liquidity of the Shares. For further information, please refer to the sections entitled “Voting Rights” in Part I (The Company) and “United States transfer restrictions” and “Representations, Warranties and Undertakings” in Part VI (Issue Arrangements) of this Prospectus.

The Company may directly or indirectly incur US or non-US withholding tax

The Company believes that interest income realised from US sources should be exempt from US withholding tax (or be subject to a reduced rate of US withholding tax) either pursuant to an exemption under the US Tax Code (for example, the portfolio interest exemption) or pursuant to the provisions of the Treaty. As described below, however, the Company’s eligibility under the Treaty will depend, among other things, on the Publicly Traded Company Test (as defined below) and the actual trading of the Company’s Shares in each calendar year. In addition, there can be no assurance that the IRS (or, where relevant, any withholding agents) could not successfully

assert positions contrary to those taken by the Company. If the Company (i) was not treated as the beneficial owner of the relevant US source income received by it or (ii) was not eligible to claim benefits under the Treaty, the Company could be subject to US federal income tax withholding on a gross basis at a rate of 30 per cent. with respect to certain types of income received from US sources, including certain fee income and interest income, to the extent not treated as effectively connected with the conduct of a US trade or business. In addition, the Company may incur withholding tax with respect to income realised in any US state or local, or non-US jurisdiction.

Such withholding taxes, if any, would be expected to be incurred at the Company level and could have a material adverse effect on the performance of the Company and the Company's returns to Shareholders.

Shareholders may be subject to withholding and forced transfers under FATCA and there may also be reporting of Shareholders under other exchange of information agreements

FATCA imposes certain information reporting requirements on a foreign financial institution ("FFI") or other non-US entity and, in certain cases, US federal withholding tax on certain US source payments and gross proceeds from a sale of assets generating US source payments. The Company is likely to be considered an FFI, and will therefore have to comply with certain registration and reporting requirements in order not to be subject to US withholding tax under FATCA. In addition, the Company may be required to withhold US tax at the rate of 30 per cent. on "withholdable payments" or, after 31 December 2018, certain "foreign passthru payments", to persons that are not compliant with FATCA or that do not provide the necessary information or documents, to the extent such payments are treated as attributable to certain US source payments.

There can be no assurance that any payments in respect of the Shares will not be subject to withholding tax under FATCA. To the extent that such withholding tax applies, the Company is not required to pay any additional amounts. Accordingly, all prospective US and non-US Shareholders should consult their own tax advisers about the effect of FATCA on an investment in the Shares.

In addition to requirements under FATCA, the Organisation for Economic Co-operation and Development has developed a new global standard for the automatic exchange of financial information between tax authorities (the "**Common Reporting Standard**"). The Common Reporting Standard has been implemented in the EU through the Revised Directive on Administrative Co-Operation (Council Directive 2014/107/EU). The United Kingdom is a signatory jurisdiction to the Common Reporting Standard and conducted its first exchange of information with tax authorities of other signatory jurisdictions in September 2017. The requirements of the Common Reporting Standard may impose additional burdens and costs on the Company or Shareholders. Although the Company will attempt to satisfy any obligations imposed on it by the Common Reporting Standard, no assurance can be given that it will be able to satisfy such obligations. Implementation of the Common Reporting Standard may require the Company to conduct additional due diligence and report upon accounts held with it by Shareholders who are reportable persons in other participating jurisdictions. The Company may require certain additional financial information from Shareholders to comply with its diligence and reporting obligations under the Common Reporting Standard. Failure by the Company to comply with the obligations under the Common Reporting Standard may result in fines being imposed on the Company and in such event, the target returns of the Company may be materially and adversely affected.

The Company is likely to be regarded as a "covered fund" under the Volcker Rule. Any prospective investor that is or may be considered a "banking entity" under the Volcker Rule should consult its legal advisers regarding the potential impact of the Volcker Rule on its investments and other activities prior to making any investment decision with respect to the Shares or entering into other relationships or transactions with the Company

Section 13 of the US Bank Holding Company Act of 1956, as amended, and Regulation VV (12 C.F.R. Section 248) promulgated thereunder by the Board of Governors of the Federal Reserve System (such statutory provision together with such implementing regulations, the "**Volcker Rule**"), generally prohibits "banking entities" (which term is broadly defined to include any US bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation, any company that controls any such bank or savings association, any non-US bank treated as a bank holding company for purposes of Section 8 of the US International Banking Act of 1978, as amended, and any affiliate or subsidiary of any of the foregoing entities) from: (i) engaging in proprietary trading as defined in the Volcker Rule; (ii) acquiring or retaining an

“ownership interest” in, or “sponsoring”, a “covered fund”; and (iii) entering into certain other relationships or transactions with a “covered fund”.

The Volcker Rule generally defines an entity as a “covered fund” if, among other things, the entity would be an “investment company” as defined under the Investment Company Act were it not for section 3(c)(1) or section 3(c)(7) thereof. Because the Company has structured itself and offerings of its Shares so as to qualify for an exemption under section 3(c)(7) of the Investment Company Act, the Company is likely to be regarded as a “covered fund” under the Volcker Rule.

Any prospective investor that is or may be considered a “banking entity” under the Volcker Rule should consult its legal advisers regarding the potential impact of the Volcker Rule on its investments and other activities, prior to making any investment decision with respect to the Shares or entering into other relationships or transactions with the Company. If the Volcker Rule applies to an investor’s ownership of Shares, the investor may be forced to sell its Shares or the continued ownership of Shares may be subject to certain restrictions.

The Company has not, does not intend to become and may be unable to become registered as an investment company under the Investment Company Act

The Company has not, does not intend to become and may be unable to become registered with the SEC as an “investment company” under the Investment Company Act and related rules which provide certain protections to investors and impose certain restrictions on companies that are registered as investment companies. As the Company is not so registered, does not intend to so register and may be unable to so register, none of these protections or restrictions are or will be applicable to the Company. However, if the Company were to become subject to the Investment Company Act because of a change of law or otherwise, the various restrictions imposed by the Investment Company Act, and the substantial costs and burdens of compliance therewith, could adversely affect the operating results and financial performance of the Company. Moreover, parties to a contract with an entity that has improperly failed to register as an investment company under the Investment Company Act may be entitled to cancel or otherwise void their contracts with the unregistered entity and shareholders in that entity may be entitled to withdraw their investment. In order to ensure compliance with the exemptions that permit the Company to avoid being required to register as an investment company under the Investment Company Act and related rules, the Company has implemented restrictions on the ownership and transfer of Shares, which may materially affect an investor’s ability to hold or transfer Shares and may in certain circumstances require the investor to transfer or sell its Shares. For further information, please refer to the sections entitled “United States transfer restrictions” and “Representations, Warranties and Undertakings” in Part VI (Issue Arrangements) of this Prospectus.

The ability of certain persons to hold Shares and make secondary transfers in the future may be restricted as a result of ERISA and other regulatory considerations

Each initial purchaser and subsequent transferee of Shares will be required to represent and warrant or will be deemed to represent and warrant that it is not a “benefit plan investor” (as defined in Section 3(42) of ERISA), and that it is not, and is not using assets of, a plan or other arrangement subject to provisions under applicable federal, state, local, non-US or other laws or regulations that are substantially similar to Section 406 of ERISA or Section 4975 of the US Tax Code unless its purchase, holding and disposition of Shares does not constitute or result in a non-exempt violation of ERISA, Section 4975 of the US Tax Code or any such substantially similar law. In addition, under the Articles, the Board has the power to refuse to register a transfer of Shares or to require the sale or transfer of Shares in certain circumstances, including any purported acquisition or holding of Shares by a Benefit Plan Investor.

Under the Articles, the Board has the power to require the sale or transfer of Shares, or refuse to register a transfer of Shares, in respect of any Non-Qualified Holder (as defined in the Articles). In addition, the Board may require the sale or transfer of Shares held or beneficially owned by any person who refuses to provide information or documentation to the Company which results in the Company suffering US tax withholding charges. Prospective investors should refer to the section entitled “Articles of Association” in Part VIII (Additional Information on the Company) of this Prospectus.

The Company may be subject to US Net Income Taxation

Although the Company intends to conduct its activities in a manner so as to not be treated as engaged in the conduct of a US trade or business, it is possible that income derived from certain

of its activities may be deemed to be income effectively connected with the conduct of a US trade or business for US federal income tax purposes and, therefore, subject to US federal income taxation. The Company could be treated as engaged in the conduct of a US trade or business if it conducts, or is treated as conducting through any of its agents for US federal income tax purposes, certain activities in the United States on a regular, continuous and substantial basis. Although not free from doubt, the Company has acquired debt interests with, and expects that future debt interests will be acquired with, “investor” intent and, therefore, the Company should not be treated as engaged in the conduct of a US trade or business for US federal income tax purposes. However, due to uncertainty regarding both the law in the area and the specific nature and frequency of the activities in which the Company may engage, it is possible that the Company may be treated as engaged in the conduct of a US trade or business. Even if the Company is so treated, the Company intends to conduct its affairs such that it should not be treated as carrying on such US trade or business through a permanent establishment situated in the United States within the meaning of the Treaty. As described below, however, the Company’s eligibility under the Treaty will depend, among other things, on the Publicly Traded Company Test (as defined below) and the actual trading of the Company’s Shares in each calendar year. Although the concept of a “permanent establishment” is somewhat open to interpretation, the Treaty specifically provides that a UK entity will not be deemed to have a permanent establishment in the United States merely because it carries on business in the United States through a broker, general commission agent, or “any other agent of an independent status,” provided that such persons are acting in the ordinary course of their business as independent agents. The Company believes that its anticipated activities, as well as the legal and economic relationship between the Company and the Investment Manager, will support the position that the Investment Manager should be treated as an “agent of an independent status” acting in the ordinary course of its business within the meaning of the Treaty and, as a result, that the Company should not be carrying on a US trade or business through a permanent establishment situated in the United States. However, since the Company’s positions are based on certain legal and factual determinations and given the absence of direct authority on point, the US federal income tax treatment of the Company is not free from doubt, and there can be no assurance that positions contrary to those taken by the Company may not be asserted successfully by the IRS (including, without limitation, with respect to the Transaction Fee offset described above).

Subject to the foregoing, the Company believes that it is, and expects that it will continue to be, entitled to all benefits of the Treaty because: (i) it is a resident of United Kingdom within the meaning of Article 4 of the Treaty; and (ii) it is a “qualified resident” for the purposes of the Treaty, and, thus, meets the requirements of the Limitation on Benefits (“**LOB**”) provision in Article 23 of the Treaty. The Company is a UK tax resident investment trust and, as such, is liable for tax in the United Kingdom on its income. In addition, to be eligible for “qualified resident” status under the LOB provision of the Treaty, the Company’s principal class of shares must be: (i) listed or admitted to dealings on a recognised stock exchange; and (ii) regularly traded on one or more recognised stock exchanges (the “**Publicly Traded Company Test**”). The London Stock Exchange is listed as a “recognised stock exchange” in the Treaty. However, to be considered “regularly traded” for purposes of the Publicly Traded Company Test, the aggregate number of the Company’s principal class of shares traded on one or more recognised stock exchanges must be at least 6 per cent. of the average number of shares of such class outstanding during (i) the 12 months ending on the day before the beginning of the relevant taxable year, or (ii) if such class of shares was not listed on a recognised stock exchange in such 12 month period, during the taxable period in which the relevant income arises. For these purposes, authorised but unissued shares are disregarded. Although the Company generally expects that, based on listed entities with a similar investment policy, the Shares will satisfy this “regular trading” condition, since meeting this condition depends on the actual trading of the Company’s Shares in any taxable year, there can be no assurance that the Shares will be so traded. Investors should consult their own tax advisers in this regard.

If the Company (i) is considered to be engaged in the conduct of a US trade or business and (ii) is not eligible for benefits under the Treaty or is treated as carrying on such US trade or business through a US permanent establishment (as a result of an unexpected change in the intended method of operation or a contrary interpretation by the IRS), the Company’s income that is attributable to such trade or business or permanent establishment, as applicable, may be subject to regular US federal and, potentially, state and local income taxation on a net basis. In addition, the Company may be subject to an additional “branch profits tax” at a rate of 30 per cent. (which may

be reduced under the Treaty to 5 per cent.) on its net income remaining after payment of the regular tax.

Although Shareholders not otherwise subject to US federal income tax should not be subject to any US reporting obligations or the payment of any US federal income tax directly as a result of an investment in the Company, any tax liability at the Company level could have a material adverse effect on the performance of the Company and the Company's returns to Shareholders.

RISKS RELATING TO AN INVESTMENT IN THE SHARES

Investing in the Shares may involve a high degree of risk

Market conditions, or significant changes thereto, may adversely impact the Company's ability to achieve its investment objective and pursue its investment policy successfully and the market price of the Shares may fluctuate significantly, particularly in the short term. Potential investors should not regard an investment in the Shares as a short-term investment. Investors may not recover the full amount initially invested, or any amount at all.

As with any investment, the share price of the Shares may fall in value with the maximum loss on such investments being equal to the value of the initial investment and, where relevant, any gains or subsequent investments made.

The Shares may trade at a discount to Net Asset Value

The Shares including, in the case of any C Shares, any Correspondent Ordinary Shares, may trade at a discount to the Net Asset Value per share of the relevant class of Shares for a variety of reasons, including due to market or economic conditions or to the extent investors undervalue the management activities of the Investment Manager. While the Directors may, and in certain circumstances as detailed in Part I (The Company) of this Prospectus will, seek to mitigate any discount to Net Asset Value per share of each class of Shares through such discount management mechanisms as they consider appropriate, there can be no guarantee that they will do so or that such mechanisms will be successful. As a result of this, investors that dispose of their interests in the secondary market may realise returns that are lower or higher than they would have if an amount equivalent to the Net Asset Value of their interests was distributed.

The price that can be realised for Shares can be subject to market fluctuations

Potential investors should not regard an investment in the Shares as a short-term investment. Shareholders may not recover the full amount initially invested, or any amount at all. The market price of the Shares may fluctuate significantly and Shareholders may not be able to sell their Shares at or above the price at which they purchased them. Factors that may cause the price of the Shares to vary include those detailed in the risk disclosures made in this Prospectus, such as: changes in the Company's financial performance and prospects, or in the financial performance and market prospects of the Company's assets or those which are engaged in businesses that are similar to the Company's business; the termination of the Investment Management Agreement or the departure of some or all of the Investment Manager's key investment professionals; changes in or new interpretations or applications of laws and regulations that are applicable to the Company's business or to the companies in which the Company makes investments; sales of Shares (including any Correspondent Ordinary Shares arising on Conversion) by Shareholders; general economic trends and other external factors, including those resulting from war, incidents of terrorism or responses to such events; poor performance in any of the Investment Manager's activities or any event that affects the Investment Manager's reputation; and speculation in the press or investment community regarding the Company's business or assets or factors or events that may directly or indirectly affect the Company's business or assets.

Securities markets in general have experienced extreme volatility that has often been unrelated to the operating performance or fundamentals of particular companies. Market fluctuations may adversely affect the trading price of the Shares (including any Correspondent Ordinary Shares arising on Conversion). Furthermore, potential investors should be aware that a liquid secondary market in the Shares cannot be assured.

As with any investment, the share price of the Shares (including any Correspondent Ordinary Shares arising on Conversion) may fall in value with the maximum loss on such investments being equal to the value of the initial investment and, where relevant, any gains or subsequent investments made.

There may not be a liquid market in the Shares and Shareholders have no right to have their Shares redeemed or repurchased by the Company

Admission should not be taken as implying that there will be an active and liquid market for the Shares. The number of Issue Shares to be issued pursuant to the Issue is not yet known and there may, on Admission, be a limited number of holders of Shares. Limited numbers and/or holders of Shares may mean that there is limited liquidity in such Shares, which may affect: (i) an investor's ability to realise some or all of his investment; and/or (ii) the price at which such investor can effect such realisation; and/or (iii) the price at which such Shares trade in the secondary market.

The Company is a closed-ended investment company.

Each class of Shares may have a highly concentrated portfolio of investments

Each class of Shares will form a separate pool of assets and liabilities. In the case of each class of C Shares, it will remain a separate class of Shares from the Ordinary Shares until Conversion. Each class of C Shares will form a separate underlying pool of assets and liabilities from other classes of C Shares. The investment restrictions set out in the Company's investment objective and investment policy, however, are measured against the gross assets of the Company as a whole without regard to which class of Shares they are attributable to. For the purposes of calculating the Company's exposure to any single Borrower, Unsecured Debt or equity securities issued by any LifeSci Company for the purposes of complying with the investment restrictions that form part of the Company's investment objective and policy, the Company will disregard the segregation of assets between different classes of Shares. Consequently, a class of Shares may have a higher concentration in the assets attributable to that class of Shares than the investment limits set out in the Company's investment objective and policy until all classes of C Shares issued under the Placing Programme have been converted into Ordinary Shares. This may result in a disproportionately large impact on one class of Shares over other classes of Shares. For the risks related to concentration, please see "Concentration in the Company's portfolio may affect the Company's ability to achieve its investment objective".

For example, in relation to a class of C Shares, if a large Debt Asset is impaired for any reason prior to Conversion, this will have a negative impact on the Net Asset Value attributable to such class of C Shares and not any other class of Shares which, in turn, will have a negative impact on the Conversion Ratio determined for such class of C Shares on Conversion resulting in a lesser number of Correspondent Ordinary Shares.

Similarly, if a Debt Asset attributable to the Ordinary Shares is impaired for any reason prior to Conversion, this will have a negative impact on the Net Asset Value attributable to the Ordinary Shares but not any class of C Shares existing at that time and, on Conversion of any class of C Shares, this will result in a higher Conversion Ratio and a greater dilution of holdings of holders of Ordinary Shares than would have otherwise been the case.

The existence of a liquid market in any class of C Shares cannot be guaranteed

The Company has applied for the C Shares issued in connection with the Initial Placing and Offer to be admitted to trading on the Specialist Fund Segment and to listing and trading on Official List of TISEA. The Company will make similar applications for C Shares issued in connection with any subsequent Placing. Each class of C Shares will constitute a separate class of Shares, with a separate underlying pool of assets and each class shall be independent of each other. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. Each class of C Shares will have a separate Net Asset Value per C Share (calculated by reference to the assets attributable to that class of C Shares divided by the number of C Shares issued in that class). There can be no guarantee that a liquid market in any class of C Shares will develop or be sustained or that the C Shares of any class will trade at prices close to their respective underlying net asset values. The number of C Shares to be issued pursuant to the Initial Placing and Offer or through any subsequent Placing is not yet known, and there may be a limited number of holders of C Shares issued pursuant to the Initial Placing and Offer or any subsequent Placing. Limited numbers and/or holders of C Shares in a class may mean that there is limited liquidity in such class of C Shares which may affect: (i) a Shareholder's ability to realise some or all of their investment; (ii) the price at which such Shareholder can effect such realisation; and/or (iii) the price at which C Shares in that class trade in the secondary market. Accordingly, Shareholders may be unable to realise their investment at net asset value or at all.

C Shares may suffer greater volatility in discounts and may be more illiquid than Ordinary Shares

The shares of investment trusts and other listed closed-ended funds may trade at a discount to the underlying net asset value per share. The Directors will consider using and in some cases, have committed to use, Ordinary Share buybacks to assist in limiting discount volatility and potentially providing an additional source of liquidity, if and when the Ordinary Shares trade at a level which makes their repurchase attractive. However, the Directors will not conduct buybacks of any Shares from any class of C Shares prior to Conversion. Therefore, the Company will not assist any class of C Shares in limiting discount volatility or provide an additional source of liquidity through repurchases of any C Shares in such a class of C Shares. Therefore, until the relevant C Shares are converted into Correspondent Ordinary Shares, they may suffer greater volatility in discounts and may be more illiquid than Ordinary Shares.

It may be difficult for Shareholders to realise their investment and there may not be a liquid market in the Shares

The price at which the Shares will be traded will be influenced by a large number of factors, some specific to the Company and its investments and some which may affect companies generally. Admission should not be taken as implying that there will be an active and liquid market for the Shares particularly as, on Admission, the Company may have a limited number of Shareholders. Consequently, the Share price may be subject to significant fluctuation on small volumes of trading.

The Company expects in the future to issue new Shares, which may dilute Shareholders' equity or have a detrimental effect on the market price of the Shares

The Company expects to issue further Shares in the future through the Placing Programme or otherwise. Any such issue may dilute the percentage of the Company held by such persons who are Shareholders immediately prior to such issue. Additionally, such issues could have an adverse effect on the market price of the Ordinary Shares and/or C Shares. Although the Articles do not contain pre-emption rights, pre-emption rights at law apply. By a special resolution passed on 28 February 2017, the Directors were authorised to allot Ordinary Shares, or C Shares convertible into Ordinary Shares, up to an aggregate nominal amount equal to the difference between the nominal amount of the Shares in issue and US\$20 million on a non-pre-emptive basis, such authority to expire at the end of the period of five years from the date of the passing of that resolution. The Company has issued 914,252,831 Ordinary Shares under such authority so far and has the ability to issue a further 1,085,747,169 Shares under its existing authority. The Company may issue a maximum of 2,000 million additional Shares through the Placing Programme and the Offer. Any issue of Shares on a non-pre-emptive basis above 1,085,747,169 whether under the Placing Programme and Offer or otherwise will only be made if the Shareholders grant the Directors authority to do so.

Assuming that 500 million C Shares are issued pursuant to the Initial Placing and Offer, a Shareholder holding 1.00 per cent. of the Company's issued Ordinary Share capital who does not subscribe for any C Shares pursuant to the Initial Placing and Offer would hold Shares representing approximately 0.65 per cent. of the Company's issued share capital. The potential dilution in any subsequent Placing will be communicated by a Regulatory Information Service announcement in connection with such Placing. Further, on Conversion of C Shares, any dilution resulting from the issue of C Shares, whether under the Placing Programme or Offer, may increase or decrease depending on the Conversion Ratio used for such Conversion.

The performance fee payable to the Investment Manager for a performance period may in some cases be borne by different Shareholders in different proportions

Subject to (i) the total return on NAV (calculated per Ordinary Share) exceeding 6 per cent. over such performance period, (ii) the total return on NAV (calculated per Ordinary Share) as at the end of a performance period representing an increase of at least 6 per cent. per annum compounded on the IPO Issue Price, and (iii) a high watermark (which is the total return on NAV (calculated per Ordinary Share) as at the end of the last performance period in respect of which a performance fee was payable to the Investment Manager), the Investment Manager will be entitled to receive a performance fee equating to 10 per cent. of the total return over such performance period, on the basis of catch up arrangements whereby the Investment Manager will receive 50 per cent. of the total return above 6 per cent. (the "**Excess Total Return**") up to the point at which it has received 10 per cent. of the overall total return allocated to itself and Shareholders in this manner, and

thereafter 10 per cent. of the remaining Excess Total Return provided always that the amount of any performance fee payable to the Investment Manager will be reduced to the extent necessary to ensure that after account is taken of such fee, conditions (i), (ii) and (iii) above are still satisfied.

Investors and prospective investors should note that because Ordinary Shares may be issued, and C Shares may be converted into Correspondent Ordinary Shares, otherwise than immediately following the end of a performance period, it is possible that any performance fee payable by the Company in respect of a performance period in which such issuances or conversions occur, could be borne as between holders of Ordinary Shares in proportions which differ from the proportions in which such performance fee would have been borne had all holders of Ordinary Shares (including those acquiring Ordinary Shares pursuant to such issuances or conversions) held their Ordinary Shares for the entirety of such performance period.

Securities quoted on the Specialist Fund Segment may experience higher volatility and carry greater risks than those listed on the Main Market

Investment in shares traded on the Specialist Fund Segment may have limited liquidity and may experience greater price volatility than shares listed on the Main Market. Limited liquidity and high price volatility may result in Shareholders being unable to sell their Shares at a price that would result in them recovering their original investment.

IMPORTANT NOTICES

Prospective investors should rely only on the information contained in this Prospectus and any supplementary prospectus published by the Company prior to the date of Admission of the relevant Issue Shares subscribed for under the Issue. No person has been authorised to give any information or to make any representation other than those contained in this Prospectus (or any supplementary prospectus published by the Company prior to the expiry of the Placing Programme) in connection with the Issue and, if given or made, such information or representation must not be relied upon as having been authorised by or on behalf of the Company, the Investment Manager, the Joint Bookrunners or any of their respective Affiliates, officers, directors, employees or agents. Without prejudice to any obligation of the Company to publish a supplementary prospectus pursuant to section 87G(1) of FSMA, neither the delivery of this Prospectus nor any subscription or sale made under this Prospectus shall, under any circumstances, create any implication that there has been no change in the business or affairs of the Company since the date of this Prospectus or that the information contained in this Prospectus is correct as of any time subsequent to its date.

The contents of this Prospectus or any subsequent communications from the Company, the Investment Manager, the Joint Bookrunners or any of their respective Affiliates, officers, directors, employees or agents are not to be construed as legal, business or tax advice. Each prospective investor should consult their own solicitor, financial adviser or tax adviser for legal, financial or tax advice in relation to the purchase of any Issue Shares.

Apart from the liabilities and responsibilities (if any) which may be imposed on any of the Joint Bookrunners by FSMA or the regulatory regime established thereunder, none of the Joint Bookrunners makes any representations, express or implied, or accepts any responsibility whatsoever for the contents of this Prospectus (or any supplementary prospectus that may be published by the Company prior to the date of the expiry of the Placing Programme) or for any other statement made or purported to be made by either of them or on behalf of either of them in connection with the Company, the Investment Manager, the Issue Shares, the Issue or Admission. Each of the Joint Bookrunners and their respective Affiliates accordingly disclaim all and any liability (save for any statutory liability) whether arising in tort or contract or otherwise which it or they might otherwise have in respect of this Prospectus, any such supplementary prospectus or any such statement.

In connection with the Issue, the Joint Bookrunners and their respective Affiliates acting as investor(s) for its (or their) own account(s), may acquire Issue Shares and, in that capacity, may retain, purchase, sell, offer to sell or otherwise deal for its (or their) own account(s) in such securities of the Company, any other securities of the Company or other related investments in connection with the Issue or otherwise. Accordingly, references in this Prospectus to the Issue Shares being issued, offered, acquired, subscribed or otherwise dealt with, should be read as including any issue or offer to, acquisition of, or subscription or dealing by, the Joint Bookrunners and any of their respective Affiliates acting as investor(s) for its (or their) own account(s). Neither the Joint Bookrunners nor any of their respective Affiliates intend to disclose the extent of any such investment or transactions otherwise than in accordance with any legal or regulatory obligation to do so.

An investment in the Issue Shares should constitute part of a diversified investment portfolio. The Issue Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio. Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of the potential risks from investing in the Company. It should be remembered that the price of the Issue Shares and the income from them can go down as well as up.

The Issue Shares are designed to be held over the long-term and may not be suitable as short-term investments. There is no guarantee that any appreciation in the value of the Company's investments will occur and investors may not get back the full value of their investment. Any investment objective of, and dividends or returns proposed by, the Company are targets only and should not be treated as an assurance or guarantee of performance. There can be no assurance

that the Company's investment objective will be achieved or that the proposed dividends or returns will be paid.

A prospective investor should be aware that the value of an investment in the Company is subject to market fluctuations and other risks inherent in investing in securities. There is no assurance that any appreciation in the value of the Issue Shares will occur or that the investment objective of, or the dividends or returns proposed by, the Company will be achieved or paid. The value of investments and the income derived therefrom may fall as well as rise and investors may not recoup the original amount invested in the Company. Prospective investors should carefully review the "Risk Factors" section of this Prospectus before making an investment decision.

General

Prospective investors should rely only on the information contained in this Prospectus and any supplementary prospectus that may be published by the Company prior to Admission of the relevant Issue Shares subscribed for under the Issue. No broker, dealer or other person has been authorised by the Company, the Board or any Director, the Investment Manager, or any of the Joint Bookrunners to issue any advertisement or to give any information or to make any representation in connection with the Issue other than those contained in this Prospectus or any supplementary prospectus that may be published by the Company prior to the expiry of the Placing Programme and, if issued, given or made, any such advertisement, information or representation must not be relied upon as having been authorised by the Company, the Board, any Director, the Investment Manager or any of the Joint Bookrunners.

The distribution of this Prospectus in jurisdictions other than the UK may be restricted by law and persons into whose possession this Prospectus comes should inform themselves about and observe any such restrictions.

Prospective investors should not treat the contents of this Prospectus as advice relating to legal, taxation, investment or any other matters. Prospective investors should inform themselves as to: (i) the legal requirements within their own countries for the purchase, holding, transfer, redemption, conversion or other disposal of Issue Shares; (ii) any foreign exchange restrictions applicable to the purchase, holding, transfer, redemption, conversion or other disposal of Issue Shares which they might encounter; and (iii) the income and other tax consequences which may apply in their own countries as a result of the purchase, holding, transfer, redemption, conversion or other disposal of Issue Shares. Prospective investors must rely upon their own representatives, including their own legal advisers and accountants, as to legal, tax, investment or any other related matters concerning the Company and an investment therein. In making an investment decision, each prospective investor must rely on their own examination, analysis and equity of the Company and the terms of the Issue, including the merits and risks involved.

Statements made in this Prospectus are based on the law and practice currently in force in England and Wales and are subject to changes therein.

Selling Restrictions

This Prospectus does not constitute, and may not be used for the purposes of, an offer or an invitation to apply for any Issue Shares by any person: (i) in any jurisdiction in which such offer or invitation is not authorised; or (ii) in any jurisdiction in which the person making such offer or invitation is not qualified to do so; or (iii) to any person to whom it is unlawful to make such offer or invitation.

The distribution of this Prospectus and the offering of Issue Shares in certain jurisdictions may be restricted. Accordingly, persons into whose possession this Prospectus comes are required to inform themselves about and observe any restrictions as to the offer or sale of Issue Shares and the distribution of this Prospectus under the laws and regulations of any jurisdiction relevant to them in connection with any proposed applications for Issue Shares, including obtaining any requisite governmental or other consent and observing any other formality prescribed in such jurisdiction.

Save for the United Kingdom and save as explicitly stated elsewhere in this Prospectus, no action has been taken or will be taken in any jurisdiction by the Company that would permit a public offering of Issue Shares in any jurisdiction where action for that purpose is required, nor has any such action been taken with respect to the possession or distribution of this Prospectus in any other jurisdiction where action for that purpose is required.

Notice to prospective investors regarding United States federal securities laws

The Company has not been and will not be registered under the Investment Company Act and, as such, investors will not be entitled to the benefits of the Investment Company Act. The Issue Shares have not been and will not be registered under the Securities Act and may not be offered, sold, resold, pledged, transferred or delivered, directly or indirectly, into or within the United States or to, or for the account or benefit of, US Persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in compliance with any applicable securities laws of any state or other jurisdiction of the United States and in a manner which would not require the Company to register under the Investment Company Act.

In connection with the Issue, subject to certain exceptions, offers and sales of the Issue Shares will be made only outside the United States in “offshore transactions” to non-US Persons pursuant to Regulation S under the Securities Act. There has been and will be no public offer of the Issue Shares in the United States.

The Issue Shares may not be acquired by: (i) investors using assets of: (A) an “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title I of ERISA; (B) a “plan” as defined in Section 4975 of the US Tax Code, including an individual retirement account or other arrangement that is subject to Section 4975 of the US Tax Code; or (C) an entity whose underlying assets are considered to include “plan assets” by reason of investment by an “employee benefit plan” or “plan” described in preceding clause (A) or (B) in such entity pursuant to the US Plan Assets Regulations; or (ii) a governmental, church, non-US or other employee benefit plan that is subject to any federal, state, local or non-US law that is substantially similar to the provisions of Title I of ERISA or Section 4975 of the US Tax Code, unless its purchase, holding, and disposition of the Issue Shares will not constitute or result in a non-exempt violation of ERISA, Section 4975 of the US Tax Code or any such substantially similar law. Each investor acquiring Issue Shares shall be deemed by such acquisition to represent that it is not a Benefit Plan Investor.

The Issue Shares are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under applicable securities laws and regulations and under the Articles. Any failure to comply with such restrictions may constitute a violation of applicable securities laws and may subject the holder to the forced transfer provisions set out in the Articles. For further information on restrictions on transfers of the Issue Shares, please refer to the sections entitled “United States transfer restrictions” and “Representations, Warranties and Undertakings” in Part VI (Issue Arrangements) of this Prospectus.

Notice to prospective investors in the EEA

In relation to each Relevant Member State (other than the UK), no Issue Shares have been offered or will be offered pursuant to the Issue to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Issue Shares which has been approved by the competent authority in that Relevant Member State, or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that offers of Issue Shares to the public may be made at any time with the prior consent of the Joint Bookrunners, under the following exemptions under the Prospectus Directive, if they are implemented in that Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined in Article 2(1)(e) of the Prospectus Directive;
- (b) to fewer than 100, or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) in such Relevant Member State; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive with the prior consent of the Joint Bookrunners,

provided that no such offer of Issue Shares shall result in a requirement for the publication of a prospectus pursuant to Article 3 of the Prospectus Directive or any measure implementing the Prospectus Directive in a Relevant Member State (other than the UK).

For the purposes of this provision, the expression an “offer to the public” in relation to any offer of Issue Shares in any Relevant Member State means a communication in any form and by any

means presenting sufficient information on the terms of the offer and any Issue Shares to be offered so as to enable an investor to decide to purchase or subscribe for the Issue Shares, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State.

Further, the Investment Manager, in its capacity as the Company's alternative investment fund manager, has made the notifications or applications and received, where relevant, approvals for the marketing of the Issue Shares to "professional investors" (as defined in the AIFM Directive) in the following EEA States: the United Kingdom, the Netherlands, Ireland, Belgium and Luxembourg. Notwithstanding any other statement in this Prospectus, this Prospectus should also not be made available to any investor domiciled in any EEA State other than those cited above. Prospective investors domiciled in the EEA that have received this Prospectus in any EEA States other than those cited above should not subscribe for Issue Shares (and the Company reserves the right to reject any application so made, without explanation) unless (i) the Investment Manager has confirmed it has made the relevant notification or applications in that EEA State and are lawfully able to market Issue Shares into that EEA State; or (ii) such investors have received this Prospectus on the basis of an enquiry made at the investor's own initiative.

Notwithstanding that the Investment Manager (as the Company's alternative investment fund manager) may have confirmed that it is able to market Issue Shares to professional investors in an EEA State, the Issue Shares may not be marketed to retail investors (as this term is defined in the AIFM Directive as transposed in the relevant EEA State) in that EEA State unless the Issue Shares have been qualified for marketing to retail investors in that EEA State in accordance with applicable local laws. At the date of this Prospectus, the Issue Shares are not eligible to be marketed to retail investors in **BELGIUM, IRELAND, LUXEMBOURG AND THE NETHERLANDS**. Accordingly, the Issue Shares may not be offered, sold or delivered and neither this Prospectus nor any other offering materials relating to such Issue Shares may be distributed or made available to retail investors in those countries.

Notice to prospective investors in Belgium

This Prospectus has not been submitted for approval by, and no advertising or other offering materials have been filed with, the Belgian Financial Services and Markets Authority ("**Autoriteit voor Financiële Diensten en Markten**")/ ("**Autorité des services et marchés financiers**"). This Prospectus and its distribution are for information purposes only and does not constitute a public offering or involve an investment service in Belgium. Neither this Prospectus nor any other information or materials relating thereto (including for the avoidance of doubt any distribution materials) (a) may be distributed or made available to the public in Belgium, (b) may be used in relation to any investment service in Belgium unless all conditions of Directive 2014/65/EU on markets in financial instruments, as implemented in Belgium and as amended from time to time or any successive legislation that may enter into force, are satisfied, (c) or may be used to publicly solicit, provide advice or information to, or otherwise provoke requests from the public in Belgium in relation to the offering. Any offering in Belgium is made exclusively on a private basis in accordance with article 5, §, 1, 1° of the Law of 19 April 2014 on alternative investment funds and their managers (the "**Law of 19 April 2014**" as amended from time to time or any successive legislation that may enter into force) and with article 3, §2, a) of the Law of 16 June 2006 concerning the public offering of investment instruments and the admission to the trading on a regulated market of investment instruments (the "**Law of 16 June 2006**" as amended from time to time or any successive legislation that may enter into force), and is addressed only to, and subscription will only be accepted from investors that qualify both as "professional investors" (as defined by article 3, 30° of the Law of 19 April 2014) and as "qualified investors" (as defined by article 10, §1 of the Law of 16 June 2006), i.e. professional clients and eligible counterparties as referred to in Article 3, §1 and the Annex of the Royal Decree of 19 December 2017 relating to the determination of further rules regarding the implementation of MiFID, (the "Royal Decree of 19 December 2017" as amended from time to time or any successive legislation that may enter into force), each, a "Qualified Investor", subject to any such Qualified Investor acting in its own name and for its own account and not acting as intermediary, or otherwise selling or transferring, to any other investor, unless any such other investor would also qualify as a Qualified Investor and subject to any such Qualified Investor not qualifying as "consumer" within the meaning of Article I.1, 2° of the Belgian Code of Economic Law of 28 February 2013 (the "**Code of Economic Law**" as amended from time to time or any successive legislation that may enter into force).

Notice to prospective investors in Switzerland

This Prospectus may only be freely circulated and Issue Shares in the Company may only be freely offered, distributed or sold to regulated financial intermediaries such as banks, securities dealers, fund management companies, asset managers of collective investment schemes and central banks as well as to regulated insurance companies. Circulating this Prospectus and offering, distributing or selling Issue Shares in the Company to other persons or entities including qualified investors as defined in the Federal Act on Collective Investment Schemes (“**CISA**”) and its implementing Ordinance (“**CISO**”) may trigger, in particular, (i) licensing/prudential supervision requirements for the distributor, (ii) a requirement to appoint a representative and paying agent in Switzerland and (iii) the necessity of a written distribution agreement between the representative in Switzerland and the distributor. **Accordingly, legal advice should be sought before providing this Prospectus to and offering, distributing, selling or on-selling Issue Shares of the Company to any other persons or entities.** This Prospectus does not constitute an issuance prospectus pursuant to Articles 652a or 1156 of the Swiss Code of Obligations and may not comply with the information standards required thereunder. The Issue Shares will not be listed on the SIX Swiss Exchange, and consequently, the information presented in this document does not necessarily comply with the information standards set out in the relevant listing rules. The documentation of the Company has not been and will not be approved, and may not be able to be approved, by the Swiss Financial Market Supervisory Authority (“**FINMA**”) under the CISA. Therefore, investors do not benefit from protection under the CISA or supervision by the FINMA. This Prospectus does not constitute investment advice. It may only be used by those persons to whom it has been handed out in connection with the Issue Shares and may neither be copied or directly/indirectly distributed or made available to other persons.

Notice to prospective investors in the Bailiwick of Guernsey

This document has not been filed with, or approved by, the Guernsey Financial Services Commission (“**GFSC**”) and no authorisations in respect of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (the “**POI Law**”) have been issued by the GFSC in respect of it. Neither the GFSC nor the States of Guernsey Policy Council takes any responsibility for the financial soundness of the Company or for the correctness of any of the statements made or opinions expressed with regard to it. This document does not comply with the requirements of Guernsey’s Prospectus Rules 2008 on the basis that the Issue Shares in the Company will be admitted to trading on the Specialist Fund Segment for listed securities of the London Stock Exchange plc: if the Issue Shares are not so admitted, then the document may be required to comply with the requirements of such Prospectus Rules 2008 and may need to be re-drafted in some respects.

This document is directed in the Bailiwick of Guernsey only at the following: (i) those who have specifically solicited this document, where such approach was not itself specifically solicited by any of the Joint Bookrunners (“**Requesting Investors**”); or (ii) those holding a licence from the GFSC under any of the following laws: the POI Law, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended, the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended or the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, as amended (such persons being “**GFSC Licensees**”). This document must only be distributed to persons who are not either Requesting Investors or GFSC Licensees by a person holding an appropriate licence from the GFSC under the POI Law. This document may not be relied upon by those who are not Requesting Investors or GFSC Licensees, unless it has been distributed to them by a person holding such a licence under the POI Law.

Notice to prospective investors in the Bailiwick of Jersey

The offering of Issue Shares is “valid in the United Kingdom” (within the meaning given to that expression under Article 8(5) of the Control of Borrowing (Jersey) Order 1958 (the “**Jersey COBO**”) and is circulated in Jersey only to persons similar to those to whom, and in a manner similar to that in which, it is for the time being circulated in the United Kingdom. The Company has no “relevant connection with Jersey” for the purposes of Articles 8(7) and 8(8) of the Jersey COBO. Accordingly, the consent of the Jersey Financial Services Commission under Article 8(2) of the Jersey COBO to the circulation of this Prospectus in Jersey is not required and has not been obtained.

Notice to prospective investors in the British Virgin Islands

This Prospectus does not constitute, and there will not be, an offer of securities to the public in the British Virgin Islands.

Notice to prospective investors in the Cayman Islands

This Prospectus does not constitute an offer or invitation to the public in the Cayman Islands to subscribe for interests.

Notice to prospective investors in Mexico

The Issue Shares have not been and will not be registered in the Mexican National Registry of Securities (*Registro Nacional de Valores*). Therefore, the Issue Shares may not be offered or sold in the United Mexican States (“**Mexico**”) by any means except in circumstances which constitute a private offering (*oferta privada*) pursuant to Article 8 of the Mexican Securities Market Law (*Ley del Mercado de Valores*). All applicable provisions of the Mexican Securities Market Law must be complied with in respect to anything done in relation to the Issue Shares in, from or otherwise involving Mexico.

Notice to prospective investors in Panama

Neither the Issue Shares, nor their offer, sale or transfer, have been registered with the Superintendence of the Securities Market of the Republic of Panama. The exemption from registration is based on numeral 2 of Article 129 of Decree Law 1 of July 8, 1999 (Institutional Investors). The Issue Shares are not under the supervision of the Superintendence of the Securities Market of the Republic of Panama.

Notice to prospective investors in Peru

The Issue Shares and the information contained in this Prospectus are not being publicly marketed or offered in Peru and will not be distributed or caused to be distributed to the general public in Peru. Peruvian securities laws and regulations on public offerings will not be applicable to the offering of the Issue Shares and therefore, the disclosure obligations set forth therein will not be applicable to the Company before or after their acquisition by prospective investors. The Issue Shares and the information contained in this Prospectus have not been and will not be reviewed, confirmed, approved or in any way submitted to the Peruvian Superintendency of Capital Markets (*Superintendencia del Mercado de Valores*), nor have they been registered under the Securities Market Law (*Ley del Mercado de Valores*) or any other Peruvian regulations. Accordingly, the Issue Shares cannot be offered or sold within the Peruvian territory except to the extent any such offering or sale qualifies as a private offering under Peruvian regulations and complies with the provisions on private offerings set forth therein.

Forward-looking statements

This Prospectus includes statements that are, or may be deemed to be, “forward-looking statements”. Forward-looking statements typically can be identified by the use of forward-looking terminology, including, but not limited to, terms such as “believes”, “estimates”, “anticipates”, “expects”, “intends”, “may”, “will” or “should” or, in each case, their negative or other variations or comparable terminology. Such forward-looking statements, which include all matters that are not historical facts, appear in a number of places in this Prospectus and include statements regarding the intentions, beliefs or current expectations of the Company, the Board or the Investment Manager concerning, among other things, the investment objective and investment policy, investment performance, the Company’s target returns, results of operations, financial condition, prospects, and dividend policy of the Company and the markets in which it invests and/or operates. By their nature, forward-looking statements involve risks and uncertainties because they relate to events, and depend on circumstances, that may or may not occur in the future. Forward-looking statements are not guarantees of future performance. The Company’s actual investment performance, results of operations, financial condition, dividends paid and its financing strategies may differ materially from the impression created by the forward-looking statements contained in this Prospectus. In addition, even if the investment performance, results of operations, financial condition of the Company and its financing strategies are consistent with the forward-looking statements contained in this Prospectus, those results, its condition or strategies may not be

indicative of results, its condition or strategies in subsequent periods. Important factors that could cause these differences include, but are not limited to:

- changes in economic conditions generally and the Company's ability to achieve its investment objective and returns on equity for investors;
- the Company's ability to invest the cash on its balance sheet and the Net Initial Proceeds and Net Placing Proceeds on a timely basis within the investment objective and investment policy;
- foreign exchange mismatches with respect to exposed assets;
- changes in interest rates and/or credit spreads, as well as the success of the Company's investment strategy in relation to such changes and the management of the uninvested proceeds of the Issue;
- impairments in the value of the Company's investments;
- the availability and cost of capital for future investments;
 - the departure of key personnel employed by, or seconded to, the Investment Manager;
 - the failure of the Investment Manager to perform its obligations under the Investment Management Agreement with the Company or the termination of the Investment Management Agreement;
- changes in laws or regulations, including tax laws, or new interpretations or applications of laws and regulations, that are applicable to the Company; and
- general economic trends and other external factors, including those resulting from war, incidents of terrorism or responses to such events.

Given these uncertainties, prospective investors are cautioned not to place any undue reliance on such forward-looking statements. Prospective investors should carefully review the "Risk Factors" section of this Prospectus for a discussion of additional factors that could cause the Company's actual results to differ materially from those that the forward-looking statements may give the impression will be achieved, before making an investment decision. Forward-looking statements speak only as at the date of this Prospectus. Although the Company and the Investment Manager undertake no obligation to revise or update any forward-looking statements contained herein (save where required by the Prospectus Rules, the Listing Rules (to the extent to which the Company voluntarily complies with these), the AIFM Directive or the Disclosure Guidance and Transparency Rules), whether as a result of new information, future events, conditions or circumstances, any change in the Company's or the Investment Manager's expectations with regard thereto or otherwise, Shareholders are advised to read any communications made directly to them by the Company and/or any additional disclosures in announcements that the Company may make through an RIS.

Nothing in the preceding two paragraphs should be taken as limiting the working capital statement contained in paragraph 13 of Part VIII (Additional Information on the Company) of this Prospectus.

INFORMATION TO DISTRIBUTORS

Solely for the purposes of the product governance requirements contained within: (a) EU Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**"); (b) Articles 9 and 10 of Commission Delegated Directive (EU) 2017/593 supplementing MiFID II; and (c) local implementing measures (together, the "**MiFID II Product Governance Requirements**"), and disclaiming all and any liability, whether arising in tort, contract or otherwise, which any "manufacturer"(for the purposes of the MiFID II Product Governance Requirements) may otherwise have with respect thereto, the Issue Shares have been subject to a product approval process, which has determined that such Issue Shares are: (i) compatible with an end target market of retail investors and investors who meet the criteria of professional clients and eligible counterparties, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels as are permitted by MiFID II (the "**Target Market Assessment**"). Notwithstanding the Target Market Assessment, distributors should note that: the price of the Issue Shares may decline and investors could lose all or part of their investment; the Issue Shares offer no guaranteed income and no capital protection; and an investment in the Issue Shares is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom. The Target

Market Assessment is without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Issue.

For the avoidance of doubt, the Target Market Assessment does not constitute: (a) an assessment of suitability or appropriateness for the purposes of MiFID II; or (b) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to the Issue Shares.

Each distributor is responsible for undertaking its own target market assessment in respect of the Issue Shares and determining appropriate distribution channels.

PRIIPS REGULATION

In accordance with the PRIIPs Regulation, key information documents in respect of the Ordinary Shares and the C Shares to be issued under the Initial Placing and Offer have been prepared by the Investment Manager and are available to investors at www.bpcruk.com. If you are distributing the Issue Shares, it is your responsibility to ensure that the relevant key information document is provided to any clients that are “retail clients”.

The Investment Manager is the only manufacturer of the Issue Shares for the purposes of the PRIIPs Regulation and none of the Joint Bookrunners are manufacturers for these purposes. None of the Joint Bookrunners makes any representations, express or implied, or accepts any responsibility whatsoever for the contents of the key information documents prepared by the Investment Manager nor accepts any responsibility to update the contents of the key information documents in accordance with the PRIIPs Regulation, to undertake any review processes in relation thereto or to provide such key information documents to future distributors of Issue Shares. Each of the Joint Bookrunners and their respective Affiliates accordingly disclaim all and any liability whether arising in tort or contract or otherwise which it or they might have in respect of the key information documents prepared by the Investment Manager.

DATA PROTECTION

The information that a prospective investor in the Company provides in documents in relation to a subscription for Issue Shares or subsequently by whatever means which relates to the prospective investor (if it is an individual) or a third party individual (“**personal data**”) will be held and processed by the Company (and any third party in the United Kingdom to whom it may delegate certain administrative functions in relation to the Company) in compliance with the relevant data protection legislation and regulatory requirements of the United Kingdom. Each prospective investor acknowledges and consents that such information will be held and processed by the Company (or any third party, functionary or agent appointed by the Company) for the following purposes:

- verifying the identity of the prospective investor to comply with statutory and regulatory requirements in relation to anti-money laundering procedures;
- contacting the prospective investor with information about other products and services provided by the Investment Manager, or its Affiliates, which may be of interest to the prospective investor;
- carrying out the business of the Company and the administering of interests in the Company;
- meeting the legal, regulatory, reporting and/or financial obligations of the Company in the United Kingdom or elsewhere; and
- disclosing personal data to other functionaries of, or advisers to, the Company to operate and/or administer the Company.

Each prospective investor acknowledges and consents that where appropriate it may be necessary for the Company (or any third party, functionary or agent appointed by the Company) to:

- disclose personal data to third party service providers, Affiliates, agents or functionaries appointed by the Company or its agents to provide services to prospective investors; and
- transfer personal data outside of the EEA to countries or territories that do not offer the same level of protection for the rights and freedoms of prospective investors in the United Kingdom (as applicable).

If the Company (or any third party, functionary or agent appointed by the Company) discloses personal data to such a third party, functionary or agent and/or makes such a transfer of personal data, it will use reasonable endeavours to ensure that any third party, functionary or agent to

whom the relevant personal data is disclosed or transferred is contractually bound to provide an adequate level of protection in respect of such personal data.

Prospective investors are responsible for informing any third party individual to whom the personal data relates as to the disclosure and use of such data in accordance with these provisions.

Notwithstanding the above, on 25 May 2018 data protection law will change in Europe. Each prospective investor acknowledges that from 25 May 2018 onwards, personal data provided to the Company by prospective investors will be held and processed in compliance with the Company's privacy policy. Please refer to the Company's website for a copy of the privacy policy. Investors will be notified that an updated privacy policy has been published on the Company's website via an RIS announcement.

No incorporation of website

The contents of the Company's website at www.bpcruk.com and any website of the Investment Manager or any of its Affiliates, the contents of any website accessible from hyperlinks on the Company's website, any website of the Investment Manager or its Affiliate or any other website referred to in this Prospectus are not incorporated into, and do not form part of this Prospectus. Investors should base their decision to invest on the contents of this Prospectus and any supplementary prospectus published by the Company prior to Admission of the relevant Issue Shares subscribed for under the Issue alone and should consult their professional advisers prior to making an application to acquire Issue Shares.

Presentation of financial information

The Company prepares its financial information under International Financial Reporting Standards (as adopted by the EU) ("IFRS"). The financial information contained or incorporated by reference in this document, including that financial information presented in a number of tables in this document, has been rounded to the nearest whole number or the nearest decimal place. Therefore, the actual arithmetic total of the numbers in a column or row in a certain table may not conform exactly to the total figure given for that column or row. In addition, certain percentages presented in the tables in this document reflect calculations based upon the underlying information prior to rounding, and, accordingly, may not conform exactly to the percentages that would be derived if the relevant calculations were based upon the rounded numbers.

VOLUNTARY COMPLIANCE WITH THE LISTING RULES

The Specialist Fund Segment is a segment of the Main Market of the London Stock Exchange, which is an EU regulated market and, therefore, the Company is subject to the Prospectus Rules, the Disclosure Guidance and Transparency Rules (as implemented in the UK through FSMA) and the Market Abuse Regulation and the admission and disclosure standards of the London Stock Exchange. As such, the Listing Rules applicable to closed-ended investment companies which are listed on the Premium Listing Segment of the Official List of the UK Listing Authority do not apply to the Company.

However, the Directors intend that, as a matter of best practice and good corporate governance, the Company will conduct its affairs in accordance with the following key provisions of the Listing Rules in such manner as they would apply to the Company were it admitted to the Official List under Chapter 15 of the Listing Rules. The Company intends to comply with:

- the Listing Principles set out at Chapter 7 of the Listing Rules other than the Premium Listing Principles 3 and 5;
- the following provisions of Chapter 9 of the Listing Rules: (i) Listing Rule 9.3 (Continuing obligations: holders); (ii) Listing Rule 9.5 (Transactions); (iii) Listing Rule 9.6.4 to Listing Rule 9.6.21 other than Listing Rule 9.6.19(2) and Listing Rule 9.6.19(3) (Notifications); (iv) Listing Rule 9.7A (Preliminary statement of annual results and statement of dividends); and (v) Listing Rule 9.8 (Annual financial report);
- in relation to any transaction which would constitute a “related party transaction” as defined in Chapter 11 of the Listing Rules regarding related party transactions and to the extent reasonably practicable, Chapter 11 of the Listing Rules. This policy may only be modified with Shareholder approval by ordinary resolution;
- in relation to the purchase of its own shares, the provisions of Listing Rules 12.4.1 and 12.4.2 by adopting a policy consistent with such provisions;
- the following provisions of Chapter 13 of the Listing Rules: (i) Listing Rule 13.3 (Contents of all circulars); (ii) Listing Rule 13.4 (Class 1 circulars); (iii) Listing Rule 13.5 (Financial information in Class 1 Circulars); (iv) Listing Rule 13.7 (Circulars about purchase of own equity shares); and (v) Listing Rule 13.8 (Other circulars); and
- the following provisions of Chapter 15 of the Listing Rules: (i) Listing Rule 15.4.2 to Listing Rule 15.4.11 (Continuing obligations); (ii) Listing Rule 15.5 (Transactions); and (iii) Listing Rule 15.6 (Notifications and periodic financial information).

It should be noted that the UK Listing Authority will not monitor the Company's voluntary compliance with the Listing Rules applicable to closed-ended investment companies which are listed on the Premium Listing Segment of the Official List of the UK Listing Authority nor will it impose sanctions in respect of any failure of such compliance by the Company.

The Company may apply at a future date for admission to the Premium Listing Segment of the Official List, subject to the Company's ability to satisfy the eligibility requirement for admission, including in particular the requirements under Chapter 15 of the Listing Rules.

As a company whose shares will be admitted to listing on TISEA, the Company will be subject to the TISEA Listing Rules.

This Prospectus has been approved by the FCA.

EXPECTED TIMETABLE

Publication of this Prospectus and commencement of the Placing Programme and Offer	14 March 2018

INITIAL PLACING AND OFFER

Latest time and date for applications under the Offer	11:00 am on 12 April 2018
Latest time and date for placing commitments under the Initial Placing	11:00 am on 12 April 2018
Publication of results of the Initial Placing and Offer	13 April 2018
Admission and dealings in C Shares issued in connection with Initial Admission commence	8:00 am on 16 April 2018
CREST Accounts credited with uncertificated C Shares issued in connection with Initial Admission	as soon as possible after 8:00 am on 16 April 2018
Where applicable, definitive share certificates despatched by post	By 27 April 2018
Long Stop Date in connection with the Initial Placing and Offer	30 April 2018
Back Stop Date for Conversion of C Shares issued in connection with Initial Admission	30 April 2019

SUBSEQUENT PLACINGS

Admission and crediting of CREST accounts in respect of subsequent Placings	8:00 a.m. on the Business Day on which the Issue Shares are issued
Despatch of definitive share certificates for the Placing Shares in certificated form	Approximately two weeks following the Admission of those Issue Shares
Placing Programme closes	13 March 2019

Any changes to the expected timetable set out above will be notified by the Company through a Regulatory Information Service, provided that Initial Admission and dealings in Issue Shares shall commence by no later than 30 April 2018.

References to times are to London times unless otherwise stated.

ISSUE STATISTICS

Maximum size of Placing Programme and Offer for Subscription	up to 2,000 million Shares in the form of New Ordinary Shares or C Shares
Issue Price per New Ordinary Share	At least NAV per Ordinary Share at the time of issue (plus issue expenses)
Issue Price per C Share	US\$1.00

INITIAL PLACING AND OFFER

Number of C Shares being issued pursuant to the Initial Placing and Offer	up to 500 million
Expected Net Asset Value per C Share on Admission	US\$0.98

DEALING CODES

ORDINARY SHARES

ISIN	GB00BDGKMY29
SEDOL	BDGKMY2
Ticker	BPCR

C SHARES

ISIN	GB00BDRNW621
SEDOL	BDRNW62
Ticker	BPC1

DIRECTORS, ADVISERS AND OTHER SERVICE PROVIDERS

Directors

Jeremy Sillem (Chairman)
Colin Bond
Duncan Budge
Harry Hyman

Registered Office

Beaufort House
51 New North Road
Exeter EX4 4EP

Investment Manager and AIFM

Pharmakon Advisors L.P.
110 East 59th Street #3300
New York, NY 10022
USA

Global Coordinators and Joint Bookrunners

J.P. Morgan Securities plc
25 Bank Street
London E14 5JP

Goldman Sachs International
Peterborough Court
133 Fleet Street
London EC4A 2BB

Joint Bookrunner

BofA Merrill Lynch
2 King Edward Street
London EC1A 1HQ

Company Secretary

Link Company Matters Limited
Beaufort House
51 New North Road
Exeter EX4 4EP

Legal advisers to the Company (as to English law & US Securities law)

Herbert Smith Freehills LLP
Exchange House, Primrose Street
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Legal advisers to the Global Coordinators and Bookrunners

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PART I – THE COMPANY

1. INTRODUCTION AND BACKGROUND

BioPharma Credit plc (the “**Company**”) is a closed-ended public limited company incorporated in the United Kingdom. It was registered in England and Wales under the Act on 24 October 2016. The Company intends to conduct its affairs so as to qualify, at all times, as an investment trust for the purposes of section 1158 of the Corporation Tax Act 2010 (as amended).

The investments of the Company are managed by Pharmakon Advisors L.P. (the “**Investment Manager**”) which, as the Company’s alternative investment fund manager for the purposes of the AIFM Directive, is responsible for the discretionary portfolio management and risk management of the Company.

In its IPO in March 2017, the Company issued 761,877,359 Ordinary Shares at US\$1.00 each and raised gross proceeds of c.US\$761.9 million. It was admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA. The Company launched with seed assets of US\$338.6 million, together with US\$423.3 million of cash. The opening NAV was US\$746.6 million or US\$0.98 per Ordinary Share.

On 21 September 2017, the Company declared an interim dividend in respect of the financial period ending 30 June 2017 of US\$0.01 per Ordinary Share payable on 31 October 2017 to the holders of Ordinary Shares on the register on 29 September 2017. The ex-dividend date was 28 September 2017.

On 7 December 2017, the Company declared an interim dividend in respect of the financial period ending 30 September 2017 of US\$0.01 per Ordinary Share payable on 31 January 2018 to holders of Ordinary Shares on the register on 15 December 2017. The ex-dividend date was 14 December 2017.

On 18 December 2017, the Company placed an additional 152,375,471 Ordinary Shares at an issue price of US\$1.0114, raising gross proceeds of approximately US\$154.1 million. After taking into account expenses relating to the placing, these Ordinary Shares were issued at a price that was NAV accretive.

As at 31 December 2017, the Company had 914,252,831 Ordinary Shares in issue and the closing NAV was US\$922.6 million, or US\$1.0091 per Ordinary Share, representing an increase of approximately 3.0 per cent over the period between IPO and 31 December 2017.

The unaudited NAV per Ordinary Share as at 31 January 2018 was US\$1.0056.

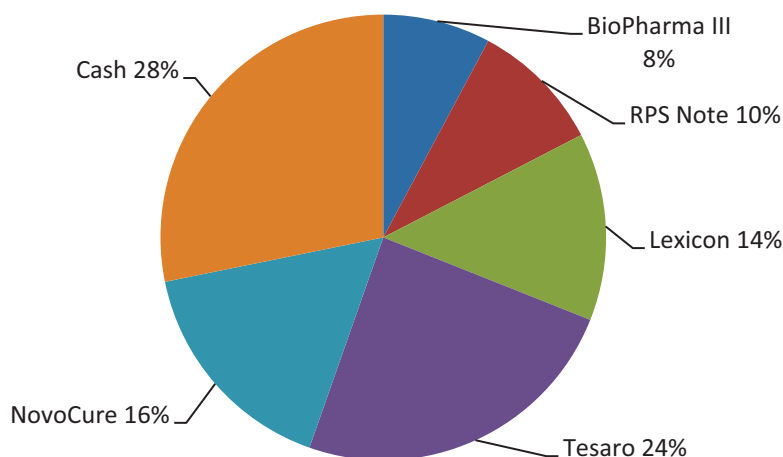
On 1 March 2018, the Company declared an interim dividend in respect of the financial period ending 31 December 2017 of US\$0.021 per Ordinary Share, payable on 29 March 2018 to holders of Ordinary Shares on the register as at 9 March 2018. The US\$0.021 return comprised an ordinary dividend of US\$0.01, the Company’s third quarterly dividend since the IPO, and a special dividend of US\$0.011 which includes additional consideration received on some investments in the form of structuring fees, which are paid on completion of the transaction.

As at the date of this Prospectus, the Company’s portfolio consists of:

- (i) a limited partnership interest in BioPharma III Holdings, LP (the “**BioPharma III Interest**”), which provides the Company with indirect exposure to four Debt Assets;
 - a. a Priority Royalty Tranche issued by Vivus Inc.;
 - b. Senior Secured Debt issued by Valneva Austria GMBH, a subsidiary of Valneva SE;
 - c. Senior Secured Debt issued by Depomed Inc.; and
 - d. Senior Secured Debt issued by iRhythm Technologies, Inc.;
- (ii) a credit agreement (the “**RPS Credit Agreement**”) entered into between the Company and RPS BioPharma Investments, LP (the “**RPS Borrower**”), pursuant to which the RPS Borrower has issued a promissory note in favour of the Company (together with the RPS Credit Agreement, the “**RPS Note**”) secured by units of Royalty Pharma Select held by the RPS Borrower which represent the right to receive a proportion of ongoing royalties generated from 21 Products;
- (iii) a Debt Asset in the form of Senior Secured Debt issued by Tesaro;
- (iv) a Debt Asset in the form of Senior Secured Debt issued by Lexicon;
- (v) a Debt Asset in the form of Senior Secured Debt issued by NovoCure; and

- (vi) a Debt Asset acquired by BPCR Ongdapa Ltd from a subsidiary of Royalty Pharma Investments (“RPI”), representing 50 per cent. of a stream of payments acquired by RPI’s subsidiary from Bristol Myers Squibb linked to tiered worldwide sales of Onglyza and Farxiga, diabetes agents marketed by AstraZeneca, and related products.

As at the date of this Prospectus, the percentage of the gross assets of the Company that the current funded tranches of each investment represents is as follows:



Further information on the Company’s existing portfolio of Debt Assets is set out in section 5 of this Part I (The Company) of this Prospectus below.

Under the Investment Management Agreement, the Investment Manager has the power to incur borrowings, on behalf of the Company, of an aggregate value up to 25 per cent. of the Net Asset Value (calculated at the time of drawdown). This borrowing limit may be increased to 50 per cent. of the Net Asset Value (again, calculated at the time of drawdown) with the approval of the Board. Although the Company has not incurred any borrowings as at the date of this Prospectus, the Investment Manager may arrange such borrowings quickly if an opportunity to invest in Debt Asset(s) arise and the investible cash of the Company is or may be insufficient to acquire such Debt Asset(s). The Company has entered into the Commitment Letter on 6 March 2018 with Bank of America N.A. and Goldman Sachs Bank USA whereby the Company may at its option, and subject to entry into appropriate loan documentation, put in place a term loan facility for up to US\$250 million for the purposes of funding further obligations under its existing investments and a pipeline investment (which may or may not materialise) for a maximum period of 364 days from the date of the first loan advance which must be made on or before the earlier of: (i) 31 May 2018; or (ii) the date on which the pipeline investment is abandoned. The amount which may be drawn under the facility will be reduced on a dollar for dollar basis to reflect the amount raised under the Initial Placing and Offer.

2. THE ISSUE

The Issue comprises the Placing Programme and the Offer. The Company may issue up to 2,000 million New Ordinary Shares and / or C Shares pursuant to the Issue, out of which the Company is seeking to raise gross proceeds of up to US\$500 million by way of the Initial Placing and Offer of up to 500 million C Shares at an Issue Price of US\$1.00. The net proceeds from the Issue will be invested in accordance with the investment objective and investment policy set out below.

Applications will be made for the Issue Shares to be admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA at the relevant Admission with applications to be made in connection with C Shares issued pursuant to the Initial Placing and Offer at Initial Admission. It is not currently intended that the Shares be admitted to listing in any other jurisdiction or to trading on any other market. It is expected that Initial Admission will become effective and dealings in the C Shares issued pursuant to the Initial Placing and Offer will commence on 16 April 2018.

The Company may apply at a future date for admission of the Shares to the Premium Listing Segment of the Official List and to trading on the Main Market of the London Stock Exchange,

subject to the Company's ability to satisfy the eligibility requirement for such admission, including in particular the requirements under Chapter 15 of the Listing Rules.

The Issue Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Issue Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio.

Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of, the potential risks from investing in the Company.

3. INVESTMENT OBJECTIVE AND INVESTMENT POLICY

Investment objective

The Company will seek to generate long-term shareholder returns, predominantly in the form of sustainable income distributions, from exposure to the life sciences industry.

Investment policy

The Company will seek to achieve its investment objective predominantly through direct or indirect exposure to Debt Assets (as defined below).

The Company may acquire Debt Assets:

- directly from the entity issuing the Debt Asset (a "**Borrower**"), which may be: (i) a company operating in the life sciences industry (a "**LifeSci Company**"); or (ii) an entity other than a LifeSci Company which directly or indirectly holds an interest in royalty rights to certain Products including any investment vehicle or special purpose vehicle ("**Royalty Owner**"); or
- in the secondary market.

The Company may also invest in equity issued by a LifeSci Company, acquired directly from the LifeSci Company or in the secondary market.

"**Debt Assets**" will typically comprise:

- ***Royalty Debt Instruments***
Debt issued by a Royalty Owner where the Royalty Owner's obligations in relation to the Debt are secured as to repayment of principal and/or payment of interest by Royalty Collateral, including the RPS Note.
- ***Priority Royalty Tranches***
Contract with a Borrower that provides the Company with the right to receive payment of all, or a fixed percentage, of the future royalty payments receivable by the Borrower in respect of a Product (or Products) that would otherwise belong to the Borrower up to a fixed monetary amount or a pre-set rate of return, with such royalty payment being secured by Royalty Collateral in respect of that Product (or Products).
- ***Senior Secured Debt***
Debt issued by a LifeSci Company, which is secured as to repayment of principal and/or payment of interest by a first priority charge over some or all of such LifeSci Company's assets, which may include: (i) Royalty Collateral; or (ii) other intellectual property and marketing rights to the Products of that LifeSci Company.
- ***Unsecured Debt***
Debt issued by a LifeSci Company which is not secured or is secured by a second lien on assets of the Borrower.
- ***Credit Linked Notes***
Derivative instruments referencing Debt Assets, being a synthetic obligation between the Company and another party where the repayment of principal and/or the payment of interest is based on the performance of the obligations under the underlying Debt Assets.

"**Royalty Collateral**" means, with respect to a Debt Asset: (i) future payments receivable by the Borrower on a Product (or Products) in the form of royalty payments or other revenue sharing

arrangements; or (ii) future distributions receivable by the Borrower based on royalty payments generated from a Product (or Products); or (iii) both limb (i) and limb (ii).

“Debt” includes loans, notes, bonds and other debt instruments and securities, including convertible debt, and Priority Royalty Tranches.

Borrowers will predominantly be domiciled in the US, Europe and Japan, though the Company may also acquire Debt Assets issued by Borrowers in other jurisdictions.

Investment restrictions and portfolio diversification

The Company will seek to create a diversified portfolio of investments by investing across a range of different forms of Debt Assets issued by a variety of Borrowers. In particular, the Company will observe the following restrictions when making investments in accordance with its investment policy:

- no more than 30 per cent. of the Company’s gross assets will be exposed to any single Borrower, other than in the case of the RPS Note;
- no more than 35 per cent. of the Company’s gross assets will be invested in Unsecured Debt; and
- no more than 15 per cent. of the Company’s gross assets will be invested in equity securities issued by LifeSci Companies.

Each of these investment restrictions will be calculated as at the time of investment. Although not forming part of the investment policy of the Company, for the avoidance of doubt, where a Debt Asset involves multiple tranches of loans that may be funded at different points of time subject to the satisfaction of precedent conditions at the time each tranche is to be funded, the “time of investment” for these purposes will be the time when a tranche is funded by the Company. Unfunded tranches will not be considered for the purposes of complying with the investment restrictions. In the event that any of the above limits are breached as a result of the funding of a later tranche of loan in a Debt Asset acquired, the Company will take reasonable steps to reduce the resulting concentration including selling an appropriate portion of the relevant investment. In the event that any of the above limits are breached at any point after the relevant investment has been made (for instance, as a result of any movements in the value of the Company’s total gross assets), there will be no requirement to sell any investment (in whole or in part).

Leverage and borrowing limits

The Company may incur indebtedness of up to a maximum of 50 per cent. of its Net Asset Value, calculated at the time of drawdown, for investment and for working capital purposes. The Investment Manager’s powers to incur indebtedness on behalf of the Company within such limit shall be subject to any restrictions set out in the Investment Management Agreement, as amended from time to time.

Although not forming part of the investment policy of the Company, under the Investment Management Agreement, the Investment Manager is not permitted to incur aggregate borrowings greater than 25 per cent. of the Net Asset Value, calculated as at the time of drawdown, without prior Board approval.

Where the Company invests in any Debt Assets through any wholly owned subsidiary, leverage at the subsidiary level will apply towards the restrictions on the Company’s overall indebtedness set out above. Where the Company invests in Debt Assets indirectly through any collective investment undertakings alongside other co-investors or investment partners, notwithstanding the previous sentence, indebtedness in such collective investment undertakings will not count towards the indebtedness of the Company, provided that the Investment Manager ensures that there will be no recourse to the Company in respect of leverage at the level of such underlying collective investment undertakings.

Cash management

The Company’s uninvested capital may be invested in cash instruments or bank deposits for cash management purposes.

Hedging

The Company may, from time to time, enter into such hedging or other derivative arrangements as may be considered appropriate for the purposes of efficient portfolio management and managing any exposure through its investments to currencies other than the US Dollar.

4. CHANGES TO THE COMPANY'S INVESTMENT POLICY

Any material change to the Company's investment policy will be made only with the prior approval of the Shareholders by ordinary resolution. The Company intends to conduct its affairs so as to qualify, at all times, as an investment trust for the purposes of section 1158 of the Corporation Tax Act 2010 (as amended). Any proposed changes to the Company's investment policy are also required to be notified to HMRC in advance.

5. PORTFOLIO

BioPharma III Interest

The Company acquired a 46.2 per cent. limited partnership interest in BioPharma III Holdings, LP, in exchange for Ordinary Shares at the time of its IPO. The BioPharma III Interest gave the Company indirect exposure to five Debt Assets, and its value at the time of the IPO was c.US\$153.5 million.

On 4 December 2017, one of the five Debt Assets, a loan to Depomed Inc. ("**Depomed**"), was subject to an amendment that allowed the Borrower to enter into a commercialisation agreement with a third party, Collegium Pharmaceuticals. The key terms to the amendment provided for: (i) a replacement of a US\$330 million annual sales covenant with an annual EBITDA covenant of US\$90 million through the third quarter of 2018 and US\$125 million thereafter; and (ii) a change in the amortisation schedule to allow for quarterly as opposed to annual amortisation. As part of the consent, Depomed paid the lenders US\$3.0 million and BioPharma III Holdings, LP received US\$0.78 million on 14 December 2017.

From the time of IPO to 31 December 2017, the BioPharma III Interest has resulted in cash distributions to the Company of US\$41.8 million of which US\$30.0 million represented repayment of principal.

As described below, on 7 February 2018, the Company acquired a Senior Secured Debt issued by NovoCure, some of the proceeds of which were used by NovoCure to prepay the Senior Secured Debt issued to BioPharma III Holdings, LP. The Company received approximately US\$46 million from BioPharma III Holdings, LP as a result of the prepayment.

As at the date of the Prospectus, the value of the BioPharma III Interest is estimated to be US\$72.7 million, representing approximately 8 per cent. of the Company's portfolio.

As at the date of this Prospectus, the BioPharma III Interest gives the Company indirect exposure to the following Debt Assets:

Vivus

In March 2013, BioPharma III Holdings, LP entered into an agreement to purchase from Vivus Inc. (NASDAQ: VVUS) a Priority Royalty Tranche in relation to Qsymia. Qsymia is an approved drug to be used as an adjunct to diet and exercise for chronic weight management in adults who are obese or overweight and who have at least one weight-related co-morbidity such as hypertension, type 2 diabetes or dyslipidemia.

BioPharma III Holdings, LP made an initial investment of US\$50 million and gave Vivus the option to draw a second tranche of US\$60 million by 31 December 2013 (which was not exercised by Vivus). BioPharma III Holdings, LP will continue to receive quarterly payments equal to 25 per cent. of quarterly sales of Qsymia, subject to quarterly caps, through April 2018. As at 31 December 2017, the Qsymia investment had a balance of US\$6.7 million.

Valneva

In December 2013, BioPharma III Holdings, LP entered into a US\$30 million senior secured loan agreement with Valneva Austria GMBH, a subsidiary of Valneva SE (Paris Euronext: VLA FP). Valneva's lead product is Ixiaro/Jespect, an approved travellers' vaccine to prevent Japanese Encephalitis, launched in 2009. The loan has a 9.5 per cent. coupon plus a royalty of 2 per cent. to 2.6 per cent. of Valneva's share of Ixiaro/Jespect sales. In March 2015, Novartis AG sold its vaccines business, including Ixiaro, to GlaxoSmithKline and Valneva exercised its right to take over

the marketing rights to the vaccine. BioPharma III Holdings, LP had provided Valneva with the option to draw an additional US\$11 million, which was exercised on 18 November 2015. As of 31 December 2017, the Valneva investment had a balance of US\$27.7 million and will mature in December 2018.

Depomed

In March 2015, BioPharma III Holdings, LP co-led a US\$575 million secured debt facility for Depomed, a publicly traded specialty pharmaceutical company based in California (NASDAQ: DEPO). BioPharma III Holdings, LP committed to a US\$200 million investment; US\$150 million was funded by BioPharma III Holdings, LP and US\$50 million was assigned to co-investors. Contemporaneous with the financing, Depomed acquired Nucynta, a commercial stage product used to treat severe pain, from Johnson & Johnson for US\$1 billion.

Under the terms of the transaction, BioPharma III Holdings, LP invested US\$150 million in a senior secured loan with a term of seven years, maturing in April 2022. The transaction was expected to generate an IRR (from the date of investment) of approximately 11.8 per cent. with upside in the event of an early repayment. On 4 April 2016, Depomed prepaid US\$100 million and BioPharma III Holdings, LP received a US\$27.4 million payment which included US\$26.1 million in principal and US\$1.3 million in additional gains because of the partial early termination. On 3 April 2017, Depomed prepaid an additional US\$100 million and BioPharma III Holdings, LP received a US\$27.1 million payment which included US\$26.1 million in principal and US\$1.0 million in additional gains because of the partial early termination. On 8 November 2017, Depomed prepaid an additional US\$10 million and BioPharma III Holdings, LP received a US\$2.7 million payment which included US\$2.6 million in principal and US\$0.1 million in additional gains because of the partial early termination. On 4 December 2017, BioPharma III Holdings, LP together with the other lenders provided consent to Depomed that allowed it to enter into a Commercialization Agreement with Collegium Pharmaceutical. The key terms to the consent provided for (i) a replacement of a US\$330 million annual sales covenant for an annual EBITDA covenant of US\$90 million through the third quarter of 2018 and US\$125 million thereafter and (ii) a change in the amortisation schedule to allow for quarterly as opposed to annual amortisation. As of 31 December 2017, the Depomed investment had a balance of US\$94.5 million, which includes unamortised fees and will mature in June 2022.

iRhythm

In August 2015, BioPharma III Holdings, LP entered into a commitment for up to US\$55 million in Senior Secured Credit to iRhythm Technologies, Inc. (“iRhythm”), a cardiac diagnostic company based in San Francisco (NASDAQ: IRTC). US\$30 million was funded on 4 December 2015 and on 1 December 2016, iRhythm notified Pharmakon that it will not draw down the remaining US\$25 million tranche. The loan is interest-only for the first four years and will amortize on a straight-line basis for the last two years. As of 31 December 2017 the iRhythm investment had a balance of US\$30 million and will mature in December 2021.

RPS Note

On IPO, the Company also entered into a credit agreement with RPS BioPharma Investments LP pursuant to which the RPS Borrower issued a promissory note in favour of the Company for a loan of US\$185.1 million. The RPS Note represents the right to receive a proportion of ongoing royalties generated from 21 Products and bears interest at an annual rate of 12 per cent.

From the time of IPO to 31 December 2017, the RPS Note has resulted in cash distributions to the Company of US\$94.8 million of which US\$85.5 million represented repayment of principal. As at the date of this Prospectus, the value of the RPS Note is estimated to be US\$89.2 million, representing approximately 10 per cent. of the Company’s portfolio.

Depomed

Between 13 September 2017 and 31 October 2017, the Company purchased 2.5 per cent. senior unsecured convertible notes issued by Depomed (NASDAQ: DEPO) with a face value of US\$23.5 million, at an average price of 72.9 cents, for a total consideration of US\$17.2 million. Between 5 December 2017 and 8 December 2017, the Company sold the entire position at an average price of 83.4 cents and received proceeds of US\$19.7 million including accrued interest, generating a net gain of US\$2.5 million.

Tesaro

On 21 November 2017, the Company and BioPharma IV entered into a definitive loan agreement for up to US\$500 million with Tesaro (NASDAQ: TSRO). Tesaro is an oncology focused biopharmaceutical company incorporated in the state of Delaware in the United States, with its headquarters located at 1000 Winter Street, Suite 3300, Waltham, Massachusetts 02451, United States. Tesaro is listed on the NASDAQ Stock Market.

Tesaro has commercial operations in the United States and Europe, and currently markets ZEJULA (Niraparib) and VARUBI (Rolapitant). Tesaro intends to use the proceeds of the financing to strengthen its leading PARP inhibitor franchise in ovarian cancer, further expand the development of ZEJULA in other tumour types in order to help realize its full potential, and rapidly advance its robust immuno-oncology portfolio using combination-based approaches.

ZEJULA is a drug used in the treatment of ovarian cancer. ZEJULA is the current leader in a three player market with approximately 60 per cent. share. In its clinical trial, ZEJULA reduced the risk of cancer progression or death by 74 per cent. in patients with BRCA mutations and by 55 per cent. in patients without BRCA mutations. ZEJULA received U.S. FDA approval in March 2017 and EMEA approval in November 2017. Tesaro has several ongoing clinical trials evaluating ZEJULA's efficacy for additional lines of ovarian cancer therapy as well as for applications in breast, prostate and other cancers. Tesaro's management believes these additional ovarian cancer indications represent a US\$4.0 billion market opportunity. ZEJULA's Composition of Matter patents cover the drug through 2030.

VARUBI (Rolapitant) is approved for the prevention of chemotherapy-induced nausea and vomiting in the U.S. and Europe.

Under the terms of the transaction, the Company will invest up to US\$370 million (US\$222 million in the first tranche and up to an additional US\$148 million by 20 December 2018 at Tesaro's option) and BioPharma IV will invest up to US\$130 million in parallel with the Company acting as collateral agent. The loan has a term of seven years and is secured by Tesaro's US rights to ZEJULA and VARUBI. The first US\$300 million tranche bears interest at LIBOR plus 8 per cent., with the second optional tranche bearing interest at LIBOR plus 7.5 per cent. The LIBOR rate is subject to a floor of 1 per cent. and certain caps. Each tranche of the loan is interest only for the first two years, amortises over the remaining term, and can be prepaid at Tesaro's discretion, at any time, subject to prepayment fees. The first US\$300 million tranche was funded on 6 December 2017.

As at the date of this Prospectus, the Tesaro Debt Asset constitutes approximately 24 per cent. of the gross assets of the Company (calculated by reference to the first tranche funded). Depending on the net proceeds raised on Initial Admission, the Tesaro Debt Asset may fall below 20 per cent. on Initial Admission. However, the Company may be required to fund up to US\$148 million of the second tranche of the loan amount at any time between 30 June 2018 and 20 December 2018 with 90 days' prior notice. The Company cannot anticipate when the second tranche will be drawn, how much of it will be drawn or if such tranche will be drawn at all. If the second tranche is drawn, depending on the loan amount drawn under the second tranche and the size of the gross assets of the Company at the time when such second tranche is funded (which will depend on a number of factors including the capital raised through the Issue), the Tesaro Debt Asset may constitute more than 20 per cent. of the Company's gross assets when the second tranche is funded. If the gross assets of the Company are such that the Tesaro Debt Asset constitutes more than 30 per cent. of the Company's gross assets when the second tranche is funded, the Company will identify potential solutions and execute a plan to dilute the investment to no more than 30 per cent. of the gross assets of the Company at that time.

Please refer to Part IX (Additional Information on Tesaro) of this Prospectus for further information on Tesaro.

Lexicon

On 4 December 2017, the Company and BioPharma IV entered into a definitive term loan agreement for up to US\$200 million with Lexicon (NASDAQ: LXRX) a fully integrated biopharmaceutical company with a market capitalisation of approximately US\$1.0 billion as at 31 December 2017.

The US\$200 million loan will be available in two tranches, each maturing in December 2022 and bearing interest at 9.0 per cent. per annum. The first US\$150 million was funded on 18 December

2017 of which the Company provided US\$124.5 million and an additional tranche of US\$50 million is available for draw down by March 2019 at Lexicon's option if net XERMELO sales are greater than US\$25 million in the preceding quarter. Under the terms of the transaction, the Company will invest up to US\$166 million (US\$124.5 million in the first tranche and up to an additional US\$41.5 million by 30 March 2019) and BioPharma IV will invest up to US\$34 million in parallel with the Company, acting as collateral agent. The loan is secured by substantially all of Lexicon's assets, including its rights to XERMELO and Sotagliflozin.

Lexicon markets XERMELO (Teloristat Ethyl) for the treatment of carcinoid syndrome diarrhoea in the United States and has licensed XERMELO to Ipsen Pharma SA for commercialisation in territories outside of the United States and Japan. Lexicon is also developing sotagliflozin for the treatment of type 1 and type 2 diabetes in partnership with Sanofi. Lexicon intends to use the proceeds of the financing to support the commercial efforts of XERMELO, advance sotagliflozin, as well as to execute on the clinical development of other earlier stage product candidates.

XERMELO is the first and only orally administered therapy for the treatment of carcinoid syndrome diarrhoea in combination with somatostatin analog (SSA) therapy in adults inadequately controlled by SSA therapy. Carcinoid syndrome is a rare and debilitating condition that affects people with metastatic neuroendocrine tumours (mNETs). XERMELO targets the overproduction of serotonin inside mNET cells, providing a new treatment option for patients suffering from carcinoid syndrome diarrhoea. XERMELO was approved by the U.S. Food and Drug Administration in February 2017 and by the European Commission in September 2017.

Bristol Myers Squibb

On 8 December 2017, the Company's wholly-owned subsidiary, BPCR Ongdapa Ltd, entered into a purchase, sale and assignment agreement with a wholly-owned subsidiary of RPI, for the purchase of a 50 per cent. interest in a stream of payments (the "**Purchased Payments**") acquired by RPI's subsidiary from Bristol Myers Squibb (NYSE: BMY) through a purchase agreement dated 14 November 2017. The Purchased Payments are linked to tiered worldwide sales of Onglyza and Farxiga, diabetes agents marketed by AstraZeneca, and related products.

RPI is an investment vehicle managed by Royalty Pharma. Under the terms of the Assignment Agreement, RPI's subsidiary has assigned the benefit of 50 per cent. of the Purchased Payments to the Company's subsidiary, BPCR Ongdapa Ltd, in consideration for the Company's subsidiary meeting 50 per cent. of the funding obligations owed to Bristol Myers Squibb under the Purchase Agreement. As a result of the arrangements, RPI's subsidiary and the Company's subsidiary will each be entitled to the benefit of 50 per cent. of the Purchased Payments under identical economic terms.

The Company is expected to fund US\$140 million to US\$160 million in consideration for acquiring the Purchased Payments during 2018 and 2020, determined by product sales over that period, and will receive payments from 2020 through 2025. Bristol Myers Squibb and Astra Zeneca are rated A2/A+ and A3/BBB+ respectively.

NovoCure

On 7 February 2018, the Company entered into a senior secured loan agreement for US\$150 million with NovoCure for a term of five years. NovoCure is a commercial stage oncology company with a current market capitalisation of approximately US\$1.9 billion. NovoCure is publicly listed and trades on the NASDAQ stock exchange (NASDAQ: NVCR).

NovoCure manufactures and sells the Optune system, a cancer treatment centered on a proprietary therapy called TTFields, which involves the use of electric fields tuned to specific frequencies to disrupt solid tumour cancer cell division. Optune is currently approved for the treatment of adults with Glioblastoma ("**GBM**"). On 9 January 2018, NovoCure reported unaudited revenues of US\$53.7 million for the fourth quarter of 2017 and US\$177 million for the full year ended 31 December 2017. NovoCure invests meaningfully in R&D and has late stage trials (Phase III pilot studies) underway for TTFields in brain metastases, non-small cell lung cancer and pancreatic cancer.

The US\$150 million loan will mature in February 2023 and bears interest at 9 per cent per annum.

Funding commitments of the Company

As at the date of this Prospectus, other than the assets held through the BioPharma III Interest and the RPS Note which were fully funded on the IPO, the Company has utilised the net cash proceeds from the IPO and the placing of Ordinary Shares in December 2017 to fund the following commitments in relation to its current portfolio. The Company also intends to utilise its existing cash of US\$261.3 million (as at 13 March 2018 being the latest practicable date prior to the date of this Prospectus) as well as the net proceeds from the Issue to fund future commitments in relation to its current portfolio.

The Company has also entered into the Commitment Letter on 6 March 2018 with Bank of America N.A. and Goldman Sachs Bank USA whereby the Company may at its option, and subject to entry into appropriate loan documentation, put in place a term loan facility for up to US\$250 million for the purposes of funding further obligations under its existing investments and a pipeline investment (which may or may not materialise) for a maximum period of 364 days from the date of the first loan advance which must be made on or before the earlier of: (i) 31 May 2018; or (ii) the date on which the pipeline investment is abandoned. The amount which may be drawn under the facility will be reduced on a dollar for dollar basis to reflect the amount raised under the Initial Placing and Offer.

Investment	Funded Commitment (US\$m)	Outstanding Potential Commitment (US\$m)	Number of Tranches Outstanding	Latest Potential Draw Date for Outstanding Tranches
Tesaro	222.0	148.0	1	20 December 2018 ⁽¹⁾
Lexicon	124.5	41.5	1	30 March 2019 ⁽²⁾
Bristol Myers Squibb	—	140.0 – 160.0	8	June 2018 to March 2020
NovoCure	150.0	—	—	—
Total	496.5	329.5 – 349.5	—	—

(1) At any time between 30 June 2018 and 20 December 2018.

(2) At any time up to 30 March 2019 subject to net XERMELO sales being greater than US\$25 million in the preceding quarter.

Future Investment Opportunities

The Company has a strong pipeline and the Investment Manager continues to assess and evaluate a pipeline of confidential investment opportunities within its investment objective and policy, which may or may not materialise. Some opportunities may become actionable in the near term, including an investment of the Company's assets commensurate in size to its existing major investments that is within the Company's investment policy and return expectations. If any significant pipeline investments do materialise, the Company will announce such investments through a Regulatory Information Service as it has done for all of its investments made since the IPO.

6. DIVIDEND POLICY AND TARGET RETURN

The Company has, since the IPO, paid and intends to continue paying dividends in US Dollars on a quarterly basis. The Company will also be giving Shareholders the opportunity to receive dividend payments in Sterling. The Company may, where the Directors consider it appropriate, use the reserve created by the cancellation of its share premium account to pay dividends.

Whilst not forming part of the Company's investment objective or policy, on the basis of market conditions as at the date of this Prospectus, the Company will target an annual dividend yield of 7 per cent. on the Ordinary Shares (calculated by reference to the IPO Issue Price) (the "**Target Dividend**"), together with a net NAV total return of 8 to 9 per cent. per annum on the Ordinary Shares in the medium term (the "**Target Return**"). Details regarding the tax treatment of any dividends paid are set out in Part VII (Taxation and ERISA Considerations) of this Prospectus.

The Target Dividend and Target Return are targets only and are not profit forecasts. There can be no assurance that these targets will be met and they should not be taken as an indication of the Company's expected or actual future results. Potential investors should

decide for themselves whether or not these targets are reasonable or achievable in deciding whether to invest in the Company.

Actual events and conditions may differ materially from the assumptions used to establish the Target Dividend and the Target Return. In particular, the actual return generated by the Company in pursuing its investment objective depends on a wide range of factors including, but not limited to, general economic and market conditions, availability of investment opportunities, defaults and prepayments under Debt Assets, fluctuations in the life sciences industry, the terms of the investments made by the Company and the risks highlighted in the “Risk Factors” section of this Prospectus. Accordingly, investors should not place any reliance on the Target Dividend or the Target Return in deciding whether to invest in the Issue Shares.

7. NET ASSET VALUE

The Net Asset Value is the value of all assets of the Company less its liabilities (all as determined in accordance with the Company’s accounting policies). The Net Asset Value per Ordinary Share is the Net Asset Value attributable to the Ordinary Shares divided by the number of Ordinary Shares in issue at the relevant time. The Net Asset Value per C Share is the Net Asset Value attributable to the C Shares divided by the number of C Shares in issue at the relevant time. These Net Asset Values will be audited on a yearly basis.

The unaudited Net Asset Value, the unaudited Net Asset Value per Ordinary Share and the unaudited Net Asset Value per C Share will be calculated in US Dollars by the Administrator (on the basis of information provided by the Investment Manager) on a monthly basis, and will be notified to the market via a Regulatory Information Service on a monthly basis and is expected to be published on the Company’s website within 45 days of the month end.

Investments will be valued at fair market value as determined by the Investment Manager (in accordance with the Company’s accounting policies) at the date of measurement, using a methodology based on accounting guidelines and the nature, facts and circumstances of the respective investments.

The Board may temporarily suspend the calculation and publication of the Net Asset Value and Net Asset Value per Ordinary Share and/or Net Asset Value per C Share during a period when, in the opinion of the Board:

- there are political, economic, military or monetary events or any circumstances outside the control, responsibility or power of the Board, and disposal or valuation of investments of the Company or other transactions in the ordinary course of the Company’s business are not reasonably practicable without material detriment to the interests of Shareholders;
- there is a breakdown of the means of communication normally employed in determining the calculation of the Net Asset Value per Ordinary Share and/or Net Asset Value per C Share; or
- it is not reasonably practicable to determine the Net Asset Value per Ordinary Share and/or Net Asset Value per C Share on an accurate, fair and timely basis.

Any suspension in the calculation of the Net Asset Value and Net Asset Value per Ordinary Share and/or Net Asset Value per C Share, to the extent required under the Articles or by the Listing Rules (to the extent to which the Company voluntarily complies with these), will be notified through a Regulatory Information Service as soon as practicable after such suspension occurs.

Any suspension in the calculation of the Net Asset Value per Ordinary Share and/or Net Asset Value per C Share may also lead to a suspension of the listing of the Company on the Official List of TISEA for the period where such suspension is in force.

8. VOTING RIGHTS

As the Investment Manager is based in the United States, the Company could lose its status as a “foreign private issuer” under the Securities Act and the Exchange Act if US residents come to own more than 50 per cent. of the Company’s voting securities, which for this purpose means securities the holders of which are presently entitled to vote in respect of the election of Directors. If the Company ceases to be a “foreign private issuer”, this could have materially adverse consequences for the Company – for example, the Company could be required to register with the SEC under the Exchange Act and/or under the Investment Company Act, which would subject the

Company to potentially onerous and costly reporting requirements and substantive regulation with which the Company is not currently structured to comply.

With a view to ensuring that the Company continues to be considered a “foreign private issuer” for the purposes of the Securities Act and the Exchange Act, thus avoiding the materially adverse consequences outlined above, the Articles provide that, in respect of any shareholder resolution concerning the appointment or removal of one or more Directors (a “**Director Resolution**”), each Shareholder shall be required, as set out in the Articles, to make certain certifications with regard to their status (and, to the extent they hold Shares for the account or benefit of any other person, the status of such other person) as a non-US resident (each Shareholder that does not so certify, being a “**Non-Certifying Shareholder**”). If the aggregate total of votes which Non-Certifying Shareholders would otherwise be entitled to cast on a Director Resolution is greater than 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution, then, pursuant to the Articles, the aggregate number of votes which Non-Certifying Shareholders are entitled to cast on such Director Resolution shall be scaled down so as not to exceed 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution.

Further information on such provisions of the Articles is set out in paragraph 5.2.7 in Part VIII (Additional Information on the Company) of this Prospectus.

9. DISCOUNT CONTROL MECHANISMS

Continuation Resolution

The Company has been established with an indefinite life. However, the Board wishes to provide Shareholders with the opportunity to consider the future of the Company on a periodic basis. Accordingly, the Articles provide that a continuation vote be put to Shareholders:

- at the first annual general meeting of the Company to be held following the fifth anniversary of First Admission and, if passed, at the annual general meeting of the Company held every third year thereafter; and
- within two months of the expiration of any 12 month rolling period where the Ordinary Shares have, on average, traded at a discount in excess of 10 per cent. to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each month in the relevant period to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at such month end and averaging this comparative figure over the relevant period).

If the continuation vote is passed by the Shareholders by ordinary resolution, the effect will be that the Company will continue its business as a closed-ended public limited company conducting its affairs as a UK investment trust. If the continuation vote resolution is not passed, the Directors will be required to put proposals for the reconstruction, reorganisation or winding up of the Company to the Shareholders for their approval within six months of the date of the general meeting at which the resolution was proposed. These proposals may or may not involve winding up the Company or liquidating all or part of the Company's then existing portfolio of investments and there can be no assurance that a continuation vote not being passed will necessarily result in a winding up of the Company or liquidation of all or some of its investments.

Share buybacks

The shares of investment trusts and other listed closed-ended funds may trade at a discount to the underlying net asset value per share. Whilst the rating which the market applies to the Ordinary Shares or the C Shares is not within the control of the Company, the Directors believe that, subject always to wider market conditions, the rating will tend to benefit from strong investment performance.

The Directors will consider using Ordinary Share buybacks to assist in limiting discount volatility and potentially providing an additional source of liquidity, if and when the Ordinary Shares trade at a level which makes their repurchase attractive.

The Directors will not buy back any Shares from any class of C Shares in issue prior to Conversion. Therefore, the Company will not assist any class of C Shares in limiting discount volatility or provide an additional source of liquidity.

Ordinary Shares will only be repurchased at a price which, after repurchase costs, represents a discount to the Net Asset Value per Ordinary Share. Repurchased Ordinary Shares will be cancelled or may, alternatively, be held in treasury. Ordinary Shares may only be reissued from treasury at a price which, after issue costs and expenses, is not less than the Net Asset Value per Ordinary Share at the relevant time.

If, in any 3 month rolling period, the Ordinary Shares have, on average, traded at a discount in excess of 5 per cent. to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each month in the relevant period to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at such month end and averaging this comparative figure over the relevant period), the Company will, subject to meeting its Target Dividend, use 50 per cent. of the Company's capital and income proceeds generated after the conclusion of such 3 month rolling period, to repurchase Ordinary Shares at least until such time as the Ordinary Shares trade at an average discount of 1 per cent. or less to the Net Asset Value per Ordinary Share over a 2 week rolling period.

If, in any 6 month rolling period, the Ordinary Shares have, on average, traded at a discount in excess of 10 per cent. to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each month in the relevant period to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at such month end and averaging this comparative figure over the relevant period), the Company will, subject to meeting its Target Dividend, use 100 per cent. of the Company's capital and income proceeds generated after the conclusion of such 6 month rolling period, to repurchase Ordinary Shares at least until such time as the Ordinary Shares trade at an average discount of 1 per cent. or less to the Net Asset Value per Ordinary Share over a 2 week rolling period.

All Ordinary Share repurchases will be conducted in accordance with the Act, the Market Abuse Regulation, the Listing Rules (to the extent to which the Company voluntarily complies with these) and other applicable laws and regulations, and will be announced to the market via an RIS on the same or the following day.

In accordance with the Act, Ordinary Share repurchases will be subject to a special resolution granting the Board general authority to make such market purchases of issued Ordinary Shares being passed and having remaining capacity under such authority at the time when such obligations arise.

The Company will not undertake any Ordinary Share repurchases where any such repurchases may result in a breach of the Company's obligations under any bank facility that the Company may put in place in the future, whether pursuant to the Commitment Letter or otherwise.

Other than as set out above, the exercise by the Directors of the Company's powers to repurchase Ordinary Shares and the timing and structure of any such repurchase is entirely discretionary and no expectation or reliance should be placed on the Directors exercising such discretion.

By way of a special resolution dated 27 February 2017, the Board has the general authority to make market purchases of Ordinary Shares up to a maximum of 14.99 per cent. of the Ordinary Shares in issue immediately following the IPO, such authority lasting until the conclusion of the first annual general meeting of the Company.

As approved by a further special resolution passed on 27 February 2017, the Company effected the cancellation of its share premium account following the IPO by way of a court order, in order to be able to make share repurchases out of the Company's distributable reserves. Thereafter, pursuant to an order of the High Court, it cancelled the redeemable preference shares issued at the time of incorporation.

10. FURTHER ISSUES OF SHARES

By way of a special resolution dated 28 February 2017, the Board has the general authority to allot Ordinary Shares and/or C Shares, in addition to those Ordinary Shares issued pursuant to the IPO, up to an aggregate nominal amount of US\$20 million (i.e. up to 2,000 million (in aggregate) Ordinary Shares or C Shares of a nominal value of US\$0.01 each), such authority lasting until the end of the period of five years from the date of the passing of that resolution. The Company has

issued 914,252,831 Ordinary Shares under such authority so far and has the ability to issue a further 1,085,747,169 Shares under its existing authority. The Company may issue a maximum of 2,000 million additional Shares through the Issue. To the extent that the authority is used in full before the end of such period, the Company may convene a general meeting to refresh the authority, or it may refresh the authority at an annual general meeting. At the same meeting on 28 February 2017, a special resolution was passed to disapply Shareholders' pre-emption rights over this unissued share capital so that the Board will not be obliged to offer any such new Shares to Shareholders *pro rata* to their existing holdings. Any issue of Shares on a non-pre-emptive basis above 1,085,747,169 whether under the Placing Programme and Offer or otherwise will only be made if the Shareholders grant the Directors authority to do so at a general meeting.

As discussed in additional detail in Part V (C Shares), the Company may at its discretion issue additional classes of C Shares prior to the Conversion of any previously issued class(es) of C Shares.

Except where authorised by Shareholders, no new Ordinary Shares will be issued at a price which (after costs and expenses) is less than the Net Asset Value per Ordinary Share at the time of the issue of the new Ordinary Shares, unless the new Ordinary Shares are first offered *pro rata* to Shareholders on a pre-emptive basis.

Applications will be made to the London Stock Exchange and TISEA for the Issue Shares to be issued pursuant to the Initial Placing and Offer (and pursuant to each Placing thereafter) to be admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA.

As noted in further detail in Part VIII (Additional Information on the Company) of this Prospectus, the Articles contain provisions that permit the Directors to issue C Shares from time to time and a C Share issue would permit the Board to raise further capital for the Company whilst avoiding any immediate dilution of investment returns for existing Shareholders which may otherwise result.

PART II – INVESTMENT OPPORTUNITY

1. BACKGROUND TO THE LIFE SCIENCES INDUSTRY

Size and growth dynamics of the industry

The life sciences industry consists of pharmaceutical and biotechnology firms and is a large and vital industry with consistent growth. Worldwide industry revenues today are approximately US\$1.1 trillion and are expected to reach US\$1.5 trillion by 2021, reflecting a compounded annual growth rate of 6 per cent. While medical and scientific advances contribute to a portion of that increase, other growth drivers include more basic demographic and macroeconomic factors such as a growing population, an aging population and increasing prosperity in developing countries which is improving access to healthcare for millions of patients. The increase in spending is expected to be largely driven by brands and increased usage in emerging markets, offset by expiring patents.

Life Sciences is a Large, Vital Industry with Strong, Consistent Growth

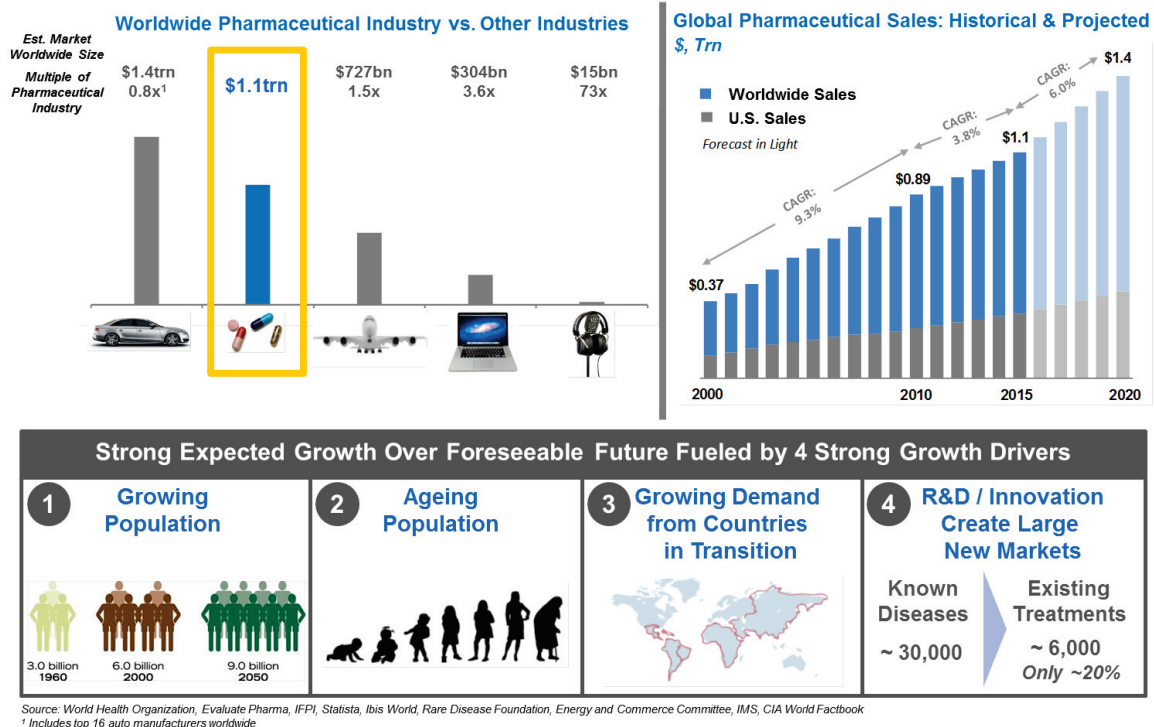


Exhibit 1 – Life Sciences is a Large, Vital Industry with Strong Consistent Growth

In 2015, total US healthcare spending increased 5.8 per cent. to reach US\$3.2 trillion, or US\$9,990 per person, the sixth consecutive year of growth. Annual growth for the five years ending in 2015 has ranged from 2.9 per cent. to 5.8 per cent. US households accounted for 28 per cent. of national health spending in 2015, with the federal government accounting for 29 per cent., followed by private employers for 20 per cent. and state and local governments for 17 per cent. The share of the US economy devoted to healthcare was 17.8 per cent. of GDP, approximately the same as it was for the previous 5 years.

In 2015, US prescription drug spending, which accounted for approximately 10 per cent. of US healthcare spending, grew 9.0 per cent. to US\$324.6 billion. This growth may be attributed to increases in the use of prescription drugs **by people who were newly insured and by those who moved to more generous insurance plans as a result of the premium and cost-sharing subsidies offered by the US Patient Protection and Affordable Care Act.** Annual prescription drug spending growth is projected to average 6.2 per cent. for the period between 2016 and 2020 and 6.4 per cent. for the period between 2020 and 2025.

Quintiles IMS Holdings, Inc. (“IMS”), a company that assists pharmaceutical companies with clinical trial research, reports that in 2016 the US continued to be the largest market for prescription pharmaceuticals, accounting for over 40 per cent. of worldwide pharmaceuticals spending. Growth in the US market is expected to remain strong, driven by fewer patent expiries than in previous years, innovative product launches and rising prices.

In 2015, European spending on pharmaceuticals made up approximately 23 per cent. of global spending on pharmaceuticals. IMS projects that in 2020 the top five European markets will spend approximately US\$180 to US\$190 billion on medicines, an increase of US\$40 billion on spending on medicines in 2015, partly due to the wider adoption of specialty medicines.

In addition, according to IMS, Japanese spending on pharmaceuticals is approximately 8 per cent. of the global spend on pharmaceuticals. Japan and France have a range of expected growth rates over the next five years from a 1 per cent. decline to a 2 per cent. increase. This is the lowest of the developed markets. Spending in 2020 is expected to see wider use of specialty original brands but lower overall brand spending, as older brands will face more severe price cuts – the local price regime applies greater price cuts to older off-patent brands, lower to newer, original brands, and separately incentivises generic dispensing.

This is relevant for the Company as it seeks new investment opportunities because the growing pharmaceuticals market can be expected to provide a larger pool of products and biotechnology companies in need of capital that could meet the Company's lending criteria.

Product Lifecycle

Pharmaceutical and biotechnology products have a long life cycle, which can provide considerable downside protection for the Company. Worldwide patents can lead to more than 20 years of protection, which frequently translates to as long as 15 years of exclusivity from the time the products are first approved by regulatory agencies such as the FDA. Some governments also provide for regulatory exclusivity which provides for 6 to 10 years of commercial exclusivity independent of an approved patent, if an innovator performs clinical trials.

Exhibit 2 below shows the average worldwide sales curve of the top 500 pharmaceutical products launched since 1986. On average, sales growth is very robust for the first 12 years of a product's life cycle, after which some of these products begin to lose exclusivity, and their sales growth slows and starts to decline shortly thereafter. A key driver of initial sales growth is increasing prescriptions from physicians in the early-launch markets, but subsequent commercialisation rates in additional geographic markets, as well as expanding indications, frequently drive attractive growth for more than a decade.

Investing in Pharmaceutical Assets Allows for Stable Cash Flows and Long Runway of Visibility

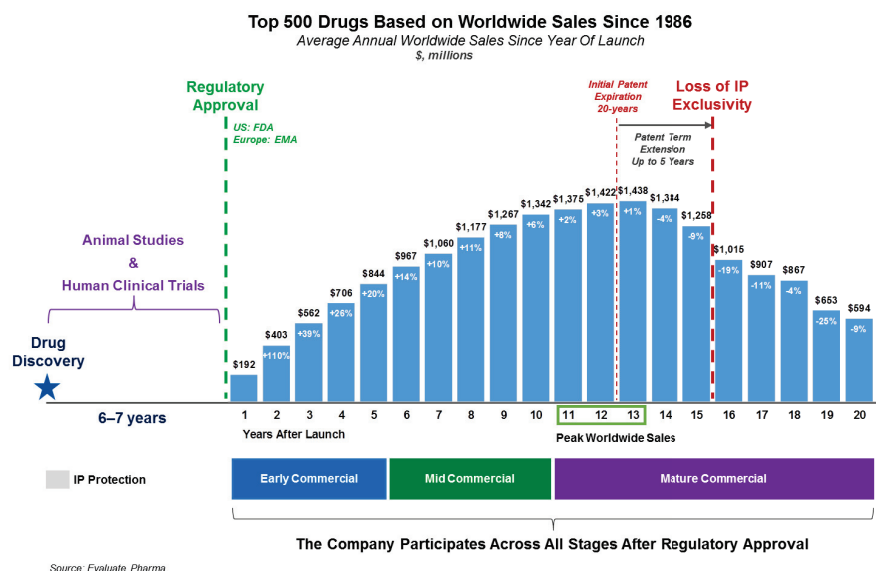


Exhibit 2 – Investing in Pharmaceutical Assets Allows for Stable Cash Flows and Long Runway of Visibility

Therefore, the Investment Manager believes that the Company's portfolio of assets should comprise reliable, durable cash flows, protected by intellectual property. The Company's approach towards the acquisition of Debt Assets and ranking of security provides attractive downside protection.

Largest Investor in Research and Development and Favourable Regulatory Environment

Large, mature, multinational pharmaceutical companies invest an amount equivalent to 15 per cent. to 20 per cent. of annual sales revenue in research and development (“R&D”), while many of the large biotech companies invest upwards of 30 per cent. to 50 per cent. of annual sales revenue in R&D versus other industries such as chemicals and software which range from 3 per cent. to 11 per cent. respectively. In 2016, global R&D investment by private sector LifeSci Companies totalled approximately US\$160 billion. To put this in context, biotech and pharmaceutical companies invested 9x (800 per cent.) more than the aerospace and defence industry and 3x (200 per cent.) more than the software industry. In addition to driving growth of future product sales, significant investment in R&D creates near-term and long-term funding needs for LifeSci Companies that are looking to progress the commercialisation of their products.

Global R&D Investment in Life Sciences

\$. billions

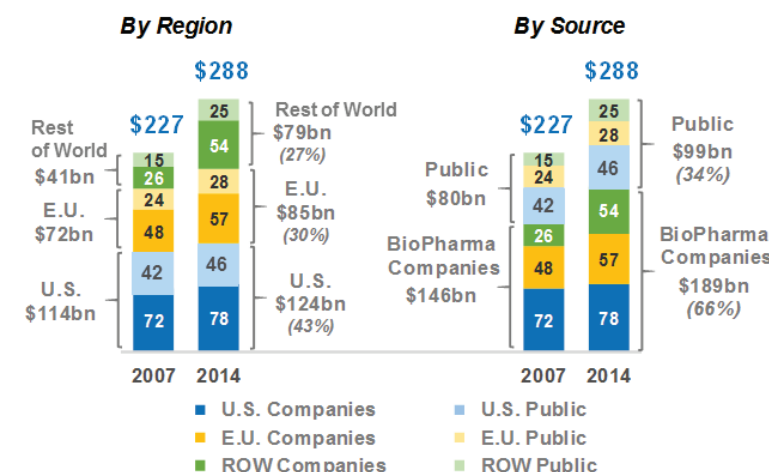


Exhibit 3 – Global R&D Investment in Life Sciences

The substantial and growing investment in R&D by the life sciences industry, coupled with increasingly productive approaches to R&D and a more favourable global regulatory environment are contributing to dramatic increases in the number of drugs which are entering clinical trials and receiving regulatory approvals. These key metrics attest to the attractive prospects of the life sciences industry. As indicated in Exhibit 4, over the last 10 years, the number of R&D programs in clinical trials in the US has grown by a compound annual growth rate of 8.2 per cent.

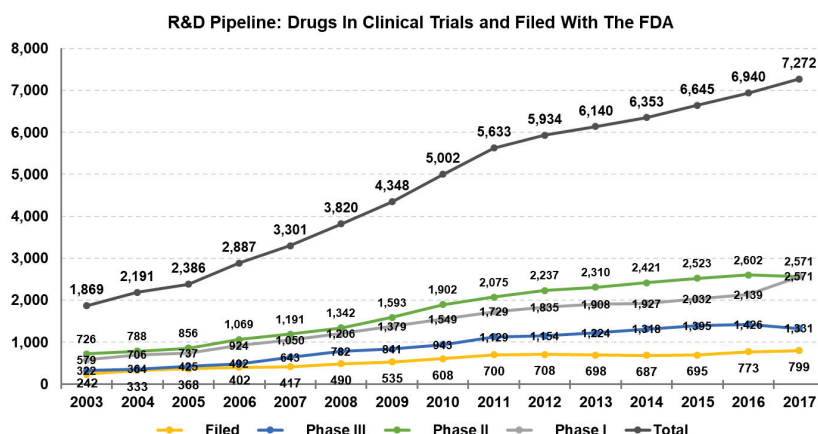


Exhibit 4 – R&D Pipeline: Drugs in Clinical Trials and Filed with the FDA

Over the past 20 years, more than 700 new drugs have been discovered, developed and authorised by regulatory bodies for use with patients. Over the past 7 years, the innovation cycle in the US has been supported by a more favourable regulatory environment. The FDA has provided a more transparent path to approval and, as an example, created the ‘Breakthrough Therapy

Designation' in 2012, which allows for the expedited development and approval of drugs which treat serious or life-threatening diseases. The PDUFA cohort of 77 new molecular entities ("NMEs") submitted between 2013 and 2015 saw an ~85 per cent. approval rate within 18 months whereas previous PDUFA cohorts from 1988 through 2014 took 48-54 months for ~80 per cent. to receive approval. As a result of this more constructive regulatory environment, over 250 US drug approvals have been recorded since 2011, including 46 in 2017 alone, which represents the largest annual number of new drug approvals since 1996. 61 per cent. of the 46 drugs approved in 2017 used one or more expedited pathways – 28 were priority review, 18 were fast track, 17 were breakthrough therapy, and 6 received accelerated approval. The 5 year average rate of FDA approvals increased to 36 drugs per year as a result of a greater focus on specific biological targets, increased contribution from smaller biotech companies, and greater efficiency within the FDA, with approval times cut in half from approximately 20 months to less than 10 months and during the next 5 years, new drug launches are expected to continue to accelerate to 40-45 per year and drive 3.5-4.5 per cent. of manufacturer revenue growth.

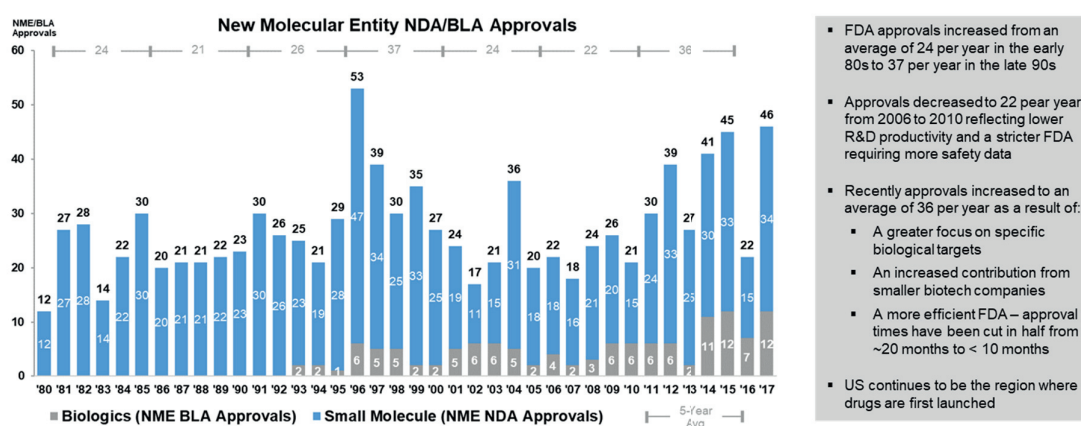


Exhibit 5 – New Molecular Entity NDA/BLA Approvals

Market Dynamics Creating Fragmentation of the Industry and More Lending Opportunities

Despite growth in the pharmaceutical market, large pharmaceutical companies continue to face mounting pressure on top-line sales from patent expirations on blockbuster products and failures in their R&D pipelines. The internal R&D departments of larger pharmaceutical companies have struggled to replace lost revenue with new products. Dramatically escalating R&D costs have also put pressure on industry participants to adapt their business model and seek partners to reduce risk. The amount of R&D investment per FDA-approved product is now approximately US\$1.4 billion compared to US\$179 million in the 1970s. As a result of these factors, large pharmaceutical companies have evolved and are increasingly relying on in-licensing and corporate acquisitions for new products.

Over the last 30 to 40 years, the landscape of the pharmaceuticals industry has been transformed from one dominated by fully integrated pharmaceutical companies to a more dynamic and entrepreneurial R&D ecosystem comprised of thousands of participants. The source of biopharmaceutical innovation is highly diverse with over 300 entities filing original patents to protect the intellectual property supporting the 667 medicines that were launched over the past 20 years. Nearly 75 per cent. of those molecules were launched by a company different from the one that filed the original patent reflecting the level of licensing, partnering, and M&A activity associated in the industry. As a result of this R&D evolution, smaller companies, investor groups, universities and non-profit research institutes increasingly have rights to royalty streams on products that have been out-licensed to larger pharmaceutical companies. This broader shift in R&D approach provides an expanding landscape of lending opportunities for the Company, as smaller companies are increasingly partnering with large pharmaceutical companies.

As indicated in Exhibit 6, the pharmaceutical and biotechnology ecosystem has evolved to one where innovation and commercialisation, which was once centralised in fewer than 100 big pharmaceuticals, has now spread among more than 5,000 academic labs, government funded entities and more than 5,000 biotech companies. The pool of creditworthy borrowers has increased exponentially.

Specialisation & Fragmentation of Drug Discovery is Leading to More Lending Opportunities

Over last 30 to 40 years landscape has been transformed from one dominated by the Fully Integrated Pharmaceutical Company to a more dynamic & entrepreneurial R&D ecosystem comprised of thousands of participants

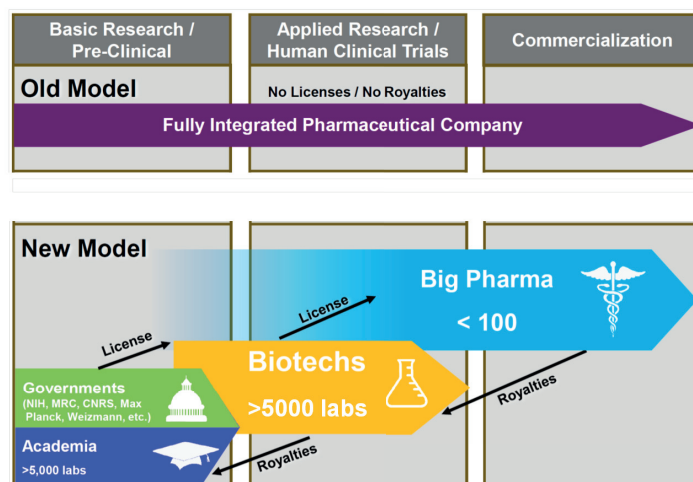


Exhibit 6 – Specialisation & Fragmentation of Drug Discovery is Leading to More Lending Opportunities

Exhibit 7 below provides more detail around the evolution of the industry as seen through the leading commercial pharmaceutical products. The exhibit lists the top 30 drugs in 2000 and 2014 and indicates which of these are biotech products (broadly defined).

In 2000, only two of the top 30 life sciences products were developed by biotech companies, representing 7 per cent. of total sales of the top 30 products, and 4 products were biotech products (products developed in living organisms), representing only 11 per cent. of total sales of the top 30 products.

By 2015, the industry had changed dramatically. 20 of the top 30 life sciences products (representing 75 per cent. of total sales of the top 30 products) were either biotech products or developed by a biotech company. Also, 10 products (representing 40 per cent. of total sales of the top 30 products) were discovered at an academic institution. Not only does this reflect the development of a larger, stronger pharmaceutical and biotech ecosystem but also the growth in the number of creditworthy entities which can be potential funding counterparties for the Company.

Top 30 Products in 2000

Product	Marketer(s)	Sales (\$ mil)	Responsible for Discovery / Development
			University / Hospital
1. Prilosec	AstraZeneca	\$6,260	
2. Zocor	Merck	\$5,280	
3. Lipitor	Pfizer	\$5,030	
4. Norvasc	Pfizer	\$3,361	
5. Prevacid	TAP Pharma	\$2,740	
6. Procrit	J&J	\$2,709	Amgen → J&J ✓
7. Celebrex	Pharmacia	\$2,614	
8. Prozac	Eli Lilly	\$2,585	
9. Zyprexa	Eli Lilly	\$2,366	
10. Paxil	GSK	\$2,349	
11. Claritin	Schering-Plough	\$2,194	
12. Vioxx	Merck	\$2,160	
13. Zolof	Pfizer	\$2,140	
14. Epogen	Amgen	\$1,863	Amgen ✓
15. Premarin	Wyeth	\$1,870	
16. Augmentin IR	GSK	\$1,847	
17. Vasotec	Merck	\$1,790	
18. Pravachol	Bristol-Myers	\$1,766	
19. Glucophage IR	Bristol-Myers	\$1,718	
20. Cozaar	Merck	\$1,715	
21. Tylenol	J&J	\$1,680	
22. Insulin	Novo Nordisk	\$1,671	– ✓
23. Cipro/Ciproxy	Bayer	\$1,648	
24. Risperdal	J&J	\$1,603	
25. Tavel	RTI → Bristol-Myers	\$1,561	
26. Zithromax	Pfizer	\$1,382	
27. Intron A	Schering-Plough	\$1,360	– ✓
28. Viagra	Pfizer	\$1,344	
29. Heurtonin	Pfizer	\$1,334	
30. Flivocid/Flovent	GSK	\$1,334	
Total WW Sales		\$69,374	\$7,702 11% 13%

Top 30 biopharma products had sales of \$69bn

- 4 products were biotech drugs with sales of \$7.7bn (11% of total)
- 2 products were developed by biotech companies and had sales of \$4.7bn (7% of total)

Top 30 Products in 2015

Product	Marketer(s)	Sales (\$ mil)	Responsible for Discovery / Development
			University / Hospital
1. Humira	AbbVie (Knoll)	\$14,359	Cambridge, Scripps ✓
2. Harvoni	Gilead	\$13,864	
3. Enbrel	Amgen (Immunex) / Pfizer	\$9,037	MassGen ✓
4. Remicade	J&J (Centocor) / Merck	\$8,151	NYU ✓
5. Rituxan	Roche (Genentech)	\$7,221	– Idec → Genentech ✓
6. Lantus	Sanofi	\$7,089	– Genentech ✓
7. Avastin	Roche (Genentech)	\$6,945	– Genentech ✓
8. Herceptin	Roche (Genentech)	\$6,794	UCLA ✓
9. Prevacid	Pfizer	\$6,023	– Celgene ✓
10. Revlimid	Celgene	\$5,801	–
11. Seretide/Advair	GSK	\$5,625	–
12. Crestor	AstraZeneca	\$5,381	– Shionogi ✓
13. Sovaldi	Gilead (Pharmasset)	\$5,076	– Pharmasset ✓
14. Lyrica	Pfizer	\$4,876	Northwestern ✓
15. Neulasta	Amgen	\$4,800	MSK ✓
16. Gleevec	Novartis	\$4,658	– Amgen ✓
17. Bystolic	Regeneron	\$4,372	– Regeneron ✓
18. Copaxone	TEVA	\$4,028	Weitzman ✓
19. Spriva	Boehringer Ingelheim	\$3,942	–
20. Xarelto	J&J / Bayer	\$3,930	–
21. Januvia	Merck	\$3,870	Demuth, Tufts ✓
22. Lucantis	Novartis / Roche	\$3,639	– Prosidion ✓
23. Tecfidera	Biogen (Fumapharm)	\$3,638	– Genentech ✓
24. Truvada	Gilead	\$3,567	Emory/IOCP ✓
25. Symbicort	AstraZeneca	\$3,394	– Gilead ✓
26. Nexium	AstraZeneca	\$3,202	–
27. Atripia	Gilead	\$3,134	Emory/IOCP ✓
28. Novorapid	Novo Nordisk	\$3,082	–
29. Abilify	Bristol Myers	\$2,696	– Otsuka ✓
30. Humalog	Eli Lilly	\$2,642	–
Total WW Sales		\$165,539	\$65,459 40% 75% 67%

Top 30 biopharma products had sales of \$165bn

- 10 products with sales of \$65bn (40% of total sales) were discovered at academic institutions
- 20 products with sales of \$123bn (75% of total sales) were developed by biotech companies or pharma companies using biotechnology
- Remarkably, 9 of the top 10 drugs are biotech products

Exhibit 7 – Track Record of Academic Research and Biotech Development

Trend of specialty products driving market growth

Medical and scientific advances continue to drive innovation. The emergence of specialty medicines has contributed meaningfully to growth within the pharmaceutical and biotechnology sector. These products, which are often the sole or leading product in their disease category, face little to no competition, and have been largely immune to pricing pressure. According to IMS, in 2003, specialty drugs accounted for 14 per cent. of the global pharmaceutical market; in 2016, they accounted for 40 per cent. of the global market. Many of the new specialty drugs are biotechnology/biologic medicines which differ from conventional pills in that they are more complex and made up of injectable or intravenous organic compounds that are harder to copy. Of the over 630 distinct research programs in Phase II or later, 37 per cent. are in the specialty market. By definition, specialty medicines are marketed to a much smaller audience of specialist physicians (7,000 to 50,000 physicians in the US) as compared to the broad universe of general medicine physicians (approximately 400,000 in the US). This has allowed small biotech companies to commercialise their products on their own without having to licence them to large pharmaceutical companies as in many cases a 250 person specialist sales force is sufficient instead of a 5,000 person general medicines sales force. This has created a robust pool of vertically integrated biotech companies that are creditworthy and in need of capital in the form of debt or equity.

Summary of Industry Dynamics

- Large and growing global market – US\$1.1 trillion growing at c.6 per cent. annually.
- Revenue supported by long product life cycles – patent protected products with as long as 12 to 15 years or more of commercial exclusivity.
- Largest investments in R&D – this can fuel long term growth and increases funding needs.
- Evolving business model – fragmentation of the industry has increased the number of creditworthy counterparties. Dramatic growth in the number of smaller biotech companies has created counterparties with a much higher cost of capital.
- Favourable R&D productivity and US regulatory environment – the increase in productivity and approvals further secures growth and the need for capital.

2. INVESTMENT HIGHLIGHTS

The Company represents an attractive investment opportunity as a vehicle to provide debt capital for the life sciences industry for the reasons set out below.

Attractive industry dynamics for debt financing with high barriers to entry

As described above, the life sciences industry is significant. Healthcare companies that are developing products, particularly small to mid-size biotech companies, require steady access to substantial amounts of capital in order to fund product development. Pharmaceutical companies have increasingly focused on obtaining debt financing as a lower cost of capital alternative relative to equity, resulting in increased size of debt financings. An annual cost of debt of 12 per cent. may be considered inexpensive relative to the cost of equity for these companies.

However, this market has not historically been served by traditional lenders, because lenders need highly specialised industry, scientific, clinical, regulatory and commercial expertise to generate returns. The Investment Manager's professionals, together with those at Royalty Pharma accessible through the Shared Services Agreement, have complementary scientific, medical, licensing, operating, structuring and financial backgrounds which the Investment Manager believes provide a competitive advantage in sourcing, evaluating, executing and managing credit investments in the life sciences industry.

Patent-protected pharmaceutical products have significant barriers to entry as a result of intellectual property protection and the rigorous regulatory and clinical review process. Intellectual property, patents and other regulatory protections (such as data exclusivity, orphan drug designation or paediatric exclusivity) provide market exclusivity, limiting competition and leading to pricing stability and market leverage. The regulatory approval process for the clinical development of human pharmaceutical products is expensive and time consuming. The average development cost of a newly approved drug exceeds US\$1.4 billion and products can take 10 to 15 years to be developed. The rigorous approval process, related expenses and time required to develop pharmaceutical and biopharmaceutical products tend to limit the number of competitors/competing products.

Uncorrelated returns and a high quality investment portfolio

Provision of debt capital offers uncorrelated returns, as returns are based on long-term cash flows from pharmaceutical sales and not equity markets or accounting earnings. Sales of pharmaceutical and biopharmaceutical products are generally less affected by economic and business cycles than durable and other consumer goods. This is particularly true with drugs that treat critical care and chronic conditions, such as autoimmune diseases, HIV, cancer and diabetes. Given that the Investment Manager mainly provides debt capital in situations where a drug is revenue-generative, the return of cash frequently begins in the financial quarter after the initial investment is made and continues through the life of the investment.

The Company's current portfolio of investments offers strong downside protection through the structuring of the investments in the form of Debt Assets, which is further de-risked by the predictable nature of cash flows from assets with long-dated intellectual property protection (which, for pharmaceutical products more generally, is on average at least 15 years).

Additionally, the portfolio is highly cash-generative, has strong collateral underlying the cash flows and provides consistent returns uncorrelated with equity and credit markets. The assets underlying the portfolio are comprised of some of the biggest products of the largest pharmaceutical and biotechnology firms, including Merck, Gilead and Roche.

Within the portfolio, there is high cash flow visibility, with approximately 15 per cent. of future proceeds expected to be achieved by the end of 2018. Furthermore, approximately two-thirds of the cash flows are comprised of royalty loans backed by investment-grade companies and approximately one-third are senior secured loans.

Additionally, almost all of the products underlying the RPS Note are among the top 3 products for the indications that they treat and have been approved and on the market for many years, providing clinical, regulatory and also commercial de-risking. The underlying Royalty Pharma Select portfolio has nearly twice as many of the top 30 pharmaceutical products as any large pharmaceutical or biopharmaceutical company.

Access to Investment Manager's Business Development Network

The Investment Manager has developed a network of relationships with venture capital, biotech, pharmaceutical and other institutions. The Investment Manager and Royalty Pharma investment management teams have established relationships over two decades with numerous biotech companies early in their development, engaging in an ongoing dialogue regarding financing opportunities as well as providing a long runway for product diligence as the Investment Manager tracks over 200 opportunities on an ongoing basis. These multi-year relationships give the investment management team a key advantage over other potential financing sources and newly emerging competitors.

The Investment Manager also has the Shared Services Agreement with Royalty Pharma, encompassing the research, legal and compliance, and finance teams of Royalty Pharma. This arrangement gives the Investment Manager access to the resources and expertise of the Royalty Pharma team, thus enabling a better analysis of the funding opportunities and gives the Investment Manager a differentiated approach to diligence compared to traditional lenders and other competitors in the sector. The Investment Manager's professionals have a broad and deep experience across the healthcare and finance industries, given their diverse backgrounds, which will allow the Company to provide customised solutions as well as structural creativity, which can in turn lead to superior outcomes for all parties involved. The Investment Manager believes that these attributes, along with its strong reputation and credibility across the industry, differentiate the Company.

Rigorous approach to assessment of investment opportunities

The Investment Manager adopts a rigorous screening and diligence process in the evaluation of its investment opportunities. The investment management team has a deep understanding of the clinical and competitive positioning of the underlying assets. This differentiated diligence process is driven by in-depth modelling and an internally aggregated database on pharmaceutical or biopharmaceutical companies and their products as well as long-term relationships with companies and their investment management teams. The Investment Manager builds detailed models across various therapeutic opportunities using a bottom-up approach, noting scientific advancements, patient populations and subpopulations and geographic-specific dynamics, as well as competitive pressures including regional pricing. These models are updated for new developments (such as

new clinical data and indication approvals) on an ongoing basis and are refined based on discussions with consultants, doctors and other industry experts.

Key considerations in the screening process of opportunities include, but are not limited to, viability and marketability of product, clinical differentiation, financing needs of the counterparty, marketer creditworthiness, identity and suitability of potential risks, loan-to-value ratio, alternative financing options (equity or convertibles) and pricing. In 2015, the Investment Manager screened more than 200 opportunities and participated in only five investments, raising US\$1.1 billion, and therefore had a look-to-book ratio of less than 3 per cent., demonstrating its thorough filtering and diligence process.

The Investment Manager tailors the structure of its investments to reflect its considered assessment of the value of the collateral and to meet the various financing needs of biopharmaceutical companies while protecting investors against downside risk. As such, the Investment Manager intends to structure the sizes of the loans and the levels of leverage appropriately to meet these needs in ways that traditional lenders cannot.

The Investment Manager invests in each stage of the product life cycle (early commercial, mid commercial and mature commercial) and structures investments across these stages accordingly. For example, early commercial products may have a lower loan-to-value ratio than later stage products, to account for the relatively higher associated risk.

Proven track record

The Investment Manager has, to date, invested or committed to invest US\$2.4 billion in Debt Assets. None of the Debt Assets previously or currently managed by the Investment Manager are or have previously been judged to be impaired. Of the 28 investments made to date, 17 have been fully repaid and all of the remaining loans are current. BioPharma I made its last distribution to investors in 2014 and realised a Gross IRR of approximately 15 per cent. (Net IRR of 11.3 per cent.) and cash-on-cash returns of 1.3x. BioPharma II made its last distribution to investors in 2018 and realised a Gross IRR of approximately 10.2 per cent. (Net IRR of 6.8 per cent.) and cash-on-cash returns of 1.2x. BioPharma III and IV have reached the end of their investment periods and are now returning capital to investors.

PART III – THE INVESTMENT MANAGER

1. Introduction

The Company has appointed Pharmakon Advisors L.P., a limited partnership established under the laws of the State of Delaware formed on 1 April 2009 and having its principal office at 110 East 59th Street #3300, New York, NY 10022 USA, as its investment manager. The registered office of the Investment Manager is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808 USA. The Investment Manager is a registered investment adviser under the Advisers Act and is regulated by the SEC.

The Company and the Investment Manager have entered into the Investment Management Agreement pursuant to which the Investment Manager has been given responsibility, subject to the overall supervision of the Board, for the active investment management of the Debt Assets and all other investments of the Company from time to time, including sourcing and advising on investment opportunities and proposals which are in accordance with the Company's investment objective and policy. Further details of the terms of the Investment Management Agreement are set out in paragraph 10.2 of Part VIII (Additional Information on the Company) of this Prospectus. Details on the investment process that the Investment Manager expects to use are set out in paragraph 3 below.

The Investment Manager consists of three principals: Pedro Gonzalez de Cosio, Pablo Legorreta and Martin Friedman. Further details of the principals are set out in paragraph 4 below.

In addition, the Investment Manager may draw on the expertise of certain employees of its Affiliate, Royalty Pharma. For these purposes, the Investment Manager and Royalty Pharma have entered into the Shared Services Agreement whereby Royalty Pharma provides the services of its research, legal and compliance, and finance teams to the Investment Manager. The Investment Manager is responsible for the acts of Royalty Pharma personnel pursuant to the Shared Services Agreement. Further details of the Shared Services Agreement are set out in paragraph 6 below.

Royalty Pharma is an industry leader in acquiring royalty interests in biopharmaceutical products. The Investment Manager expects to leverage its relationship with Royalty Pharma to gain the insight of several of its top employees who have expertise in the pharmaceutical royalty sector. Details of the key personnel at Royalty Pharma who will also provide services to the Investment Manager under the Shared Services Agreement are set out in paragraph 4 below.

The Investment Manager's primary office is located in New York City, New York and the Investment Manager intends to perform most or all of its investment management services for the Company through its primary office or other locations within the United States.

2. TRACK RECORD ^{1 2}

BioPharma I

The Investment Manager previously managed the investments of BioPharma I, which was launched in June 2009. By the end of its investment period in June 2010, BioPharma I had invested US\$263.7 million across a portfolio of Debt Assets with an average life of 2 years and that generated a final Gross IRR of 15 per cent. and a final Net IRR to investors of 11.3 per cent. Through 15 March 2014, the date of final maturity of the last to expire investment of BioPharma I, BioPharma I had received total proceeds of US\$342.2 million from its investments, representing US\$262.9 million in principal plus US\$79.3 million in interest payments from the Debt Assets held in its portfolio.

BioPharma I investors funded a total of US\$267.1 million from its launch in June 2009 to the end of the investment period on 30 June 2010. During the period from June 2009 through April 2014, BioPharma I made distributions to investors totalling US\$329.2 million. BioPharma I made its final distribution to investors on 15 April 2014.

BioPharma II

The Investment Manager previously managed the investments of BioPharma II, which was launched in March 2011. By the end of its investment period in March 2013, BioPharma II had invested US\$343.0 million across a portfolio of Debt Assets with an average life of 3.9 years that generated a final Gross IRR of 10.2 per cent. and a final Net IRR to investors of 6.8 per cent. Through 20 December 2017, the sale date of the last investment of BioPharma II, BioPharma II had received total proceeds of US\$456.0 million from its investments, representing US\$343.0 million in principal plus US\$113.0 million in interest payments from the Debt Assets in its portfolio.

BioPharma II investors funded a total of US\$330.4 million from its launch in March 2011 to the end of the investment period in 30 March 2013. During the period from March 2011 through January 2018, BioPharma II made distributions to investors totalling US\$410.1 million. BioPharma II made its final distribution to investors on 5 January 2018.

BioPharma III

The Investment Manager also manages BioPharma III, which was launched on 25 February 2013. Its investment period concluded on 24 August 2015. As of 31 December 2017, BioPharma III had invested approximately US\$463.0 million in a portfolio of Debt Assets with an average life of 3.3 years and a projected Gross IRR of 14.2 per cent.; and BioPharma III Investors had funded a total of US\$451.7 million out of total commitments of US\$500 million.

Through 31 December 2017, BioPharma III had: (i) received total proceeds of US\$322.6 million, representing US\$217.7 million in principal plus US\$104.9 million in payments representing investment income from the assets held in its portfolio; and (ii) made distributions to investors totalling US\$423.8 million. As of 31 December 2017, BioPharma III held assets valued at US\$258.8 million with an expected final maturity in 2021.

The Investment Manager believes that, based on its projections as of 31 December 2017, BioPharma III will continue to make cash distributions to investors through December 2021,

1 Projected returns included herein are forward-looking statements involving known and unknown risks, uncertainties and assumptions. The actual results, performance or achievements of BioPharma III and BioPharma IV may be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Performance figures for each account are calculated based on estimated yields of underlying portfolio investments.

2 Any projections of returns on Debt Assets are made using an assumption that borrowers will pay interest and principal at the time and in the amounts stated in the relevant debt instruments. Payments of interest and principal on Debt Assets are dependent on the timing and amount of cash received by each individual issuer in the form of royalties from the sale of Products which comprise the Debt Assets. The projected Gross IRR and the projected Net IRR of BioPharma II and BioPharma III were prepared by the Investment Manager using its own good faith projections for the timing and amounts of future sales of Products and resulting royalty payments based on information available at the time. Such projections were made by the Investment Manager using the Investment Manager's own sales forecasts taking into account a number of factors including, but not limited to: (i) financial strength and competitive position of the marketer of such Product; (ii) historical Product sales; (iii) therapeutic use and efficacy of a Product; (iv) anticipated Product competition; (v) importance of Product to its marketer; (vi) geographic region in which a Product is marketed; and (vii) Wall Street analyst projections. Such projections are subject to a wide range of market factors which, individually or in the aggregate, may substantially impact the accuracy of the Investment Manager's projections, including: (i) adverse market conditions affecting Product pricing or the financial strength of the Product's marketer; (ii) challenges to a Product's patent or other intellectual property rights; (iii) adverse determinations relating to the Product's safety or use; (iv) adverse regulatory determination; (v) interruptions or delays in Product manufacturing; and (vi) insolvency of an issuer impacting such issuer's ability to repay its obligations. If any of the foregoing events were to occur, such an event could have a material adverse effect on the issuer's ability to make future payments of interest and principal, which could result in an extended maturity and duration, or potentially a substantial or full loss of capital.

resulting in an average projected Net IRR to investors of approximately 10.9 per cent. after all fees and expenses.

BioPharma IV

The Investment Manager also manages BioPharma IV, which was launched in December 2015. As at the date of this Prospectus, investors have contributed capital equal to approximately US\$512.9 million for investment, equal to approximately 100 per cent. of their commitments to invest in Debt Assets. The investment period for BioPharma IV expired on 8 December 2017.

3. INVESTMENT APPROACH

The Investment Manager utilises its extensive, industry-focused knowledge and contacts to identify, source, analyse and structure attractive investment opportunities for the Company. The Investment Manager selects Debt Assets based upon in-depth, rigorous analysis of the credit characteristics of the Debt Assets available for investment.

When considering Royalty Debt Instruments or Priority Royalty Tranches (together “**Royalty Investments**”), the Investment Manager’s analysis focuses on royalty-generating Products underlying the Royalty Collateral and the structure of the Royalty Investments.

Royalty Investments

Royalty Collateral

The Investment Manager employs a disciplined evaluation process of the Royalty Collateral underlying each potential Debt Asset. A key component of this process is to examine future sales potential of the relevant Product. In making such an evaluation, the Investment Manager gives particular consideration to:

- the clinical utility of the Product;
- the risk of new or existing competitive products, including generics, through the expected maturity of the investments;
- quality and strength of the related patent estate;
- strength of the marketing and sales organisation of the company that markets the product, as well as that company’s financial strength;
- seriousness of the condition or disease that the Product targets;
- pricing of the Product and any competing products;
- qualification for reimbursements by insurers and Medicaid/Medicare in the US; and
- track record of safety, physician adoption and sales history.

The Investment Manager uses its relationships with scientific experts and leading physicians to assist in its evaluation of the Products. Physician studies (i.e. market research) may also be commissioned to ascertain safety, familiarity, usage and acceptance of Products by practising doctors. The Investment Manager may also retain outside counsel to evaluate the intellectual property rights and patent estate of the Royalty Collateral. The Investment Manager may rely on the research and analysis performed by third parties, including existing opinions by outside patent counsel and third party market research, to make investment decisions related to Royalty Investments available for sale in the secondary market.

Structure of Royalty Investments

In conjunction with the analysis of a Product’s sales potential, the Investment Manager analyses the structure of the Royalty Investments. Each potential Royalty Investment’s structure is reviewed rigorously, with particular consideration of:

- the investment’s expected yield and duration;
- strength and enforceability of collateral agreements;
- coverage ratios measured as the commercial value of the licence to the amount of debt outstanding;
- priority of payments;
- any embedded calls, puts or revenue sharing agreements; and
- cash flow projections and their impact on expected maturity and duration.

Senior Secured and Unsecured Debt Investments

When considering investments in Senior Secured Debt and Unsecured Debt, the Investment Manager's analysis also focuses on the Products marketed by the relevant Borrower and evaluates such Products as if they were Royalty Collateral. In addition, the Investment Manager focuses on the Borrower's credit metrics as well as the structure of the investment.

Borrower's credit metrics

The Investment Manager employs a disciplined evaluation process of the Borrower's credit metrics and ultimate ability to generate cash flows to make future payments of interest and principal. In making such an evaluation, the Investment Manager gives particular consideration to:

- the potential sales from the Borrower's Products, in a process similar to the evaluation of Royalty Collateral;
- expected margins from the sales of Products, after taking into account the cost of goods sold associated with the Products, as well as other operating, financing and tax expenses;
- coverage ratios measured as projected free cash flow generation to total indebtedness and/or enterprise value of the Borrower to its total indebtedness;
- the Borrower's ability to access the equity capital markets and to raise future capital;
- the strength and experience of the Borrower's management team;
- the Borrower's ability to manufacture sufficient supply of Products;
- overall capital structure; and
- other existing liabilities.

Structure of Senior Secured Debt and Unsecured Debt investments

In conjunction with the analysis of a Borrower's credit metrics, the Investment Manager analyses the structure of the Debt Assets. The structure of each potential Senior Secured Debt and Unsecured Debt investment is reviewed rigorously, with particular consideration of:

- the investment's expected yield and duration;
- strength and enforceability of collateral agreements (with respect to Senior Secured Debt investments);
- covenants including limits on additional indebtedness and ability to divest assets and make distributions;
- call protections that guarantee a minimum cash-on-cash return on the investment;
- structural yield enhancements such as additional coupons linked to sales of Products, warrants or convertibility features; and
- access to liquidity in cases of publicly listed securities.

4. PERSONNEL

Principals of the Investment Manager

Pedro Gonzalez de Cosio

Mr. Gonzalez de Cosio is a Principal and co-founder of the Investment Manager and manages the Company's portfolio. During the 14 years prior to founding the Investment Manager, Mr. Gonzalez de Cosio held various positions in the structured finance divisions of Deutsche Bank and JP Morgan in New York, where he was responsible for structuring various forms of collateralised financings and derivatives for US and international clients, including several years covering clients in the life sciences industries. Mr. Gonzalez de Cosio's prior experience also includes various positions in the investment banking division of Nomura Securities in New York, the leasing division of Société Générale in Paris, and coordinating the issuance of external debt for the Mexican Ministry of Finance. Mr. Gonzalez de Cosio earned a B.A. degree (Summa Cum Laude) in Business Administration from the University of San Diego and an M.B.A. from INSEAD in Fontainebleau, France.

Pablo Legorreta

Mr. Legorreta is co-founder and Chief Executive Officer of Royalty Pharma and a Principal and co-founder of the Investment Manager providing advisory oversight. Royalty Pharma was founded in 1996 and is a premier investor in pharmaceutical royalties. Prior to founding Royalty Pharma,

Mr. Legorreta had a 10 year career in investment banking with Lazard Frères in Paris and New York. During his tenure at Lazard Frères, Mr. Legorreta co-founded two “proof of principle” funds that acquired royalties in Neupogen in 1993 and ReoPro in 1994. Mr. Legorreta is also a Director of Giuliani S.p.A. Mr. Legorreta is a member of the Association of University Technology Managers, the Licensing Executives Society, the Swiss Pharmaceutical Group, the Biotechnology Industry Organization, the Children’s Circle of Care and is a founding member of the Research Council of Boston’s Children’s Hospital. Mr. Legorreta earned a degree in Industrial Engineering from Universidad Iberoamericana in Mexico City, Mexico.

Martin Friedman

Mr. Friedman is a Principal of the Investment Manager, having joined in 2011. Mr. Friedman has spent the past 22 years in various positions in the healthcare finance industry, most recently as the co-head of the US life sciences banking at Bank of America/Merill Lynch. He has worked very closely with both large cap and emerging pharmaceutical, biotech, specialty pharmaceutical, device and diagnostic companies, having advised on M&A transactions and raised equity and debt capital. Mr. Friedman’s prior experience also includes his 12 years at JPMorgan, including four years at JPMorgan Partners, and several years as the Head of M&A and Collaborations at Novartis AG based in Switzerland. Mr. Friedman earned a B.A. degree in English and History from Columbia College and an M.B.A. (Honours) in Finance and Accounting from Columbia Business School.

Shared personnel with Royalty Pharma

Under the Shared Services Agreement, the Investment Manager has access to the expertise of certain Royalty Pharma employees. The key employees under this arrangement are:

Dr. Jim Reddoch – EVP and Head of Research

Dr. Reddoch joined Royalty Pharma in July 2008 after 12 years on Wall Street as a biotechnology analyst. Prior to joining Royalty Pharma, Dr. Reddoch was Managing Director and Head of Healthcare Equity Research at Friedman Billings Ramsey. He previously worked at Bank of America and CIBC World Markets Corp (now Oppenheimer & Co). Dr. Reddoch holds a B.A. from Furman University and a Ph.D. in biochemistry and molecular genetics from the University of Alabama at Birmingham. He was a postdoctoral fellow at the Yale University School of Medicine.

George Lloyd – EVP and General Counsel

Mr. Lloyd joined Royalty Pharma in 2011 after representing Royalty Pharma on all transactional work since 2006. Prior to joining Royalty Pharma, Mr. Lloyd was a partner in Goodwin Procter’s private equity group and co-head of the M&A group at Testa, Hurwitz & Thibault. Mr. Lloyd began his career at Davis Polk & Wardwell in New York and Paris. In 2002 to 2003, Mr. Lloyd worked in Hong Kong as the Chief Financial Officer and General Counsel of the Asian operations of an education and travel company. Mr. Lloyd received an A.B. from Princeton University and a J.D. degree from New York University Law School, where he was on the Law Review.

Susannah Gray – EVP and Chief Financial Officer

Ms. Gray joined Royalty Pharma in January 2005 after a 14 year career in investment banking. Ms. Gray has led Royalty Pharma’s efforts to maximise its financial capabilities. She spearheaded Royalty Pharma’s successful implementation of a US\$2.3 billion credit facility in 2007 and has helped raise over US\$1.4 billion in equity capital for the company. Ms. Gray was a managing director and the senior analyst covering the healthcare sector for CIBC World Market’s high yield group from 2002 to 2004. She worked in a similar capacity at Merrill Lynch prior to joining CIBC World Markets. Ms. Gray joined Merrill Lynch in April 1999 after nine years at Chase Securities (a predecessor of JP Morgan), working in various capacities within the high yield and the structured finance groups. Ms. Gray received a B.A. with honours from Wesleyan University and holds an M.B.A. degree from Columbia University.

5. INVESTMENT MANAGEMENT AGREEMENT

The Company and the Investment Manager entered into an investment management agreement dated 1 March 2017 (the “**Investment Management Agreement**”), pursuant to which the Investment Manager provides discretionary investment management and risk management services to the Company and its subsidiaries. A summary of the material terms of the Investment Management Agreement are set out in paragraph 10.2 of Part VIII (Additional Information on the Company) of this Prospectus. In connection with the Issue, the Investment Management

Agreement was amended on 14 March 2018 to clarify that the Performance Fee would only be payable on the performance of the Ordinary Shares.

6. SHARED SERVICES AGREEMENT

The Shared Services Agreement was entered into by and between Royalty Pharma and the Investment Manager on 30 November 2016 and deemed effective as of 1 January 2016. Under the terms of the Shared Services Agreement, each of Royalty Pharma and the Investment Manager has agreed to provide services (including any research, legal, compliance, financial and administrative services) to the other as the other reasonably requests, provided that the rendering party has the resources to provide such services and that the services requested do not interfere with the business needs of the rendering party (as determined solely by the rendering party). Under the Shared Services Agreement, each of Royalty Pharma and the Investment Manager has agreed to reimburse the other for reasonable internal and third party expenses incurred by the other on its behalf, or for its benefit, as a result of rendering such services. Such expenses include (without limitation) business development, due diligence, legal, consulting, compliance, research and similar expenses.

Under the Shared Services Agreement, subject to each party's fiduciary duties to its clients, each of Royalty Pharma and the Investment Manager has agreed to refer to the other any business opportunities that fit the other's investment objectives. To the extent that a business opportunity involves both equity and debt-like financing transactions, each of Royalty Pharma and the Investment Manager shall be free to negotiate an offer aligning with its own investment objectives and is under no obligation to take the other party's investment objectives into consideration during such a negotiation.

The Shared Services Agreement is governed by the laws of the State of New York and may be terminated by either Royalty Pharma or the Investment Manager upon 30 days' written notice.

7. POTENTIAL CONFLICTS OF INTEREST

There will be occasions where the Investment Manager and other Manager Affiliated Parties may encounter potential conflicts of interest in connection with the business activities and operations of the Company. With respect to any issue involving any potential conflicts of interest, the Manager Affiliated Parties will be guided by their good faith judgement as to the best interests of the Company. If any matter arises that the Manager Affiliated Parties determine in their good faith judgement constitutes an actual conflict of interest, the Manager Affiliated Parties may take such actions as may be necessary or appropriate to ameliorate the conflict, including referring the matter for approval by the Board.

Conflicts of interest in relation to BioPharma III Interest

There may be occasions where the Investment Manager may have potential conflicts of interest in connection with the BioPharma III Interest. The Investment Manager is also the investment manager of BioPharma III Holdings, LP and BioPharma III. At the same time, the principals of the Investment Manager also own and control BioPharma Secured Investments III GP Cayman Limited, the general partner of BioPharma III Holdings, LP. Therefore, where decisions are to be made by the Company in its capacity as a limited partner of BioPharma III Holdings, LP, the duties of the Investment Manager towards the Company may conflict with its duties as an investment manager of BioPharma III. With a view to addressing this conflict, under the Investment Management Agreement, all decisions reserved for the limited partners of BioPharma III Holdings, LP under the second amended and restated limited partnership agreement for BioPharma III Holdings, LP and the applicable laws and regulations are made by the Directors on behalf of the Company and the Investment Manager complies with any instructions of the Directors in relation to such matters.

Conflicts of interest in relation to the RPS Note

There may be occasions where the Investment Manager may have potential conflicts of interest in connection with the RPS Note. Royalty Pharma, an Affiliate of the Investment Manager, is the manager of the RPS Borrower and other Affiliates of the Investment Manager have substantial investments in the RPS Borrower in the form of partnership interests. Therefore, the Investment Manager is likely to have conflicts of interest where the Company is in a position to exercise any rights or powers under the RPS Note which are outside the ordinary course of business including, without limitation, any enforcement action in relation to the security granted under the RPS Note as

a result of an event of default. In order to manage such conflicts of interest, under the Investment Management Agreement, all rights and powers under the RPS Note outside the ordinary course of business (including the situations identified above) shall be exercised by the Directors on behalf of the Company and the Investment Manager shall comply with any instructions of the Directors in relation to such matters.

Other investments of the Manager Affiliated Parties

The Manager Affiliated Parties manage and expect to continue to manage their own proprietary accounts and other investment and trading accounts with objectives similar, in whole or in part, to those of the Company, including BioPharma II, BioPharma III, BioPharma IV and other investment vehicles or managed accounts which may be managed or sponsored by the principals and their respective Affiliates, and entities in which such principals will have an equity interest.

Limited priority as to Investment Manager time and investment opportunities

The Investment Management Agreement requires that the Investment Manager acts in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Company, but, save as set out below, does not impose specific obligations or requirements concerning the allocation of time, effort or investment opportunities to the Company or any restrictions on the nature or timing of investments for the account of the Company and the Manager Affiliated Parties' own accounts or for other accounts which members of the Manager Affiliated Parties may manage.

The Manager Affiliated Parties currently and may from time to time in the future, directly or indirectly, provide investment management services on behalf of Managed Entities such as other pooled investment vehicles, funds, accounts and clients including, without limitation, BioPharma II, BioPharma III and BioPharma IV. The Manager Affiliated Parties are not restricted from entering into other investment advisory or management relationships, or from engaging in other business activities with Managed Entities, even though such activities may involve substantial time and resources of the Manager Affiliated Parties. Such activities may involve similar or different investment objectives, philosophy or strategies as those of the Company and could be viewed as creating a conflict of interest in that the time and effort of the Manager Affiliated Parties will not be devoted exclusively to the business of the Company, but will be allocated among the Company and such other business activities.

The Investment Manager has agreed, pursuant to the Investment Management Agreement, to ensure that its obligations under the Investment Management Agreement are performed by a team of appropriately qualified, trained and experienced professionals. Other than the limitations discussed above, the Manager Affiliated Parties are not obligated to devote any specific amount of time to the affairs of the Company and its Affiliates.

Conflicting interests in investments

The Manager Affiliated Parties manage other investment vehicles that may hold positions in, or enter into transactions with, entities in which the Company invests and the Company may have divergent interests from such other investment vehicles. In addition, conflicts may arise due to the fact that such other investment vehicles may enter into such transactions or invest in different levels of the capital structure of such entities.

Allocation of Investment Opportunities

The Manager Affiliated Parties are also responsible, directly or indirectly, for investment decisions made on behalf of the Managed Entities. The Manager Affiliated Parties and certain of their respective employees may also provide investment advice to various Managed Entities. The Managed Entities currently have and in the future are likely to have, the same or similar investment objectives, philosophy and strategies as those used for the Company. Therefore, the Manager Affiliated Parties currently encounter and will in the future encounter, conflicts of interests in making investment decisions for, or providing advice to, other accounts advised by the Manager Affiliated Parties.

An investment opportunity which meets the requirements of the investment objective and policy of the Company (an “**Investment Opportunity**”) shall be allocated by the Investment Manager based on the following principles:

- (a) The Company will be entitled to participate in a minimum of 50 per cent. by value of the Investment Opportunity (subject always to compliance with the investment restrictions applicable to the Company).
- (b) The remaining value of such Investment Opportunity may be allocated by the Investment Manager, in its sole discretion, to the Company or any other Managed Entity.
- (c) If, for any reason, the Investment Opportunity is not available to the Company or the Company, for any reason, does not participate in an Investment Opportunity in accordance with sub-paragraphs (a) or (b) above (in whole or in part), any resultant excess remaining value may also be allocated by the Investment Manager to any other Managed Entity.
- (d) Any value of the Investment Opportunity that is foregone in accordance with sub-paragraph (c) above, shall be reported by the Investment Manager to the Directors at the next Board meeting along with an appropriate supporting explanation.

The Company may have divergent interests from the Managed Entities with respect to strategies in acquiring or exiting from certain investments. Conflicts may arise due to the fact that the Company and the Managed Entities may invest in different levels of the capital structure of, or otherwise in different securities or other instruments issued by or related to, the same Borrower. Investments by the Company and the Managed Entities may cause the Investment Manager to become subject to legal or contractual restrictions on its ability to effect transactions for the Company, for example due to the receipt of non-public information or due to the existence of a control relationship between the Investment Manager and the Borrower issuing a security in which the Investment Manager has invested on behalf of the Company or the Managed Entities.

The Investment Manager may consider presenting existing investments of Managed Entities to the Company for investment, if the Investment Manager considers such investments to fulfil the Company's investment objective and policy. In such circumstances, the Company will be purchasing investments from Managed Entities. Given that the Investment Manager may have conflicts of interest in such instances, such transactions will not be effected without the approval of the Board.

Affiliation with Royalty Pharma

The Investment Manager is affiliated and shares physical premises with Royalty Pharma, which manages investment funds that invest in pharmaceutical royalties. One of the Investment Manager's principals, Pablo Legorreta, is also a principal of Royalty Pharma. From time to time, the Investment Manager and Royalty Pharma share investment research and may seek similar investment opportunities for their respective clients, although the Investment Manager considers actual conflicts of interest to be unlikely due to the differing investment strategies of Royalty Pharma and the Investment Manager and the fact that royalty holders, rather than the Investment Manager or Royalty Pharma, determine the type of transaction they seek. The Investment Manager and Royalty Pharma reimburse each other to the extent either of them provides materially more services to the other than are provided in return. In addition, Royalty Pharma occasionally provides research services to the Investment Manager, and the Investment Manager occasionally provides business development services to Royalty Pharma. In consideration of the support in due diligence and other aspects of the Company's and the Managed Entities' potential investments provided by certain Royalty Pharma employees, such employees receive compensation from the Investment Manager.

PART IV – DIRECTORS, MANAGEMENT AND ADMINISTRATION

DIRECTORS

The Directors are responsible for the determination of the Company's investment policy and investment strategy and have overall responsibility for the Company's activities, including the review of investment activity and performance, and the control and supervision of the Investment Manager. The Directors have delegated responsibility for managing the assets comprised in the Company's portfolio to the Investment Manager, which is not required to, and generally will not, submit individual investment decisions for the approval of the Board. All of the Directors are non-executive and are independent of the Investment Manager for the purposes of the Listing Rules (to the extent to which the Company voluntarily complies with these) and the UK Corporate Governance Code.

The Directors meet as a Board at least quarterly and the Audit and Risk Committee meets at least twice a year.

The Directors are as follows:

Jeremy Sillem (Chairman)

Jeremy Sillem is the managing partner of Spencer House Partners LLP, a London-based firm focused on providing financial advice and capital to the asset and wealth management industry.

Prior to founding the firm in 2005 he was, from 2000 to 2004, chairman of Bear Stearns International in London. Before that he spent a 28 year career with Lazard LLC and its predecessor entities in London and New York.

He has served on the boards of a number of asset management and related businesses including those of CDC Group, Martin Currie, RHJ International, Kleinwort Benson Group, Harbourmaster Holdings and WP Stewart. He is an advisory director of Partners Capital LLC and is the former chairman of the World Trust Fund. He is a Trustee and Advisory Director of Reform, the public policy think tank, a member of the investment committee of the National Portrait Gallery and a former member of the investment advisory committee of Brasenose College, Oxford.

He received an M.A. (Honours) in Politics, Philosophy and Economics from Oxford University.

Duncan Budge

Duncan Budge is chairman of Dunedin Enterprise Investment Trust plc and Artemis Alpha Trust plc, and a non-executive director of Lazard World Trust Fund (SICAF), Lowland Investment Company plc, Menhaden Capital plc and Asset Value Investors Ltd.

He was previously a director of J. Rothschild Capital Management from 1988 to 2012 and a director and chief operating officer of RIT Capital Partners plc from 1995 to 2011. Between 1979 and 1985 he was with Lazard Brothers & Co. Ltd. He received an M.A. (Honours) in History from Oxford University.

Colin Bond

Colin Bond has been Chief Financial Officer of the specialty pharmaceutical company Vifor Pharma based in Zürich since 2016. From 2010 to 2016, he was the Chief Financial Officer of Evotec AG, the early drug discovery company listed on the Frankfurt Stock Exchange as part of TecDax. Prior to that, he held CFO positions at several companies including Ecolab and Novartis. During his early career, he worked as a pharmacist, auditor, and management consultant for Procter & Gamble, Arthur Andersen, and PricewaterhouseCoopers, respectively.

He has been a Member of the Board of Directors and the chairman of the Audit Committee of Siegfried Holding AG, listed on the Swiss Stock Exchange since 2013.

He holds a university degree in pharmacy from the University of Aston (Birmingham) and a MBA degree from London Business School. He is a fellow of the Institute of Chartered Accountants in England and Wales and a member of the Royal Pharmaceutical Society of Great Britain. Colin Bond is a citizen of Great Britain and Switzerland.

Harry Hyman

Harry Hyman is the founder and managing director of Primary Health Properties plc (PHP), a listed company that specialises in the ownership of property leased on a long-term basis to healthcare providers. PHP is managed externally by Nexus Tradeco Limited ("Nexus").

After graduating from Christ's College Cambridge, Harry qualified as a chartered accountant with Price Waterhouse. In 1983 he joined Baltic plc where he was deputy managing director, finance director and company secretary. He left to establish PHP and Nexus in February 1994.

Harry is the non-executive chairman of Summit Germany Limited, an AIM listed property vehicle. He is also the non-executive chairman of Derriston Capital plc.

Harry is the founder of The International Opera Awards.

He has been a non-executive director of a number of listed investment trusts.

THE INVESTMENT MANAGER

The Company has appointed Pharmakon Advisors L.P. as its Investment Manager, pursuant to the Investment Management Agreement, further details of which are set out in paragraph 10.2 of Part VIII (Additional Information on the Company) of this Prospectus. As the Company's alternative investment fund manager, the Investment Manager is responsible for the portfolio management and risk management of the Company (which is an AIF for the purposes of the AIFM Directive).

The Investment Manager is a registered investment adviser under the Advisers Act and is regulated by the SEC. Further details on the Investment Manager are set out in Part III (The Investment Manager) of this Prospectus.

COMPANY SECRETARY

Link Company Matters Limited has been appointed as Company Secretary of the Company pursuant to the Company Secretarial Services Agreement, further details of which are set out in paragraph 10.3 in Part VIII (Additional Information on the Company) of this Prospectus. The Company Secretary is responsible for the general company secretarial functions required by the Act (including, but not limited to, the maintenance of the Company's statutory records). Prospective investors should note that it is not possible for the Company Secretary to provide any investment advice to investors.

ADMINISTRATOR

Link Alternative Fund Administrators Limited has been appointed as Administrator of the Company pursuant to the Fund Administration Services Agreement, further details of which are set out in paragraph 10.4 in Part VIII (Additional Information on the Company) of this Prospectus. The Administrator is responsible for the day to day administration of the Company (including but not limited to the maintenance of the Company's fund accounting records and the calculation and publication of the estimated monthly NAV). Prospective investors should note that it is not possible for the Administrator to provide any investment advice to investors.

REGISTRAR

Link Market Services Limited, trading as Link Asset Services, has been appointed as the Company's Registrar pursuant to the Registrar Services Agreement, further details of which are set out in paragraph 10.5 in Part VIII (Additional Information on the Company) of this Prospectus. The Registrar is responsible for the maintenance of the Company's register of members, dealing with routine correspondence and enquiries, and the performance of all the usual duties of a registrar in relation to the Company.

AUDITOR

The auditor to the Company currently is PricewaterhouseCoopers LLP of 1 Embankment Place, London WC2N 6RH. PricewaterhouseCoopers LLP is independent of the Company and is registered to carry on audit work in the UK by the Institute of Chartered Accountants in England and Wales.

The auditor's responsibility is to audit and express an opinion on the financial statements of the Company in accordance with applicable law and auditing standards. The annual report and accounts will be prepared according to IFRS.

UK VAT AND US TAX COMPLIANCE

The Company has appointed Throgmorton UK Limited to provide VAT registration and filing services in the UK. The Company has also appointed the New York offices of Ernst & Young LLP to assist in preparing US Federal Income tax Return, Form 1120F and PFIC statements.

FEES AND EXPENSES

Initial Expenses

The costs and expenses in relation to the Initial Placing and Offer and Initial Admission (“**Initial Expenses**”) will be paid on or around Initial Admission and will include, without limitation: registration, listing and admission fees; the cost of settlement arrangements; printing, advertising and distribution costs; placing commissions; professional services fees; and any other applicable expenses.

The Initial Expenses will be capped at 2 per cent. of the Gross Initial Proceeds and accordingly the expected Net Asset Value per C Share immediately following Initial Admission will be US\$0.98 per C Share. On the basis that the Gross Initial Proceeds are US\$300 million, the Initial Expenses will therefore be capped at US\$6 million and the Net Initial Proceeds will be approximately US\$294 million. The Joint Bookrunners and the Investment Manager have agreed that, in the event that the Initial Expenses exceed 2 per cent. of the Gross Issue Proceeds, such excess (the “**Excess**”) will be split equally between the Joint Bookrunners on the one hand and the Investment Manager on the other.

Subsequent Expenses

It is expected that arrangements of a similar nature as outlined above will apply in relation to subsequent Placings of the Issue Shares, with the costs and expenses that will be borne by investors being set at the time of the relevant Placing (“**Subsequent Expenses**”). It is not possible to ascertain the exact costs and expenses of such subsequent Placings. The Subsequent Expenses may or may not be capped in the same manner as the Initial Expenses.

In relation to each subsequent Placing, depending on the Subsequent Expenses applicable to that Placing, the Gross Placing Proceeds may be applied to repay the Excess borne by the Joint Bookrunners and the Investment Manager in connection with the Initial Placing and Offer and Initial Admission until this such Excess is fully extinguished.

Ongoing expenses of the Company

The Company will incur ongoing expenses, which are expected to be equivalent to approximately 0.21 per cent. of the Net Asset Value annually (excluding the Investment Management Fee and any Performance Fee), based on an assumed Net Asset Value of US\$1,213.4 million (being the sum of the NAV of the Company of US\$919.4 million as at 31 January 2018 and Net Initial Proceeds of US\$294 million). Ongoing expenses borne by the Company include, but are not limited to, the fees of the Directors and the service providers (excluding the Investment Manager), as well as general operational expenses.

Foreseeable fees and expenses (as set out in detail below) have been included in the above estimation. Some expenses are, however, either irregular or calculated using formulae that contain variable components. This makes them difficult to ascertain in advance or to estimate. These expenses have been excluded from the above estimation. For this reason, the maximum amount of fees, charges and expenses that Shareholders will bear in relation to their investment in the Company cannot be determined in advance.

The Investment Manager has prepared a key information document as required under the PRIIPs Regulation in relation to each of the Ordinary Shares and the C Shares to be issued pursuant to the Initial Placing and Offer. That regulation requires costs to be calculated and presented in accordance with detailed and prescriptive rules. The key information documents are available on the Company’s website at www.bpcruk.com.

The ongoing expenses factored into the above estimation include the fees of the following persons:

Directors

Each of the Directors is entitled to receive a fee from the Company at such rate as may be determined in accordance with the Articles. The Directors’ remuneration is US\$70,000 per annum for each Director other than:

- the Chairman, who receives an additional US\$30,000 per annum; and
- the chairman of the Audit and Risk Committee, who receives an additional US\$15,000 per annum.

Each of the Directors is also entitled to be paid all reasonable expenses properly incurred by them in connection with the performance of their duties. These expenses include those associated with

attending general meetings, Board or committee meetings and legal fees. The Board may determine that additional remuneration may be paid, from time to time, to any one or more Directors in the event such Director or Directors are requested by the Board to perform extra or special services on behalf of the Company.

Company Secretary

Under the terms of the Company Secretarial Services Agreement, the Company Secretary is entitled to an annual fee of £60,000 (exclusive of VAT and disbursements).

Administrator

Under the terms of the Fund Administration Services Agreement, the Administrator is entitled to an annual fee (exclusive of any applicable VAT) of: (i) £65,900 for the first US\$1 billion of the Company's net assets; and (ii) an *ad valorem* fee of 0.95 basis points of the Company's net assets in excess of US\$1 billion, payable monthly in equal instalments.

Registrar

Under the terms of the Registrar Services Agreement, the Registrar is entitled to an annual maintenance fee of £1.80 per Shareholder on the register during a fee year, subject to a minimum annual charge of £4,500 (exclusive of VAT). The Registrar is also entitled to activity fees under the Registrar Services Agreement.

Other operational expenses

Other ongoing operational expenses that will be borne by the Company include the auditor's fees, corporate broker fees, legal fees, other advisory fees, listing fees of the FCA (if any), fees of the London Stock Exchange and TISEA, fees for public relations services, D&O insurance premiums, printing costs and fees for website maintenance.

Certain out of pocket expenses of the Investment Manager or its Affiliates, the Administrator, the Registrar and other service providers, as well as the Directors, may also be borne by the Company.

Management Fee

In addition to the ongoing expenses set out above, under the terms of the Investment Management Agreement, the Company pays the Investment Manager a management fee calculated on the following basis: (1/12 of 1 per cent. of the Net Asset Value on the last Business Day of the calendar month in respect of which the management fee is to be paid (calculated before deducting any accrued management fee in respect of such calendar month)) minus (1/12 of US\$100,000) (the "**Management Fee**"). The Management Fee is calculated monthly and invoiced quarterly in arrears.

The Management Fee payable in respect of any quarter will be reduced (but not below zero) by an amount equal to the aggregate of: (i) the Company's *pro rata* share of any transaction fees, topping fees, break-up fees, investment banking fees, closing fees, consulting fees or other similar fees which the Investment Manager (or an affiliate) receives in aggregate over such quarter, in connection with transactions involving investments of the Company ("**Transaction Fees**"); and (ii) any Carried Forward Amount from the previous quarter. The Company's *pro rata* share of any Transaction Fees will be in proportion to the Company's economic interest in the investment(s) to which such Transaction Fees relate.

To the extent the aggregate of: (i) the Company's *pro rata* share of Transaction Fees in respect of any quarter; and (ii) any Carried Forward Amount from the previous quarter, exceeds the Management Fee payable in respect of any quarter, the Management Fee payable in respect of such quarter shall be reduced to zero, and the excess amount shall be carried forward to the following quarter (the "**Carried Forward Amount**").

Performance Fee

Subject to the satisfaction of the Performance Conditions, in respect of each Performance Period, the Investment Manager (or, where the Investment Manager so directs, any Associate of the Investment Manager) shall be entitled to receive:

- (i) 50 per cent. of the Excess Total Return relating to the Performance Period until the Investment Manager has been allocated amounts under this sub-paragraph (i) which, in aggregate, are equal to 10 per cent. of the Total Return relating to such Performance Period; and
 - (ii) thereafter, 10 per cent. of the Excess Total Return relating to the Performance Period,
- the amounts payable to the Investment Manager (or its Associate) in accordance with this paragraph, being the “**Performance Fee**”.

The Investment Manager’s entitlement to a Performance Fee in respect of any Performance Period shall be conditional on the Closing NAV per Ordinary Share in respect of the Performance Period (adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances since First Admission) being in excess of:

- (i) an amount representing, as at the end of the relevant Performance Period, an increase of 6 per cent. per annum (calculated from First Admission and compounded annually) of the IPO Issue Price; and
 - (ii) the Closing NAV per Ordinary Share in respect of the last Performance Period in respect of which a Performance Fee was payable to the Investment Manager (or an Associate) by the Company (adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances from First Admission to the end of such Performance Period),
- (the “**Performance Conditions**”).

For the purpose of calculating the Performance Fee:

- (i) “**Closing NAV per Ordinary Share**” means the NAV per Ordinary Share on the last Business Day of the relevant Performance Period (which shall not, for the avoidance of doubt, be adjusted for any Performance Fee accrued in relation to such Performance Period);
- (ii) “**Excess Total Return**” means, in relation to each Performance Period, the amount by which the Total Return exceeds the Performance Hurdle;
- (iii) “**First Performance Period**” means the period from First Admission up to and including 31 December 2017;
- (iv) “**Month**” means a calendar month;
- (v) “**NAV per Ordinary Share**” means the Net Asset Value attributable to the Ordinary Shares divided by the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) at the relevant time;
- (vi) “**Performance Hurdle**” means, in relation to each Performance Period, “A” multiplied by “B”, where:
 - “**A**” is 6 per cent. of the Starting NAV per Ordinary Share for such Performance Period; and
 - “**B**” is the weighted average of the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) as at the end of each day during the Performance Period;
- (vii) “**Performance Period**” means the First Performance Period and/or a Subsequent Performance Period, as the context so requires;
- (viii) “**Starting NAV per Ordinary Share**” means the NAV per Ordinary Share on the first Business Day of each Performance Period (which, for the avoidance of doubt, shall be net of any accrued but unpaid Performance Fees for any previous Performance Periods but shall not be reduced by any dividends paid during such Performance Period which were declared in respect of any previous Performance Period);
- (ix) “**Subsequent Performance Period**” means each 12-Month period subsequent to the First Performance Period, commencing on the relevant 1 January and ending on the relevant 31 December (inclusive);
- (x) “**Total Return**” means, in relation to each Performance Period, “C” multiplied by “D”, where:

“C” is the difference between the Starting NAV per Ordinary Share and the Closing NAV per Ordinary Share (with the Closing NAV per Ordinary Share being adjusted for any changes to the NAV per Ordinary Share through dividend payments, Ordinary Share repurchases (howsoever effected) and Ordinary Share issuances during the relevant Performance Period); and

“D” is the weighted average of the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) as at the end of each day during the Performance Period.

The Performance Fee for a Performance Period shall be paid as soon as practicable after the end of the relevant Performance Period and, in any event, within three calendar months as of the end of such Performance Period.

If, during the last Month of a Performance Period, the Ordinary Shares have, on average, traded at a discount of 1 per cent. or more to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each Business Day in the Month to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the Month), the Investment Manager shall (or shall procure that its Associate does) apply 50 per cent. of any Performance Fee paid by the Company to the Investment Manager (or its Associate) in respect of that Performance Period (net of all taxes and charges applicable to such portion of the Performance Fee) to make market acquisitions of Ordinary Shares (the “**Performance Shares**”) as soon as practicable following the payment of the Performance Fee by the Company to the Investment Manager (or its Associate) and at least until such time as the Ordinary Shares have, on average, traded at a discount of less than 1 per cent. to the Net Asset Value per Ordinary Share over a period of five Business Days (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each such Business Day to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the period of five Business Days). The Investment Manager’s obligation:

- (i) shall not apply to the extent that the acquisition of the Performance Shares would require the Investment Manager to make a mandatory bid under Rule 9 of the Takeover Code; and
- (ii) shall expire at the end of the Performance Period which immediately follows the Performance Period to which the obligation relates.

Pursuant to the terms of the Investment Management Agreement, except in certain specified circumstances, the Investment Manager shall not offer, sell, contract to sell, pledge, mortgage, charge, assign, grant options over, or otherwise dispose of, directly or indirectly, the Performance Shares nor mandate a third party to do so on its behalf, or announce the intention to do so for a period of 12 months immediately following the acquisition of the relevant Performance Shares.

The Investment Manager intends to seek the Board’s approval to amend the terms of the Performance Fee in the Investment Management Agreement.

The purpose of the amendment would be to address more fairly the consequence on future performance fees of the returns generated during the company’s first year of investment ramp up which, as expected, were lower than the medium-term target of 8 per cent. to 9 per cent. The Company achieved an almost 4 per cent. return on NAV during 2017 even though returns were weighed down by high levels of uninvested cash. This return is, however, reduced to 2 per cent. when calculated on the IPO Issue Price as a result of the 2 per cent. initial discount caused by the capped issue expenses incurred at the IPO.

The proposed amendment would stipulate that when the Company has achieved a return that is greater than 6 per cent. in a given year (the “**one-year test**”) but has not yet achieved a 6 per cent. per annum compounded return on the IPO Issue Price from First Admission (the “**cumulative test**”) as a result of factoring in the returns of a prior year in which the Company achieved a less than 6 per cent. return, the incentive compensation payable based on the one-year test will not be forfeited but will instead be deferred until the cumulative test is satisfied. This amendment would only affect any Performance Fee earned from 2018 onward. Any such change in the Performance Fee in the Investment Management Agreement will be subject to approval by the Board as well as the Shareholders at a general meeting.

POTENTIAL CONFLICTS OF INTEREST

Directors

In relation to transactions in which a Director is interested, the Articles provide that, as long as the Director discloses to the Board the nature and extent of any material interest, the Director may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested and may be a director or other officer of, or employed by, or a party to any transaction with, any body corporate in which the Company is interested, and shall not, by reason of their office, be accountable to the Company for any benefit they derive from any such office, employment, transaction or arrangement and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.

Investment Manager

Please see Part III (The Investment Manager) of this Prospectus for a summary of the potential conflicts of interest that may arise in relation to the Investment Manager.

TAKEOVER CODE

The Takeover Code applies to the Company.

CORPORATE GOVERNANCE

The Board has considered the principles and recommendations of the AIC Code by reference to the AIC Guide. The AIC Code, as explained by the AIC Guide, addresses all the principles set out in the UK Corporate Governance Code, as well as setting out additional principles and recommendations on issues that are of specific relevance to the Company.

The Board considers that reporting against the principles and recommendations of the AIC Code (which complements the UK Corporate Governance Code and provides a framework of best practice for listed investment companies), and by reference to the AIC Guide (which incorporates the UK Corporate Governance Code), will provide better information to Shareholders.

The Company is a member of the AIC and complies with the AIC Code, and is therefore deemed to comply with the UK Corporate Governance Code in accordance with the AIC Code.

The UK Corporate Governance Code includes provisions relating to: (i) the role of the chief executive; (ii) executive directors' remuneration; (iii) appointing the directors for a term of six years; and (iv) an internal audit function. For the reasons set out in the AIC Guide, and as explained in the UK Corporate Governance Code, the Board considers that these provisions are not relevant to the position of the Company, as an externally managed investment company, and accordingly the Company does not comply with them.

Audit and Risk Committee

The Company has established an Audit and Risk Committee, which is chaired by Colin Bond and consists of all the Directors. The Audit and Risk Committee meets at least twice a year. The Board considers that the members of the Audit and Risk Committee have the requisite skills and experience to fulfil the responsibilities of the Audit and Risk Committee. The Audit and Risk Committee examines the effectiveness of the Company's control systems. It reviews the half-yearly and annual reports of the Company and also receives information from the Investment Manager. The Audit and Risk Committee reviews the scope, results, cost effectiveness, independence and objectivity of the external auditor. It also reviews the valuations of all unlisted investments and make recommendations to the Board for approval.

ANNUAL GENERAL MEETINGS, ANNUAL AND HALF-YEARLY REPORTS AND FINANCIAL STATEMENTS

The Company will hold its first annual general meeting in 2018 and will hold an annual general meeting each year thereafter. The audited annual report and financial statements of the Company are made up to 31 December in each year, with copies expected to be sent to Shareholders within the following four months. The Company will also publish unaudited half-yearly reports for the period ended 30 June in each year. The Company's accounts are prepared in US Dollars and are available on the Company's website.

The Company's audited annual report and accounts for the period from incorporation to 31 December 2017 have been published on 8 March 2018 and are available on the Company's

website. For the avoidance of doubt, such website and its contents are not incorporated by reference into this Prospectus.

Any ongoing disclosures required to be made to Shareholders pursuant to the AIFM Directive (where applicable) are contained in the Company's half-yearly or annual reports or on the Company's website, or will be communicated to Shareholders in written form as required.

The Directors intend to include in the Company's annual and half-yearly reports sufficient information relating to the Company's underlying investments and valuation methodologies to enable Shareholders to appraise the Company's portfolio.

PART V – C Shares

1. INTRODUCTION

The issue of C Shares is designed to overcome the potential disadvantages, for both existing and new investors, which could arise out of a fixed price issue of further Ordinary Shares for cash. In particular:

- 1.1 the assets representing the net proceeds of an issue of a class of C Shares will be accounted for until the Conversion Calculation Date as a separate pool of assets from the pools of assets representing the assets of the Ordinary Shares and any other class of C Shares that may be in existence at the same time. Thereafter, the relevant class of C Shares will convert into Correspondent Ordinary Shares on their Conversion Date and the separate underlying pool of assets of that class of C Shares and the Ordinary Shares will merge. Due to the Company accounting for the net proceeds arising from the issue of each class of C Shares separately, holders of existing Ordinary Shares will not be exposed to a portfolio containing a substantial amount of uninvested cash relating to the C Shares before the Conversion Date;
- 1.2 provided that Initial Admission occurs, the Net Asset Value of the existing Ordinary Shares will not be diluted by the expenses associated with the issue of C Shares at Initial Admission, which will be borne solely by the subscribers for C Shares pursuant to the Initial Placing and Offer and not by existing Shareholders; and
- 1.3 the basis upon which a class of C Shares will convert into Correspondent Ordinary Shares is such that the number of Correspondent Ordinary Shares to which the holders of that class of C Shares will become entitled will reflect the assets attributable to that class of C Shares, and the investment performance and value of the pool of new capital attributable to that class of C Shares raised pursuant to the issue of that class of C Shares, up to the Conversion Calculation Date as compared to the assets attributable to the existing Ordinary Shares at that time. As a result, neither the Net Asset Value attributable to the Ordinary Shares nor the Net Asset Value attributable to the relevant class of C Shares will be adversely affected by Conversion.

Pending Conversion, the assets attributable to each class of C Shares will be invested by the Investment Manager in accordance with the Company's investment policy. The Company will not have regard to the concentration in the portfolio attributable to a specific class of C Shares prior to its Conversion. The investment limits set out in the Company's investment objective and policy will apply to the Company's gross assets as a whole. Therefore, a class of C Shares or the Ordinary Shares may, prior to Conversion, have a greater concentration of investments within their respective portfolios than the investment limits set out in the Company's investment policy. See also the "Risks relating to an Investment in the Shares" and in particular, the risk factor entitled "Each class of Shares may have a highly concentrated portfolio of investments" in the "Risk Factors" section of this Prospectus.

Each class of C Shares will ordinarily convert into Correspondent Ordinary Shares at any time as the Directors may determine after the assets attributable to such class have been substantially invested in accordance with the Company's investment policy, or upon the relevant Back Stop Date (as defined in paragraph 2 of this Part V (C Shares) of this Prospectus below) being reached, in each case, in accordance with the Articles.

The Directors do not currently intend to pay any dividend to the holders of C Shares in respect of the period from the Admission of such C Shares up to the Conversion Calculation Date. The Directors may, nevertheless, at their sole discretion, resolve to pay to such holders such dividend out of the assets attributable to such class of C Shares as the Directors may determine.

It is expected that, subject to demand, C Shares and New Ordinary Shares will be issued pursuant to the Placing Programme and the Offer at such times and in such volumes as the Company and the Joint Bookrunners may determine in their absolute discretion. The Company may, at its discretion, issue additional classes of C Shares prior to the Conversion of any previously issued class(es) of C Shares. Each class of C Shares will form a distinct and separate class of Shares from other classes of C Shares. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. A new class of C Shares may be issued prior to the Conversion of any existing class(es) of C Shares in a number of circumstances including where, prior to Conversion, the existing cash attributable to Ordinary Shares and any existing

class(es) of C Shares is considered to be potentially insufficient to fund the acquisition of one or more pipeline Debt Assets (which may or may not ultimately materialise).

The Correspondent Ordinary Shares arising on Conversion of the C Shares will rank *pari passu* with the Ordinary Shares then in issue for dividends and other distributions declared, made or paid by reference to a record date falling after the relevant Conversion Calculation Date. In accordance with the Articles, fractions of Correspondent Ordinary Shares arising on Conversion may be dealt with by the Directors in such manner as they see fit. Further details concerning Conversion, together with a worked example, are set out below.

2. BACK STOP DATE AND CONVERSION CALCULATION DATE

Pursuant to the Articles, the Directors have determined the last day for the Conversion for each class of C Shares issued pursuant to the Issue to be the last calendar day in the month falling 12 months after the relevant Admission (the “**Back Stop Date**”).

Subject to the Back Stop Date and any Force Majeure Circumstances, the Conversion of a class of C Shares may occur on a day determined by the Directors occurring not before the Investment Manager gives notice to the Directors to consider a class of C Shares to be 85 per cent. invested for the purposes of determining the Conversion Calculation Date.

On the relevant Conversion Calculation Date, the net assets attributable to the Ordinary Shares then in issue, the net assets attributable to the relevant class of C Shares and the resultant Conversion Ratio will be calculated.

Holders of a class of C Shares will receive such number of Correspondent Ordinary Shares as results from applying the Conversion Ratio to their holdings in such class of C Shares on the Conversion Date, with fractions of Correspondent Ordinary Shares being dealt with by the Directors in such manner as they see fit.

The conversion process is more fully described, and the definitions of the terms “Conversion”, “Conversion Calculation Date”, “Conversion Date”, “Conversion Ratio” and “Correspondent Ordinary Shares” are set out in the section entitled “C Shares Definitions” in this Part V (C Shares) of this Prospectus.

3. EXAMPLE OF CONVERSION

The following example is provided for the purpose of illustrating the basis on which the number of Correspondent Ordinary Shares arising on Conversion will be calculated. The example is not, and is not intended to be, either a profit forecast or a forecast of the number of Correspondent Ordinary Shares which will arise on an actual Conversion.

The example below illustrates the number of Correspondent Ordinary Shares which would arise in respect of the conversion of 1,000 C Shares forming a single class of Shares on the Conversion Date, using assumed net assets attributable to the C Shares and the existing Ordinary Shares on the Conversion Calculation Date (as determined in accordance with the Articles). The assumed net assets attributable to an existing Ordinary Share is US\$1.03 per Ordinary Share. The assumed net assets attributable to each C Share is based on the following assumptions: (i) there is no capital growth on the Net Initial Proceeds of the C Shares in the period to the Conversion Calculation Date; (ii) 1,000 C Shares are issued; and (iii) the expenses of the issue of C Shares attributable to each C Share are US\$0.02.

Example

Number of C Shares issued	1,000
Amount subscribed	US\$1,000
Net Asset Value attributable to a C Share on the Conversion Calculation Date	US\$0.98
Net Asset Value attributable to an existing Ordinary Share on the Conversion Calculation Date	US\$1.03
Conversion Ratio	0.9515 ⁽¹⁾
Number of Correspondent Ordinary Shares arising on Conversion	951 ⁽²⁾

(1) 0.00005 being rounded upwards in accordance with the Articles.

(2) Rounded down for fractions of Correspondent Ordinary Shares.

Other than the criteria set out in the section entitled “Back Stop Date and Conversion Calculation Date” in this Part V (C Shares) of this Prospectus, the rights and restrictions attaching to the C Shares are set out in the Articles. The relevant provisions are summarised below.

4. C SHARE DEFINITIONS

The following definitions apply (for the purposes of this Part V (C Shares) of this Prospectus only) in addition to, or (where applicable) in substitution for, the definitions elsewhere in this Prospectus:

“C Shares”	redeemable C shares of US\$0.01 each in the capital of the Company carrying the rights set out in the Articles
“C Share Surplus”	in relation to any class of C Shares, the net assets of the Company attributable to the holders of C Shares of that class (including, for the avoidance of doubt, any income and/or revenue arising from or relating to such assets) less such proportion of the Company’s liabilities (including the fees and expenses of the liquidation or return of capital (as the case may be)) as the Directors or the liquidator (as the case may be) shall reasonably allocate to the assets of the Company attributable to such holders
“Conversion”	in relation to any class of C Shares, conversion of the C Shares of that class into Correspondent Ordinary Shares in accordance with the Articles
“Conversion Calculation Date”	in relation to any class of C Shares, the earlier of: a) close of business on the day to be determined by the Directors occurring not before the day on which the Investment Manager gives notice to the Directors that at least 85 per cent., or such other percentage as the Directors may select as part of the terms of issue of any class of C Shares, of the assets attributable to the holders of that class of C Shares are invested in accordance with the investment policy of the Company; and b) opening of business on the first day on which the Directors resolve that Force Majeure Circumstances in relation to any class of C Shares have arisen or are imminent, provided that the Conversion Calculation Date shall in relation to any class of C Shares be such that the Conversion Date shall not be later than such date as may be determined by the Directors on the date of issue of C Shares of such class as the last date for Conversion of that class
“Conversion Date”	in relation to any class of C Shares, the earlier of: a) such date as may be determined by the Directors on the date of issue of the C Shares of such class as the last date for Conversion of such class; and b) the opening of business on a dealing day selected by the Directors and falling after the Conversion Calculation Date
“Conversion Ratio”	in relation to each class of C Shares, A divided by B calculated to four decimal places (with 0.00005 being rounded upwards) where: $A = \frac{C-D}{E}$ and $B = \frac{F-G}{H}$ and where: C is the aggregate value of all assets and investments of the Company attributable to the relevant class of C Shares (as determined by the Directors)

	on the relevant Conversion Calculation Date calculated in accordance with the accounting principles adopted by the Company from time to time; D is the amount (to the extent not otherwise deducted in the calculation of C) which, in the Directors' opinion, fairly reflects the amount of the liabilities attributable to the holders of C Shares of the relevant class on the Conversion Calculation Date; E is the number of C Shares in issue on the Conversion Calculation Date; F is the aggregate value of all assets and investments attributable to the Ordinary Shares on the relevant Conversion Calculation Date calculated in accordance with the accounting principles adopted by the Company from time to time; G is the amount (to the extent not otherwise deducted in the calculation of F) which, in the Directors' opinion, fairly reflects the amount of the liabilities attributable to the Ordinary Shares on the Conversion Calculation Date; and H is the number of Ordinary Shares in issue on the Conversion Calculation Date; provided always that: (i) in relation to any class of C Shares, the Directors may determine, as part of the terms of issue of such class, that element A in the formula shall be valued at such discount as may be selected by the Directors; and (ii) the Directors shall make such adjustments to the value or amount of "A" and "B" as the auditor shall report to be appropriate having regard, inter alia, to the assets of the Company immediately prior to the date of the relevant Admission or the Conversion Calculation Date; and (iii) in relation to any class of C Shares, the Directors may, as part of the terms of issue of such class, amend the definition of Conversion Ratio in relation to that class
"Correspondent Ordinary Shares"	the new Ordinary Shares arising on Conversion of the C Shares
"Force Majeure Circumstance"	in relation to any class of C Shares, any political and/or economic circumstances and/or actual or anticipated changes in fiscal or other legislation and/or other circumstances which, in the reasonable opinion of the Directors, renders Conversion necessary or desirable notwithstanding that less than 85 per cent. (or such other percentage as the Directors may select as part of the terms of issue of such class) of the assets attributable to the holders of that class of C Shares are invested in accordance with the investment policy of the Company
"Ordinary Share Surplus"	the net assets of the Company less the C Share Surplus or, if there is more than one class of C Shares in issue at the relevant time, the C Share Surpluses attributable to each of such classes

5. ISSUE OF C SHARES

Subject to the Articles and the Act, the Directors have the power to issue an unlimited number of C Shares. The Directors are authorised to issue such classes of C Shares as they may determine in accordance with the provisions of the Articles and with C Shares of each such class being convertible into Correspondent Ordinary Shares as the Directors may determine at the time of issue of the relevant C Shares.

Each class of C Shares will form a separate class of Shares from other classes of C Shares and will constitute a separate underlying pool of assets and liabilities from Ordinary Shares and each other class of C Shares that may be in existence at the same time. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. When a class of C Shares is converted into Correspondent Ordinary Shares, the net assets attributable to such class of C Shares prior to Conversion shall merge with the net assets attributable to the Ordinary Shares.

The Directors shall, on the issue of each class of C Shares, determine the Back Stop Date for such class, and any other amendments, if any, to the definition of Conversion Calculation Date for such class.

6. ALLOCATION OF INVESTMENT OPPORTUNITIES

Opportunities to invest in Debt Assets (including funding any unfunded commitments under existing Debt Assets) will be allocated as between the Ordinary Shares and various classes of C Shares as follows:

- (i) no investible cash attributable to a class of C Shares will be utilised to invest in a Debt Asset unless the investible cash attributable to the Ordinary Shares has been fully invested in specific Debt Assets or has otherwise been utilised;
- (ii) no investible cash attributable to a new class of C Shares issued under any Placing will be utilised to invest in a Debt Asset unless the investible cash attributable to all previously issued classes of C Shares has been fully invested in specific Debt Assets or has otherwise been utilised; and
- (iii) where there is no further investible cash attributable to the Ordinary Shares or any existing classes of C Shares and any borrowings are incurred by the Company, the investible cash attributable to any new class of C Shares may, at the Company's discretion, be utilised to repay such borrowings in exchange for an allocation to the pool of assets attributable to such new class of C Shares of either: (i) all, or the relevant proportion, of the specific investment(s) funded with such borrowings; or (ii) a proportionate share of all Debt Assets attributable to the Ordinary Shares, as the Directors may determine in their absolute discretion.

For the avoidance of doubt, the Company will not have regard to the concentration in the portfolio attributable to a specific class of C Shares prior to its Conversion. The investment limits set out in the Company's investment objective and policy will apply to the Company's gross assets as a whole. Therefore, a class of C Shares or the Ordinary Shares may, prior to Conversion, have a greater concentration of investments within their respective portfolios than the investment limits set out in the Company's investment objective and policy. See also the "Risks relating to an Investment in the Shares" and in particular, the risk factor entitled "Each class of Shares may have a highly concentrated portfolio of investments" in the "Risk Factors" section of this Prospectus.

7. DIVIDENDS

Notwithstanding any other provision of the Articles, the Directors do not currently intend to pay any interim dividend to the holders of C Shares representing the net income attributable to the C Shares in respect of the period from Admission of such C Shares up to their Conversion Calculation Date. The Directors may, nevertheless, at their sole discretion, resolve to pay to such holders such dividend out of the assets attributable to such class of C Shares as the Directors may determine.

No dividend or other distribution shall be made or paid by the Company on any of its C Shares between the Conversion Calculation Date and the Conversion Date (both dates inclusive) provided that any dividend announced prior to the relevant Conversion Calculation Date shall be taken into account as an adjustment in the calculation of the Conversion Ratio and no dividend shall be declared with a record date falling between the relevant Conversion Calculation Date and the relevant Conversion Date (both dates inclusive).

8. THE CONVERSION PROCESS

In relation to each class of C Shares, the Directors shall procure that:

- (i) within 10 Business Days of the Conversion Calculation Date (or such other period as the Directors may determine), the Conversion Ratio as at the Conversion Calculation Date and the number of Correspondent Ordinary Shares which each holder of C Shares of that class shall be entitled on Conversion shall be calculated; and
- (ii) the auditors shall be requested to certify, within 10 Business Days of the relevant Conversion Calculation Date (or such other period as the Directors may determine), that such calculations as have been made by the Investment Manager have been performed in accordance with the Articles and are arithmetically accurate.

Upon such determination by the auditors, such calculations shall become final and binding on the Company and all Shareholders and as soon as practicable after such certification, a notice will be sent to each holder of C Shares of the relevant class advising such holder of C Shares of the Conversion Date, the Conversion Ratio and the number of Correspondent Ordinary Shares that such holder of C Shares will be entitled to on Conversion.

Any person acquiring Correspondent Ordinary Shares upon Conversion will be deemed to have agreed, represented and warranted to each of the Company, the Investment Manager, the Registrar and the Joint Bookrunners to all of the statements that the subscriber for the relevant C Shares is deemed to have agreed, represented and warranted to each of the aforementioned persons at the time of subscription as set out in this Prospectus.

The Directors may, in their absolute discretion, decline to convert any C Shares into Correspondent Ordinary Shares with respect to any person who has not established to the satisfaction of the Directors that such person is not a Non-Qualified Holder and any such C Shares shall be subject to the forced transfer and other provisions relating to Non-Qualified Holders set out in the Articles and this Prospectus.

On Conversion, such number of C Shares of the relevant class as shall be necessary to ensure that, upon Conversion being completed, the aggregate number of Correspondent Ordinary Shares into which those C Shares are converted equals the number of C Shares in issue on the Conversion Calculation Date multiplied by the Conversion Ratio and rounded down to the nearest whole Ordinary Share, shall automatically convert into an equal number of Correspondent Shares.

The Correspondent Ordinary Shares arising on Conversion shall be divided amongst the former holders of the relevant class C Shares *pro rata* according to their respective former holdings of that class of C Shares (provided always that the Directors may deal in such manner as they think fit with fractional entitlements to Correspondent Ordinary Shares arising upon Conversion, including, without prejudice to the generality of the foregoing, selling any such shares representing such fractional entitlements and retaining the proceeds for the benefit of the Company provided that such proceeds are less than US\$5.00 per holder of the relevant class of C Shares).

In the event that the number of C Shares in the relevant class of C Shares required to be converted into Correspondent Ordinary Shares exceeds the number of C Shares in issue, the Directors shall be authorised (without the need for any further authorisation) to take such additional steps, including issuing additional innominate shares by way of a bonus issue to the holders of the relevant class of C Shares, as shall be necessary to ensure the proper operation of the Conversion process as described in herein.

Each issued C Share of a class which does not convert into a Correspondent Ordinary Share in accordance with this paragraph shall, immediately upon Conversion, be redeemed by the Company for an aggregate consideration of US\$0.01 for all of the C Shares of that class to be so redeemed and the notice referred to in this paragraph shall be deemed to constitute notice to each holder of C Shares of that class (and any person or persons having the right to acquire or acquiring C Shares of that class on or after the Conversion Calculation Date) that such C Shares shall be so redeemed. The Company shall not be obliged to account to any holder of C Shares for the redemption monies in respect of such shares.

Upon request following Conversion, the Company shall issue to each former holder of C Shares a new certificate in respect of the Correspondent Ordinary Shares in certificated form which have arisen upon Conversion.

9. RANKING OF C SHARES UPON CONVERSION

The Correspondent Ordinary Shares arising upon Conversion shall rank *pari passu* with all other Ordinary Shares for dividends and other distributions declared, made or paid by reference to a record date falling after the relevant Conversion Calculation Date and will entitle the newly converted holders thereof to participate in any future share buybacks on the same terms and subject to the same conditions as holders of the Ordinary Shares. For further details on the Company's policies around share buybacks and discount control management, please refer to the section entitled "Discount Control Mechanisms" in Part I (The Company) of this Prospectus.

10. RIGHTS AS TO CAPITAL

The assets of the Company shall on a winding up or on a return of capital (other than by way of the repurchase of Ordinary Shares by the Company) prior, in each case, to Conversion be applied as follows:

10.1 the Ordinary Share Surplus shall be divided amongst the holders of Ordinary Shares *pro rata* according to their holdings of Ordinary Shares; and

10.2 the C Share Surplus of each class of C Shares shall be divided among the holders of C Shares of such class *pro rata* to their holdings of such C Shares.

11. VOTING AND TRANSFER

The C Shares shall carry the right to receive notice of and to attend and vote at any general meeting of the Company in the same manner as the Ordinary Shares. The voting rights of holders of C Shares will be the same as those applying to holders of Ordinary Shares as set out in the Articles as if the C Shares and Ordinary Shares were a single class. Each class of C Shares will have the same rights and characteristics as any other class of C Shares.

The C Shares shall be transferable in the same manner as the Ordinary Shares.

12. CLASS CONSENTS AND VARIATION OF RIGHTS

Without prejudice to the generality of the Articles, until Conversion, the consent of: (i) the holders of each class of C Shares as a class; and (ii) the holders of Ordinary Shares as a class shall be required to:

- (a) make any alternation to the Articles; or
- (b) pass any resolution to wind up the Company,

and accordingly, the special rights attached to the C Shares of such class and the Ordinary Shares shall be deemed to be varied if such consent is not obtained.

13. CLASS ACCOUNTS

Until Conversion and without prejudice to its obligations under the Act, the Company shall, in relation to each class of C Shares, establish a separate class account for that class in accordance with the Articles and, subject thereto:

13.1 procure that the Company's records and bank accounts shall be operated so that the assets attributable to the holders of C Shares of the relevant class can, at all times, be separately identified and, in particular but without prejudice to the generality of the foregoing, the Company shall procure that separate cash accounts, broker and other settlement accounts and investment ledger accounts shall be created and maintained in the books of the Company for the assets and liabilities attributable to the holders of C Shares of the relevant class;

13.2 allocate to the assets attributable to the holders of C Shares of the relevant class such proportion of the expenses and liabilities of the Company incurred or accrued between the relevant Admission and the relevant Conversion Calculation Date (both days inclusive) as the Directors fairly consider to be attributable to the C Shares of the relevant class; and

13.3 appropriate instructions to the Investment Manager to manage the Company's assets so that such undertakings can be complied with by the Company.

14. DEEMED REPRESENTATIONS AT THE TIME OF CONVERSION

Your attention is drawn to the representations and warranties set out in the section headed "Representations and Warranties" in Part VI (Issue Arrangements) of this Prospectus, which each holder of C Shares of any class will be deemed to have represented, acknowledged and agreed to at the time of: (i) subscription or acquisition of C Shares of that class; and (ii) Conversion and receipt of the Correspondent Ordinary Shares.

PART VI – ISSUE ARRANGEMENTS

1. INTRODUCTION

In this Prospectus, the Placing Programme and the Offer are together referred to as the “Issue”. The Company proposes to issue up to 2,000 million Shares, being New Ordinary Shares and / or C Shares, pursuant to the Placing Programme and the Offer (the New Ordinary Shares and the C Shares together being the “**Issue Shares**”), out of which, the Company intends to issue up to 500 million C Shares with an Issue Price of US\$1.00 per C Share pursuant to the Initial Placing and Offer. The maximum size of the Issue should not be taken as an indication of the number of Shares which will be issued under the Issue. No New Ordinary Shares will be issued pursuant to the Initial Placing and Offer. The minimum gross proceeds in respect of the Initial Placing and Offer of C Shares will be US\$120 million (“**Minimum Gross Proceeds**”). The Issue is not being underwritten.

If the timetable for any Placing or the Offer is extended, the revised timetable will be notified through an RIS announcement.

It is expected that the results of the Initial Placing and the Offer will be notified through a Regulatory Information Service on or around 13 April 2018, or such later date (no later than the Long Stop Date) as the Company and the Joint Global Coordinators may agree.

Each allotment of Issue Shares pursuant to the Placing Programme and the Offer is conditional on:

- in the case of an issue of New Ordinary Shares, the Issue Price, after taking account of issue expenses, being not less than the latest published Net Asset Value per Ordinary Share;
- in relation to the Initial Placing and Offer only, the Minimum Gross Proceeds being at least US\$120 million;
- in relation to the Initial Placing and Offer, Initial Admission occurring not later than 8:00 a.m. on 16 April 2018 or such other date as may be agreed between the Company and the Joint Global Coordinators, not being later than the Long Stop Date;
- in relation to any subsequent Placing, Admission of the relevant Issue Shares occurring; and
- the Placing Agreement not being terminated in accordance with its terms or a particular Placing (whether the Initial Placing or any subsequent Placing) not being suspended or terminated in accordance with the terms of the Placing Agreement.

In circumstances where these conditions are not fully met, the relevant issue of Issue Shares pursuant to the Initial Placing, the Offer or the relevant subsequent Placing (as the case may be) will not take place.

The Company reserves the right not to issue Shares in the event that such issue would result in the Company not complying with the requirements of TISEA Listing Rules or becoming a “close company” (as defined in section 439 of the Corporation Tax Act 2010, as amended).

The terms and conditions which will apply to any subscriber for Issue Shares under a Placing procured by any of the Joint Bookrunners or the Company directly, as principal, are set out in Part XI (Terms and Conditions of the Placing Programme) of this Prospectus.

2. THE OFFER

The C Shares are being made available by the Company under the Offer at the Issue Price of US\$1.00 per C Share, subject to the terms and conditions of application under the Offer set out in Part XII (Terms and Conditions of the Offer for Subscription) of this Prospectus. These terms and conditions, and the Application Form, including the section entitled “Notes on how to complete the Application Form for the Offer”, set out at Appendix 1 to this Prospectus should be read carefully before an application is made under the Offer. The Offer is expected to expire at 11:00 am on 12 April 2018. If the timetable for the Offer is extended, the revised timetable will be notified through a Regulatory Information Service.

Applications under the Offer must be for C Shares with a minimum subscription amount of US\$1,000 and thereafter in multiples of US\$1,000 or such lesser amount as the Company may determine (at its discretion).

Completed Application Forms, accompanied by a cheque or banker’s draft as appropriate, must be posted or delivered by hand (during normal business hours only) to the Receiving Agent, so as to be received as soon as possible and, in any event, by no later than 11:00 am on 12 April 2018.

The Offer is being made only to the public in the United Kingdom and applications for C Shares under the Offer will only be accepted from United Kingdom residents unless the Company (in its absolute discretion) determines that applications may be accepted from non-United Kingdom residents without compliance by the Company with any material regulatory, filing or other requirements or restrictions in other jurisdictions.

Although the Offer is available to the public in the United Kingdom, the Shares are only suitable for investors: (i) who understand the potential risk of capital loss and that there may be limited liquidity in the underlying investments of the Company; (ii) for whom an investment in the Shares is part of a diversified investment programme; and (iii) who fully understand and are willing to assume the risks involved in such an investment portfolio. Investors in the Company are expected to be institutional investors, professional investors, professionally advised investors and highly knowledgeable investors who understand, or who have been advised of, the potential risks from investing in the Company.

The Joint Bookrunners have no responsibility in relation to the making of the Offer or any matter concerning the Offer and in accordance with the terms and conditions of the Offer, applicants under the Offer shall be required to agree that the Joint Bookrunners are acting only for the Company in connection with the Issue and for no-one else and that the Joint Bookrunners will not treat the applicant as their customer by virtue of such application being accepted or owe the applicant any duties or responsibilities concerning the price of the Issue Shares or concerning the suitability of the Issue Shares for the applicant or be responsible to the applicant for providing the protections afforded to their customers.

3. PLACING PROGRAMME

C Shares or New Ordinary Shares will only be issued pursuant to the Placing Programme at times when the Company and the Investment Manager consider that suitable investments in accordance with the Company's investment policy will be capable of being secured (although there is no guarantee that such investments will be secured).

The Placing Programme is flexible and may have a number of closing dates in order to provide the Company with the ability to issue Issue Shares on appropriate occasions over a period of time. Each Placing may consist of Issue Shares being placed by the Joint Bookrunners on behalf of the Company or by the Company directly, as principal. The Placing Programme is intended to satisfy market demand for the Shares and to raise further money for investment in accordance with the Company's investment policy.

3.1 *Background and reasons for the Placing Programme*

Pursuant to the IPO in March 2017, the Company raised gross proceeds of approximately US\$761.9 million. In December 2017, the Company raised an additional approximately US\$154.1 million through a further issue of Ordinary Shares. The Company currently has 914,252,831 Ordinary Shares in issue (the "**Existing Shares**").

Since the IPO, the Existing Shares have generally traded at a premium to their respective Net Asset Value. In light of the continuing market demand for the Ordinary Shares, and having regard to the benefits of enlarging the Company, the Directors have determined to implement the Placing Programme. As referred to above, Issue Shares will be issued when the Directors consider that it is appropriate to do so. New Ordinary Shares issued pursuant to the Placing Programme will be issued at prices which are not less than the latest published Net Asset Value per Ordinary Share plus issue expenses and such issues are therefore expected to be accretive to the Net Asset Value per Ordinary Share.

C Shares issued pursuant to the Placing Programme will be issued at US\$1.00 per C Share and will convert into Correspondent Ordinary Shares in accordance with the Articles. The Company may issue new classes of C Shares before any existing class(es) of C Shares are converted into Correspondent Ordinary Shares. For further information on the rights attaching to C Shares and Conversion, please refer to Part V (C Shares) of this Prospectus.

In determining to initiate the Placing Programme, the Directors have also taken into account the desirability of limiting the premium to Net Asset Value at which the Ordinary Shares may trade from time to time in order to ensure that long-term Shareholders who regularly acquire Ordinary Shares are not disadvantaged by being required to pay a high premium in order to acquire additional Shares.

Up to 1,085,747,169 Issue Shares, whether C Shares or New Ordinary Shares, may be issued on a non pre-emptive basis under an existing authority granted to the Directors at the time of the IPO which expires on 28 February 2022 (unless previously renewed, revoked or varied by the Company in a general meeting). Further details regarding this authority to allot can be found in paragraph 4.2.1 of Part VIII (Additional Information on the Company) of this Prospectus. The Company will issue Issue Shares in excess of that limit on a non pre-emptive basis only if such authority is renewed and pre-emption rights are disapplied (and will issue only up to the lower of either 2,000 million Issue Shares in the aggregate or the limit set out in such renewed authority).

3.2 Benefits of the Placing Programme

The Board believes that the Placing Programme should yield the following principal benefits:

- 3.2.1 greater scope to develop and diversify the Company's portfolio;
- 3.2.2 provide additional capital which will allow the Company to be well placed to take advantage of the investment opportunities which the Directors and the Investment Manager anticipate arising in the future;
- 3.2.3 maintain the Company's ability to issue Shares to better manage the premium at which the Ordinary Shares trade to their Net Asset Value from time to time;
- 3.2.4 offer the potential to enhance the Net Asset Value attributable to the Ordinary Shares through new issuance at a premium to Net Asset Value per Ordinary Share, after the related costs have been deducted;
- 3.2.5 increase the size of the free float with the expectation of greater liquidity in the Ordinary Shares; and
- 3.2.6 reduce the total expense ratio per Share by spreading the Company's fixed running costs over a larger Shareholder base.

3.3 Overview of the Placing Programme

The Placing Programme will open on 14 March 2018 and will close on 13 March 2019 (or any earlier date on which it is fully subscribed or the Company and the Joint Global Coordinators decide to terminate the Placing Programme earlier).

The maximum number of Issue Shares to be issued pursuant to the Placing Programme is 2,000 million, being New Ordinary Shares and/or C Shares. Subject to that maximum limit, there is no limit on the number of New Ordinary Shares or C Shares that the Company may issue pursuant to any single issuance under the Issue. The Placing Programme may consist entirely of C Shares or a mix of New Ordinary Shares and C Shares. The number of Issue Shares to be issued over the course of the Placing Programme cannot be determined as at the date of this Prospectus. The maximum number of Issue Shares should not be taken as an indication of the number of Issue Shares finally to be issued.

Each Placing under the Placing Programme may consist of placings of C Shares or New Ordinary Shares by the Joint Bookrunner, as agents of the Company, or directly by the Company, as principal. A placing of Issue Shares by a Joint Bookrunner will be referred to as "Bookrunner Placing" and a placing of Issue Shares by the Company, as principal, will be referred to as "Company Placing" in this Prospectus. None of the Joint Bookrunners takes any responsibility with respect to any Issue Shares placed pursuant to a Company Placing.

The issue of Issue Shares under the Placing Programme is at the discretion of the Directors. Issuance may take place at any time prior to the final closing date of 13 March 2019 or such earlier time as all the Issue Shares the subject of the Placing Programme have been issued. An announcement regarding the results of each Placing will be released through an RIS announcement, including details of the number of Issue Shares allotted, the applicable Issue Price and, in respect of each issue of C Shares, the ISIN, SEDOL and ticker symbol for the C Shares issued. It is anticipated that dealings in the Issue Shares will commence no more than three Business Days after the trade date for each issue of Issue Shares. Except where the Company may determine (in its absolute discretion) otherwise, it is expected that all Issue Shares issued pursuant to a particular Placing (which may include Bookrunner Placings and Company Placings) will be issued in uncertificated form. If the Company decides to issue any Issue Shares in certificated form, it is expected that share certificates would be despatched approximately two weeks after Admission of the relevant Issue Shares. No temporary documents of title will be issued.

The Company may, at its discretion, issue additional classes of C Shares prior to the Conversion of any previously issued classes of C Shares. Each class of C Shares will form a distinct and separate class of Shares from other classes of C Shares. Each class of C Shares will have the same rights and characteristics as any other class of C Shares. A new class of C Shares may be issued prior to the Conversion of any existing class(es) of C Shares in a number of circumstances including where the existing cash attributable to Ordinary Shares and any existing class(es) of C Shares is considered to be potentially insufficient to fund the acquisition of one or more pipeline Debt Assets (which may or may not ultimately materialise). Save in relation to the Initial Placing and Offer and subject to complying with the requirements of TISEA Listing Rules and not becoming a “close company” (as defined in section 439 of the Corporation Tax Act 2010, as amended), there are no minimum gross proceeds required for the issue of subsequent classes of C Shares or New Ordinary Shares pursuant to the Placing Programme. Applications for Issue Shares under the Placing Programme must be for a minimum subscription amount of US\$100,000 and thereafter in multiples of US\$1,000. There is no maximum subscription, unless notified to investors.

As at the date of this Prospectus, the actual number of Issue Shares which will be issued under the Placing Programme is not known. The maximum number of Issue Shares available under the Placing Programme should not be taken as an indication of the number of Issue Shares to be finally issued. Subject to the maximum limit on the Issue Shares, there is no limit on the number of New Ordinary Shares or C Shares that may be issued pursuant to any single issuance under the Issue.

The Placing Programme is not being made on a pre-emptive basis and, accordingly, existing Shareholders who do not participate in the Placing Programme may have their percentage holding of Ordinary Shares diluted: (i) on issue of New Ordinary Shares; and/or (ii) on conversion of the C Shares. It is not possible to provide an estimate of the extent of such dilution as the actual number of Issue Shares which will be issued under the Placing Programme is not known. There will be no dilution of the Net Asset Value attributable to the existing Ordinary Shares.

The Placing Programme will be suspended at any time when the Company is unable to issue Issue Shares pursuant to the Placing Programme under any statutory provision or other regulation applicable to the Company or otherwise at the Directors’ discretion. The Placing Programme may resume when such conditions cease to exist, subject always to the final closing date of the Placing Programme being 13 March 2019.

3.4 *Placing Agreement*

Please see paragraph 10.1 of Part VIII (Additional Information on the Company) of this Prospectus for a summary of the Placing Agreement.

3.5 *Related Party Transaction*

The Company has certain related parties, pursuant to the Listing Rules (to the extent that the Company voluntarily complies with them) as a result of such party currently being or having been a substantial shareholder of the Company in the past 12 months (which, under the Listing Rules, is any shareholder who is entitled to exercise, or to control the exercise of, 10 per cent. or more of the votes able to be cast on all or substantially all matters at a general meeting of the Company). One such related party, Invesco Asset Management Limited, as agent for and on behalf of its discretionary manager clients, has indicated its intention to participate in the Issue. The Company believes that it would be in the interests of all Shareholders to allow its related parties to continue their support for the Company should they so wish and in whatever size they wish to do so.

Should any related party choose to participate in the Initial Placing and Offer or any subsequent Placing under the Placing Programme, then its application will be on the same terms as the other investors participating in the Initial Placing and Offer or such subsequent Placing (as the case may be). The Company intends to publish a circular as soon as reasonably practicable after the date of this Prospectus convening a general meeting of the Shareholders in order to seek the approval of Shareholders (independent of that related party and its affiliates) for each related party to be able to participate in the Initial Placing and Offer and/or any subsequent Placing.

4. DILUTION

The Issue is not being made on a pre-emptive basis and accordingly existing Shareholders who do not participate in the Issue may have their percentage holding of the Shares diluted on issue of the Issue Shares.

Assuming that 500 million C Shares are issued pursuant to the Initial Placing and Offer, a Shareholder holding 1.00 per cent. of the Company's issued share capital who does not subscribe for any C Shares pursuant to the Initial Placing and Offer would hold Shares representing approximately 0.65 per cent. of the Company's issued share capital. The potential dilution in any subsequent Placing will be communicated by a Regulatory Information Service announcement in connection with such Placing. Further, on Conversion of C Shares, any dilution resulting from the issue of C Shares, whether under the Placing Programme or Offer, may increase or decrease depending on the Conversion Ratio used for such Conversion.

5. THE ISSUE PRICE

Subject to the requirements of the Listing Rules (to the extent that the Company voluntarily complies with them), the price at which each New Ordinary Share will be issued will be calculated by reference to the latest published Net Asset Value per Ordinary Share plus issue expenses. The premium at which Ordinary Shares are issued has the potential to ultimately provide an enhancement to the Net Asset Value attributable to the Ordinary Shares.

All C Shares will be issued at an Issue Price of US\$1.00. The costs and expenses (including placing commissions) applicable to the Initial Placing and Offer will be capped at 2 per cent. of, and accordingly the expected Net Asset Value per C Share immediately following Initial Admission will be US\$0.98 per C Share. On the basis that the Gross Initial Proceeds are US\$300 million the Gross Initial Proceeds, the Initial Expenses will therefore be capped at US\$6 million and the Net Initial Proceeds will be approximately US\$294 million.

It is expected that arrangements of a similar nature as outlined above will apply in relation to subsequent Placings of the Issue Shares, with the costs and expenses that will be borne by investors being set at the time of the relevant Placing ("**Subsequent Expenses**"). It is not possible to ascertain the exact costs and expenses of such subsequent Placings. The Subsequent Expenses may or may not be capped in the same manner as the Initial Expenses.

Fractions of Issue Shares will not be issued.

6. CONVERSION OF C SHARES

The C Shares issued pursuant to the Placing Programme will convert into Correspondent Ordinary Shares in accordance with the conversion mechanism and subject to the terms and conditions described in Part V (C Shares) of this Prospectus.

Upon Conversion, the Correspondent Ordinary Shares arising will rank *pari passu* with all other Ordinary Shares then in issue for dividends and other distributions declared, made or paid by reference to a record date falling after the relevant Conversion Calculation Date. The number of Correspondent Ordinary Shares issued on Conversion will be rounded down to the nearest whole number and any fractions may be dealt with by the Directors in such manner as they see fit.

7. USE OF PROCEEDS

The Issue is being made in order to provide investors with exposure to a diversified portfolio of investments through participation in an investment trust company. The Company intends to use the Net Initial Proceeds and Net Placing Proceeds to acquire further investments in accordance with the Company's investment objective and policy.

8. INITIAL ADMISSION

It is expected that Initial Admission will become effective and that unconditional dealings in the C Shares issued pursuant to the Initial Placing and Offer will commence at 8:00 a.m. on 16 April 2018. Dealings in C Shares in advance of the crediting of the relevant stock account shall be at the risk of the person concerned. The Issue Price of C Shares will be US\$1.00.

9. DEALING CODES

The Ordinary Shares and C Shares (in respect of the first issue of C Shares pursuant to the Initial Placing and Offer) will have the following dealing codes:

	Ordinary Shares	C Shares
ISIN	GB00BDGKMY29	GB00BDRNW621
SEDOL	BDGKMY2	BDRNW62
Ticker	BPCR	BPC1

Each class of C Shares represented by subsequent issues of C Share classes will have separate ISINs, SEDOLs and ticker symbols issued. The announcement of each subsequent Placing of C Shares will contain details of the relevant ISIN, SEDOL and ticker symbol for such class of C Shares being issued.

10. SPECIALIST FUND SEGMENT

The Specialist Fund Segment is a part of the London Stock Exchange's EU regulated Main Market. Pursuant to the admission of the Shares to trading on the Specialist Fund Segment, the Company is subject to the Prospectus Rules, the Disclosure Guidance and Transparency Rules (as implemented in the UK through FSMA) and the Market Abuse Regulation.

The Company may apply at a future date for admission of the Shares to the Premium Listing Segment of the Official List and to trading on the Main Market of the London Stock Exchange, subject to the Company's ability to satisfy the eligibility requirement for such admission, including in particular the requirements under Chapter 15 of the Listing Rules.

11. SCALING BACK AND ALLOCATION

If aggregate applications for Issue Shares pursuant to the Offer and/or a Placing exceed a level that the Directors determine, in their absolute discretion at the time of closing the Offer and / or such Placing, to be the appropriate maximum size of the Offer and/or that Placing, it would be necessary to scale back applications under the Offer and/or that Placing (including the Initial Placing). The Offer may be scaled in favour of the Initial Placing and vice versa. Accordingly, applicants for Issue Shares may, in certain circumstances, not be allotted the number of Issue Shares for which they have applied. The Joint Bookrunners reserve the right, at their sole discretion but after consultation with the Company, to scale back applications for Issue Shares received pursuant to any Bookrunner Placing in such amounts as they consider appropriate. The Joint Bookrunners on behalf of the Company reserves the right to decline in whole or in part any application for Issue Shares received pursuant to any Bookrunner Placing.

The Company reserves the right, at its sole discretion but after consultation with the Joint Bookrunners, to scale back applications for Issue Shares received pursuant to any Company Placing or the Offer in such amounts as it considers appropriate. The Company reserves the right to decline in whole or in part any application for Issue Shares received pursuant to any Company Placing or the Offer.

The Company will notify investors of the number of Issue Shares in respect of which their application has been successful and the results of the Offer and each Placing will be announced by the Company via an RIS announcement.

Subscription monies received in respect of unsuccessful applications (or to the extent applications are scaled back) will be returned without interest at the risk of the applicant to the bank account from which the money was received forthwith following the relevant Admission.

12. GENERAL

Pursuant to anti-money laundering laws and regulations with which the Company must comply in the UK, the Company (and its agents) may require evidence in connection with any application for Issue Shares, including further identification of the applicant(s), before any Issue Shares are issued.

In the event that there are any significant new factors relating to the information described in this Prospectus after its publication, the Company will publish a supplementary prospectus. The supplementary prospectus will give details of the significant new factors.

The Directors (in consultation with the Joint Bookrunners) may in their absolute discretion waive the minimum application amounts in respect of any particular application for Issue Shares under the Issue.

Should a Placing and/or the Offer be aborted or fail to complete for any reason, monies received will be returned without interest at the risk of the applicant to the bank account from which the money was received forthwith following such abort or failure, as the case may be. Any abort or failure fees and expenses will be borne by the Company.

13. DEALINGS IN SHARES

Applications will be made to the London Stock Exchange and TISEA for the Issue Shares to be issued pursuant to the Initial Placing and Offer (and pursuant to each Placing thereafter) to be admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA.

The Company does not guarantee that at any particular time any market maker(s) will be willing to make a market in the Issue Shares, nor does it guarantee the price at which a market will be made in the Issue Shares. Accordingly, the dealing price of the Issue Shares may not necessarily reflect changes in the Net Asset Value per Ordinary Share or the Net Asset Value per C Share (as the case may be). Furthermore, the level of the liquidity in the various classes of Shares can vary significantly and liquidity on the Specialist Fund Segment is still unknown.

As a company with its shares admitted to listing on TISEA, the Directors will comply with the Model Code of TISEA and will take all reasonable and proper steps to ensure compliance by applicable employees as required by TISEA Listing Rules. The Directors and the Company will also comply at all times with the applicable provisions of TISEA Listing Rules.

14. CREST

CREST is a paperless settlement process enabling securities to be evidenced otherwise than by a certificate and transferred otherwise than by written instrument. The Articles permit the holding of Shares under the CREST system. The Company will apply for the Issue Shares to be admitted to CREST with effect from the relevant Admission. Accordingly, settlement of transactions in the Issue Shares following the relevant Admission may take place within the CREST system if any Shareholder so wishes.

CREST is a voluntary system and Shareholders who wish to receive and retain share certificates will be able to do so.

15. LEGAL IMPLICATIONS OF THE CONTRACTUAL RELATIONSHIP ENTERED INTO FOR THE PURPOSE OF INVESTMENT

The Company is a public company limited by shares, incorporated in England and Wales. While investors acquire an interest in the Company on subscribing for or purchasing Issue Shares, the Company is the sole legal and/or beneficial owner of its investments. Consequently, Shareholders have no direct legal or beneficial interest in those investments. The liability of Shareholders for the debts and other obligations of the Company is limited to the amount unpaid, if any, on the Issue Shares held by them. Shareholders' rights in respect of their investment in the Company are governed by the Articles and the Act. Under English law, the following types of claim may in certain circumstances be brought against a company by its shareholders: contractual claims under its articles of association; claims in misrepresentation in respect of statements made in its prospectus and other marketing documents; unfair prejudice claims; and derivative actions. In the event that a Shareholder considers that it may have a claim against the Company in connection with such investment in the Company, such Shareholder should consult their own legal advisers.

Jurisdiction and applicable law

As noted above, Shareholders' rights are governed principally by the Articles and the Act. By subscribing for Issue Shares under the Issue, investors agree to be bound by the Articles which are governed by, and construed in accordance with, the laws of England and Wales.

Recognition and enforcement of foreign judgments

Regulation (EC) 593/2008 ("**Rome I**") must be applied in all member states of the EU (other than Denmark). Accordingly, where a matter comes before the courts of a Relevant Member State, the choice of a governing law in any given agreement is subject to the provisions of Rome I. Under

Rome I, the Member State's courts may apply any rule of that Member State's own law which is mandatory, irrespective of the governing law, and may refuse to apply a rule of governing law if it is manifestly incompatible with the public policy of that Member State. Further, where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement. Shareholders should note that there are a number of legal instruments providing for the recognition and enforcement of foreign judgments in England. Depending on the nature and jurisdiction of the original judgment, Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, the Administration of Justice Act 1920, and the Foreign Judgments (Reciprocal Enforcement) Act 1933 may apply. There are no legal instruments providing for the recognition and enforcement of judgments obtained in jurisdictions outside those covered by the instruments listed above, although such judgments might be enforceable at common law.

16. OVERSEAS PERSONS AND RESTRICTED TERRITORIES

The attention of potential investors who are not resident in, or who are not citizens of, the UK is drawn to the sections below.

The offer of Issue Shares under the Issue to Overseas Persons may be affected by the laws of other relevant jurisdictions. Such persons should consult their professional advisers as to whether they require any government or other consents or need to observe any applicable legal requirements to enable them to acquire Issue Shares under the Issue. It is the responsibility of all Overseas Persons receiving this Prospectus and/or wishing to subscribe for Issue Shares under the Issue to satisfy themselves as to full observance of the laws of the relevant territory in connection therewith, including obtaining all necessary governmental or other consents that may be required and observing all other formalities needing to be observed and paying any issue, transfer or other taxes due in such territory.

In particular, none of the Issue Shares have been or will be registered under the laws of any Restricted Territory. Accordingly, the Issue Shares may not be offered, sold, issued or delivered, directly or indirectly, within any Restricted Territory unless an exemption from any registration requirement is available.

No person receiving a copy of this Prospectus in any territory other than the UK may treat the same as constituting an offer or invitation to them, unless in the relevant territory such an offer can lawfully be made to them without compliance with any material further registration or other legal requirements.

Persons (including, without limitation, nominees and trustees) receiving this Prospectus should not distribute or send it to any jurisdiction where to do so would or might contravene local securities laws or regulations.

Investors should additionally consider the provisions set out under the heading "Important Notices" on page 75 of this Prospectus.

In addition, until 40 days after the commencement of the Issue, an offer or sale of the Issue Shares within the United States by any dealer (whether or not participating in the Issue) may violate the registration requirements of the Securities Act.

The Company reserves the right to treat as invalid any agreement to subscribe for Issue Shares under the Issue if it appears to the Company or its agents to have been entered into in a manner that may involve a breach of the securities legislation of any jurisdiction.

17. UNITED STATES TRANSFER RESTRICTIONS

The Company has elected to impose the restrictions described below in "Representations, Warranties and Undertakings" (in particular, see items 18.4 and 18.5 therein) on the Issue and on the future trading and conversion of the Issue Shares so that the Company will not be required to register the Issue Shares under the Securities Act, and so that the Company will not have an obligation to register as an "investment company" under the Investment Company Act and related rules, and to address certain ERISA, US Tax Code and other considerations. These transfer

restrictions, which will remain in effect until the Company determines in its sole discretion to remove them, may adversely affect the ability of Shareholders to trade in or otherwise acquire or dispose of the Issue Shares. The Company and its agents will not be obliged to recognise any resale, conversion or other transfer of the Issue Shares made other than in compliance with the restrictions described below.

The Issue Shares may not be acquired by: (i) investors using assets of: (A) an “employee benefit plan” as defined in Section 3(3) of ERISA that is subject to Title I of ERISA; (B) a “plan” as defined in Section 4975 of the US Tax Code, including an individual retirement account or other arrangement that is subject to Section 4975 of the US Tax Code; or (C) an entity whose underlying assets are considered to include “plan assets” by reason of investment by an “employee benefit plan” or “plan” described in preceding clause (A) or (B) in such entity pursuant to the US Plan Assets Regulations; or (ii) a governmental, church, non-US or other employee benefit plan that is subject to any federal, state, local or non-US law that is substantially similar to the provisions of Title I of ERISA or Section 4975 of the US Tax Code, unless its purchase, holding, and disposition of the Issue Shares will not constitute or result in a non-exempt violation of any such substantially similar law.

18. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

Unless otherwise expressly agreed with the Company, each acquirer of Issue Shares pursuant to the Issue and each subsequent transferee, and each acquirer of Correspondent Ordinary Shares upon conversion of any C Shares and each subsequent transferee, by acquiring Shares or a beneficial interest therein, will be deemed to have represented, warranted, undertaken, agreed and acknowledged to the Company and the Joint Bookrunners as follows:

- 18.1 it is located outside the United States, it is not a US Person, it is acquiring the Shares in an “offshore transaction” meeting the requirements of Regulation S and it is not acquiring the Shares for the account or benefit of a US Person;
- 18.2 the Shares have not been and will not be registered under the Securities Act, or with any securities regulatory authority of any state or other jurisdiction of the United States, and may not be offered, sold, resold, pledged, transferred or delivered, directly or indirectly, into or within the United States or to, or for the account or benefit of, US Persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in compliance with any applicable securities laws of any state or other jurisdiction of the United States and in a manner which would not require the Company to register under the Investment Company Act;
- 18.3 the Company has not been and will not be registered under the Investment Company Act and, as such, investors will not be entitled to the benefits of the Investment Company Act and the Company has elected to impose restrictions on the Issue and on the future trading in and conversion of the Shares to ensure that the Company is not and will not be required to register under the Investment Company Act;
- 18.4 if in the future it decides to offer, sell, transfer, assign, pledge or otherwise dispose of the Shares or any beneficial interest therein, it will do so only (i) in an “offshore transaction” complying with the provisions of Regulation S to a person outside the United States and not known by the transferor to be a US Person, by prearrangement or otherwise, or (ii) to the Company or a subsidiary thereof. It acknowledges and agrees that any offer, sale, transfer, assignment, pledge or other disposal made other than in compliance with the foregoing restrictions will be subject to the compulsory transfer provisions contained in the Articles;
- 18.5 it is not, and is not acting on behalf of, a Benefit Plan Investor (as defined on the third page of the cover notes) unless its purchase, holding, and disposition of the Shares will not constitute or result in a non-exempt violation of any such substantially similar law;
- 18.6 it is acquiring the Shares for its own account or for one or more investment accounts for which it is acting as a fiduciary or agent, in each case for investment only, and not with a view to or for sale or other transfer in connection with any distribution of the Shares in any manner that would violate the Securities Act, the Investment Company Act or any other applicable securities laws;

- 18.7 it is aware and acknowledges that the Company is likely to be regarded as a “covered fund”, and that the Shares are likely to be regarded as “ownership interests”, for the purposes of the Volcker Rule, and to the extent relevant it will consult its own legal advisers regarding the matters described above and other effects of the Volcker Rule;
- 18.8 it is aware and acknowledges that the Company reserves the right to make inquiries of any holder of the Shares or interests therein at any time as to such person’s status under US federal securities laws and to require any such person that has not satisfied the Company that the holding by such person will not violate or require registration under US federal securities laws to transfer such Shares or interests in accordance with the Articles;
- 18.9 the representations, warranties, undertakings, agreements and acknowledgements contained in this Prospectus are irrevocable and it acknowledges that the Company, the Joint Bookrunners, their respective Affiliates and their respective directors, officers, agents, employees, advisers and others will rely upon the truth and accuracy of the foregoing representations, warranties, undertakings, agreements and acknowledgements;
- 18.10 if any of the foregoing representations, warranties, undertakings, agreements or acknowledgements are no longer accurate or have not been complied with, it will immediately notify the Company and the Joint Bookrunners; and
- 18.11 if it is acquiring any Shares as a fiduciary or agent for one or more accounts, it has sole investment discretion with respect to each such account and it has full power to make, and does make, such foregoing representations, warranties, undertakings, agreements and acknowledgements on behalf of each such account.

PART VII – TAXATION AND ERISA CONSIDERATIONS

UK TAXATION

1. INTRODUCTION

The following statements are based upon current UK tax law and what is understood to be the current published practice of HMRC, both of which are subject to change, possibly with retrospective effect. The statements are intended only as a general guide and may not apply to certain Shareholders, such as dealers in securities, insurance companies, collective investment schemes or Shareholders who have (or are deemed to have) acquired their Shares by virtue of an office or employment, who may be subject to special rules. They apply only to Shareholders resident (and, in the case of individuals, domiciled) for UK tax purposes in the UK (except in so far as express reference is made to the treatment of non-UK residents), who hold Shares as an investment rather than trading stock and who are the absolute beneficial owners of those Shares. Shares held through an ISA or a SIPP are also excluded from the scope of the UK taxation section.

The information contained in this Prospectus relating to UK taxation matters is a summary of the UK taxation matters which the Directors consider should be brought to the attention of prospective investors and is based upon UK tax law and published HMRC practice and is subject to changes therein (possibly with retrospective effect). All potential investors, and in particular those who are in any doubt about their tax position, or who are resident or otherwise subject to taxation in a jurisdiction outside the UK, should consult their own professional advisers on the potential tax consequences of subscribing for, purchasing, holding or selling Shares under the laws of their country and/or state of citizenship, domicile or residence.

2. THE COMPANY

The Directors have applied to, and obtained approval from, HMRC as an investment trust company and intend at all times to conduct the affairs of the Company so as to enable it to satisfy the conditions necessary for it to be eligible as an investment trust under Chapter 4 of Part 24 of the Corporation Tax Act 2010 and the Investment Trust (Approved Company) (Tax) Regulations 2011 (as amended). However, neither the Investment Manager nor the Directors can guarantee that this eligibility will be maintained. One of the conditions for a company to qualify as an investment trust is that it is not a “close company” for UK tax purposes. In respect of each accounting period for which the Company is approved by HMRC as an investment trust, the Company will be exempt from UK taxation on its chargeable gains. The Company will, however, (subject to what follows) be liable to UK corporation tax on its income in the normal way. Income arising from overseas investments may be subject to foreign withholding taxes at varying rates, but double taxation relief may be available. The Company should in practice be exempt from UK corporation tax on dividend income received, provided that such dividends (whether from UK or non UK companies) fall within one of the “exempt classes” in Part 9A of the Corporation Tax Act 2009.

An investment trust approved under Chapter 4 of Part 24 of the Corporation Tax Act 2010, or one that intends to seek such approval and which has a reasonable belief that such approval will be obtained, is able to elect to take advantage of modified UK tax treatment in respect of its “qualifying interest income” for an accounting period (referred to here as the “streaming” regime). The Company may, if it so chooses, designate as an “interest distribution” all or part of the amount it distributes to Shareholders as dividends, to the extent that it has “qualifying interest income” for the accounting period. Were the Company to designate any dividend it pays in this manner, it should be able to deduct such interest distributions from its income in calculating its taxable profit for the relevant accounting period. The Company intends to elect for the “streaming” regime to apply to the dividend payments it makes to the extent that it has such “qualifying interest income”.

Given its investment objective and policy, it is expected that the Company will have a material amount of “qualifying interest income” through the Debt Assets and it is currently considered likely that a significant proportion of the dividends paid by the Company will be designated as “interest distributions” for UK tax purposes (and it is possible that, depending on the circumstances, the full amount of the dividends paid for a given period might be designated as “interest distributions”).

3. SHAREHOLDERS

3.1 Taxation of chargeable gains

A disposal of Shares (including a disposal on a winding up of the Company) by a Shareholder who is resident in the UK for tax purposes, or who is not so resident but carries on a trade in the United Kingdom through a branch agency or permanent establishment in connection with which their investment in the Company is used, held or acquired, may give rise to a chargeable gain or an allowable loss for the purposes of UK taxation of chargeable gains, depending on the Shareholder's circumstances and subject to any available exemption or relief.

For the purposes of UK tax on chargeable gains, the amounts paid by a Shareholder for Shares will generally constitute the base cost of his holdings in those Shares.

UK-resident and domiciled individual Shareholders have an annual exemption, such that capital gains tax is chargeable only on gains arising from all sources during the tax year in excess of this figure. The annual exemption is £11,300 for the tax year 2017 – 2018 (and £11,700 for the tax year 2018 – 2019). For such individual Shareholders, capital gains tax will be chargeable on a disposal of Shares at the applicable rate (the current rate being 10 per cent. for basic rate taxpayers or 20 per cent. for higher or additional rate taxpayers).

Generally, an individual Shareholder who has ceased to be resident in the UK for tax purposes for a period of five years or less and who disposes of Shares during that period may be liable on their return to the UK to UK taxation on any chargeable gain realised (subject to any available exemption or relief). Special rules apply to Shareholders who are subject to tax on a "split-year" basis, who should seek specific professional advice if they are in any doubt about their position.

Corporate Shareholders who are resident in the UK for tax purposes will generally be subject to corporation tax at the rate of corporation tax applicable to that Shareholder (currently at a rate of 19 per cent. and reducing to 17 per cent. from 1 April 2020) on chargeable gains arising on a disposal of their Shares. Indexation allowance may apply to reduce the amount of chargeable gain that is subject to corporation tax but may not create or increase any allowable loss.

Shareholders who are neither resident in the United Kingdom, nor temporarily non-resident for the purposes of the anti-avoidance legislation referred to above, and who do not carry on a trade in the United Kingdom through a branch, agency or permanent establishment with which their investment in the Company is connected, should not be subject to United Kingdom taxation on chargeable gains on a disposal of their Shares.

3.2 Taxation of dividends – individuals

3.2.1 *Non "interest distributions"*

In the event that the Directors do not elect for the "streaming" regime to apply to any dividends paid by the Company, the following statements summarise the expected UK tax treatment for individual Shareholders who receive dividends from the Company. The following statements would also apply to any dividends not treated as "interest distributions" were the Directors to elect for the "streaming" regime to apply.

The Company will not be required to withhold UK tax at source when paying a dividend.

UK resident individuals are entitled to a nil rate of income tax on the first £5,000 of dividend income in a tax year (the "**Nil Rate Amount**"). Any dividend income received by a UK resident individual Shareholder in excess of the Nil Rate Amount will be subject to income tax at a rate of 7.5 per cent. to the extent that it is within the basic rate band, 32.5 per cent. to the extent that it is within the higher rate band and 38.1 per cent. to the extent that it is within the additional rate band. The Finance (No.2) Act 2017 provides that the Nil Rate Amount will be reduced to £2,000 for dividend received on or after 6 April 2018.

Dividend income that is within the Nil Rate Amount counts towards an individual's basic or higher rate limits – and will therefore affect the level of savings allowance to which they are entitled and the rate of tax that is due on any dividend income in excess of the Nil Rate Amount. In calculating into which tax band any dividend income over the Nil Rate Amount falls, savings and dividend income are treated as the highest part of an individual's income. Where an individual has both savings and dividend income, the dividend income is treated as the top slice.

3.2.2 ***“Interest distributions”***

Should the Directors elect to apply the “streaming” regime to any dividends paid by the Company, a UK tax resident individual Shareholder in receipt of such a dividend would be treated for UK tax purposes as though they had received a payment of interest. Such a Shareholder would be subject to UK income tax at the applicable rate (the current rates being 0 per cent., 20 per cent., 40 per cent. or 45 per cent., depending on the level of the Shareholder’s income).

The Company will not be required to withhold UK tax at source when paying a dividend.

Taxation of dividends – corporations

3.2.3 ***Non “interest distributions”***

In respect of dividends to which the Directors have not elected for the “streaming” regime to apply, a corporate Shareholder who is tax resident in the UK or carries on a trade in the UK through a permanent establishment in connection with which its Shares are held will be subject to UK corporation tax on the gross amount of any dividends paid by the Company, unless the dividend falls within one of the exempt classes set out in Part 9A of the Corporation Tax Act 2009. It is anticipated that dividends paid on the Shares to UK tax resident corporate Shareholders would generally (subject to anti-avoidance rules) fall within one of those exempt classes, however, such Shareholders are advised to consult their independent professional tax advisers to determine whether such dividends will be subject to UK corporation tax. If the dividends do not fall within any of the exempt classes, the dividends will be subject to tax currently at a rate of 19 per cent. and reducing to 17 per cent. from 1 April 2020.

The Company will not be required to withhold UK tax at source when paying a dividend.

3.2.4 ***“Interest distributions”***

If, however, the Board did elect for the “streaming” rules to apply, and corporate Shareholders within the charge to corporation tax were to receive dividends designated by the Company as “interest distributions”, they would be subject to corporation tax on any such amounts received. The dividends would be subject to tax currently at a rate of 19 per cent. reducing to 17 per cent. from 1 April 2020.

The Company will not be required to withhold UK tax at source when paying a dividend.

It is particularly important that prospective investors who are not resident in the UK for tax purposes obtain their own tax advice concerning tax liabilities on dividends received from the Company.

4. STAMP DUTY AND STAMP DUTY RESERVE TAX (“SDRT”)

Transfers on sale of existing Shares held in certificated form will generally be subject to UK stamp duty at the rate of 0.5 per cent. of the amount or value of the consideration given for the transfer (rounded up to the nearest £5). However, an exemption from stamp duty will be available on an instrument transferring existing Shares where the amount or value of the consideration is £1,000 or less, and it is certified on the instrument that the transaction effected by the instrument does not form part of a larger transaction or series of transactions for which the aggregate consideration exceeds £1,000. The purchaser normally pays the stamp duty.

An unconditional agreement to transfer existing Shares will normally give rise to a charge to SDRT at the rate of 0.5 per cent. of the amount or value of the consideration payable for the transfer. However, if a duly stamped or exempt transfer in respect of the agreement is produced within six years of the date on which the agreement is made (or, if the agreement is conditional, the date on which the agreement becomes unconditional) any SDRT paid is repayable, generally with interest, and otherwise the SDRT charge is cancelled. SDRT is, in general, payable by the purchaser.

Paperless transfers of existing Shares within the CREST system will generally be liable to SDRT, rather than stamp duty, at the rate of 0.5 per cent. of the amount or value of the consideration payable. CREST is obliged to collect SDRT on relevant transactions settled within the CREST system (but in practice the cost will be passed on to the purchaser). Deposits of Shares into CREST will not generally be subject to SDRT, unless the transfer into CREST is itself for consideration in the form of money or money’s worth.

The issue of new Shares pursuant to the Issue should not generally be subject to UK stamp duty or SDRT.

5. ISAS, SIPPS AND SSASS

Shares issued by the Company should be eligible to be held in a stocks and shares New ISA, subject to applicable annual subscription limits (£20,000 in the tax year 2017 – 2018).

Investments held in ISAs will be free of UK tax on both capital gains and income. The opportunity to invest in shares through an ISA is restricted to certain UK tax resident individuals aged 18 or over.

Selling shares within an ISA to reinvest would not count towards the Shareholder's annual limit and for "flexible" ISAs (which does not include junior ISAs), Shareholders may be entitled to withdraw and replace funds in their stocks and shares ISA, in the same tax year, without using up their annual subscription limit.

The Board have been advised that the Shares should be eligible for inclusion in a self-invested personal pension ("**SIPP**") or a small self-administered scheme ("**SSAS**"), subject to the discretion of the trustees of the SIPP or the SSAS, as the case may be.

Individuals wishing to invest in Shares through an ISA, SSAS or SIPP should contact their professional advisers regarding their eligibility.

6. INFORMATION REPORTING

The UK has entered into international agreements with a number of jurisdictions which provide for the exchange of information in order to combat tax evasion and improve tax compliance. These include, but are not limited to, an Inter-Governmental Agreement with the United States in relation to FATCA, International Tax Compliance Agreements with Guernsey, Jersey, the Isle of Man and Gibraltar and agreements regarding the OECD's global standard for automatic and multilateral exchange of information between tax authorities, known as the "Common Reporting Standard". The UK is also subject to obligations regarding mandatory automatic exchange of information in the field of taxation pursuant to EU Council Directive 2014 / 107 /EU, which implements the Common Reporting Standard in the EU member states. In connection with such international agreements and obligations the Company may, among other things, be required to collect and report to HMRC certain information regarding Shareholders and other account holders of the Company and HMRC may pass this information on to tax authorities in other jurisdictions in accordance with the relevant international agreements.

CERTAIN US FEDERAL INCOME TAX CONSIDERATIONS

1. INTRODUCTION

This section sets out a summary of certain material US federal income tax aspects of the acquisition, ownership and disposition of Shares that will generally be applicable to US Shareholders (as defined below). This summary is based on the US Tax Code (as amended), the US Treasury Department regulations promulgated under the US Tax Code (the "**Regulations**") and judicial decisions, undertakings and rulings in force on the date of this Prospectus. Changes in existing laws or regulations and their interpretation may occur after the date of this Prospectus and could alter the income tax consequences of an investment in the Company (possibly on a retroactive basis). No ruling from the IRS or any state or local authority with respect to any of the tax issues affecting the Company or its Shareholders will be sought.

The term "**US Shareholder**" in this Part VII (Taxation and ERISA Considerations) of this Prospectus means a beneficial owner of one or more Shares who is: (i) a citizen or individual resident of the United States; (ii) a corporation (or any other entity treated as a corporation for US federal income tax purposes) created or organised in or under the laws of the United States; (iii) an estate, the income of which is subject to US federal income taxation regardless of its source; (iv) a trust, if a US court is able to exercise primary supervision over the administration of the trust and one or more US persons have the authority to control all substantial decisions of the trust or if the trust has in effect a valid election to be treated as a US person; or (v) any person that is subject to US federal income tax on its worldwide income.

This summary does not discuss all of the tax consequences that may be relevant to a particular investor or to certain investors subject to special treatment under the US federal income tax laws, such as: individual retirement accounts and other tax-deferred accounts; insurance companies;

financial institutions; securities dealers; mutual funds; brokers or dealers in securities or foreign currencies; traders in securities that elect to apply a mark-to-market method of accounting; an investor that holds any Shares as part of a hedge, appreciated financial position, straddle, conversion or other risk reduction transaction; investors that have a “functional currency” other than the US Dollar, are subject to the US federal alternative minimum tax, or that do not hold Shares as a capital asset within the meaning of Section 1221 of the US Tax Code; and non-US investors.

If a partnership (including any entity treated as a partnership or pass-through entity for US federal income tax purposes) holds Shares, the tax treatment of a partner will generally depend upon the status of the partner in the partnership and the activities of the partnership. Partners of a partnership holding Shares should consult their own tax advisers.

EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS TAX ADVISER IN ORDER TO UNDERSTAND FULLY THE US FEDERAL, STATE, LOCAL AND/OR ANY NON-US TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY IN ITS PARTICULAR SITUATION.

2. US SHAREHOLDERS GENERALLY SUBJECT TO US TAXATION

This summary is applicable to US Shareholders that are not exempt from tax under Section 501(a) of the US Tax Code.

2.1 Taxation of distributions

Except as explained below with respect to treatment of the Company as a “passive foreign investment company” (“**PFIC**”) or “controlled foreign corporation” (“**CFC**”) for US federal income tax purposes, distributions made by the Company with respect to Shares will be taxable to a US Shareholder as dividends to the extent of the Company’s current and accumulated earnings and profits as computed under US federal income tax principles. The Company intends to maintain such information and, upon a reasonable request by a US Shareholder, will provide such information. To the extent distributions made by the Company with respect to the Shares exceed the Company’s current and accumulated earnings and profits, such distributions would reduce the tax basis of the Shares. Any distributions made by the Company with respect to Shares that would reduce the basis of the Shares below zero will generally be taxed as a capital gain from the sale or exchange of the Shares. Any distributions made by the Company with respect to the Shares are not expected by the Company to be eligible for the corporate dividends received deduction or a reduced US dividend tax rate.

Individual US Shareholders with modified adjusted gross income that exceeds certain thresholds ((i) US\$200,000 for unmarried individuals, (ii) US\$250,000 for a married taxpayer filing a joint return (or a surviving spouse), or (iii) US\$125,000 for a married individual filing a separate return) will be subject to a Medicare tax of 3.8 per cent. on the lesser of: (i) their investment income, net of deductions properly allocable to such income; or (ii) the excess of their “modified adjusted gross income” above the relevant threshold. Individual US Shareholders who meet the income thresholds and certain trusts and estates should expect to be subject to this tax. This tax will be in addition to any US federal income tax imposed on US Shareholders with respect to any income realised with regard to the Company. Prospective investors should consult their tax advisers regarding the application of the Medicare tax to their investment in the Company.

If a US Shareholder converts the amount of any distribution received in a foreign currency (if any) into US Dollar on the date of receipt, such US Shareholder generally should not be required to recognise foreign currency gain or loss in respect of such distribution for US federal income tax purposes. However, if a US Shareholder does not immediately convert any foreign currency distributions into US Dollar, upon any later conversion, the US Shareholder would generally recognise ordinary income or loss as a result of exchange rate fluctuation that may occur in the interim.

2.2 Taxation of a sale or redemption

Except as explained below with respect to treatment of the Company as a PFIC or a CFC, gain or loss recognised upon the sale or complete redemption of Shares held by a US Shareholder will generally be treated as a capital gain or loss. A US Shareholder will generally recognise gain or loss in an amount equal to the difference between the amount realised (as determined in US Dollar) and the US Shareholder’s adjusted tax basis in the Shares (as determined in US Dollar). The capital gain or loss will generally be treated as long-term capital gain or loss if the US Shareholder has held the Shares for more than one year on the date of disposition. Any such

capital gain will generally be treated as investment income and thus, as discussed above, will be subject to an additional Medicare tax of 3.8 per cent. net of deductions properly allocable to such income for individual US Shareholders and certain trusts and estates.

On the settlement date, a US Shareholder should generally recognise US source foreign currency gain or loss (if any, taxable as ordinary income or loss) equal to the difference (if any) between the US Dollar value of the amount received based on the exchange rates in effect on the date of sale or redemption and the settlement date. In the case of cash basis and electing accrual basis taxpayers, the amount realised on a sale or redemption of Shares for an amount in foreign currency will be the US Dollar value of this amount on the settlement date.

If the Company makes a redemption of Shares other than in complete redemption, any amounts paid will generally be treated under Section 302 of the US Tax Code as a distribution taxable as a dividend (to the extent of current and accumulated earnings and profits) at ordinary income rates (unless the redemption satisfies one of the tests set forth in Section 302(b) of the US Tax Code and is therefore treated as a sale or exchange of the redeemed Shares, with the consequences described above). If a redemption of Shares is treated as a distribution taxable as a dividend, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received by the US Shareholder (each as determined in US Dollar). The US Shareholder's adjusted tax basis in the redeemed Shares will be transferred to such US Shareholder's remaining Shares, if any. Because the determination as to whether any of the alternative tests of Section 302(b) of the US Tax Code will be satisfied depends upon the facts and circumstances at the time that the determination must be made, prospective US Shareholders are advised to consult their own tax advisers to determine such tax treatment at the time of any redemption.

2.3 PFIC and CFC taxation

2.3.1 PFIC taxation in general

The US Tax Code contains special rules for the taxation of US Shareholders who hold stock in a PFIC. A PFIC is defined as any non-US corporation with respect to which either: (i) 75 per cent. or more of the gross income for a taxable year is "passive income" (such as dividends, interest, rents, royalties and gains from commodities and securities transactions); or (ii) 50 per cent. or more of its assets in any taxable year (by value) produce "passive income". The Company believes that it is, and expects that it will continue to be, a PFIC. The PFIC rules provide for the imposition of a special tax and an interest charge, referred to as the "deferred tax amount", on certain distributions and gain recognised on a disposition of the stock of a PFIC, unless: (a) an election is made to treat the PFIC as a "qualified electing fund" (a "**QEF Election**"); or (b) a "mark-to-market" election is made with respect to the PFIC's shares for the first taxable year in which the US shareholder is considered to own an interest in the PFIC (a "**Mark-to-Market Election**"). In addition, a US Shareholder that directly or indirectly owns stock of a PFIC is treated as owning a proportionate amount of the value of any stock owned by that PFIC. If the PFIC owns shares in another PFIC, the PFIC rules generally apply separately to the US Shareholder with respect to its interest in such lower-tier PFIC on an indirect basis.

If a QEF Election is made with respect to a PFIC, the deferred tax amount rules do not apply but the electing US Shareholder is taxed each year on its *pro rata* share of ordinary earnings and net capital gain of each PFIC, whether or not the earnings or the capital gains are distributed. Alternatively, if a Mark-to-Market Election is made with respect to a PFIC, the electing US Shareholder generally recognises ordinary income equal to the excess, if any, of the fair market value of the Shares at the end of the taxable year over their adjusted basis. Such US Shareholder would generally also be allowed to recognise an ordinary deduction equal to the excess (if any) of the adjusted basis of the PFIC's shares at the end of the taxable year over their fair market value (however limited to the net amount of income that was previously included as a result of the Mark-to-Market Election). Any of these elections must be made individually by each US Shareholder seeking the relevant tax treatment. The relevant election applies only to the US Shareholder who makes it.

A US Shareholder will generally be required to file IRS Form 8621 for any taxable year in which such US Shareholder holds Shares.

2.3.2 Making QEF or Mark-to-Market Elections

US Shareholders who would consider making a QEF Election should note that such election will not be given effect unless the PFIC (in this case, the Company) complies with requirements prescribed by the IRS for determining its ordinary earnings and net capital gain and concerning the furnishing of certain other information. The Company will make available an annual PFIC Information Statement currently required under US Treasury regulations for US Shareholders to make a QEF Election, which will contain information (including as to the allocation of the Company's "ordinary earnings" and "net capital gains" among the Shareholders, each as computed under US federal income tax principles) and undertakings sufficient to permit such US Shareholders to make a QEF Election in respect of the Company and any subsidiary, if necessary. However, US Shareholders should be aware that in the event that any of the Company's investments consist of stock in another PFIC, there can be no assurance that such PFIC would make available to the Company or any US Shareholder the information necessary to enable the US Shareholder to make a QEF Election with respect to such PFIC.

US Shareholders who would consider making a Mark-to-Market Election should note that such election will only be available in case the Shares are treated as "regularly traded" on a "qualified exchange or other market" for US federal income tax purposes. The Company believes that the London Stock Exchange should be treated as a qualified exchange for such purposes, although there can be no assurance in this regard absent clear authority. The Shares will be treated as "regularly traded" on the London Stock Exchange for any calendar year during which such Shares are traded, other than in de minimis quantities, on at least 15 days during each calendar quarter. Although the Company generally expects that, based on listed entities with a similar investment policy and trading of the Shares in previous quarters, the Shares will satisfy this "regular trading" condition, there can be no assurance in this regard since meeting this condition depends on the actual trading of the Company's Shares in any taxable year. In addition, in the event that any of the Company's investments consist of stock in another PFIC, a valid Mark-to-Market Election with respect to the Company, if any, would not apply to such PFIC and, as described above, there can be no assurance that such PFIC would make available to the Company or a US Shareholder the information necessary to enable the US Shareholder to make a QEF Election with respect to such PFIC.

If a US Shareholder is not eligible to make either a QEF Election or a Mark-to-Market Election, then such US Shareholder may be subject to the PFIC rules on a direct or indirect disposition of such stock by the Company or the direct or indirect receipt by the Company of a distribution by such other PFIC. US Shareholders should consult their own tax advisers as to the eligibility and consequences of making or not making such elections.

A US Shareholder that is permitted to make an effective QEF Election with respect to a PFIC will be required under Section 1293(a) of the US Tax Code to include in its gross income such US Shareholder's *pro rata* share of ordinary earnings and net capital gain of such PFIC for the year, regardless of the amount actually distributed to the US Shareholders by the Company. Net capital gain included by an electing US Shareholder should be taxed as long-term capital gain. Amounts distributed from earnings by a PFIC that are taxed under Section 1293(a) are not again taxed to an electing US Shareholder when distributed. The tax basis of an electing US Shareholder's Shares will be increased by any amount includable in income under Section 1293(a) and decreased by any distributions excluded from income as described in the preceding sentence.

As discussed above, the adverse tax treatment with respect to PFIC stock can also be mitigated if a US Shareholder is permitted to make a valid Mark-to-Market Election under Section 1296 of the US Tax Code. Such US Shareholder will generally: (i) be required to recognise ordinary income equal to the excess, if any, of the fair market value of the Shares at the end of the taxable year over their adjusted basis; or (ii) be allowed to recognise an ordinary deduction equal to the excess, if any, of the adjusted basis of the Shares at the end of the taxable year over their fair market value (to the extent of the net amount of income that was previously included as a result of such Mark-to-Market election). A US Shareholder's basis in the Shares for US federal income tax purposes would be adjusted to reflect any income or loss recognised pursuant to

such Mark-to-Market Election. In the case of a sale or other disposition of Shares in relation to which a Mark-to-Market Election is in effect, any gain realised on the sale or other disposition will be treated as ordinary income. Any loss realised on the sale or other disposition will be treated as an ordinary loss, up to the amount of any prior increase in the fair market value of the Shares that has not previously been taken into account in calculating allowable deductions, and as a capital loss to the extent of any excess.

2.3.3 PFIC interests without QEF and Mark-to-Market Elections

If no QEF Election or Mark-to-Market Election is made in respect of the first year and each subsequent year during which the US Shareholder holds Shares, the deferred tax amount described above is based on the portion of “excess distributions” of the Company received by a US Shareholder during a taxable year and attributable to the period in which the US Shareholder held the Shares before the current taxable year. The amount of an “excess distribution” is determined in the following manner: first, the total amount of distributions in respect of the Shares during the taxable year is determined, and from this amount is subtracted 125 per cent. of the average amount received by the US Shareholder in respect of such Shares during the three preceding years (or if shorter, the portion of the US Shareholder’s holding period before the taxable year). The remainder is then allocated rateably to the actual distributions made during the taxable year. The amount so allocated to an actual distribution is referred to as an “excess distribution”. All of the gain from a disposition of Shares or a deemed disposition is treated as an excess distribution.

The excess distribution is then allocated rateably to each day of the period during which the US Shareholder held the Shares, ending with the day upon which the excess distribution is received. The portion attributable to the taxable year in which the distribution is made is taxed as ordinary income. The portion of the excess distribution allocated to the period before the current taxable year is not included in gross income but instead is used to compute the deferred tax amount.

The deferred tax amount of a US Shareholder is equal to the sum of: (1) the amounts determined by adding together the portions of the excess distribution allocated to each of the prior taxable years multiplied by the highest rate of corporate or individual tax, depending on the US Shareholder’s status, in effect for each such prior year; and (2) an interest charge determined by applying the federal interest rate applicable to underpayments of tax in the prior taxable years, beginning with the due date for tax returns for each prior taxable year and ending with the due date for tax returns for the current taxable year. Under Section 6621(a)(2) of the US Tax Code, the rate of interest is the short-term federal rate determined on a quarterly basis plus three percentage points, compounded daily.

2.3.4 CFC Taxation

If on any day during the tax year of the Company more than 50 per cent. of the Shares (by vote or value) are owned by US persons who each own (directly or through application of certain attribution and constructive ownership rules) 10 per cent. or more of the Shares (by vote or value) (“**10 per cent. US Shareholders**”), the Company will be a CFC. In such event, among other consequences, 10 per cent. US Shareholders who own Shares on the last day of the tax year of the Company during which the Company is a CFC will generally be required to include in their ordinary income their *pro rata* shares of the Company’s “Subpart F income”, “global intangible low-taxed income” (“**GILTI**”), and in some cases, certain other income, even if such income is undistributed. Subpart F income generally includes royalty, dividend, interest and net capital gain income of the Company, limited to the Company’s earnings, for each year the Company is a CFC. Certain exceptions may apply. The calculation of GILTI is complex and involves calculations regarding other controlled foreign corporations, including any non-US subsidiaries that the Company may acquire that are controlled foreign corporations, in which a US Shareholder is a 10 per cent. US Shareholder. Amounts taxed currently to such 10 per cent. US Shareholders under the CFC rules will not be subject to the deferred tax amount rules discussed above regarding PFICs. For taxable years of a 10 per cent. US Shareholder in which the Company is a CFC, and taxable years of the Company that end with or within such taxable years of such 10 per

cent. US Shareholder, the Company generally will not be treated as a PFIC with respect to such 10 per cent. US Shareholder (but will be treated as a PFIC with respect to other US Shareholders). Additionally, if the Company is treated as a CFC, gain realised by a 10 per cent. US Shareholder on the sale or other disposition of Shares may be treated as dividend income to the extent of certain accumulated earnings and profits of the Company under Section 1248 of the US Tax Code.

Prospective US Shareholders are advised to consult their own tax advisers to determine any tax consequences to them under the PFIC or CFC regime in their particular circumstances.

2.3.5 Foreign Tax Credit or Deduction

Subject to various limitations, a corporate US Shareholder that holds 10 per cent. or more of the voting Shares of the Company and individual US Shareholders that make valid elections to be taxed at corporate tax rates on their Subpart F income and GILTI may be eligible for an “indirect” foreign tax credit on certain distributions to take account of certain UK income taxes the Company previously paid. US Shareholders should contact their own tax advisers with respect to the availability of any deduction or foreign tax credit in their particular circumstances.

3. US TAX-EXEMPT SHAREHOLDERS

A US Shareholder that is an organisation exempt from tax under Section 501(a) of the US Tax Code (a “**Tax-Exempt US Shareholder**”) is subject to tax on income that is considered to be “unrelated business taxable income” (“**UBTI**”) as defined in Section 512 of the US Tax Code. In addition, a Tax-Exempt US Shareholder is also subject to tax as UBTI with respect to its “unrelated debt-financed income” pursuant to Section 514 of the US Tax Code (“**UDFI**”). In general, UDFI consists of: (i) income derived by a tax-exempt organisation from income-producing property with respect to which there is “acquisition indebtedness” at any time during the taxable year; and (ii) gains derived by a tax-exempt organisation from the disposition of property with respect to which there is “acquisition indebtedness”.

A Tax-Exempt US Shareholder should generally not realise UBTI (including UDFI) as a result of its investment in the Company provided that the Tax-Exempt US Shareholder does not borrow funds in order to make such investment.

The Company believes that it will likely be considered a PFIC for US federal income tax purposes. Under the Regulations, a Tax-Exempt US Shareholder is generally not subject to tax under the PFIC tax rules, except to the extent that a “dividend” paid by the relevant PFIC would be taxable under the relevant sub-chapter F of the US Tax Code. Hence, a Tax-Exempt US Shareholder would only be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realised on the sale of its equity interests, in limited circumstances. These Regulations provide, additionally, that a Tax-Exempt US Shareholder that is not taxable under the PFIC rules may not make a QEF Election under Section 1295 of the US Tax Code. Moreover, different rules may apply to certain types of Tax-Exempt US Shareholders, such as charitable remainder trusts. Accordingly, any Tax-Exempt US Shareholder that is contemplating an investment in the Company is urged to consult its own tax advisers regarding the tax consequences of the ownership and disposition of Shares in the Company, including potential filing requirements.

If the Company qualifies as a CFC, as described above, any Tax-Exempt US Shareholder who is a 10 per cent. US Shareholder will be required to file certain information returns with the IRS as further discussed below under “*Information Reporting*”.

4. INFORMATION REPORTING

4.1 General reporting requirements

A US Shareholder (including in certain circumstances a Tax-Exempt US Shareholder) that transfers property (including cash) to the Company in exchange for a Share will be required to file a Form 926 or a similar form with the IRS. In the event that such person fails to file any required form, such person could be subject to a penalty of up to 10 per cent. of the value of the property transferred, subject to a US\$100,000 limit provided that the failure was not due to intentional disregard.

Under the Regulations, any US Shareholder owning 10 per cent. or more (taking certain attribution rules into account) of either the total combined voting power or total value of all classes of the

shares of a non-US corporation, or whose ownership interest changes by a statutorily specified amount, may be required to file an information return with the IRS containing certain disclosures concerning the filing investor, other US Shareholders and the corporation. The Company has not committed to provide all of the information about the Company or its shareholders necessary to complete such an information return. Prospective investors should consult their tax advisers about such information return filing requirements.

Certain US persons are generally required to report to the IRS by filing FinCEN Form 114 with respect to financial interests in foreign financial accounts held by such US persons during the previous calendar year if the aggregate value of such accounts exceeds US\$10,000 at any time during the calendar year. Significant penalties may apply in respect of the failure to file FinCEN Form 114 in respect of foreign financial accounts. Thus, US Shareholders should consult their tax advisers as to whether to file FinCEN Form 114 in respect of their ownership in the Company.

4.2 Investor tax filings and record retention

The US Treasury Department has adopted Regulations designed to assist the IRS in identifying abusive tax shelter transactions. In general, the Regulations require investors in specified transactions (including certain investors in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be incurred as a result of a failure to comply with these tax filing and record retention rules.

The Regulations are broad in scope and it is conceivable that the Company may enter into transactions that will subject the Company and certain investors to the special tax filing and record retention rules. Additionally, an investor's recognition of a loss on its disposition of its Shares could, in certain circumstances, subject such investor to these rules. The Company has not committed to provide all of the information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Company. Prospective investors should consult their tax advisers about such information return filing requirements.

4.3 Backup withholding

Payments of dividends and other proceeds with respect to the Shares by a US financial intermediary will be required to be reported to the IRS and to the US Shareholder as may be required under applicable Regulations. As a result, backup withholding may apply to such payments if the US Shareholder fails in a timely manner to provide an accurate US taxpayer identification number or to certify its exempt status. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will generally be allowed as a refund or credit against the US Shareholder's US federal income tax liability, provided that the required information is provided to the IRS in a timely manner.

4.4 FATCA reporting and withholding tax

FATCA imposes a withholding tax of 30 per cent. on: (i) certain US source interest, dividends and other types of income; and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce US source interest and dividends, that are received by a foreign financial institution ("FFI"), unless such FFI enters into an agreement with the IRS and/or complies with an applicable intergovernmental agreement to obtain certain information as to the identity of the direct and indirect owners of accounts in such FFI. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities that do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of US source interest, dividends and certain other types of income from US sources and, after 31 December 2018, these rules are expected to apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce US source interest or dividends.

The IRS has released temporary and final Regulations and other guidance to implement FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the United Kingdom has entered into a Model 1 IGA with the United States (the "UK-US IGA") and has issued the Tax Information Authority (International Tax Compliance) (United States of America) Regulations 2014 and associated guidance notes, each as updated from time to time.

The Company believes that it is likely to be considered an FFI. To avoid incurring US withholding tax under FATCA, an FFI is generally required to register with the IRS and to comply with the UK-US IGA and any associated guidance. The Company has registered with the IRS and expects that it will be required to identify and report on certain direct and indirect US owners in order to

comply with the UK-US IGA. Therefore, the Company generally does not expect to become subject to US withholding tax under FATCA.

To the extent that the Company is an FFI solely because it qualifies as an “investment entity” within the meaning of the UK-US IGA, equity interests in the Company that are regularly traded on an established securities market should not qualify as financial accounts subject to FATCA diligence and reporting. Shareholders should note that, since Shares may be held via the CREST securities settlement system, any financial institutions that are CREST members acting as intermediaries with respect to the Company’s Share transactions (including, without limitation, any custodian, broker, nominee or other agent that is a financial institution) are likely required to conduct FATCA diligence, reporting and withholding with respect to the Shareholders. However, a Shareholder may in any event be required to provide to the Company information that identifies the Shareholder’s direct and indirect ownership. Any such information provided to the Company may ultimately be shared with HMRC and transmitted to the IRS and, potentially, certain other authorities and withholding agents, as applicable.

By investing (or continuing to invest) in the Company, investors will be deemed to have acknowledged, and to have given their consent to, the following:

- 4.4.1 the Company (or its agent) may be required to disclose to HMRC and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor’s name, address, date of birth, tax identification number (if any), social security or national insurance number (if any) and certain additional information and/or documentation relating to the investor’s investment or identity, and the investor may be required to provide any such information and/or documentation;
- 4.4.2 HMRC may be required to automatically exchange information with, among other authorities, the IRS, and to provide additional information to such authorities, and the Company (or its agent) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;
- 4.4.3 in the event that an investor’s failure to comply with any FATCA-related reporting requirements gives rise to any withholding tax, the Company reserves the right to recover any such withholding tax and any related cost, interest, penalties and other losses or liabilities suffered by the Company, the Administrator or any other investor, or any agent, delegate, employee, director, officer or affiliate of any of the foregoing persons, arising from such investor’s failure to provide information to the Company;
- 4.4.4 in the event that an investor does not provide the information and/or documentation necessary for the Company’s satisfaction of its FATCA-related reporting requirements, whether or not that actually leads to compliance failures by the Company or to a risk of the Company or its investors being subject to US withholding tax under FATCA, the Company reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of the investor’s failure to comply with the requirements described above, including compulsory redemption or withdrawal of the investor concerned; and
- 4.4.5 no investor affected by any such action or remedy shall have any claim against the Company or the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any damages or liability as a result of actions taken or remedies pursued by or on behalf of the Company in order to comply with FATCA.

Investors should consult their tax advisers as to the withholding, filing, and information reporting requirements that may be imposed on them in respect of their ownership of Shares of the Company.

5. OTHER TAXES

The Company and its investors may be subject to other taxes, such as the alternative minimum tax, and estate, inheritance or intangible property taxes that may be imposed by various jurisdictions, as well as non-US withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Company. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and

tax consequences of an investment in the Company, under the laws of the state(s) of its domicile and its residence, by obtaining advice from its own tax counsel or other adviser, and to file all appropriate tax returns that may be required.

THE LEGAL COUNSEL AND ACCOUNTANTS OF THE COMPANY SHOULD NOT BE DEEMED TO REPRESENT THE INVESTORS. EACH INVESTOR SHOULD CONSULT ITS OWN LEGAL, TAX, ACTUARIAL AND ACCOUNTING ADVISERS WITH RESPECT TO ITS INVESTMENT IN THE COMPANY.

ERISA CONSIDERATIONS

1. General

Fiduciaries and other persons who are proposing to invest in the Company on behalf of: (i) an employee benefit plan subject to the fiduciary provisions of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), (ii) a “plan” subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”) or (iii) an entity whose underlying assets include “plan assets” for purposes of ERISA by reason of investment in the investor by persons described in (i) and (ii) (“**Plans**”), must give appropriate consideration to, among other things, the role that an investment in the Company plays in the Plan’s portfolio, taking into consideration whether the investment is designed to reasonably further the Plan’s purposes, the investment’s risk and return factors, the portfolio’s composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan’s objectives, the limited right of investors to withdraw all or part of their capital or to transfer their interests in the Company and whether investment in the Company constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

2. PLAN ASSET REGULATIONS AND BENEFIT PLAN INVESTORS

The United States Department of Labor (the “**DOL**”) has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Company, as “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code (“**Plan Assets**”). Section 3(42) of ERISA defines the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25 per cent. of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “**significant participation test**”). For the purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “**Benefit Plan Investors**” means any employee benefit plan subject to the fiduciary provisions of ERISA, any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., individual retirement accounts), and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “**Plan Asset Entity**”).

The Company intends to restrict participation in any class of equity interest in the Company by Benefit Plan Investors to less than 25 per cent. of the aggregate value of such class (determined, as described above, by excluding certain interests held by the Investment Manager and its affiliates). Each person purchasing Shares in the Offer or the Placing will be deemed to have represented that it is not a Benefit Plan Investor or acting for the account of a Benefit Plan Investor. Each such investor that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it invests in the Company the maximum percentage of such general account or Plan Asset Entity that will constitute Plan Assets (the “**Maximum Percentage**”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Company. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial investment in the Company, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Company of that occurrence and shall, if and as directed by the Company in a manner consistent with the restrictions on transfer set forth herein, dispose of some or all of its interests in the Company.

The Company may act to compel the transfer or redemption of and/or restrict the holding of Shares held by a Benefit Plan Investor. Although the Company may (at its discretion) issue any Issue Shares in certificated form, Shares purchased in trading on the Specialist Fund Segment may be held through CREST, including in nominee accounts, on an uncertificated basis. The Company is unlikely to be aware of the beneficial ownership of any Shares purchased by Benefit Plan Investors and held in nominee accounts through CREST. In such circumstances, the Company would not be able to effectively monitor or limit the level of Benefit Plan Investor participation in the Company. In light of this uncertainty, the Company intends to use its discretion regarding restricting transfers of Shares to Non-Qualified Holders to prohibit any transfer of Shares of which it is aware to a Benefit Plan Investor. **However, in light of the foregoing, Benefit Plan Investors must consider the uncertainty of the Company's status under ERISA and whether an investment in the Company is prudent under ERISA.**

If the Company's assets were considered Plan Assets, then, under ERISA and the Code, the Investment Manager would be a fiduciary, and certain of its employees, partners and officers, as well as certain affiliates, would become "parties in interest" and "disqualified persons," with respect to the investing Plans, with the result that the rendering of services to certain related parties or the lending of money or other extensions of credit, or the sale, exchange or leasing of property by the Company or certain related parties, or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in the Company by persons who are fiduciaries, and/or parties in interest and disqualified persons, to a Plan might be deemed to constitute prohibited transactions under such circumstances.

3. REPRESENTATIONS BY PLANS

The fiduciaries of each Plan proposing to invest in the Company will be required to represent that they have been informed of and understand the Company's investment objectives, policies and strategies and that the decision to invest Plan Assets in the Company is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its investment, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Company will not constitute a non-exempt prohibited transaction under ERISA or the Code.

In addition, each Plan proposing to invest in the Company will be required to represent that in connection with its decision to invest in the Company, the investor is and will remain represented by a party that is independent of the Investment Manager and its affiliates and employees and such party (A) is described in 29 CFR §2510.3-21(c)(1)(i); (B) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies; (C) acknowledges that it has been informed that neither the Investment Manager nor any of its affiliates or employees is undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the investor's investment in the Company; and (D) is acting as a fiduciary under ERISA with respect to the investor's investment in the Company and is responsible for exercising independent judgement in evaluating such investment.

4. INELIGIBLE PURCHASERS

Shares may not be acquired with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

5. PLAN REPORTING REQUIREMENTS

The information contained herein and in the other documentation provided to investors in connection with an investment in the Company is intended to satisfy the alternative reporting option

for “eligible indirect compensation” on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

WHETHER OR NOT THE UNDERLYING ASSETS OF THE COMPANY ARE DEEMED PLAN ASSETS, AN INVESTMENT IN THE COMPANY BY A PLAN IS SUBJECT TO ERISA AND THE CODE. ACCORDINGLY, PLAN FIDUCIARIES SHOULD CONSULT THEIR OWN COUNSEL AS TO THE CONSEQUENCES UNDER ERISA AND THE CODE OF AN INVESTMENT IN THE COMPANY. NOTE THAT SIMILAR LAWS GOVERNING THE INVESTMENT AND MANAGEMENT OF THE ASSETS OF GOVERNMENTAL OR NON-US PLANS MAY CONTAIN FIDUCIARY AND PROHIBITED TRANSACTION REQUIREMENTS SIMILAR TO THOSE UNDER ERISA AND THE CODE. ACCORDINGLY, FIDUCIARIES OF SUCH GOVERNMENTAL OR NON-US PLANS, IN CONSULTATION WITH THEIR COUNSEL, SHOULD CONSIDER THE IMPACT OF THEIR RESPECTIVE LAWS AND REGULATIONS ON AN INVESTMENT IN THE COMPANY.

PART VIII – ADDITIONAL INFORMATION ON THE COMPANY

1. INCORPORATION AND ADMINISTRATION

- 1.1 The Company is a public limited company incorporated in the United Kingdom. It was registered in England and Wales under the Act on 24 October 2016 with registered number 10443190. The Company has received a certificate under section 761 of the Act entitling it to commence business and to exercise its borrowing powers. The Company has given notice to the Registrar of Companies that it intends to carry on business as an investment company under section 833 of the Act.
- 1.2 The Company has a wholly owned subsidiary, BPCR Ongdapa Ltd, a private limited liability company which was registered under the laws of Ireland on 5 October 2017.
- 1.3 The Company's accounting period ends on 31 December of each year. The Company's audited annual report and accounts for the period from 24 October 2016 (the date of incorporation of the Company) to 31 December 2017 were published on 8 March 2018. As at 31 January 2018, being the latest practicable date prior to the publication of this Prospectus, the unaudited NAV of the Company was US\$919.4 million and the unaudited NAV per Ordinary Share was US\$1.0056. The Company is resident for tax purposes in the United Kingdom and has no employees.
- 1.4 The principal activity of the Company is to invest its assets in accordance with the investment policy set out in Part I (The Company) of this Prospectus.
- 1.5 The Company operates under the Act and is not regulated as a collective investment scheme by the FCA. Its registered office and principal place of business is at Beaufort House, 51 New North Road, Exeter EX4 4EP, and the statutory records of the Company are kept at this address. The Company's telephone number is +44 1392 477500.

2. PRINCIPAL ACTIVITIES OF THE COMPANY

- 2.1 The Company has obtained approval from HMRC as an investment trust company and intends at all times to conduct its affairs so as to enable it to continue to qualify as an investment trust for the purposes of Chapter 4 of Part 24 of the Corporation Tax Act 2010 (as amended) and the Investment Trust (Approved Company) (Tax) Regulations 2011 (as amended). In summary, the conditions that must be met for a company to be approved as an investment trust for an accounting period are that, in relation to that accounting period:
 - 2.1.1 all, or substantially all, of the business of the company is to invest its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
 - 2.1.2 the shares making up the company's equity share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market;
 - 2.1.3 the company is not a venture capital trust or a UK Real Estate Investment Trust (or "REIT");
 - 2.1.4 the company is not a "close company" (as defined in section 439 of the Corporation Tax Act 2010, as amended); and
 - 2.1.5 subject to particular rules that may apply where the company has accumulated revenue losses brought forward from previous accounting periods, the company does not retain an amount which is greater than the higher of: (i) 15 per cent. of its income for the accounting period; and (ii) any amount of income that the company is required to retain in respect of the accounting period by virtue of a restriction imposed by law.

3. THE INVESTMENT MANAGER

- 3.1 The Investment Manager, Pharmakon Advisors L.P., a limited partnership established under the laws of the State of Delaware, is the Company's alternative investment fund manager. It is registered as an investment adviser with the SEC under the Advisers Act. The principal office of the Investment Manager is 110 East 59th Street #3300, New York, NY 10022 USA and its telephone number is +1 212 883 2284. The registered office of the Investment Manager is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808 USA.

4. SHARE CAPITAL

4.1 Shares

- 4.1.1 The ISIN of the Ordinary Shares is GB00BDGKMY29 and the SEDOL is BDGKMY2. The ticker symbol of the Company relating to the Ordinary Shares is BPCR.
- 4.1.2 The ISIN of the C Shares is to be issued pursuant to the Initial Placing and Offer GB00BDRNW621 and the SEDOL is BDRNW62. The ticker symbol of the Company relating to the C Shares to be issued pursuant to the Initial Placing and Offer is BPC1.
- 4.1.3 The Company was incorporated with one Ordinary Share issued at US\$0.01 and 5,000,000 redeemable preference shares issued at £0.01.
- 4.1.4 On 27 March 2017, 526,747,199 Ordinary Shares were issued at US\$1.00 each fully paid, pursuant to a placing and offer for subscription at the First Admission. At the Second Admission on 30 March 2017, 235,130,160 Ordinary Shares were issued at US\$1.00 each fully paid. All such Ordinary Shares were admitted to the Official List of TISEA and for trading on the Specialist Fund Segment.
- 4.1.5 On 30 June 2017, the Company's share premium account of US\$739,021,000 was cancelled in order to create distributable reserves, which may be used for the repurchase of Shares and to enable, or to fund, the payment of dividends. Simultaneously, the redeemable preference shares were cancelled in accordance with the Articles.
- 4.1.6 Following a placing by the Company announced on 14 December 2017, the Company issued 152,375,471 Ordinary Shares. These Ordinary Shares were admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA on 18 December 2017.
- 4.1.7 Following the issue of Ordinary Shares in December 2017 and as at the date of this Prospectus, the Company may allot an additional 1,085,747,169 Shares pursuant to the authority granted to the Company as described in paragraph 4.2 below.
- 4.1.8 The following table shows the issued share capital of the Company as at the date of this Prospectus:

	Nominal Value per Share	Number
Ordinary Shares	US\$0.01	914,252,831

- 4.1.9 The Issue Shares to be issued pursuant to the Issue will be issued in accordance with the Articles and the Act.
- 4.1.10 Set out below is the issued share capital of the Company as it will be following the Initial Placing and Offer (assuming that 500 million C Shares are allotted pursuant to the Initial Placing and Offer):

	Nominal Value per Share	Number
Ordinary Shares	US\$0.01	914,252,831
C Shares	US\$0.01	500,000,000

- 4.1.11 All Shares are and will, on their Admission, be fully paid.
- 4.1.12 The investors who acquired Ordinary Shares at IPO through the acquisition of the BioPharma III Interest and the RPS Note and Pablo Legorreta (with respect to his cash subscription at IPO) are subject to lock-up arrangements with respect to the Ordinary Shares acquired by them at the time of the IPO, which is due to expire on the first anniversary of the date on which such Ordinary Shares were admitted to trading on the Specialist Fund Segment and to listing and trading on the Official List of TISEA, being 27 March 2018 for Ordinary Shares issued pursuant to the

acquisition of the BioPharma III Interest and the cash subscription of Pablo Legorreta and 30 March 2018 with respect to Ordinary Shares issued in relation to the acquisition of the RPS Note.

4.2 Issue and Repurchases of Shares

4.2.1 By special resolutions passed on 27 February 2017 and 28 February 2017:

- (A) the Directors were authorised to allot Ordinary Shares in connection with the IPO up to an aggregate nominal amount of US\$20 million, such authority to expire at the end of the period of five years from the date of the passing of that resolution;
- (B) the Directors were empowered to allot Ordinary Shares as referred to in sub-paragraph (A) above on a non-pre-emptive basis provided that this power will expire upon the expiry of the authority to allot Ordinary Shares referred to in sub-paragraph (A) above;
- (C) the Directors were authorised to allot Ordinary Shares, or C Shares convertible into Ordinary Shares, up to an aggregate nominal amount equal to the difference between the nominal amount of the Ordinary Shares issued under the IPO and US\$20 million, such authority to expire at the end of the period of five years from the date of the passing of that resolution;
- (D) the Directors were empowered to allot Ordinary Shares and C Shares as referred to in sub-paragraph (C) above on a non-pre-emptive basis provided that this power will expire upon the expiry of the authority to allot Shares referred to in sub-paragraph (C) above;
- (E) the Company was authorised to make market purchases of Ordinary Shares on such terms and in such manner as the Directors may from time to time determine, provided that:
 - (1) the maximum number of Ordinary Shares authorised to be acquired, other than pursuant to an offer made to Shareholders generally, is 150 million Ordinary Shares provided that such number shall not exceed 14.99 per cent. of the number of Ordinary Shares in issue immediately following the IPO;
 - (2) the minimum price which may be paid for any Ordinary Share is US\$0.01;
 - (3) the maximum price which may be paid for any Ordinary Share is the higher of: (i) an amount equal to 105 per cent. of the average of the middle market quotations for an Ordinary Share as derived from the London Stock Exchange Daily Official List for the five Business Days immediately preceding the day on which such Ordinary Share is contracted to be purchased; and (ii) the higher of (a) the price of the last independent trade and (b) the highest current independent bid for an Ordinary Share in the Company on the trading venues where the market purchases by the Company pursuant to the authority conferred by that resolution will be carried out; and
 - (4) such authority shall expire at the conclusion of the first annual general meeting of the Company, unless previously renewed, varied or revoked by the Company in general meeting.

4.2.2 Subject as provided elsewhere in this Prospectus and in the Articles, Shares are freely transferable.

4.2.3 There are no pre-emption rights relating to the Shares in the Articles. Statutory pre-emption rights in the Act apply, save to the extent disapplied by Shareholders as referred to in paragraph 4.2.1 above or otherwise.

4.2.4 Save as disclosed in this Prospectus, since the date of its incorporation, no share or loan capital of the Company has been issued or agreed to be issued, or is now proposed to be issued, either for cash or any other consideration and no commissions, discounts, brokerages or other special terms have been granted by the Company in connection with the issue or sale of any such capital. Save as disclosed in this Prospectus, since the date of its incorporation, no share or loan capital of the

Company is under option or has been agreed, conditionally or unconditionally, to be put under option. The Company has entered into the Commitment Letter on 6 March 2018 with Bank of America N.A. and Goldman Sachs Bank USA whereby the Company may at its option, and subject to entry into appropriate loan documentation, put in place a term loan facility for up to US\$250 million for the purposes of funding further obligations under its existing investments and a pipeline investment (which may or may not materialise) for a maximum period of 364 days from the date of the first loan advance which must be made on or before the earlier of: (i) 31 May 2018; or (ii) the date on which the pipeline investment is abandoned. The amount which may be drawn under the facility will be reduced on a dollar for dollar basis to reflect the amount raised under the Initial Placing and Offer.

- 4.2.5 The Issue Shares will be issued in registered form and may be held in either certificated or uncertificated form and settled through CREST from Initial Admission. In the case of Shares to be issued in uncertificated form, these will be transferred to successful applicants through CREST. Accordingly, settlement of transactions in the Shares following Admission may take place within CREST if any Shareholder so wishes.

4.3 Redemptions at the option of Shareholders

There is no right or entitlement attaching to Shares that allows them to be redeemed or repurchased by the Company at the option of the Shareholder.

5. MEMORANDUM AND ARTICLES OF ASSOCIATION

5.1 Memorandum

The Memorandum does not restrict the objects of the Company.

5.2 Articles of Association

The Articles contain (among others) provisions to the following effect:

5.2.1 Life

The Company has been established with an unlimited life. The Articles provide, however, that a continuation resolution be put to Shareholders as an ordinary resolution: (i) at the first annual general meeting of the Company to be held following the fifth anniversary of First Admission and, if passed, at the annual general meeting held in every third year thereafter; and (ii) within two months of the end of any 12 month rolling period where the Ordinary Shares have, on average, traded at a discount in excess of 10 per cent. to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each month in the relevant period to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at such month end and averaging this comparative figure over the relevant period). If passed by the Shareholders the effect of that resolution will be that the Company will continue its business as a closed-ended investment trust. If the resolution is not passed, then the Board will be required to put proposals for the reconstruction, reorganisation or winding up of the Company to the Shareholders for their approval within six months of the date of the general meeting at which the continuation resolution was proposed.

5.2.2 Issue of Shares

Subject to the provisions of the Act and without prejudice to any rights attaching to any existing Shares, any Share may be issued with such rights or restrictions as the Company may by ordinary resolution determine (or, if the Company has not so determined, as the Directors may determine).

5.2.3 Alteration to Share capital

The Company may by ordinary resolution consolidate and divide all or any of its Shares into Shares of larger nominal amount than its existing Shares and sub-divide its Shares, or any class of them, into Shares of smaller nominal amount than its existing Shares and determine that, as between Shares arising from that sub-division, any of the Shares have any preference or advantage as compared with the others.

5.2.4 **Redemption of Shares**

Any Share may be issued which is or is to be liable to be redeemed at the option of the Company or the holder, and the Directors may determine the terms, conditions and manner of redemption of any such Share.

5.2.5 **Dividends**

- (A) Subject to the provisions of the Act and the Articles, the Directors may by ordinary resolution declare dividends. No dividends shall exceed the amount recommended by the Board. Subject to the provisions of the Act and the Articles, the Directors may pay interim dividends, or dividends payable at a fixed rate, if it appears to them that such dividends are justified by the profits of the Company available for distribution.
- (B) Subject to the provisions of the Act and the Articles, all dividends shall be declared and paid according to the amounts paid-up on the Shares on which the dividend is paid. If any Share is issued on terms that it ranks for dividend as at a particular date, it shall rank for dividend accordingly. In any other case, dividends shall be apportioned and paid proportionately to the amount paid-up on the Shares during any portion(s) of the period in respect of which the dividend is paid.
- (C) Notwithstanding any other provision of the Articles, but without prejudice to the rights attached to any Shares, the Company or the Directors may fix a date and time as the record date by reference to which a dividend will be declared or paid or a distribution, or allotment or issue of Shares, made. No dividends or other money payable in respect of a Share shall bear interest against the Company, unless otherwise provided by the rights attached to the Share.

5.2.6 **Distribution of assets on a winding up**

If the Company is wound up, the liquidator may, with the sanction of a special resolution and any other sanction required by law and subject to the Act, divide among the Shareholders, *in specie*, the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the Shareholders or different classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator may with the like sanction determine, but no Shareholder shall be compelled to accept any assets upon which there is a liability.

5.2.7 **Voting rights**

- (A) Subject to sub-paragraph (B) below and any rights or restrictions attached to any class of Shares, on a show of hands every Shareholder present in person at a meeting has one vote and every proxy present who has been duly appointed by a Shareholder entitled to vote has one vote (except where that proxy has been duly appointed by more than one Shareholder, and has been instructed by one or more of those Shareholders to vote for the resolution, and one or more of those Shareholders to vote against the resolution, in which case the proxy shall be entitled to one vote for and one vote against the resolution), and on a poll every Shareholder (whether present in person or by proxy) has one vote for every Share of which they are the holder. A Shareholder entitled to more than one vote need not, if they vote, use all their votes or cast all the votes they use the same way. In the case of joint holders, the vote of the senior who tenders a vote shall be accepted to the exclusion of the vote of the other joint holders, and seniority shall be determined by the order in which the names of the holders appear in the Register.
- (B) (1) In respect of any resolution to appoint or remove a Director (a “**Director Resolution**”), each Shareholder shall be required to certify that, at the time of the general meeting (or any adjournment thereof) at which the relevant Director Resolution is tabled, at the time of signifying agreement to the proposed resolution: (a) it is not a US Person and it reasonably believes it is not a US Resident; and (b) to the extent that it holds Shares for the

account or benefit of any other person, such other person is not a US Person and it reasonably believes such other person is not a US Resident. Each Shareholder that does not so certify at the relevant time in a manner satisfactory to the Board is referred to in this paragraph as a “**Non-Certifying Shareholder**”.

- (2) For the purposes of calculating the number of votes which Non-Certifying Shareholders are entitled to cast on a Director Resolution, if and to the extent that, in the absence of this paragraph:

$$“A” > (49/100) \times “B”$$

then the aggregate total of votes which Non-Certifying Shareholders are entitled to cast shall be reduced so that “D” is the whole number nearest to but not exceeding:

$$“C” \times (49/51)$$

Where the aggregate number of votes actually cast by Non-Certifying Shareholders (whether on a show of hands or on a poll or on a written resolution) “for” and “against” the relevant Director Resolution when added to the aggregate number of votes withheld by Non-Certifying Shareholders in respect of such Director Resolution exceeds “D”, then the number of: (a) aggregate votes cast “for”; (b) aggregate votes cast “against”; and (c) aggregate votes withheld in respect of such Director Resolution by Non-Certifying Shareholders, will each be reduced *pro rata* until the sum of (a), (b) and (c) above is equal to the whole number nearest to but not exceeding “D”. Where the aggregate number of votes actually cast (whether on a show of hands or on a poll) and votes withheld, in each case by Non-Certifying Shareholders, is equal to or less than “D”, then each of such votes actually cast or votes withheld (as applicable) shall be counted and no reductions shall occur.

- (3) For the purposes of the foregoing:

“A” is the aggregate total of votes which Non-Certifying Shareholders are entitled to cast, whether on a show of hands or on a poll, on the relevant Director Resolution prior to the operation of this paragraph;

$$“B” = A + C$$

“C” is the aggregate total of votes which Shareholders other than Non-Certifying Shareholders are entitled to cast, whether on a show of hands or on a poll, on the relevant Director Resolution; and

“D” is the aggregate total of votes Non-Certifying Shareholders are entitled to cast, whether on a show of hands or on a poll, on the relevant Director Resolution, following the operation of this paragraph (B).

- (4) The Directors may specify other requirements and/or vary the requirements of this paragraph (B) as they, in their discretion, consider necessary or appropriate to give effect to the limitation herein, but such restrictions shall only be implemented when the Directors in good faith believe that: (a) to not do so may result in a regulatory, pecuniary, legal, taxation or material administrative disadvantage for the Company or its Shareholders as a whole; and (b) the exercise of such power would not disturb the market in those Shares.

- (C) No Shareholder shall have any right to vote at any general meeting or at any separate meeting of the holders of any class of Shares, either in person or by proxy, in respect of any Share held by them unless all amounts presently payable by them in respect of that Share have been paid.

5.2.8 General Meetings

- (A) General meetings may be called by the Directors. If there are not sufficient Directors to form a quorum in order to call a general meeting, any Director may call a general meeting. If there is no Director, any Shareholder may call a general meeting.

- (B) Subject to the provisions of the Act, an annual general meeting and all other general meetings of the Company shall be called by at least such minimum period of notice as is prescribed or permitted under the Act.
- (C) No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a Shareholder or a proxy for a Shareholder or a duly authorised representative of a corporation which is a Shareholder (including for this purpose two persons who are proxies or corporate representatives of the same Shareholder), shall be a quorum.
- (D) A Shareholder is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company. A Shareholder may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different Share or Shares held by him. Subject to the provisions of the Act, any corporation (other than the Company itself) which is a Shareholder may, by resolution of its directors or other governing body, authorise any person(s) to act as its representative(s) at any meeting of the Company, or at any separate meeting of the holders of any class of Shares. Delivery of an appointment of proxy shall not preclude a Shareholder from attending and voting at the meeting or at any adjournment of it.
- (E) Directors may attend and speak at general meetings and at any separate meeting of the holders of any class of Shares, whether or not they are Shareholders.
- (F) A poll on a resolution may be demanded at a general meeting either before a vote on a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

5.2.9 **Redeemable Preference Shares**

Redeemable preference shares are not entitled to receive any dividend or distribution made or declared by the Company except for a fixed annual dividend equal to 0.00001 per cent. of their issue price. Save where there are no other Shares of the Company in issue, redeemable preference shares shall carry no right to attend, receive notice of or to vote at any general meeting of the Company. On a winding up of the Company, the holder of a redeemable preference share shall be entitled to be repaid the capital paid-up thereon *pari passu* with the repayment of the nominal amount of the Shares.

5.2.10 **Restrictions on rights: failure to respond to a section 793 notice**

If a Shareholder, or any other person appearing to be interested in Shares held by that Shareholder, has been given a notice under section 793 of the Act and has failed in relation to any Shares (the “**default Shares**”) to give the Company the information thereby required within 14 days of the notice, sanctions shall apply unless the Directors determine otherwise. The sanctions available are the suspension of the right to attend or vote (whether in person or by representative or proxy) at any general meeting of Shareholders or any separate meeting of the holders of any class of Shares or on any poll and, where the default Shares represent at least 0.25 per cent. of their class (excluding treasury Shares), the withholding of any dividend payable in respect of those default Shares and the restriction of the transfer of any default Shares (subject to certain exceptions).

5.2.11 **Untraced Shareholders**

Subject to various notice requirements, the Company may sell any of a Shareholder's Shares if, during a period of 12 years, at least three dividends (either interim or final) on such Shares have become payable and no cheque for amounts payable in respect of such Shares has been presented and no warrant or other method of payment has been effected and no communication has been received by the Company from the Shareholder or person concerned.

5.2.12 Borrowing powers

The Directors shall restrict the borrowings of the Company so as to secure that the aggregate principal amount (including any premium payable on final repayment) outstanding of all money borrowed by the Company shall not at any time when any borrowing is drawn down, save with the previous sanction of an ordinary resolution of the Company, exceed an amount equal to 50 per cent. of NAV (such 50 per cent. for these purposes including any existing borrowings and the proposed additional borrowing, and calculated at the time of incurring the proposed additional borrowings).

5.2.13 Transfer of Shares

- (A) A Share in certificated form may be transferred by an instrument of transfer, which may be in any usual form or in any other form approved by the Directors, executed by or on behalf of the transferor and, where the Share is not fully paid, by or on behalf of the transferee. The transferor and/or the transferee shall deliver to the Company (and/or other person designated by the Company) such written certifications in form and substance satisfactory to the Company as the Directors may determine in accordance with applicable law.
- (B) A Share in uncertificated form may be transferred by means of the relevant system concerned.
- (C) In their absolute discretion, the Directors may refuse to register the transfer of a Share in certificated form which is not fully paid provided that, if the Share is traded on a regulated market, such refusal does not prevent dealings in the Shares from taking place on an open and proper basis. The Directors may also refuse to register a transfer of a Share in certificated form unless the instrument of transfer:
 - (1) is lodged, duly stamped, at the registered office of the Company or such other place as the Directors may appoint and is accompanied by the certificate for the Share to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and/or the transferee to receive the transfer (including such written certifications in form and substance satisfactory to the Company as the Directors may determine in accordance with applicable law);
 - (2) is in respect of only one class of Share;
 - (3) is not in favour of more than four transferees; and
 - (4) the transfer is not in favour of any Non-Qualified Holder (as defined below).
- (D) The Directors may refuse to register a transfer of a Share in uncertificated form to a person who is to hold it thereafter in certificated form in any case where the Company is entitled to refuse (or is excepted from the requirement) under the CREST Regulations to register the transfer.
- (E) If the Directors refuse to register a transfer of a Share, they shall send the transferee notice of that refusal with reasons for the refusal within two months after the date on which the transfer was lodged with the Company (for the transfer of a Share in certificated form) or the date the operator-instruction was received by the Company (for the transfer of a Share in uncertificated form which will be held thereafter in certificated form).
- (F) No fee shall be charged for the registration of any instrument of transfer or other document or instruction relating to or affecting the title to any Share.
- (G) The Directors may, in their absolute discretion, decline to transfer, convert or register any transfer of Shares to any person: (i) whose ownership of Shares may cause the Company's assets to be deemed "plan assets" for the purposes of ERISA or the US Tax Code; (ii) whose ownership of Shares may cause the Company to be required to register as an "investment company" under the Investment Company Act or to lose an exemption or a status thereunder to which it might otherwise be entitled (including because the holder of Shares is not a "qualified purchaser" as defined in the Investment Company Act); (iii)

whose ownership of Shares may cause the Company to be required to register under the Exchange Act or any similar legislation; (iv) whose ownership of Shares may cause the Company to be a “controlled foreign corporation” for the purposes of the US Tax Code, or may cause the Company to suffer any pecuniary disadvantage (including any excise tax, penalties or liabilities under ERISA or the US Tax Code); (v) whose ownership of Shares may cause the Company to cease to be considered a “foreign private issuer” for the purposes of the Securities Act or the Exchange Act; or (vi) whose ownership of Shares would or might result in the Company not being able to satisfy its obligations on the Common Reporting Standard developed by the Organisation for Economic Co-Operation and Development or such similar reporting obligations on account of, *inter alia*, non-compliance by such person with any information request made by the Company, (each person described in (i) through (vi) above, being a “**Non-Qualified Holder**”).

- (H) If any Non-Qualified Holder owns any Shares, whether directly, indirectly or beneficially, the Directors may give notice requiring such person within 30 days to:
 - (1) establish to the satisfaction of the Directors that such person is not a Non-Qualified Holder; or
 - (2) sell or transfer his Shares to a person who is not a Non-Qualified Holder, and to provide the Directors with satisfactory evidence of such sale or transfer. Pending sale or transfer of such Shares, the Directors may suspend rights with respect to the Shares.
- (I) If any person upon whom a notice is served pursuant to paragraph (H) does not within 30 days transfer his Shares or establish to the satisfaction of the Directors that he is not a Non-Qualified Holder, the Directors may arrange for the sale of the Shares on behalf of the registered holder at the best price reasonably obtainable at the time. The manner, timing and terms of any such sale shall be such as the Directors determine (based on appropriate professional advice) to be reasonably obtainable having regard to all material circumstances.

5.2.14 **Appointment of Directors**

- (A) Unless the Company determines otherwise by ordinary resolution, the number of Directors (other than alternate Directors) shall not be subject to any maximum but shall not be less than two.
- (B) Subject to the Articles, the Company may by ordinary resolution appoint a person who is willing to act as a Director, and is permitted by law to do so, to be a Director either to fill a vacancy or as an additional Director. The Directors may appoint a person who is willing to act as a Director, and is permitted by law to do so, to be a Director, either to fill a vacancy or as an additional Director. A person appointed as a Director by the other Directors is required to retire at the Company’s next annual general meeting and shall then be eligible for reappointment by Shareholders.
- (C) Until otherwise determined by the Company by ordinary resolution, there shall be paid to the Directors (other than alternate Directors) such fees for their services in the office of director as the Directors may determine, not exceeding in the aggregate an annual sum of US\$750,000.

5.2.15 **Powers of Directors**

- (A) The business of the Company shall be managed by the Directors who, subject to the provisions of the Articles and to any directions given by special resolution to take, or refrain from taking, specified action, may exercise all the powers of the Company.
- (B) The Directors may appoint one or more of their number to the office of managing Director or to any other executive office of the Company and, subject to the provisions of the Act, any such appointment may be made for such term, at such remuneration and on such other conditions as the Directors think fit.

- (C) Any Director (other than an alternate Director) may appoint any other Director, or any other person approved by resolution of the Directors and willing to act and permitted by law to do so, to be an alternate Director and may remove such an alternate Director from office.

5.2.16 Voting at board meetings

- (A) No business shall be transacted at any meeting of the Directors unless a quorum, which may be fixed by the Directors from time to time, is present; unless so fixed at any other number, the quorum shall be two. A Director shall not be counted in the quorum present in relation to a matter or resolution on which he is not entitled to vote but shall be counted in the quorum present in relation to all other matters or resolutions considered or voted on at the meeting. An alternate Director who is not himself a Director shall, if his or her appointor is not present, be counted in the quorum.
- (B) Questions arising at a meeting of the Directors shall be decided by a majority of votes. In the case of an equality of votes, the chairman of the meeting shall, unless he is not entitled to vote on the resolution, have a second or casting vote.

5.2.17 Restrictions on voting

Subject to any other provision of the Articles, a Director shall not vote at a meeting of the Directors on any resolution concerning a matter in which he has, directly or indirectly, a material interest (other than an interest in Shares, debentures or other securities of, or otherwise in or through, the Company) unless his interest arises only because the case falls within certain limited categories specified in the Articles.

5.2.18 Directors' interests

Subject to the provisions of the Act and provided that the Director has disclosed to the other Directors the nature and extent of any material interest of his or hers, a Director, notwithstanding his or her office, may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested and may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is interested.

5.2.19 Indemnity

Subject to the provisions of the Act, the Company may indemnify to any extent any person who is or was a Director, directly or indirectly (including by funding any expenditure incurred or to be incurred by the Director) against any loss or liability whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by them or otherwise in relation to the Company or any associated company and purchase and maintain insurance for any person who is or was a Director, or a Director of any associated company, against any loss or liability or any expenditure they may incur, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by them or otherwise, in relation to the Company or any associated company.

5.2.20 C Shares

(A) Definitions

"C Share" means a redeemable C share of US\$0.01 in the capital of the Company carrying the rights set out in the Articles;

"C Share Surplus" means, in relation to any tranche of C Shares, the net assets of the Company attributable to the holders of C Shares of that tranche (including, for the avoidance of doubt, any income and/or revenue arising from or relating to such assets) less such proportion of the Company's liabilities (including the fees and expenses of the liquidation or return of capital (as the case may be)) as the Directors or the liquidator (as the case may be) shall reasonably allocate to the assets of the Company attributable to such holders;

"C Shareholder" means a holder of C Shares;

“Conversion” means, in relation to any tranche of C Shares, conversion of the C Shares of that tranche into Correspondent Ordinary Shares in accordance with the Articles;

“Conversion Calculation Date” means, in relation to any tranche of C Shares, the earlier of:

- a) close of business on the day to be determined by the Directors occurring not before the day on which the Investment Manager gives notice to the Directors that at least 85 per cent., or such other percentage as the Directors may select as part of the terms of issue of any tranche of C Shares, of the assets attributable to the holders of that tranche of C Shares are invested in accordance with the investment policy of the Company; and
- b) opening of business on the first day on which the Directors resolve that Force Majeure Circumstances in relation to any tranche of C Shares have arisen or are imminent,
provided that the Conversion Calculation Date shall in relation to any tranche of C Shares be such that the Conversion Date shall not be later than such date as may be determined by the Directors on the date of issue of C Shares of such tranche as the last date for Conversion of that tranche;

“Conversion Date” means, in relation to any tranche of C Shares, the earlier of:

- a) such date as may be determined by the Directors on the date of issue of the C Shares of such tranche as the last date for Conversion of such tranche; and
- b) the opening of business on a dealing day selected by the Directors and falling after the Conversion Calculation Date;

“Conversion Ratio” means in relation to each tranche of C Shares, A divided by B calculated to four decimal places (with 0.00005 being rounded upwards) where:

$$A = \frac{C-D}{E}$$

and

$$B = \frac{F-G}{H}$$

and where:

C is the aggregate value of all assets and investments of the Company attributable to the relevant tranche of C Shares (as determined by the Directors) on the relevant Conversion Calculation Date calculated in accordance with the accounting principles adopted by the Company from time to time;

D is the amount (to the extent not otherwise deducted in the calculation of C) which, in the Directors' opinion, fairly reflects the amount of the liabilities attributable to the holders of C Shares of the relevant tranche on the Conversion Calculation Date;

E is the number of C Shares in issue on the Conversion Calculation Date;

F is the aggregate value of all assets and investments attributable to the Ordinary Shares on the relevant Conversion Calculation Date calculated in accordance with the accounting principles adopted by the Company from time to time;

G is the amount (to the extent not otherwise deducted in the calculation of F) which, in the Directors' opinion, fairly reflects the amount of the liabilities attributable to the Ordinary Shares on the Conversion Calculation Date; and

H is the number of Ordinary Shares in issue on the Conversion Calculation Date;

“Correspondent Ordinary Shares” means the new Ordinary Shares arising on Conversion of the C Shares;

“Force Majeure Circumstance” means, in relation to any tranche of C Shares, any political and/or economic circumstances and/or actual or anticipated changes in fiscal or other legislation and/or other circumstances which, in the reasonable opinion of the Directors, renders Conversion necessary or desirable notwithstanding that less than 85 per cent. (or such other percentage as the Directors may select as part of the terms of issue of such tranche) of the assets attributable to the holders of that tranche of C Shares are invested in accordance with the investment policy of the Company;

“Issue Date” means, in relation to any tranche of C Shares, the day on which the Company receives the net proceeds of the issue of the C Shares of that tranche; and

“Ordinary Share Surplus” means the net assets of the Company less the C Share Surplus or, if there is more than one tranche of C Shares in issue at the relevant time, the C Share Surpluses attributable to each of such tranches.

(B) Issue of C Shares

Subject to the Act, the Directors shall be authorised to issue C Shares in tranches on such terms as they determine provided that such terms are consistent with the provisions of the Articles. The Board shall, on the issue of each tranche of C Shares, determine the Conversion Calculation Date (including the percentage of assets to have been invested prior to calculation of the Conversion Ratio taking place), Conversion Date, Conversion Ratio and voting rights attributable to each such tranche.

Each tranche of C Shares, if in issue at the same time, shall be deemed to be a separate class of shares. The Board may, if it so decides, designate each tranche of C Shares in such manner as it sees fit in order that each tranche of C Shares can be identified.

(C) Dividends

The C Shareholders of any tranche of C Shares will be entitled to receive such dividends as the Board may resolve to pay to such C Shareholders out of the assets attributable to such C Shareholders.

The Correspondent Ordinary Shares arising on Conversion of the C Shares shall rank in full for all dividends and other distributions declared after the Conversion Date save that, in relation to any tranches of C Shares, the Directors may determine, as part of the terms of issue of such tranche, that the Correspondent Ordinary Shares arising on the Conversion of such tranche will not rank for any dividend declared by reference to a record date falling on or before the Conversion Date.

(D) Rights as to capital

The capital and assets of the Company shall on a winding up or on a return of capital prior, in each case, to Conversion be applied as follows:

- (a) first, the Ordinary Share Surplus shall be divided amongst the holders of the Ordinary Shares *pro rata* according to their holdings of Ordinary Shares; and
- (b) secondly, the C Share Surplus attributable to each tranche of C Shares shall be divided amongst the holders of the C Shares of such tranche *pro rata* according to their holdings of C Shares.

(E) Voting rights

The C Shares shall carry the right to receive notice of and to attend and vote at any general meeting of the Company. The voting rights of holders of C Shares will be the same as those applying to holders of Ordinary Shares as set out in the Articles as if the C Shares and Ordinary Shares were a single class.

(F) Class consents and variation of rights

Until Conversion, the consent of: (i) the holders of each tranche of C Shares as a class; and (ii) the holders of the Ordinary Shares as a class shall be required to:

- a) make any alteration to the memorandum of association or the articles of association of the Company; or
- b) pass any resolution to wind up the Company,

and accordingly the special rights attached to the C Shares of such tranche and the Ordinary Shares shall be deemed to be varied if such consent is not obtained.

(G) Undertakings

Until Conversion and without prejudice to its obligations under the Act, the Company shall, in relation to each tranche of C Shares:

- a) procure that the Company's records and bank accounts shall be operated so that the assets attributable to the holders of C Shares of the relevant tranche can, at all times, be separately identified and, in particular but without prejudice to the generality of the foregoing, the Company shall, without prejudice to any obligations pursuant to the Act, procure that separate cash accounts, broker and other settlement accounts and investment ledger accounts shall be created and maintained in the books of the Company for the assets and liabilities attributable to such C Shareholders;
- b) allocate to the assets attributable to such C Shareholders such proportion of the expenses and liabilities of the Company incurred or accrued between the relevant Issue Date and the Conversion Calculation Date (both dates inclusive) as the Directors fairly consider to be attributable to such C Shares; and
- c) give appropriate instructions to the Investment Manager to manage the Company's assets so that the provisions of paragraphs (a) and (b) above can be complied with by the Company.

(H) The Conversion process

The Directors shall procure in relation to each tranche of C Shares that:

- a) within 10 Business Days (or such other period as the Directors may determine) after the relevant Conversion Calculation Date, the Conversion Ratio as at the Conversion Calculation Date and the numbers of Correspondent Ordinary Shares to which each holder of C Shares of that tranche shall be entitled on Conversion shall be calculated; and
- b) the auditors shall be requested to certify, within 10 Business Days (or such other period as the Directors may determine) of the relevant Conversion Calculation Date, that such calculations as have been made by the Investment Manager:
 - (A) have been performed in accordance with the articles of association of the Company; and
 - (B) are arithmetically accurate,

whereupon such calculations shall become final and binding on the Company and all members.

The Directors shall procure that, as soon as practicable following such certification, a notice is sent to each C Shareholder advising such C Shareholder of the Conversion Date, the Conversion Ratio and the number of Correspondent Ordinary Shares to which such C Shareholder shall be entitled on Conversion of such C Shareholder's C Shares.

On Conversion, such number of C Shares as shall be necessary to ensure that, upon Conversion being completed, the aggregate number of Correspondent Ordinary Shares into which those C Shares are converted equals the number of C Shares in issue on the Conversion Calculation Date multiplied by the Conversion Ratio and rounded down to the nearest whole Ordinary Share, shall automatically convert into an equal number of Correspondent Ordinary Shares. The Correspondent Ordinary Shares arising on Conversion shall be divided amongst the former C Shareholders *pro rata* according to their respective former holdings of C Shares (provided always that the Directors may deal in such manner as they think fit with fractional entitlements to Correspondent Ordinary Shares arising upon Conversion, including, without prejudice to the generality of the foregoing, selling any such shares representing such fractional entitlements and retaining the proceeds for the benefit of the Company provided that such proceeds are less than US\$5.00 per C Shareholder). In the event that the number of C Shares required to be converted into Correspondent Ordinary Shares exceeds the number of C Shares in issue, the Directors shall be authorised (without the need for any further authorisation) to take such additional steps, including issuing additional innominate shares by way of a bonus issue to C Shareholders, as shall be necessary to ensure the proper operation of the Conversion process as described in this paragraph.

Each issued C Share which does not convert into a Correspondent Ordinary Share in accordance with this paragraph shall, immediately upon Conversion, be redeemed by the Company for an aggregate consideration of US\$0.01 for all of the C Shares to be so redeemed and the notice referred to in this paragraph shall be deemed to constitute notice to each C Shareholder (and any person or persons having the right to acquire or acquiring C Shares on or after the Conversion Calculation Date) that such C Shares shall be so redeemed. The Company shall not be obliged to account to any C Shareholder for the redemption monies in respect of such shares.

Upon request following Conversion, the Company shall issue to each former C Shareholder a new certificate in respect of the Correspondent Ordinary Shares in certificated form which have arisen upon Conversion.

6. THE CITY CODE ON TAKEOVERS AND MERGERS

6.1 Mandatory Bid

The Takeover Code applies to the Company. Under Rule 9 of the Takeover Code, if:

- (a) any person acquires, whether by a series of transactions over a period of time or otherwise, an interest in Shares which, when taken together with Shares in which he and persons acting in concert with him are interested, carry 30 per cent. or more of the voting rights in the Company; or
- (b) any person, together with persons acting in concert with them, is interested in Shares which in the aggregate carry not less than 30 per cent. of the voting rights of the Company but does not hold Shares carrying more than 50 per cent. of such voting rights and such person, or any person acting in concert with them, acquires an interest in any other Shares which increases the percentage of Shares carrying voting rights in which they are interested,

such person would be required (except with the consent of the Takeover Panel) to make a cash or cash alternative offer for the outstanding Shares at a price not less than the highest price paid for any interests in the Shares by them or their concert parties during the previous 12 months. Such an offer must only be conditional on:

- (a) the person having received acceptances in respect of Shares which (together with Shares already acquired or agreed to be acquired) will result in the person and any person acting in concert with him holding Shares carrying more than 50 per cent. of the voting rights; and
- (b) no reference having been made in respect of the offer to the Competition and Markets Authority by either the first closing date or the date when the offer becomes or is declared unconditional as to acceptances, whichever is the later.

6.2 Share Buyback Authorisations

When a company redeems or purchases its own voting shares, under Rule 37 of the Takeover Code, any resulting increase in the percentage of shares carrying voting rights in which a person or group of persons acting in concert is interested will be treated as an acquisition for the purpose of Rule 9 of the Takeover Code. Rule 37 of the Takeover Code provides that, subject to prior consultation, the Takeover Panel will normally waive any resulting obligation to make a general offer if there is a vote of independent shareholders and a procedure along the lines of that set out in Appendix 1 to the Takeover Code is followed. Appendix 1 to the Takeover Code sets out the procedure which should be followed in obtaining the consent of independent shareholders.

Under Note 1 on Rule 37.1 of the Takeover Code, a person who comes to exceed the limits in Rule 9.1 in consequence of a company's purchase of its own shares will not normally incur an obligation to make a mandatory offer unless that person is a director, or the relationship of the person with any one or more of the directors is such that the person is, or is presumed to be, acting in concert with any of the directors. The investment manager of an investment trust is treated for these purposes as if it were a director.

Subject to certain limits, the Company has the authority to purchase Ordinary Shares under the terms of the shareholder resolutions summarised in paragraph 4.2.1(E) of this Part VIII (Additional Information on the Company) of this Prospectus. This authority is for up to a maximum of 14.99 per cent. of the Ordinary Shares in issue immediately following the IPO, such authority lasting for the period between the date of the resolution and the first annual general meeting of the Company.

6.3 Compulsory Acquisition

Under sections 974 to 991 of the Act, if an offeror acquires or contracts to acquire (pursuant to a takeover offer) not less than 90 per cent. of a class of Shares (in value and by voting rights) to which such offer relates, it may then compulsorily acquire the outstanding Shares of that class held by holders that have not assented to the offer. It would do so by sending a notice to the holders of Shares of that class indicating that it is desirous of acquiring such outstanding Shares whereupon the offeror will become entitled and bound to acquire such Shares. At the end of 6 weeks from the date of such notice, it would execute a transfer of such outstanding Shares in its favour and pay the consideration to the Company, which would hold the consideration on trust for the holders of such outstanding Shares subject to the transfer. The consideration offered to the holders whose outstanding Shares are compulsorily acquired under the Act must, in general, be the same as the consideration that was available under the takeover offer.

In addition, pursuant to section 983 of the Act, if an offeror acquires or agrees to acquire not less than 90 per cent. of the Shares (in value and by voting rights, pursuant to a takeover offer that relates to all the Shares in the Company), any holder of Shares to which the offer relates who has not accepted the offer may require the offeror to acquire his Shares.

The offeror would be required to give any holder of Shares notice of his right to be bought out within one month of that right arising. Such sell-out rights cannot be exercised after the end of the period of three months from the last date on which the offer can be accepted or, if later, three months from the date on which the notice is served on the holder of Shares notifying them of their sell-out rights. If a holder of Shares exercises its rights, the offeror is bound to acquire those Shares on the terms of the offer or on such other terms as may be agreed.

7. INTERESTS OF DIRECTORS, MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

7.1 Directors' interests

The Directors currently hold Ordinary Shares in the amounts set out below:

Name	Number of Ordinary Shares
Jeremy Sillem	300,000
Duncan Budge*	100,000
Colin Bond	100,000
Harry Hyman	100,000

* The legal and beneficial interest in 50 per cent. of Mr Budge's shares is held by Mrs Budge.

As at the date of this Prospectus there are no potential conflicts of interest between any duties owed to the Company of any of the Directors and their private interests and/or other duties. The Directors may subscribe for additional Shares in the Company pursuant to the Issue. Immediately following Initial Admission, save as described above, no Director will have any interest, whether beneficial or non-beneficial, in the share or loan capital of the Company.

7.2 Directors' contracts with the Company

- 7.2.1 No Director has a service contract with the Company, nor are any such contracts proposed, each Director having been appointed pursuant to a letter of appointment entered into with the Company.
- 7.2.2 The Directors' appointments can be terminated in accordance with the Articles and without compensation or in accordance with the Act or common law. The Directors are subject to retirement by rotation in accordance with the Articles.
- 7.2.3 There is no notice period specified in the letters of appointment or in the Articles for the removal of Directors. The Articles provide that the office of Director may be terminated by, among other things: (i) resignation; (ii) unauthorised absences from board meetings for more than six consecutive months; or (iii) the written request of all Directors other than that whose appointment is being terminated.
- 7.2.4 The Directors' remuneration is US\$70,000 per annum for each Director other than:
- (A) the Chairman, who will receive an additional US\$30,000 per annum; and
 - (B) the chairman of the Audit and Risk Committee, who will receive an additional US\$15,000 per annum.
- 7.2.5 The Company has not made any loans to the Directors which are outstanding, nor has it ever provided any guarantees for the benefit of any Director or the Directors collectively. No amounts have been set aside or accrued by the Company to provide pension, retirement or similar benefits.

7.3 Other interests

7.3.1 As at the date of this Prospectus, the Directors hold or have held during the five years preceding the date of this Prospectus the following directorships (apart from their directorships of the Company) or memberships and administrative, management or supervisory bodies and/or partnerships:

Name	Current directorships and partnerships	Past directorships and partnerships
Jeremy Sillem	Partners Capital LLC Reform Research Trust Spencer House Partners LLP	CDC Group plc Martin Currie (Holdings) Limited Martin Currie Limited SHP Nominee Company 1 Limited (Dissolved) SHP Nominee Company 2 Limited (Dissolved)
Duncan Budge	Alpha Securities Trading Limited Artemis Alpha Trust plc Asset Value Investors Limited Dunedin Enterprise Investment Trust plc Lazard World Trust Fund Lowland Investment Company plc Menhaden Capital plc	J Rothschild Capital Management Limited Spencer House Limited The West Hendred Pub Company Limited
Colin Bond	Cophar SA OM Pharma SA Siegfried AG VFMCRP Vifor SA Vifor (International) AG Vifor Pharma Limited Vifor Pharma Participations 2 AG Vifor Pharma US Participations Inc. Vifor Pharma USA Inc.	Evotec AG Evotec International GmbH, Germany Evotec (UK) Ltd., U.K. Evotec (US) Inc., U.S. Evotec (München) GmbH, Germany Evotec (India) Private Limited, India Evotec Hamburg, gmbH, Germany European ScreeningPort GmbH, Germany Evotec (France) SAS, France
Harry Hyman	AHG (2006) Limited Anchor Meadow Limited Apollo (Ipswich) Limited Carden Medical Investments Limited Chelmsley Associates Limited Crestdown Limited Derriston Capital plc Educationinvestor Limited Fortissimo Group Limited Gracemount Medical Centre Limited Health Investments Limited Healthinvestor Asia Limited Healthinvestor Limited Investor Publishing Limited Leighton Health Limited Motorstep Limited Nexus Central Management	I Value plc Landor Productions Limited Nexus Structured Finance Limited NHR Acquisitions Limited Patientfirst (GPFC) Holdings Limited Patientfirst (Leamington Spa) Limited Patientfirst (RBS) Holdings Limited Patientfirst (Wingate) Limited PHIP (6) Limited PHIP (Hetherington Road) Limited PHIP (SSG Norwich) Limited PHP CHH Limited PHP (Catford) Limited PHP (Darvel) Limited PHP (Dover) Limited

Name	Current directorships and partnerships	Past directorships and partnerships
	Services Limited	PHP (Holbeck) Limited
	Nexus Code Limited	PHP (Hounslow) Limited
	Nexus Code New York Limited	PHP (Melksham) Limited
	Nexus Consulting (UK) Limited	PHP (Paisley) Limited
	Nexus Corporate Finance II Limited	PHP (Petri) Limited
	Nexus Corporate Finance Limited	PHP (Speke) Limited
	Nexus Fund Management Limited	PHP (Swaffham Barn) Limited
	Nexus General Partner Limited	PHP Spitfire Limited
	Nexus Health Finance Limited	
	Nexus Group Holdings Limited	
	Nexus Investco Limited	
	Nexus Investment Management Limited	
	Nexus Investment Ventures Limited	
	Nexus Management Services Limited	
	Nexus PHP Management Limited	
	Nexus Pine (Management) Limited	
	Nexus Property Management Services Limited	
	Nexus Tradeco Holdings Limited	
	Nexus Tradeco Limited	
	Orbig Limited	
	Patientfirst (Burnley) Limited	
	Patientfirst (Hinckley) Limited	
	Patientfirst Partnerships Limited	
	PHIP (5) Limited	
	PHIP (Gorse Stacks) Limited	
	PHIP (Hoddesdon) Limited	
	PHIP (Milton Keynes) Limited	
	PHIP (RHL) Limited	
	PHIP (Sheerness) Limited	
	PHIP CH Limited	
	PHP (Basingstoke) Limited	
	PHP (Chandler's Ford) Limited	
	PHP (FRMC) Limited	
	PHP (Portsmouth) Limited	
	PHP (Project Finance) Limited	
	PHP 2013 Holdings Limited	
	PHP Assetco (2011) Limited	
	PHP Bond Finance plc	
	PHP Clinics Limited	
	PHP Empire Holdings Limited	
	PHP Finance (Jersey) Limited	
	PHP Glen Spean Limited	
	PHP Healthcare (Holdings) Limited	
	PHP Healthcare Investments (Holdings) Limited	
	PHP Healthcare Investments Limited	
	PHP Investments (2011) Limited	
	PHP Investments No.1 Limited	
	PHP Investments No.2 Limited	

Name	Current directorships and partnerships	Past directorships and partnerships
	PHP Medical Investments Limited PHP Medical Properties Limited PHP Medical Properties (Haymarket) Limited PHP Primary Properties Limited PHP St. Johns Limited Pine Property Services Limited Primary Health Investment Properties (No.2) Limited Primary Health Investment Properties (No.3) Limited Primary Health Investment Properties (No.4) Limited Primary Health Investment Properties (No.6) Limited Primary Health Investment Properties (No.7) Limited Primary Health Investment Properties (Sutton) Limited Primary Health Investment Properties Limited Primary Health Properties ICAV Q1 Care Limited Summit Germany Limited The Healthcare REIT Limited The Quoted Companies Alliance The Opera Awards Foundation The Opera Awards Limited Vintage Wine Sellers Limited	

7.3.2 In the five years before the date of this Prospectus, the Directors:

- (A) did not have any convictions in relation to fraudulent offences;
- (B) have not been associated with any bankruptcies, receiverships or liquidations of any partnership or company through acting in the capacity as a member of the administrative, management or supervisory body or as a partner, founder or senior manager of such partnership or company; and
- (C) have not been subject to any official public incrimination and/or sanctions by statutory or regulatory authorities (including designated professional bodies) and have not been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of any issuer or from acting in the management or conduct of the affairs of any issuer.

7.4 Major shareholders

7.4.1 As at the date of this Prospectus, in so far as is known to the Company, the major shareholders of the Company are as follows:

Name	Number of Ordinary Shares	Percentage of Voting Rights
Invesco Limited	180,002,730	19.69
Prudential plc	137,258,520	15.01
Pharmaceutical Investors LP	71,990,100	7.87
Inteligo Bank Ltd	66,293,782	7.25
Interseguro Compania de Seguros S.A.	44,008,384	4.81
Pablo Legorreta	34,767,015	3.80

7.4.2 For the purposes of ensuring that the Company continues to be considered a “foreign private issuer” for the purposes of the Securities Act and the Exchange Act, the Articles provide that, in respect of any Director Resolution, each Shareholder shall be required, as set out in the Articles, to make certain certifications with regard to their status (and, to the extent they hold Shares for the account or benefit of any other person, the status of such other person) as a non-US resident (each Shareholder that does not so certify, being a “**Non-Certifying Shareholder**”). If the aggregate total of votes which Non-Certifying Shareholders would otherwise be entitled to cast on a Director Resolution is greater than 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution then, pursuant to the Articles, the aggregate number of votes which Non-Certifying Shareholders are entitled to cast on such Director Resolution shall be scaled down so as not to exceed 49 per cent. of the aggregate total of votes which all Shareholders are entitled to cast on such Director Resolution.

7.4.3 Save as disclosed in paragraph 7.4.2, none of the Company’s Shareholders has or will have voting rights attached to the shares held by them which are different from the voting rights attached to any other shares in the same class in the Company. As at the date of this Prospectus, the Company, insofar as is known to the Company, will not immediately following the Issue be directly or indirectly owned or controlled by any single person or entity and there are no arrangements known to the Company the operation of which may subsequently result in a change of control of the Company.

7.5 Related party transactions

Save as disclosed in paragraph 10 of this Part VIII (Additional Information on the Company) of this Prospectus and note 17 to the financial statements of the 2017 Annual Report as incorporated by reference in Part X (Financial Information on the Company) of this Prospectus, the Company has not entered into any related party transaction at any time during the period from incorporation to the date of this Prospectus.

The Company has certain related parties, pursuant to the Listing Rules (to the extent that the Company voluntarily complies with them) as a result of such party currently being or having been a substantial shareholder of the Company in the past 12 months (which, under the Listing Rules, is any shareholder who is entitled to exercise, or to control the exercise of, 10 per cent. or more of the votes able to be cast on all or substantially all matters at a general meeting of the Company). One such related party, Invesco Asset Management Limited, as agent for and on behalf of its discretionary manager clients, has indicated its intention to participate in the Issue. The Company believes that it would be in the interests of all Shareholders to allow its related parties to continue their support for the Company should they so wish and in whatever size they wish to do so.

Should any related party choose to participate in the Initial Placing and Offer or any subsequent Placing under the Placing Programme, then its application will be on the same terms as the other investors participating in the Initial Placing and Offer or such subsequent Placing (as the case may be). The Company intends to publish a circular as soon as reasonably practicable after the date of this Prospectus convening a general meeting of the

Shareholders in order to seek the approval of Shareholders (independent of that related party and its affiliates) for each related party to be able to participate in the Initial Placing and Offer and/or any subsequent Placing.

7.6 Director conflicts of interests

None of the Directors has any conflict of interests or potential conflict of interests between any duties to the Company and his or her private interests and any other duties. The Manager Affiliated Parties, any of their directors, principals, officers, employees, agents and Affiliates and the Directors and any person or company with whom they are affiliated or by whom they are employed may be involved in other financial, investment or other professional activities which may cause conflicts of interest with the Company. In particular, interested parties may provide services similar to those provided to the Company to other entities and shall not be liable to account for any profit from any such services. For example, the Manager Affiliated Parties, any of their directors, officers, employees, agents and Affiliates and the Directors and any person or company with whom they are affiliated or by whom they are employed may (subject in the case of the Investment Manager to the restrictions contained in the Investment Management Agreement) acquire on behalf of a client an investment in which the Company may invest.

8. SHARE OPTIONS AND SHARE SCHEME ARRANGEMENTS

No share or loan capital of the Company is under option or agreed conditionally or unconditionally to be put under option.

9. INVESTMENT RESTRICTIONS

- 9.1 The Company will at all times invest and manage its assets with the objective of spreading risk and in accordance with its published investment policy as set out in Part I (The Company) of this Prospectus.
- 9.2 The Company intends at all times to conduct its affairs so as to enable it to continue to qualify as an investment trust for the purposes of Chapter 4 of Part 24 of the Corporation Tax Act 2010 (as amended) and the Investment Trust (Approved Company) (Tax) Regulations 2011 (as amended), and its investment activities will therefore be subject to the restrictions set out under "Principal Activities of the Company" in paragraph 2 of this Part VIII (Additional Information on the Company) of this Prospectus.
- 9.3 In the event of material breach of these investment restrictions applicable to the Company, Shareholders will be informed of the actions to be taken by the Investment Manager through an announcement made via a Regulatory Information Service.

10. MATERIAL CONTRACTS

Save as described below, the Company has not: (i) entered into any material contracts (other than contracts in the ordinary course of business) since its incorporation; or (ii) entered into any contracts that contain provisions under which the Company has any obligation or entitlement that is material to the Company as at the date of this Prospectus.

10.1 Placing Agreement

- 10.1.1 Pursuant to the Placing Agreement dated 14 March 2018 between the Company, the Investment Manager and the Joint Bookrunners, subject to certain conditions, each of the Joint Bookrunners has agreed to use their reasonable endeavours to procure Placees for Issue Shares under the Placing Programme.
- 10.1.2 The Placing Agreement (or the relevant Placing) may be terminated by either of the Joint Global Coordinators in certain customary circumstances at any time prior to the earliest of: (i) 13 March 2019; (ii) the date on which all of the Issue Shares available for issue under the Issue have been issued; and (iii) such other date as may be agreed between the Company, the Investment Manager and the Joint Bookrunners in writing (the "**Final Date**").
- 10.1.3 The obligations of the Joint Bookrunners to use their reasonable endeavours to procure subscribers for Issue Shares are conditional upon certain conditions that are customary for agreements of this nature. These conditions include, among others: (i) in relation to the Initial Placing and Offer, Initial Admission occurring and becoming

effective by 8:00 am London time on or prior to 16 April 2018 (or such later time and/or date, not being later than the Long Stop Date, as the Company and the Joint Global Coordinators may agree); (ii) in relation to any subsequent Placing, the relevant Admission occurring on or prior to the applicable closing date selected for such subsequent Placing or such other date as may be agreed between the Company and the Joint Global Coordinators prior to the closing of the relevant subsequent Placing); and (iii) the Placing Agreement not having been terminated in accordance with its terms.

- 10.1.4 The Company has agreed with the Joint Bookrunners that it will not, without the prior written consent of each of the Joint Global Coordinators, during the period of 90 days after Initial Admission, directly or indirectly, issue, offer or otherwise transfer or dispose of any shares in the capital of the Company or any interest in such shares.
- 10.1.5 If the Company proposes to undertake a Company Placing after the Initial Placing and Offer, it shall notify the Joint Bookrunners of that fact and any of the Joint Bookrunners shall be entitled to require that the relevant Placing also includes a Bookrunner Placing. Prior to undertaking a Company Placing, the Company shall consult with the Joint Bookrunners in good faith with regards to: (i) the identity of the proposed Placees procured by the Company; (ii) the size and timing of the proposed Company Placing; (iii) the appropriate class or classes of Issue Shares to be issued in respect of the Company Placing; and (iv) the applicable cap on the aggregate costs and expenses (including commission) in respect of the subsequent Placing. No closing of a Company Placing may occur without the prior consent of the Joint Global Coordinators, such consent not to be unreasonably withheld or delayed.
- 10.1.6 After the Initial Placing and Offer, the Company, the Investment Manager and the Joint Bookrunners will consult with each other in good faith with regards to (i) the size, timing and frequency of Bookrunner Placings under the Placing Programme and whether or not a Company Placing shall be made alongside the relevant Bookrunner Placing; (ii) to the extent any Bookrunner Placing includes New Ordinary Shares, the applicable Issue Price of such New Ordinary Shares and (iii) the appropriate class or classes of Issue Shares to be issued in respect of a Bookrunner Placing. No closing of a Bookrunner Placing may occur without the prior consent of the Company, the Investment Manager and the Joint Global Coordinators, such consent not to be unreasonably withheld or delayed.
- 10.1.7 Each of the Joint Bookrunners will be entitled to a commission in respect of the Issue together with an equity structuring fee payable to JPMC. Each of the Joint Bookrunners will also be entitled to reimbursement of all costs, charges and expenses incurred by them of, or incidental to, the Issue, the Admission of Issue Shares and satisfaction of any of the conditions under the Placing Agreement.
- 10.1.8 The Company and the Investment Manager have given warranties to the Joint Bookrunners concerning, amongst others, the accuracy of the information contained in this Prospectus. The Company and Investment Manager have also given indemnities to the Joint Bookrunners. The warranties and indemnities given by the Company and the Investment Manager are standard for an agreement of this nature.
- 10.1.9 The Placing Agreement is governed by the laws of England and Wales.

10.2 Investment Management Agreement

- 10.2.1 The Company and the Investment Manager entered into the Investment Management Agreement dated 1 March 2017, pursuant to which the Investment Manager is appointed to act as investment manager of the Company, with responsibility to perform investment management and risk management functions for the Company, and to advise the Company on a day to day basis in accordance with the investment policy of the Company, subject to the overall policies, supervision, review and control of the Board. Under the terms of the Investment Management Agreement and subject always to the investment guidelines contained in the Investment Management Agreement, the Investment Manager has discretion to buy, sell, retain, exchange or otherwise deal in investment assets for the account of the Company. The Investment

Manager is also required to comply with such regulatory requirements as may apply to it from time to time as the alternative investment fund manager of the Company for the purposes of the AIFM Directive.

Key Person

- 10.2.2 The Key Person under the Investment Management Agreement is Pedro Gonzalez de Cosio or such other person designated as such by the Investment Manager with the Board's prior written consent.

Borrowings

- 10.2.3 Subject to the borrowing limits agreed with the Company, the Investment Manager shall have the discretion to commit the Company or a subsidiary thereof to supplement the assets of the Company's portfolio either by borrowing on the Company's or subsidiary's behalf or by committing either of them to a contract which may require them to supplement the assets of the Company's portfolio.
- 10.2.4 Subject to the provisions in paragraph 10.2.3 above, the Investment Manager may arrange overdraft or other short-term borrowing facilities for the Company on normal banking terms and may use the moneys so borrowed for meeting settlements or for other short term purposes or for the purchase of additional investments and arrange for other borrowings by the Company or any subsidiary thereof.

Liability and indemnity

- 10.2.5 The Investment Manager shall not be liable to the Company for any loss, claim, costs, charges and expenses, liabilities or damages ("**Losses**") arising out of any action taken or omitted to be taken by the Investment Manager (or any other Manager Indemnified Person) except for Losses arising out of or in connection with the gross negligence, fraud, bad faith, wilful misconduct or knowing violation of applicable securities laws of any Manager Indemnified Person. For the purposes of this paragraph 10.2.5, "**Manager Indemnified Person**" means the Investment Manager, its associates, delegates or agents, and the officers, directors or employees of the Investment Manager or its associates, delegates or agents.
- 10.2.6 The Investment Manager shall not be liable in any circumstances for any Losses that constitute indirect, special or consequential loss, or loss of profits, opportunity, goodwill or reputation arising out of or in connection with the Investment Management Agreement.
- 10.2.7 The Company shall indemnify each Manager Indemnified Person against all claims by third parties which may be made against such Manager Indemnified Person in connection with the provision of services under the Investment Management Agreement except to the extent that the claim arises out of or in connection with the fraud, gross negligence, wilful misconduct, bad faith or knowing violation of applicable securities laws of any Manager Indemnified Person.

Service Standard

- 10.2.8 The Investment Manager is required, under the terms of the Investment Management Agreement, to perform its obligations with such skill and care as would be reasonably expected of a professional discretionary investment manager managing in good faith an investment company of comparable size and complexity to the Company and having a materially similar investment objective and investment policy and to ensure that its obligations under the Investment Management Agreement are performed by a team of appropriately qualified, trained and experienced professionals.

Management Fee and Performance Fee

- 10.2.9 The Company shall pay, and the Investment Manager shall be entitled to receive, the Management Fee and, subject to the fulfilment of certain conditions, the Performance Fee. Further details of the Management Fee and Performance Fee are described in Part IV (Directors, Management and Administration) of this Prospectus.

Performance Shares

10.2.10 If, during the last Month of a Performance Period, the Ordinary Shares have, on average, traded at a discount of 1 per cent. or more to the Net Asset Value per Ordinary Share (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each Business Day in the Month to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the Month), the Investment Manager shall (or shall procure that its Associate does) apply 50 per cent. of any Performance Fee paid by the Company to the Investment Manager (or its Associate) in respect of that Performance Period (net of all taxes and charges applicable to such portion of the Performance Fee) to make market acquisitions of Ordinary Shares (the “**Performance Shares**”) as soon as practicable following the payment of the Performance Fee by the Company to the Investment Manager (or its Associate) and at least until such time as the Ordinary Shares have, on average, traded at a discount of less than 1 per cent. to the Net Asset Value per Ordinary Share over a period of five Business Days (calculated by comparing the middle market quotation of the Ordinary Shares as at the end of each such Business Day to the prevailing published Net Asset Value per Ordinary Share (exclusive of any dividend declared) as at the end of such Business Day and averaging this comparative figure over the period of five Business Days). The Investment Manager’s obligation set out in this paragraph 10.2.10:

- (A) shall not apply to the extent that the acquisition of the Performance Shares would require the Investment Manager to make a mandatory bid under Rule 9 of the Takeover Code; and
- (B) shall expire at the end of the Performance Period which immediately follows the Performance Period to which the obligation relates.

10.2.11 The Investment Manager agrees to neither offer, sell, contract to sell, pledge, mortgage, charge, assign, grant options over, or otherwise dispose of, directly or indirectly, any Performance Shares nor to mandate a third party to do so on its behalf, or announce the intention to do so (together, a “**Disposal**”) for a period of 12 months immediately following the acquisition of such Performance Shares.

10.2.12 The restriction in paragraph 10.2.11 shall not apply where the Investment Manager has:

- (B) received the prior written consent of the Company;
- (C) accepted a general offer for the issued share capital of the Company made in accordance with the Takeover Code (a “**General Offer**”);
- (D) sold the Performance Shares to an offeror or potential offeror during an offer period (within the meaning of the Takeover Code);
- (E) made any Disposal pursuant to an offer by the Company to purchase its own Ordinary Shares where such offer is made on identical terms to all holders of Ordinary Shares in the Company;
- (F) made any Disposal through the implementation of any scheme of arrangement by the Company or other procedure to effect an amalgamation to give effect to a General Offer;
- (G) sold or transferred the Performance Shares pursuant to an order made by a court with competent jurisdiction or where required by applicable law or regulation; or
- (H) made a Disposal pursuant to any decision or ruling by an administrator, administrative receiver or liquidator appointed to the Investment Manager in connection with a winding up or liquidation of the Investment Manager.

10.2.13 Where practicable and permitted by law or regulation, the Investment Manager undertakes to the Company that it shall give the Company at least five Business Days’ notice of any Disposal of the Performance Shares pursuant to paragraph 10.2.12.

Termination

10.2.14 Unless otherwise agreed by the Company and the Investment Manager, the Investment Management Agreement may be terminated by:

- (A) the Investment Manager on not less than 6 months' notice to the Company, such notice not to expire earlier than 18 months following First Admission; or
- (B) the Company on not less than 6 months' notice to the Investment Manager, such notice not to expire earlier than: (i) 36 months following First Admission, unless approved by Shareholders by ordinary resolution; and (ii) 18 months following First Admission, in any event.

10.2.15 The Investment Management Agreement may be terminated by the Company with immediate effect from the time at which notice of termination is given or, if later, the time at which such notice is expressed to take effect if:

- (A) an order has been made or an effective resolution passed for the winding up or liquidation of the Investment Manager (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously consented to in writing by the Company, such consent not to be unreasonably withheld or delayed), or a receiver or similar officer has been appointed in respect of the Investment Manager or of any material part of the Investment Manager's assets, or the Investment Manager is, or is deemed to be, unable to pay its debts as and when due;
- (B) the Investment Manager ceases, or takes steps to cease, to carry on substantially the whole of its business;
- (C) the Investment Manager makes a material alteration to the nature of its business and such alteration has the effect of discontinuing activities required to be performed under the Investment Management Agreement in connection with the Company's investment policy;
- (D) the Investment Manager has: (i) committed fraud, gross negligence or wilful misconduct in the performance of its services under the Investment Management Agreement; or (ii) breached its obligations under the Investment Management Agreement (including a breach of the Service Standard) (whether or not, for the avoidance of doubt, such breach would otherwise be a repudiatory breach) and the Company is reasonably likely to suffer a loss of an amount equal to or greater than 10 per cent. of NAV as at the date of such breach, directly or indirectly arising out of or in connection with such breach;
- (E) one or more of the representations in relation to the BioPharma III Interest and the RPS Note is untrue or inaccurate in any material respect or misleading, and the Company suffers a loss of an amount equal to or greater than 10 per cent. of NAV as at the date of First Admission;
- (F) the Investment Manager's registration as an investment adviser under the Advisers Act is suspended by the SEC;
- (G) the scope of the Investment Manager's permissions from the SEC is restricted to the extent that it impairs the Investment Manager's ability to perform its obligations under the Investment Management Agreement in any material respect;
- (H) a Key Person either: (i) ceases to be an officer, member or partner of the Investment Manager; or (ii) otherwise ceases (1) to be actively engaged in the performance of the obligations of the Investment Manager under the Investment Management Agreement; or (2) to devote substantially all of its business time to the affairs of the Investment Manager and its affiliates (each a "**Key Person Event**"), and an appropriate replacement for such Key Person has not been substituted by the Investment Manager and approved by the Board (such approval not to be unreasonably withheld or delayed) within 180 days of the date on which the Key Person Event occurs;

- (I) if, at any time, the Principals (as defined in the Investment Management Agreement), together, hold less than a majority of the total voting rights in the general partner of the Investment Manager;
- (J) the Investment Manager breaches any provision of the Investment Management Agreement and such breach results in the trading of the Ordinary Shares on the London Stock Exchange being suspended or terminated, or results in the Company losing its status as, or becoming ineligible for approval as, an investment trust pursuant to section 1158 of the Corporation Tax Act 2010; or
- (K) the Company is required by any relevant regulatory authority to terminate the Investment Manager's appointment.

10.2.16 The Investment Management Agreement may be terminated by the Investment Manager with immediate effect from the time at which notice of termination is given or, if later, the time at which such notice is expressed to take effect, if an order has been made or an effective resolution passed for the winding up or liquidation of the Company (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously consented to in writing by the Investment Manager, such consent not to be unreasonably withheld or delayed).

10.2.17 The Board shall notify the Investment Manager in writing as soon as reasonably possible if it resolves to propose a material change to the Investment Guidelines (the "**Investment Guidelines Notice**"). If, in the opinion of the Investment Manager, acting reasonably, the proposed change is of such significance that the Investment Manager would no longer be able to perform its obligations under the Investment Management Agreement in accordance with the Service Standard, the Investment Manager may terminate the Investment Management Agreement on the earlier of: (i) the date on which the appointment of a replacement investment manager becomes effective; or (ii) the Business Day prior to the date on which the proposed changes to the Investment Guidelines are intended to take effect.

10.2.18 On termination of the Investment Management Agreement:

- (A) the Investment Manager shall be paid the Management Fee up to the effective date of termination ("**Termination Date**");
- (B) any accrued but unpaid Performance Fee in respect of any Performance Period completed prior to the Termination Date; and
- (C) if applicable, a termination fee determined in accordance with paragraph 10.2.19.

10.2.19 (A) Upon termination of the Investment Management Agreement pursuant to:

- (1) paragraphs 10.2.14(B), 10.2.16 or 10.2.17;
- (2) paragraph 10.2.15(H) (solely as a result of death or disability of a Key Person); or
- (3) paragraph 10.2.15(K) (in circumstances where the Company is required by any relevant regulatory authority to terminate the Investment Manager's appointment for reasons other than malfeasance by the Investment Manager or an affiliate),

the Investment Manager shall be entitled to receive a one-time termination fee equal to 2 per cent. of the Invested NAV as at the Termination Date.

- (B) Upon termination of the Investment Management Agreement pursuant to paragraph 10.2.15(H) for any reason other than the death or disability of a Key Person, the Investment Manager shall be entitled to receive a one-time termination fee equal to 1 per cent. of the Invested NAV as at the Termination Date.

10.2.20 For the purpose of paragraphs 10.2.10 to 10.2.19:

“First Performance Period” means the period from First Admission up to and including 31 December 2017;

“Invested NAV” means the Net Asset Value less any amounts held by the Company in cash or near-cash equivalents;

“Month” means a calendar month;

“Net Asset Value” means the value of the assets of the Company less its liabilities determined in accordance with the accounting policies and principles adopted by the Board from time to time;

“Performance Period” means the First Performance Period and/or a Subsequent Performance Period, as the context so requires; and

“Subsequent Performance Period” means each 12-month period subsequent to the First Performance Period, commencing on the relevant 1 January and ending on the relevant 31 December (inclusive).

Suspension of new investments

10.2.21 In the event that:

- (A) the Shared Services Agreement is terminated or is amended in any material respect, the Investment Manager shall not make any new investments until: (i) in the event of termination, replacement personnel are identified by the Investment Manager and approved by the Board, acting reasonably; or (ii) in the event of a material amendment, such amendment is approved by the Board, acting reasonably; or
- (B) a Key Person Event occurs, the Investment Manager shall not make any new investments until an appropriate replacement for such Key Person has been substituted by the Investment Manager and approved by the Board (such approval not to be unreasonably withheld or delayed), provided that, if an appropriate replacement has not been so substituted within 180 days of the Key Person Event occurring, the Board may, at its discretion, direct the Investment Manager to not make any new investments until further notice,

provided that nothing in this paragraph 10.2.21 shall prevent the Investment Manager from making: (i) payments to discharge existing obligations in respect of existing investments; or (ii) Follow On Investments.

Governing law

10.2.22 The Investment Management Agreement is governed by the laws of England and Wales.

Amendment to the Investment Management Agreement

10.2.23 In connection with the Issue, the Investment Management Agreement was amended on 14 March 2018 to clarify that the Performance Fee would only be payable on the performance of the Ordinary Shares.

10.3 Company Secretarial Services Agreement

10.3.1 The Company and Link Market Services Limited entered into the Company Secretarial Services Agreement dated 1 March 2017, pursuant to which Link Market Services Limited nominates Link Company Matters Limited to act as Company Secretary to the Company.

10.3.2 Under the Company Secretarial Services Agreement, Link Market Services Limited is entitled to an hourly fee of between £150 and £400 per hour (plus VAT and disbursements), depending on the seniority of the personnel, for services contained in the Pre-IPO Agreement (as defined in the Company Secretarial Services Agreement) and an annual fee of £60,000 (plus VAT and disbursements) for ongoing company secretarial services. Link Market Services Limited will also be entitled to reimbursement of all reasonable out of pocket expenses properly incurred and documented in connection with the provision of services under the Company

Secretarial Services Agreement, provided that, other than for general day to day disbursements, Link Market Services Limited shall obtain the Company's prior approval for any single discretionary expense which is greater than £250.

10.3.3 Either party may terminate the Company Secretarial Services Agreement:

- (A) by service of six months' written notice, such notice not to expire before the first anniversary of First Admission; or
- (B) by service of three months' written notice should the parties not reach an agreement regarding any increase of the fees; or
- (C) upon service of written notice if the other party commits a material breach of its obligations under the Company Secretarial Services Agreement (including any payment default) which that party has failed to remedy within 45 days of receipt of a written notice to do so from the first party; or
- (D) upon service of written notice if a resolution is passed or an order made for the winding up, dissolution or administration of the other party, or if the other party is declared insolvent or if an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) is appointed over the whole of or a substantial part of the other party or its assets or undertakings.

10.3.4 The Company Secretarial Services Agreement limits Link Market Services Limited's liability thereunder to the lesser of £500,000 or an amount equal to five times the aggregate annual fee payable by the Company under the Company Secretarial Services Agreement.

10.3.5 The Company will indemnify, defend and hold harmless Link Market Services Limited, its affiliates and their directors, officers, employees and agents (each a "**CoSec Indemnified Party**") from and against any losses, damages, liabilities, professional fees (including but not limited to legal fees), court costs, and expenses incurred by a CoSec Indemnified Party resulting or arising from the Company's breach of the Company Secretarial Services Agreement, and in addition any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with the Company Secretarial Services Agreement or the services contemplated in the Company Secretarial Services Agreement, save where due solely to the fraud, wilful default or negligence on the part of any CoSec Indemnified Party.

10.3.6 The Company Secretarial Services Agreement is governed by the laws of England.

10.4 Fund Administration Services Agreement

10.4.1 The Company and Link Alternative Fund Administrators Limited entered into the Fund Administration Services Agreement dated 1 March 2017, pursuant to which Link Alternative Fund Administrators Limited has been appointed as Administrator to the Company.

10.4.2 Under the terms of the Fund Administration Services Agreement, the Administrator is entitled to an annual fee (exclusive of any applicable VAT) of: (i) £65,900 for the first US\$1 billion of the Company's net assets; and (ii) an *ad valorem* fee of 0.95 basis points of the Company's net assets in excess of US\$1 billion, payable monthly in equal instalments. If the Administrator incurs expenses and disbursements, provided that these are properly incurred and documented in relation to the provision of the services under the Fund Administration Services Agreement, the Administrator shall invoice the Company for such amounts and the Company shall pay the invoice within 30 days of the date of invoice, provided that, other than for general day to day disbursements, the Administrator shall obtain the Company's prior approval for any single discretionary expense which is greater than £250.

10.4.3 Either party may terminate the Fund Administration Services Agreement:

- (A) by service of not less than six months' written notice; or
- (B) by service of three months' written notice should the parties not reach an agreement regarding any increase of the fees;

- (C) upon service of written notice if the other party commits a material breach of its obligations under the Fund Administration Services Agreement (including any payment default) which that party has failed to remedy within 60 days of receipt of a written notice to do so from the first party; or
 - (D) upon service of written notice if the other party goes into liquidation or a resolution is passed or an order made to put the party into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation); or
 - (E) if a receiver or administrator is appointed over the undertaking of a party or any part thereof; or
 - (F) upon service of written notice if either party ceases to hold any permits or authorisations necessary to perform its obligations under the Fund Administration Services Agreement; or
 - (G) upon service of written notice if the Administrator ceases to be qualified to act as such pursuant to this Agreement or the applicable statutory, legal and regulatory requirements, legislation, rules, regulations, orders or directives to which the Administrator is subject.
- 10.4.4 The Fund Administration Services Agreement limits the Administrator's liability thereunder to the lesser of £500,000 or an amount equal to five times the aggregate annual fee payable by the Company under the Fund Administration Services Agreement.
- 10.4.5 The Company will indemnify and hold harmless the Administrator, its affiliates, their directors, officers, employees and agents (each an "**Administrator Indemnified Party**") from and against any and all claims, losses, liabilities, damages, costs, expenses (including reasonable legal and internal costs) incurred by the Administrator Indemnified Party resulting or arising from the Company's negligence, wilful default, fraud, fraudulent misrepresentation or breach of the Fund Administration Services Agreement save where due to the negligence, fraud, fraudulent misrepresentation or wilful default of any Administrator Indemnified Party.
- 10.4.6 The Fund Administration Services Agreement is governed by the laws of England.
- 10.4.7 In connection with the Issue, the Fund Administration Services Agreement was amended on 14 March 2018 to add additional services in connection with the Issue and the issuance of classes of C Shares thereunder and revise the fees payable to the Administrator.

10.5 Registrar Services Agreement

- 10.5.1 The Company and Link Market Services Limited (trading as Link Asset Services) entered into the Registrar Services Agreement dated 1 March 2017, pursuant to which Link Market Services Limited has been appointed as Registrar to the Company.
- 10.5.2 Under the terms of the Registrar Services Agreement, the Registrar is entitled to receive an annual maintenance fee of £1.80 per Shareholder account per annum, subject to a minimum charge of £4,500 per annum. The Registrar will also be entitled to reimbursement of all reasonable out of pocket expenses properly incurred and documented in connection with the provision of services under the Registrar Services Agreement, provided that, other than for general day to day disbursements, the Registrar shall obtain the Company's prior approval for any single discretionary expense which is greater than £1,000.
- 10.5.3 Either party may terminate the Registrar Services Agreement:
- (A) by service of six months' written notice, such notice not to expire before the first anniversary of First Admission; or
 - (B) by service of three months' written notice should the parties not reach an agreement regarding any increase of the fees; or
 - (C) upon service of written notice if the other party commits a material breach of its obligations under the Registrar Services Agreement (including any payment default) which that party has failed to remedy within 45 days of receipt of a written notice to do so from the first party; or

- (D) upon service of written notice if a resolution is passed or an order made for the winding up, dissolution or administration of the other party, or if the other party is declared insolvent or if an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) is appointed over the whole of or a substantial part of the other party or its assets or undertakings.
- 10.5.4 The Registrar Services Agreement limits the Registrar's liability thereunder to the lesser of £500,000 or an amount equal to five times the aggregate annual fee payable by the Company under the Registrar Services Agreement.
- 10.5.5 The Company will indemnify, defend and hold harmless the Registrar, its affiliates and their directors, officers, employees and agents (each a "**Registrar Indemnified Party**") from and against any losses, damages, liabilities, professional fees (including but not limited to legal fees), court costs, and expenses resulting or arising from the Company's breach of the Registrar Services Agreement, and in addition any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with the Registrar Services Agreement or the services contemplated in the Registrar Services Agreement, save where due to the fraud, wilful default or negligence of any Registrar Indemnified Party.
- 10.5.6 The Registrar Services Agreement is governed by the laws of England.

10.6 Receiving Agent Services Agreement

- 10.6.1 The Company and Link Market Services Limited (trading as Link Asset Services) have entered into the Receiving Agent Services Agreement dated 14 March 2018, pursuant to which Link Asset Services has been appointed as Receiving Agent to the Company in relation to the Issue.
- 10.6.2 Under the terms of the Receiving Agent Services Agreement, the Receiving Agent is entitled to an hourly fee for professional advisory services at a minimum charge of £300 during normal business hours (9:00 am to 5:30 pm) on any Business Day and £400 outside normal business hours and on any non-Business Day, subject to a minimum charge of £3,000. The Receiving Agent is also entitled to a fee of £35,000 to cover all processing work and AML requirements for the Offer and for each Company Placing that may occur, as well as being entitled to reimbursement of all reasonable out of pocket expenses properly incurred and documented by it in connection with the Receiving Agent Services Agreement.
- 10.6.3 Either party may terminate the Receiving Agent Services Agreement upon service of written notice if:
 - (A) the other party commits a material breach of its obligations under the Receiving Agent Services Agreement (including a payment default) which that party has failed to remedy within 14 days of receipt of a written notice to do so from the first party; or
 - (B) a resolution is passed or an order made for the winding up, dissolution or administration of the other party, or if the other party is declared insolvent or if an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) is appointed over the whole of or a substantial part of the other party or its assets or undertakings.
- 10.6.4 The Company will indemnify, defend and hold harmless the Receiving Agent, its affiliates and their directors, officers, employees and agents (each a "**Receiving Agent Indemnified Party**") from and against any losses, damages, liabilities, professional fees (including but not limited to reasonable legal fees), court costs, and reasonable expenses resulting or arising from the Company's breach of the Receiving Agent Services Agreement, and in addition any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with the Receiving Agent Services Agreement or the services contemplated in the Receiving Agent Services Agreement, save where due to the fraud, wilful default or negligence of any Receiving Agent Indemnified Party.
- 10.6.5 The Receiving Agent Services Agreement is governed by the laws of England.

11. LITIGATION

There have been no governmental, legal or arbitration proceedings, and the Company is not aware of any governmental, legal or arbitration proceedings pending or threatened, nor of any such proceedings having been pending or threatened at any time preceding the date of this Prospectus which may have, or have had in the recent past, a significant effect on the Group's financial position or profitability.

12. SIGNIFICANT CHANGE

As at the date of this Prospectus, there has been no significant change in the financial or trading position of the Group since 31 December 2017, the date to which the Company's first annual financial statements have been drawn up.

13. WORKING CAPITAL

The Company is of the opinion that, taking into account the Commitment Letter available to the Company, the working capital available to the Group is sufficient for the present requirements of the Group, that is for at least 12 months from the date of this Prospectus.

14. CAPITALISATION AND INDEBTEDNESS

The following table shows the Company's capitalisation and gross indebtedness as at 31 December 2017:

Total current debt (US\$)

Guaranteed.....	Nil
Secured	Nil
Unguaranteed/unsecured	Nil

Total non-current debt (excluding current position of non-current debt) (US\$)

Guaranteed.....	Nil
Secured	Nil
Unguaranteed/unsecured	Nil

Shareholders equity (US\$000s)

Share capital	9,143
Share premium account	150,379
Special distributable reserve	734,356
Capital reserve	1,845
Revenue reserve	26,851
Total	922,574

As at 31 December 2017, the Company had net financial receivables of US\$355,860.

Net indebtedness

A. Cash	4,055
B. Cash equivalents	346,767
C. Trading securities	—
D. Liquidity (A+B+C)	350,822
E. Current financial receivables	5,038
F. Current bank debt.....	—
G. Current portion of non-current debt	—
H. Other current financial debt.....	—
I. Current financial debt (F+G+H).....	—
J. Net current financial indebtedness/(receivables) (I-E-D)	(355,860)
K. Non-current bank loans	—
L. Bonds issued	—
M. Other non-current loans	—
N. Non-current financial indebtedness (K+L+M).....	—
O. Net financial indebtedness/(receivables) (J+N).....	(355,860)

15. THIRD PARTY INFORMATION AND CONSENTS

- 15.1 Where third party information has been referenced in this Prospectus, the source of that third party information has been disclosed. Where information contained in this Prospectus has been so sourced, the Company confirms that such information has been accurately reproduced and, as far as the Company is aware and able to ascertain from information published by such third parties, no facts have been omitted which would render the reproduced information inaccurate or misleading.
- 15.2 Each of the Joint Bookrunners has given and not withdrawn its written consent to the inclusion in this Prospectus of references to its names in the form and context in which they appear.
- 15.3 The Investment Manager has given and not withdrawn its written consent to the inclusion in this Prospectus of references to its name in the form and context in which they appear. The Investment Manager has given and not withdrawn its written consent to the inclusion in this Prospectus of the information and opinions contained in Part I (The Company), Part II (Investment Opportunity), and Part III (The Investment Manager) of this Prospectus and any other information or opinion related or attributed to it or Royalty Pharma, and the references to it in the form and context in which they appear and has authorised such information and opinions.

16. GENERAL

- 16.1 The Company is not dependent on patents or licences, industrial, commercial or financial contracts or new manufacturing processes which are material to the Company's business or profitability.
- 16.2 In accordance with the Prospectus Rules, the Company will file with the FCA, and make available for inspection by the public, details of the number of Issue Shares issued under this Prospectus. The Company will also notify the issue of the Issue Shares through a Regulatory Information Service.
- 16.3 The effect of the Issue will be to increase the net assets of the Company. On the assumption that the Initial Placing and Offer is subscribed as to 500 million C Shares, the Initial Placing and Offer is expected to increase the net assets of the Company by approximately US\$490 million. The Issue is expected to be earnings-enhancing.

17. ADDITIONAL AIFM DIRECTIVE DISCLOSURES

The AIFM Directive imposes detailed and prescriptive obligations on fund managers established in the EEA (the "**Operative Provisions**"). These do not currently apply to managers established outside the EEA, such as the Investment Manager. Rather, non-EEA managers are only required to comply with certain disclosure, reporting and transparency obligations of the AIFM Directive (the "**Disclosure Provisions**") and, even then, only if the non-EEA manager markets shares in a fund to EEA domiciled investors within the EEA. Where the Disclosure Provisions appear to require disclosure on an Operative Provision which does not apply to the Company, no meaningful disclosure can be made. These Operative Provisions include prescriptive rules on measuring and capping leverage in line with known European standards, the treatment of investors, liquidity management, the use of "depositories" and cover for professional liability risks.

Professional indemnity insurance

The Investment Manager is not authorised under the AIFM Directive and is therefore not subject to the detailed requirements set out therein in relation to the holding of professional indemnity insurance and regulatory capital. Notwithstanding the above, the Investment Manager does maintain professional indemnity insurance cover.

AIFM Directive leverage limits

For the purposes of the AIFM Directive, leverage is required to be calculated using two prescribed methods: (i) the gross method; and (ii) the commitment method, and expressed as the ratio between a fund's total exposure and its net asset value.

As measured using the gross method, the level of leverage to be incurred by the Investment Manager on behalf of the Company is not to exceed 50 per cent of NAV (which is the equivalent of a ratio of 1:2).

As measured using the commitment method, the level of leverage to be incurred by the Investment Manager on behalf of the Company is not to exceed 50 per cent of NAV (which is the equivalent of a ratio of 1:2).

Liquidity risk management

There is no right or entitlement attaching to Shares that allows them to be redeemed or repurchased by the Company at the option of the Shareholder.

Liquidity risk is therefore the risk that a position held by the Company cannot be realised at a reasonable value sufficiently quickly to meet the obligations (primarily, repayment of any debt and the fees payable to the Company's service providers) of the Company as they fall due.

In managing the Company's assets, therefore, the Investment Manager will seek to ensure that the Company holds at all times a portfolio of assets that is sufficiently liquid to enable it to discharge its payment obligations.

Investors' rights

The Company is reliant on the performance of third party service providers, including the Investment Manager, the Joint Bookrunners, the Company Secretary, the Administrator, the Receiving Agent and the Registrar. Without prejudice to any potential right of action in tort that a Shareholder may have to bring a claim against a service provider, each Shareholder's contractual relationship in respect of its investment in Shares is with the Company only. Accordingly, no Shareholder will have any contractual claim against any service provider with respect to such service provider's default.

In the event that a Shareholder considers that it may have a claim against a third party service provider in connection with such Shareholder's investment in the Company, such Shareholder should consult its own legal advisers.

The above is without prejudice to any right a Shareholder may have to bring a claim against an FCA authorised service provider under section 138D of FSMA (which provides that breach of an FCA rule by such service provider is actionable by a private person who suffers loss as a result), or any tortious cause of action. Shareholders who believe they may have a claim under section 138D of FSMA, or in tort, against any service provider in connection with their investment in the Company, should consult their own legal advisers.

Fair treatment of Shareholders

The Company has decided to voluntarily comply with the certain Listing Rules and Principles that are applicable to closed-ended investment companies with a premium listing on the Official List of the UK Listing Authority. The TISEA Listing Rules also require fair treatment of Shareholders.

18. UK RULES ON MARKETING OF POOLED INVESTMENTS

The FCA Handbook contains rules restricting the marketing within the UK of certain pooled investments or 'funds', referred to in the FCA Handbook as non-mainstream pooled investments ("NMPIs"), to 'ordinary retail clients'. These rules took effect on 1 January 2014. These rules currently do not apply to investment trusts, such as the Company.

19. ELIGIBILITY FOR INVESTMENT BY UCITS OR NURS

The Company has been advised that the Issue Shares should be "transferable securities" and, therefore, should be eligible for investment by UCITS or NURS on the basis that: (i) the Company is a closed-ended investment company incorporated in England and Wales as a public limited company; (ii) the Issue Shares are to be admitted to trading on the Specialist Fund Segment; and (iii) the Investment Manager is a registered investment adviser under the Advisers Act and is regulated by the SEC and, as such, is subject to the SEC's rules in the conduct of its investment business. The manager of a UCITS or NURS should, however, satisfy itself that the Issue Shares are eligible for investment by that UCITS or NURS, including the factors relating to that UCITS or NURS itself, specified in the Collective Investment Scheme Sourcebook of the FCA Handbook.

20. DOCUMENTS ON DISPLAY

20.1 The following documents will be available for inspection during usual business hours on any day (Saturdays, Sundays and public holidays excepted) at (i) the registered office of the company at Beaufort House, 51 New North Road, Exeter EX4 4EP; and (ii) the offices of Herbert Smith Freehills LLP, Exchange House, Primrose Street, London EC2A 2EG until expiry of the Placing Programme, which shall not be later than 13 March 2019:

20.1.1 this Prospectus;

20.1.2 the 2017 Annual Report; and

20.1.3 the Articles.

20.2 In addition, copies of this Prospectus are available, for inspection only, from the National Storage Mechanism (<http://www.hemscott.com/nsm.do>) and the Company's website.

20.3 Further copies of this Prospectus and the constitutional documents of the Company may be obtained, free of charge, from the registered office of the Company as provided in paragraph 1.5 of this Part VIII (Additional Information on the Company) of this Prospectus and the principal place of business of the Investment Manager as provided in paragraph 3.1 of this Part VIII (Additional Information on the Company) of this Prospectus.

PART IX – ADDITIONAL INFORMATION ON TESARO

1. Responsibility

The information in this Part represents a reproduction of the annual report dated 28 February 2018 (the “**Tesaro 2017 Annual Report**”), the proxy statement dated 7 April 2017 (the “**Tesaro 2017 Proxy Statement**”), extracts of the annual report dated 28 February 2017 (the “**Tesaro 2016 Annual Report Extracts**”), the certificate of incorporation (the “**Tesaro Certificate of Incorporation**”) and the by-laws dated 3 July 2012 (the “**Tesaro Articles of Association**”, together with the Tesaro 2017 Annual Report, Tesaro 2016 Annual Report Extracts, Tesaro 2017 Proxy Statement and Tesaro Certificate of Incorporation, the “**Tesaro Documentation**”) published by Tesaro and filed with the SEC. None of Tesaro’s filings with the SEC nor any information on Tesaro’s website is incorporated by reference into this document. The Company confirms that the Tesaro 2017 Annual Report, the Tesaro 2017 Proxy Statement, the Tesaro Certificate of Incorporation and the Tesaro Articles of Association have been accurately reproduced and, as far as the Company is aware, no information set out in the Tesaro 2017 Annual Report, the Tesaro 2017 Proxy Statement, the Tesaro Certificate of Incorporation or the Tesaro Articles of Association has been omitted which would render the reproduced information inaccurate or misleading.

2. TESARO CERTIFICATE OF INCORPORATION

The Tesaro Certificate of Incorporation is set out in Section 1 of the Annex to this Prospectus.

3. TESARO ARTICLES OF ASSOCIATION

The Tesaro Articles of Association is set out in Section 2 of the Annex to this Prospectus.

4. TESARO 2017 PROXY STATEMENT

The Tesaro 2017 Proxy Statement is set out in Section 3 of the Annex to this Prospectus.

5. TESARO 2017 ANNUAL REPORT

The Tesaro 2017 Annual Report is set out in Section 4 of the Annex to this Prospectus.

6. TESARO 2016 ANNUAL REPORT EXTRACTS

The Tesaro 2016 Annual Report Extracts are set out in Section 5 of the Annex to this Prospectus.

7. COMPANY KNOWLEDGE OF TESARO

7.1 Property

The Company is not aware of any environmental issues that may affect Tesaro’s utilisation of its tangible fixed assets.

7.2 Profit Forecasts

The Company is not aware of any profit forecasts issued by Tesaro.

7.3 Voting Rights

The Company is not aware whether Tesaro’s major shareholders have different voting rights.

7.4 Change in Control

The Company is not aware of any arrangements, the operation of which may at a subsequent date result in a change in control of the Tesaro.

7.5 Significant Gross Change

The Company is not aware of any significant gross change, as defined by paragraph 20.2 of Annex I of the Prospectus Rules, regarding Tesaro.

7.6 Litigation

Except as disclosed in Item 3 of the Tesaro 2017 Annual Report (as set out in Section 4 of the Annex to this Prospectus), the Company is not aware of any governmental, legal or arbitration proceedings, pending or threatened, against Tesaro in the last 12 months preceding this Prospectus that may have, or have had in the recent past, a significant effect on Tesaro’s and/or its group entities’ financial position or profitability;

7.7 Significant Change

The Company is not aware of any significant change in the financial or trading position of Tesaro and its group entities which has occurred since 31 December 2017, the end of its last financial period.

7.8 Share Capital

The Company is not aware of any information about the terms of any acquisition rights and/or obligations over Tesaro's authorised but unissued capital or an undertaking to increase its capital.

The Company is not aware of any information about any capital of any member of the Tesaro group which is under option or agreed conditionally or unconditionally to be put under option.

The Company is not aware of any information relating to undertakings in which Tesaro holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

PART X – FINANCIAL INFORMATION ON THE COMPANY

PUBLISHED ANNUAL REPORT AND AUDITED ACCOUNTS OF THE COMPANY FOR THE PERIOD FROM 24 OCTOBER 2016 (THE DATE OF INCORPORATION OF THE COMPANY) TO 31 DECEMBER 2017

1. Historical Financial Information

The published annual report and audited accounts of the Company for the period from 24 October 2016 (the date of incorporation of the Company) to 31 December 2017 (“**2017 Annual Report**”) (which is incorporated in this Prospectus by reference) included, on the pages specified in the table below, the following information:

	Page Numbers
Independent auditors’ report	42-47
Statement of comprehensive income	50
Statement of changes in equity	51
Statement of financial position	52
Statement of cash flow	53
Notes to the financial statements	54-67

2. Selected Financial Information

The key audited figures that summarise the financial condition of the Company in respect of the period from 24 October 2016 (Incorporation) to 31 December 2017, which have been extracted without material adjustment from the historical financial information referred to in paragraph 1 of this Part X (Financial Information on the Company) of this Prospectus (unless otherwise indicated in the notes below the following tables), are set out in the following tables. Investors should read the whole of such report and not rely solely on the key or summarised information set out below:

STATEMENT OF COMPREHENSIVE INCOME

For the period from 24 October 2016 (date of incorporation) to 31 December 2017

(In US dollars \$000s except per share amounts)

	Note	Revenue	Capital	Total
Income				
Investment income	3	33,218	—	33,218
Other income	3	3,774	—	3,774
Net gains on investments at fair value	7	—	2,265	2,265
Currency exchange gains		—	51	51
Total income		36,992	2,316	39,308
Expenses				
Management fee	4	(5,830)	—	(5,830)
Directors' fees	4	(250)	—	(250)
Other expenses	4	(1,062)	(471)	(1,533)
Total expenses	4	(7,142)	(471)	(7,613)
Return on ordinary activities before finance costs and taxation	4	29,850	1,845	31,695
Finance costs	4	(4)	—	(4)
Return on ordinary activities after finance costs and before taxation		29,846	1,845	31,691
Taxation on ordinary activities	5	—	—	—
Return on ordinary activities after finance costs and taxation		29,846	1,845	31,691
Net revenue and capital return per ordinary share (basic and diluted)	11	US\$0.0389	US\$0.0024	US\$0.0413

STATEMENT OF CHANGES IN EQUITY

For the period from 24 October 2016 (date of incorporation) to 31 December 2017

(In US dollars \$000s except per share amounts)	Note	Share capital	Share premium account	Special distributable reserve	Capital reserve	Revenue reserve	Total equity attributable to shareholders of the Company
Net assets attributable to shareholders at 24 October 2016		—	—	—	—	—	—
Gross proceeds of share issue		9,143	906,847	—	—	—	915,990
Share issue costs		—	(17,447)	—	—	—	(17,447)
Transfer to special distributable reserve	13	—	(739,021)	739,021	—	—	—
Share premium cancellation costs	13	—	—	(41)	—	—	(41)
Return on ordinary activities after finance costs and taxation		—	—	—	1,845	29,846	31,691
Dividends paid	6	—	—	(4,624)	—	(2,995)	(7,619)
Net assets attributable to shareholders at 31 December 2017		9,143	150,379	734,356	1,845	26,851	922,574

STATEMENT OF FINANCIAL POSITION

As at 31 December 2017

(In US dollars \$000s except per share amounts)	Note	31 December 2017
Non-current assets		
Investments at fair value through profit or loss	7	569,630
Current assets		
Trade and other receivables	8	5,038
Cash and cash equivalents	9	350,822
		355,860
Total assets		925,490
Current liabilities		
Trade and other payables	10	2,916
Total liabilities		2,916
Total assets less current liabilities		922,574
Net assets		922,574
Represented by:		
Share capital	13	9,143
Share premium account	13	150,379
Special distributable reserve	13	734,356
Capital reserve		1,845
Revenue reserve		26,851
Total equity attributable to shareholders of the Company		922,574
Net asset value per ordinary share (basic and diluted)	12	US\$1.0091

STATEMENT OF CASH FLOW

For the period from 24 October 2016 (date of incorporation) to 31 December 2017

(In US dollars \$000s except per share amounts)	Note	Period ended 31 December 2017
Cash flows from operating activities		
Investment income received		28,872
Other income received		3,384
Investment management fee paid		(3,826)
Finance costs paid		(2)
Other expenses paid		(1,515)
Cash generated from operations	15	26,913
Taxation paid		—
Net cash flow generated from operating activities		26,913
Cash flow from investing activities		
Purchase of investments		(548,728)
Redemption of investments		115,474
Sales of investments		19,385
Net cash flow used in investing activities		(413,869)
Cash flow from financing activities		
Gross proceeds of share issue	13	762,508
Share issue costs		(17,121)
Dividends paid	6	(7,619)
Share premium cancellation costs		(41)
Net cash flow generated from financing activities		737,727
Increase in cash and cash equivalents for the period		350,771
Cash and cash equivalents at start of period		—
Revaluation of foreign currency balances		51
Cash and cash equivalents at end of period	9	350,822

3. Operating And Financial Review

The 2017 Annual Report (which is incorporated in this Prospectus by reference) included, on the pages specified in the table below, descriptions of the Company's financial condition (in both capital and revenue terms), changes in its financial condition and details of the Company's portfolio of investments for that period:

	Page Numbers
Chairman's Statement	6-7
Investment Manager's Report	12-14

4. Documents Incorporated by Reference

The 2017 Annual Report, which has been previously published, shall be deemed to be incorporated in, and form part of, this Prospectus. The parts of the 2017 Annual Report not referenced in this Part X (Financial Information on the Company) of this Prospectus are either not relevant for investors or are covered elsewhere in this Prospectus.

Copies of the 2017 Annual Report are available for inspection at the Company's registered office, set out on page 189 of this Prospectus.

PART XI – TERMS AND CONDITIONS OF THE PLACING PROGRAMME

1. Introduction

Each Placee which confirms its agreement (whether orally or in writing) to: (i) any Joint Bookrunner where the Placee participates through a Bookrunner Placing; or (ii) the Company where the Placee participates through a Company Placing to subscribe for Issue Shares under such Placing pursuant to the Placing Programme will be bound by these terms and conditions and will be deemed to have accepted them. The Company and/or any Joint Bookrunner may require any Placee to agree to such further terms and/or conditions and/or give such additional warranties and/or representations as it (in its absolute discretion) sees fit and/or may require any such Placee to execute a separate placing letter together with other documentation (a “**Placing Letter**”).

2. AGREEMENT TO SUBSCRIBE FOR SHARES

Conditional on:

- (i) in the case of an issue of New Ordinary Shares, the Issue Price, after taking account of issue expenses, being not less than the latest published Net Asset Value per Ordinary Share;
- (ii) in relation to the Initial Placing and Offer only, the Minimum Gross Proceeds being at least US\$120 million;
- (iii) in relation to the Initial Placing and Offer, Initial Admission occurring not later than 8:00 a.m. on 16 April 2018 or such other date as may be agreed between the Company and the Joint Global Coordinators, not being later than the Long Stop Date;
- (iv) in relation to any subsequent Placing, Admission of the relevant Issue Shares occurring; and
- (v) the Placing Agreement not being terminated in accordance with its terms or a particular Placing (whether the Initial Placing or any subsequent Placing) not being suspended or terminated in accordance with the terms of the Placing Agreement, on the relevant Placer confirming to the Placees their allocation of Issue Shares, a Placee agrees to become a member of the Company and agrees to subscribe for those Issue Shares allocated to it by the Placer at the applicable Issue Price in respect of the Issue Shares allocated to the Placee. To the fullest extent permitted by law, each Placee acknowledges and agrees that it will not be entitled to exercise any remedy of rescission at any time. This does not affect any other rights the Placee may have.

3. PAYMENT FOR SHARES

- (i) Each Placee must pay the applicable Issue Price for the Issue Shares allocated to the Placee in the manner and by the time directed by the Placer. In this regard, each Placee is deemed to agree that any cheque or other remittance accompanying its placing commitment will be honoured on first presentation at or following such time directed by the Placer. If any Placee fails to pay as so directed and/or by the time required, the relevant Placee's application for Issue Shares may, at the discretion of the Placer, either be rejected or accepted. In the case of acceptance, paragraph 3(ii) of these terms and conditions shall apply.
- (ii) Each Placee is deemed to agree that if it does not comply with its obligation to pay the applicable Issue Price for the Issue Shares allocated to it in accordance with paragraph 3(i) of these terms and conditions and the Placer elects to accept that Placee's application, the Placer may sell or arrange for all or any of the Issue Shares allocated to the Placee to be sold on such Placee's behalf and retain from the proceeds, for the Placer's own account and profit, an amount equal to the aggregate amount owed by the Placee plus any interest due. The Placee will, however, remain liable for any shortfall below the aggregate amount owed by such Placee and it may be required to bear any tax or other charges (together with any interest or penalties) which may arise upon the sale of such Issue Shares on such Placee's behalf.

4. REPRESENTATIONS AND WARRANTIES

By agreeing to subscribe for Issue Shares under a Placing, each Placee which enters into a commitment to subscribe for such Issue Shares will (for itself and any person(s) procured by

it to subscribe for Issue Shares and any nominee(s) for any such person(s)) be deemed to agree, represent and warrant to each of the Company, the Investment Manager, the Registrar and the Joint Bookrunners that:

- (i) in agreeing to subscribe for Issue Shares under the relevant Placing, it is relying solely on this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to the Admission of the relevant Issue Shares and not on any other information given, or representation or statement made at any time, by any person concerning the Company, the Issue Shares or such Placing. It agrees that none of the Company, the Investment Manager, the Registrar, any of the Joint Bookrunners, nor any of their respective Affiliates, officers, agents or employees, will have any liability for any other information or representation. It irrevocably and unconditionally waives any rights it may have in respect of any other information or representation;
- (ii) the contents of this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to the relevant Admission are exclusively the responsibility of the Company and the Directors (and other persons that accept liability for the whole or part of this Prospectus and any such supplementary prospectus) and apart from the responsibilities and liabilities, if any, which may be imposed on any of the Joint Bookrunners by FSMA or the regulatory regime established thereunder, none of the Joint Bookrunners nor any person acting on its (or their) behalf nor any of its (or their) Affiliates accepts any responsibility whatsoever for, and makes any representation or warranty, express or implied, as to the contents of this Prospectus or any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to the Admission of the relevant Issue Shares or for any other statement made or purported to be made by the Company, or on its (or their) behalf, in connection with the Company, the Issue Shares, the Issue (including any Placing thereunder) or Admission and nothing in this Prospectus and any such supplementary prospectus will be relied upon as a promise or representation by any of the Joint Bookrunners, whether or not it relates to the past or future. Each of the Joint Bookrunners accordingly disclaims all and any responsibility or liability, whether arising in tort, contract or otherwise (save as referred to above), which it or they might otherwise have in respect of this Prospectus or any such supplementary prospectus or any such statement;
- (iii) if the laws of any territory or jurisdiction outside the United Kingdom are applicable to its agreement to subscribe for Issue Shares under the relevant Placing, it warrants that it has complied with all such laws, obtained all governmental and other consents which may be required, complied with all requisite formalities and paid any issue, transfer or other taxes due in connection with its application in any territory and that it has not taken any action or omitted to take any action which will result in the Company, the Investment Manager, the Registrar, the Joint Bookrunners or any of their respective Affiliates, officers, agents, or employees acting in breach of the regulatory or legal requirements, directly or indirectly, of any territory or jurisdiction outside the United Kingdom in connection with such Placing;
- (iv) it acknowledges the representations, warranties, undertakings, agreements and acknowledgements set out in this Prospectus, including those set out in the sections entitled "United States transfer restrictions" and "Representations, Warranties and Undertakings" in Part VI (Issue Arrangements) of this Prospectus;
- (v) if the Placee is participating through a Company Placing, none of the Joint Bookrunners takes any responsibility towards such Placee (or any person on whose behalf the Placee is acting) or owes any obligations towards such Placee (or any person on whose behalf the Placee is acting) and the Placee irrevocably and unconditionally waives any rights it may have in respect of any information or representation made or appearing to have been made by any Joint Bookrunner;
- (vi) it does not have a registered address in, and is not a citizen, resident or national of, any jurisdiction in which it is unlawful to make or accept an offer of the Issue Shares and it is not acting on a non-discretionary basis for any such person;
- (vii) it agrees that, having had the opportunity to read this Prospectus, it shall be deemed to have had notice of all information and representations contained in this Prospectus, that it is acquiring Issue Shares solely on the basis of this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior

to the Admission of the relevant Issue Shares and no other information, and that in accepting a participation in the relevant Placing it has had access to all information it believes necessary or appropriate in connection with its decision to subscribe for such Issue Shares;

- (viii) it acknowledges that no person is authorised in connection with the Placing Programme (or any Placing thereunder) to give any information or make any representation other than as contained in this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to the Admission of the relevant Issue Shares and, if given or made, any information or representation must not be relied upon as having been authorised by the Company, the Investment Manager, the Registrar or any of the Joint Bookrunners;
- (ix) it has not relied on the Joint Bookrunners or any person affiliated with the Joint Bookrunners in connection with any investigation of the accuracy of any information contained in this Prospectus or their investment decision;
- (x) it is not applying as, nor is it applying as nominee or agent for, a person who is or may be liable to notify and account for tax under the Stamp Duty Reserve Tax Regulations 1986 at any of the increased rates referred to in section 67, 70, 93 or 96 (depository receipts and clearance services) of the Finance Act 1986;
- (xi) it accepts that none of the Issue Shares have been or will be registered under the laws of any Restricted Territory. Accordingly, the Issue Shares may not be offered, sold, issued or delivered, directly or indirectly, within any Restricted Territory unless it is lawful to do so and an exemption from any registration requirement is available;
- (xii) if it is receiving the offer in circumstances under which the laws or regulations of a jurisdiction other than the United Kingdom would apply, that it is a person to whom the Issue Shares may be lawfully offered under that other jurisdiction's laws and regulations and has obtained all necessary consents and authorisations to enable it to enter into the transactions contemplated;
- (xiii) if it is a resident in the EEA (other than the United Kingdom), it is: (i) a "Qualified Investor" within the meaning of the law in the Relevant Member State implementing Article 2(1)(e)(i), (ii) or (iii) of the Prospectus Directive; and (ii) otherwise permitted to be marketed to in accordance with the AIFM Directive as implemented in the relevant Member State in which it is resident;
- (xiv) if it is a professional investor (as such term is given meaning in the AIFM Directive) resident, domiciled in, or with a registered office in, the EEA, it confirms that the Issue Shares have only been promoted, offered, placed or otherwise marketed to it, and the subscription will be made from, (a) a country outside the EEA; (b) a country in the EEA that has not transposed the AIFM Directive as at the date of the Placee's commitment to subscribe is made; or (c) Ireland, the Netherlands, Belgium, Luxembourg or the United Kingdom or (d) a country in the EEA in which the Investment Manager has confirmed that it has made the relevant notification or applications in that EEA country and are lawfully able to market Issue Shares into that EEA country;
- (xv) if it is outside the United Kingdom, neither this Prospectus nor any other offering, marketing or other material in connection with the Placing Programme (or any Placing thereunder) constitutes an invitation, offer or promotion to, or arrangement with, it or any person whom it is procuring to subscribe for Issue Shares pursuant to the relevant Placing unless, in the relevant territory, such offer, invitation or other course of conduct could lawfully be made to it or such person and such documents or materials could lawfully be provided to it or such person and Issue Shares could lawfully be distributed to and subscribed and held by it or such person without compliance with any unfulfilled approval, registration or other regulatory or legal requirements;
- (xvi) if the Placee is a natural person, such Placee is not under the age of majority (18 years of age in the United Kingdom) on the date of such Placee's agreement to subscribe for any Issue Shares under a Placing and will not be any such person on the date of any such agreement to subscribe under a Placing is accepted;

- (xvii) it has complied and will comply with all applicable provisions of the Criminal Justice Act 1993 and the Market Abuse Regulations (EU) No. 596/2014 with respect to anything done by it in relation to the Issue and / or the Issue Shares;
- (xviii) it acknowledges that none of the Joint Bookrunners nor the Company or any of their respective Affiliates, nor any person acting on behalf of any of them (or their respective Affiliates) is making any recommendations to it advising it regarding the suitability of any transactions it may enter into in connection with the relevant Placing or providing any advice in relation to such Placing, and its participation in such Placing is on the basis that it is not and will not be a client of any Placer or any of its Affiliates, and that neither any Placer nor any of its Affiliates have any duties or responsibilities to it for providing the protections afforded to their respective clients or for providing advice in relation to the Placing Programme (or any Placing thereunder) nor in respect of any representations, warranties, undertakings or indemnities contained in these terms and conditions or in any Placing Letter, where relevant;
- (xix) it confirms that any of its clients, whether or not identified to the Joint Bookrunners, the Company or any of their respective Affiliates or agents, will remain its sole responsibility and will not become clients of the Joint Bookrunners, the Company or any of their respective Affiliates or agents for the purposes of the rules of the Financial Conduct Authority or for the purposes of any other statutory or regulatory provision;
- (xx) where it or any person acting on its behalf is dealing with a Placer, any money held in an account with that Placer on its behalf and/or any person acting on its behalf will not be treated as client money within the meaning of the relevant rules and regulations of the Financial Conduct Authority or other relevant authority which therefore will not require that Placer to segregate such money as that money will be held by that Placer under a banking relationship and not as trustee;
- (xxi) it has not and will not offer or sell any Issue Shares to persons in the United Kingdom, except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their business or otherwise in circumstances which have not resulted and which will not result in an offer to the public in the United Kingdom within the meaning of section 102B of FSMA;
- (xxii) it is an “eligible counterparty” within the meaning of Chapter 3 of the FCA’s Conduct of Business Sourcebook and it is subscribing for or purchasing the Issue Shares for investment only and not for resale or distribution;
- (xxiii) it irrevocably appoints any Director and any director of the Joint Bookrunners to be its agent and on its behalf (without any obligation or duty to do so), to sign, execute and deliver any documents and do all acts, matters and things as may be necessary for, or incidental to, its subscription for all or any of the Issue Shares for which it has given a commitment under the relevant Placing, in the event of its own failure to do so;
- (xxiv) it accepts that if the relevant Placing does not proceed or the conditions to the Placing Agreement are not satisfied, or the Placing Agreement is terminated prior to the Admission of the relevant Issue Shares for any reason whatsoever, or the Issue Shares for which valid applications are received and accepted are not admitted to trading on the Specialist Fund Segment and/or the Official List of TISEA for any reason whatsoever, then none of the Company and the Joint Bookrunners nor any of their respective Affiliates, nor persons controlling, controlled by or under common control with any of them, nor any of their respective employees, agents, officers, members, stockholders, partners or representatives, shall have any liability whatsoever to it or any other person;
- (xxv) it has not taken any action or omitted to take any action which will or may result in the Company, the Joint Bookrunners or any of their respective Affiliates, directors, officers, agents, employees or advisers being in breach of the legal or regulatory requirements of any territory in connection with the Placing Programme (including any Placing thereunder) or its subscription of Issue Shares pursuant to the relevant Placing;
- (xxvi) in connection with its participation in the relevant Placing it has observed all relevant legislation and regulations, in particular (but without limitation) those relating to money laundering and countering terrorist financing and that its application is only made on the basis that it accepts full responsibility for any requirement to identify and verify the identity of

its clients and other persons in respect of whom it has applied. In addition, it warrants that it is a person: (i) subject to the Money Laundering Regulations; or (ii) subject to the Money Laundering Directive (2005/60/EC of the European Parliament and of the EC Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing); or (iii) acting in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions and is based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those required by the Money Laundering Directive;

- (xxvii) due to anti-money laundering and the countering of terrorist financing requirements, the Company or any of the Joint Bookrunners may require proof of identity of the Placee and its related parties and verification of the source of the payment before the application can be processed and that, in the event of delay or failure by the Placee to produce any information required for verification purposes, the Company and the Joint Bookrunners may refuse to accept the application and the subscription monies relating thereto. It holds harmless and will indemnify the Company and the Joint Bookrunners and their respective Affiliates against any liability, loss or cost ensuing due to the failure to process the application, if such information as has been required was not provided by it or has not been provided on a timely basis;
- (xxviii) it and each person or body (including, without limitation, any local authority or the managers of any pension fund) on whose behalf it accepts Issue Shares pursuant to the relevant Placing or to whom it allocates such Issue Shares have the capacity and authority to enter into and to perform their obligations as a Placee of the Issue Shares and will honour those obligations;
- (xxix) as far as it is aware, save as otherwise disclosed in this Prospectus, it is not acting in concert (within the meaning given in the Takeover Code) with any other person in relation to the Company and it is not a related party of the Company for the purposes of the Listing Rules (to the extent to which the Company voluntarily complies with these);
- (xxx) it acknowledges that the Company and the Joint Bookrunners (and any agent acting on their behalf) are entitled to exercise any of their rights under the Placing Agreement or any other right in their absolute discretion without any liability whatsoever to it (or any person on whose behalf the Placee is acting);
- (xxxi) the representations, undertakings and warranties contained in this Prospectus or in any Placing Letter, where relevant, are irrevocable. It acknowledges that the Company and the Joint Bookrunners and their respective Affiliates will rely upon the truth and accuracy of such representations and warranties and it agrees that if any of the representations or warranties made or deemed to have been made by it in connection with its subscription for Issue Shares are no longer accurate, it shall promptly notify the Company and the Joint Bookrunners;
- (xxxii) it confirms that it is not, and at the Admission of the relevant Issue Shares will not be, an Affiliate of the Company or a person acting on behalf of such Affiliate, and it is not acquiring Issue Shares for the account or benefit of an Affiliate of the Company or of a person acting on behalf of such an Affiliate;
- (xxxiii) it will (or will procure that its nominee will) if applicable, make notification to the Company of the interest in its Issue Shares in accordance with Rule 5 of the Disclosure Guidance and Transparency Rules issued by the FCA and made under Part VII of FSMA as they apply to the Company;
- (xxxiv) it accepts that the allocation of Issue Shares shall be determined by the Company and Joint Bookrunners (in their absolute discretion) and that the Company and the Joint Bookrunners may scale down any applications for this purpose on such basis as they may determine;
- (xxxv) it acknowledges that time shall be of the essence as regards its obligations to settle payment for the Issue Shares and to comply with its other obligations under the relevant Placing; and
- (xxxvi) if it is acquiring C Shares, any person acquiring Correspondent Ordinary Shares upon conversion of its C Shares will be deemed to have agreed, represented and warranted to each of the Company, the Investment Manager, the Registrar and the Joint Bookrunners all of the statements set out in paragraph (i) to (xxxv) above.

5. SUPPLY AND DISCLOSURE OF INFORMATION

If the Company, the Investment Manager, the Registrar, the Joint Bookrunners or any of their agents request any information in connection with a Placee's agreement to subscribe for Issue Shares under a Placing or to comply with any relevant legislation, such Placee must promptly disclose it to them.

6. DATA PROTECTION

- (i) Pursuant to the Data Protection Act 1998 (the "**DP Act**") the Company and/or the Registrar may hold personal data (as defined in the DP Act) relating to past and present Shareholders.
- (ii) Personal data held by the Registrar may be used to process basic changes to shareholder records, process bank account information for processing dividend payments, and to carry out other ancillary processing functions in order to ensure that the Registrar is able to discharge its obligations under the Registrar Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Registrar in respect of the services under the Registrar Services Agreement, the Registrar's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Registrar shall ensure that any Affiliates outside the EEA to whom personal data is disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the DP Act) and to any third parties who are involved in carrying out functions related to the services under the Registrar Services Agreement.
- (iii) By becoming registered as a holder of Issue Shares, a person becomes a data subject (as defined in the DP Act) and is deemed to have consented to the processing by the Company or the Registrar of any personal data relating to them in the manner described above.
- (iv) From 25 May 2018 data protection law will change in Europe. From 25 May 2018 onwards, paragraphs (i) to (iii) will be superseded by paragraphs (v) to (vii).
- (v) Pursuant to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (the "**General Data Protection Regulation**") and any equivalent legislation in force from time to time in the United Kingdom (the **data protection laws**), the Company and/or the Registrar may hold "personal data" (as defined in the data protection laws) relating to past and present Shareholders.
- (vi) Personal data held by the Registrar may be used to process basic changes to shareholder records, process bank account information for processing dividend payments, and to carry out other ancillary processing functions in order to ensure that the Registrar is able to discharge its obligations under the Registrar Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Registrar in respect of the services provided by the Registrar under the Registrar Services Agreement, the Registrar's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Registrar shall ensure that any Affiliates outside the EEA to whom personal data is disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the data protection laws) and to any third parties who are involved in carrying out functions related to the services provided under the Registrar Services Agreement.
- (vii) By becoming registered as a holder of Issue Shares, a person becomes a data subject (as defined in the data protection laws) and acknowledges that the processing by the Registrar of any personal data relating to them will take place in the manner described above. Processing by the Company of any personal data relating to them will be undertaken in accordance with the Company's privacy policy. Please refer to the Company's website for a copy of the privacy policy.

7. MISCELLANEOUS

- (i) The rights and remedies of the Company, the Investment Manager, the Registrar and the Joint Bookrunners under these terms and conditions are in addition to any rights and

remedies which would otherwise be available to each of them and the exercise or partial exercise of one will not prevent the exercise of others.

- (ii) On application, if a Placee is a discretionary fund manager, that Placee may be asked to disclose in writing or orally the jurisdiction in which its funds are managed or owned. All documents provided in connection with the Placing will be sent at the Placee's risk. They may be returned by post to such Placee at the address notified by such Placee and at the Placee's risk.
- (iii) Each Placee agrees to be bound by the Articles (as amended from time to time) once the Issue Shares, which the Placee has agreed to subscribe for pursuant to the relevant Placing Programme, have been acquired by the Placee. The contract to subscribe for Issue Shares under the Placing Programme, and any non-contractual obligations arising under or in connection with the Placing Programme (including any Placing thereunder), and the appointments and authorities mentioned in this Prospectus will be governed by, and construed in accordance with, the laws of England and Wales. For the exclusive benefit of the Company, the Investment Manager, the Registrar and the Joint Bookrunners and their respective Affiliates, each Placee irrevocably submits to the jurisdiction of the courts of England and Wales and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum. This does not prevent an action being taken against a Placee in any other jurisdiction.
- (iv) In the case of a joint agreement to subscribe for Issue Shares under a Placing, references to a "Placee" in these terms and conditions are to each of the Placees who are a party to that joint agreement and their liability is joint and several.
- (v) The Joint Bookrunners and the Company expressly reserve the right to modify the Placing Programme and any Placing thereunder (including, without limitation, its timetable and settlement) at any time before allocations are determined.
- (vi) The Placing Programme (and each Placing thereunder) is subject to the satisfaction of the conditions contained in the Placing Agreement and the Placing Agreement not having been terminated prior to the Admission of the relevant Issue Shares. For further details of the terms of the Placing Agreement please refer to the section entitled "Material Contracts" in Part VIII (Additional Information on the Company) of this Prospectus.

PART XII – TERMS AND CONDITIONS OF THE OFFER FOR SUBSCRIPTION

1. INTRODUCTION

- (i) If you apply for C Shares under the Offer, you will be agreeing with the Company, the Registrar and the Receiving Agent to the terms and conditions of application set out below. Potential investors should note the section entitled “Notes on how to complete the Application Form for the Offer” set out at the back of Appendix 1 to this Prospectus.
- (ii) The Application Form may also be used to subscribe for C Shares on such other terms and conditions as may be agreed in writing between the applicant and the Company.

2. Offer to subscribe for C Shares

- (i) Your application must be made on the Application Form attached at Appendix 1 to this Prospectus or as may be otherwise published by the Company. By completing and delivering an Application Form, you, as the applicant, and, if you sign the Application Form on behalf of another person or a corporation, that person or corporation:
 - (a) offer to subscribe for such number of C Shares at the Issue Price as may be purchased by the subscription amount specified in Box 1 on your Application Form (being a minimum of US\$1,000, or such smaller number for which such application is accepted, and thereafter in multiples of US\$1,000) on the terms, and subject to the conditions, set out in this Prospectus, including these Terms and Conditions of the Offer for Subscription, and the Articles (as amended from time to time);
 - (b) agree that in respect of any C Shares for which you wish to subscribe under the Offer you will submit payment in US Dollars;
 - (c) agree that, in consideration of the Company agreeing that it will not, prior to the date of Initial Admission, offer for subscription any C Shares to any person other than by means of the procedures referred to in this Prospectus, your application may not be revoked (subject to any legal right to withdraw your application which arises as a result of any supplementary prospectus being published by the Company subsequent to the date of this Prospectus and prior to Initial Admission) and that this section shall constitute a collateral contract between you and the Company which will become binding upon despatch by post to or, in the case of delivery by hand, on receipt by the Receiving Agent of your Application Form;
 - (d) undertake to pay the amount for the number of C Shares specified in Box 1 on your Application Form in full on application and warrant that the remittance accompanying your Application Form will be honoured on first presentation and agree that if such remittance is not so honoured, you will not be entitled to receive the share certificates for the C Shares applied for in certificated form or be entitled to commence dealing in the C Shares applied for in uncertificated form or to enjoy or receive any rights in respect of such C Shares unless and until you make payment in cleared funds for such C Shares and such payment is accepted by the Receiving Agent (which acceptance shall not constitute an acceptance of your application under the Offer and shall be in its absolute discretion and on the basis that you indemnify the Company, the Receiving Agent and the Joint Bookrunners and their respective Affiliates against all costs, damages, losses, expenses and liabilities arising out of, or in connection with, the failure of your remittance to be honoured on first presentation) and the Company may (without prejudice to any other rights it may have) void the agreement to allot the C Shares and may allot them to some other person, in which case you will not be entitled to any refund or payment in respect thereof (other than the refund by way of a cheque, in your favour, at your risk, for an amount equal to the proceeds of the remittance which accompanied your Application Form, without interest);
 - (e) agree that where on your Application Form a request is made for C Shares to be deposited into a CREST Account, the Receiving Agent may in its absolute discretion amend the Application Form so that such C Shares may be issued in certificated form registered in the name(s) of the applicant(s) specified in your Application Form (and recognise that the Receiving Agent will so amend the form if there is any delay in satisfying the identity of the applicant or the owner of the CREST Account or in receiving your remittance in cleared funds);

- (f) agree, in respect of applications for C Shares in certificated form (or where the Receiving Agent exercises its discretion pursuant to paragraph (e) above to issue C Shares in certificated form), that any share certificate to which you or, in the case of joint applicants, any of the persons specified by you in your Application Form may become entitled or pursuant to paragraph (e) above (and any monies returnable to you) may be retained by the Receiving Agent:
- (i) pending clearance of your remittance;
 - (ii) pending investigation of any suspected breach of the warranties contained in paragraph 6 below or any other suspected breach of these Terms and Conditions of the Offer for Subscription; or
 - (iii) pending any verification of identity which is, or which the Receiving Agent or the Company considers may be, required for the purpose of applicable anti-money laundering requirements,
- and any interest accruing on such retained monies shall accrue to and for the benefit of the Company;
- (g) agree that where an electronic transfer of a sum exceeding the US Dollar equivalent of EUR 15,000 is being made by CHAPS, you will supply your bank statement to show from where the sources of the funds have been sent. If your investment is £50,000 or more in US Dollars, you also confirm that you will provide a certified copy of your passport or photographic valid driving licence and a recent bank statement;
 - (h) agree, on the request of the Receiving Agent, to disclose promptly in writing to it such information as the Receiving Agent may request in connection with your application and authorise the Receiving Agent to disclose any information relating to your application which it may consider appropriate;
 - (i) agree that, if evidence of identity satisfactory to the Receiving Agent is not provided to the Receiving Agent within a reasonable time (in the opinion of the Receiving Agent) following a request therefor, the Company may terminate the agreement with you to allot C Shares and, in such case, the C Shares which would otherwise have been allotted to you may be re-allotted or sold to some other party and the lesser of your application monies or such proceeds of sale (as the case may be, with the proceeds of any gain derived from a sale accruing to the Company) will be returned to the bank account on which the payment accompanying the application was first drawn without interest and at your risk;
 - (j) agree that you are not applying on behalf of a person engaged in money laundering, drug trafficking or terrorism or any sanctioned individual or entity;
 - (k) undertake to ensure that, in the case of an Application Form signed by someone else on your behalf, the original of the relevant power of attorney (or a complete copy certified by a solicitor or notary) is enclosed with your Application Form together with full identity documents for the person so signing;
 - (l) undertake to pay interest at the rate described in paragraph 3(iii) below if the remittance accompanying your Application Form is not honoured on first presentation;
 - (m) authorise the Receiving Agent to procure that there be sent to you definitive certificates in respect of the number of C Shares for which your application is accepted or, if you have completed section 7 on your Application Form, but subject to paragraph (e) above, to deliver the number of C Shares for which your application is accepted into CREST, and/or to return any monies returnable by cheque in your favour without interest and at your risk;
 - (n) confirm that you have read and complied with paragraph 8 of this Part XII (Terms and Conditions of the Offer for Subscription);
 - (o) agree that all subscription cheques and payments will be processed through bank accounts opened with the Receiving Agent being **Link Market Services Ltd re: BioPharma CHQ A/C** for cheque payments and **Link Market Services Ltd re: BioPharma CHAPS A/C** for electronic CHAPS payments;
 - (p) agree that your Application Form is addressed to the Company and the Receiving Agent; and

- (q) acknowledge that the Offer will not proceed if the conditions set out in paragraph 4 below are not satisfied.
- (ii) In addition to the Application Form, you must also complete and deliver an appropriate Common Reporting Standard Self-Certification Form and an IRS Form W-9 or IRS Form(s) W-8 (as applicable).
- (iii) Any application may be rejected in whole or in part at the sole discretion of the Company.

3. ACCEPTANCE OF YOUR OFFER

- (i) The Receiving Agent may, on behalf of the Company, accept your offer to subscribe (if your application is received, valid (or treated as valid), processed and not rejected) for C Shares either:
 - (a) by notifying the UK Listing Authority of the basis of allocation (in which case the acceptance will be on that basis); or
 - (b) by notifying acceptance to the Company.
- (ii) The basis of allocation will be determined by the Joint Bookrunners (in their absolute discretion) in consultation with the Company. The right is reserved notwithstanding the basis as so determined to reject in whole or in part and/or scale back any application on such basis as they may determine. The right is reserved to treat as valid any application not complying fully with these Terms and Conditions of the Offer for Subscription or not in all respects completed or delivered in accordance with the instructions accompanying the Application Form. In particular, but without limitation, the Company may accept an application made otherwise than by completion of an Application Form where you have agreed with the Company in some other manner to apply in accordance with these Terms and Conditions of the Offer for Subscription. The Company and Receiving Agent reserve the right (but shall not be obliged) to accept Application Forms and accompanying remittances which are received otherwise than in accordance with these Terms and Conditions of the Offer for Subscription.
- (iii) The Receiving Agent will present all cheques and bankers' drafts for payment on receipt and will retain documents of title and surplus monies pending clearance of successful applicants' payments. The Receiving Agent may, as agent of the Company, require you to pay interest or its other resulting costs (or both) if the payment accompanying your application is not honoured on first presentation. If you are required to pay interest you will be obliged to pay the amount determined by the Company, to be the interest on the amount of the payment from the date on which all payments in cleared funds are due to be received until the date of receipt of cleared funds. The rate of interest will be the then published bank base rate of a clearing bank selected by the Receiving Agent plus 2 per cent. per annum. The right is also reserved to reject in whole or in part, or to scale down or limit, any application.
- (iv) The Company reserves the right in its absolute discretion (but shall not be obliged) to accept applications for less than the minimum subscription.

4. CONDITIONS

- (i) The contracts created by the acceptance of applications (in whole or in part) under the Offer will be conditional upon:
 - (a) the Minimum Gross Proceeds being at least US\$120 million;
 - (b) Initial Admission occurring not later than 8:00 a.m. on 16 April 2018 or such other date as may be agreed between the Company and the Joint Global Coordinators, not being later than the Long Stop Date; and
 - (c) the Placing Agreement not being terminated in accordance with its terms or the Initial Placing and Offer not being suspended or terminated in accordance with the terms of the Placing Agreement.
- (ii) You will not be entitled to exercise any remedy of rescission for innocent misrepresentation (including pre-contractual representations) at any time after acceptance. This does not affect any other rights you may have.

5. RETURN OF APPLICATION MONIES

Where application monies have been banked and/or received, if any application is not accepted in whole, or is accepted in part only, or if any contract created by acceptance does not become unconditional, the application monies or, as the case may be, the balance of the amount paid on application will be returned without interest and after the deduction of any applicable bank charges by returning your cheque, or by crossed cheque in your favour, by post at the risk of the person(s) entitled thereto. In the meantime, application monies will be retained by the Receiving Agent in a separate non-interest bearing account.

6. WARRANTIES

(i) By completing an Application Form, you:

- (a) warrant that, if you sign the Application Form on behalf of somebody else or on behalf of a corporation, you have due authority to do so on behalf of that other person and that such other person will be bound accordingly and will be deemed also to have given the confirmations, warranties and undertakings contained in these Terms and Conditions of the Offer for Subscription and undertake to enclose your power of attorney or other authority or a complete copy thereof duly certified by a solicitor or notary;
- (b) acknowledge that the representations, warranties, undertakings, agreements and acknowledgements set out in this Prospectus, including those set out in the section entitled “United States transfer restrictions” and “Representations, Warranties and Undertakings” in Part VI (Issue Arrangements) of this Prospectus;
- (c) warrant, if the laws of any territory or jurisdiction other than the United Kingdom are applicable to your application, that you have complied with all such laws, obtained all governmental and other consents which may be required, complied with all requisite formalities and paid any issue, transfer or other taxes due in connection with your application in any territory and that you have not taken any action or omitted to take any action which will result in the Company, the Investment Manager, the Receiving Agent or any of the Joint Bookrunners, or any of their respective Affiliates, officers, agents or employees, acting in breach of the regulatory or legal requirements, directly or indirectly, of any territory or jurisdiction outside the United Kingdom in connection with the Offer in respect of your application;
- (d) represent and warrant that, if you have a registered address or are otherwise resident or domiciled in an EEA state:
 - (i) you are a “professional investor” within the meaning of the AIFM Directive (unless you are also eligible to participate in the Offer being made in the United Kingdom); and
 - (ii) you have not been marketed to or received any marketing materials in any EEA state other than the United Kingdom or any member state of the European Economic Area that has not transposed the AIFM Directive or an EEA State in which the Investment Manager or any of the Joint Bookrunners have confirmed that they have made the relevant notification or applications in that EEA State and are lawfully able to market C Shares into that EEA State;
- (e) warrant that you do not have a registered address in, and are not a citizen, resident or national of, any jurisdiction in which it is unlawful to make or accept an offer of the C Shares and you are not acting on a non-discretionary basis for any such person;
- (f) confirm that in making an application you are not relying on any information or representations in relation to the Company and the C Shares other than those contained in this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to Initial Admission (on the basis of which alone your application is made) and accordingly you agree that no person responsible solely or jointly for this Prospectus, any such supplementary prospectus or any part thereof shall have any liability for any such other information or representation and any information relating to the exchange of tax information;
- (g) agree that, having had the opportunity to read this Prospectus, you shall be deemed to have had notice of all information and representations contained herein;

- (h) acknowledge that no person is authorised in connection with the Offer to give any information or make any representation other than as contained in this Prospectus and any supplementary prospectus published by the Company subsequent to the date of this Prospectus and prior to Initial Admission and, if given or made, any information or representation must not be relied upon as having been authorised by the Company, the Investment Manager, the Receiving Agent, any of the Joint Bookrunners or any of their respective Affiliates;
- (i) warrant that you are not under the age of 18 on the date of your application;
- (j) agree that all documents and monies sent by post to, by or on behalf of, the Company, or the Receiving Agent, will be sent at your risk and, in the case of documents and returned application cheques and payments to be sent to you, may be sent to you at your address (or, in the case of joint applicants, the address of the first-named applicant) as set out in your Application Form;
- (k) confirm that you have reviewed the restrictions contained in paragraph 8 of this Part XII (Terms and Conditions of the Offer for Subscription) of this Prospectus and warrant, to the extent relevant, that you (and any person on whose behalf you apply) comply or have complied with the provisions therein;
- (l) agree that, in respect of those C Shares for which your Application Form has been received and processed and not rejected, acceptance of your Application Form shall be constituted by the Company instructing the Registrar to enter your name on the Register;
- (m) agree that all applications, acceptances of applications and contracts resulting therefrom under the Offer and any non-contractual obligations arising in connection therewith shall be governed by and construed in accordance with the laws of England and Wales and that you submit to the jurisdiction of the English Courts and agree that nothing shall limit the right of the Company to bring any action, suit or proceedings arising out of or in connection with any such applications, acceptances of applications and contracts in any other manner permitted by law or in any court of competent jurisdiction;
- (n) irrevocably authorise the Company, the Receiving Agent or any of the Joint Bookrunners or any other person authorised by any of them, as your agent, to do all things necessary to effect registration of any C Shares subscribed by or issued to you into your name and authorise any representatives of the Company, the Receiving Agent or any of the Joint Bookrunners to execute any documents required thereafter and to enter your name on the Register;
- (o) warrant that you are: (i) highly knowledgeable and experienced in business and financial matters as to be capable of evaluating the merits and risks of an investment in the C Shares; (ii) fully understand the risks associated with such investment; and (iii) are able to bear the economic risk of your investment in the Company and are currently able to afford the complete loss of such investment;
- (p) warrant that as far as you are aware, save as otherwise disclosed to the Company and the Joint Bookrunners, you are not acting in concert (within the meaning given in the Takeover Code) with any other person in relation to the Company and it is not a related party of the Company for the purposes of the Listing Rules (to the extent to which the Company voluntarily complies with these);
- (q) agree to provide the Company, the Investment Manager, the Receiving Agent and the Joint Bookrunners with any information which any of them may request in connection with your application or to comply with any other relevant legislation (as the same may be amended from time to time) including without limitation satisfactory evidence of identity to ensure compliance with applicable anti-money laundering provisions;
- (r) agree that each of the Receiving Agent and the Joint Bookrunners are acting for the Company in connection with the Offer and for no-one else and that they will not treat you as their customer by virtue of such application being accepted or owe you any duties or responsibilities concerning the price of C Shares or concerning the suitability of C Shares for you or be responsible to you for providing the protections afforded to their customers;

- (s) warrant that the information contained in your Application Form is true and accurate;
- (t) agree that if you request that C Shares are issued to you on a date other than Initial Admission and such C Shares are not issued on such date that the Company and its agents and Directors will have no liability to you arising from the issue of such C Shares on a different date;
- (u) acknowledge that the key information document relating to the C Shares to be issued pursuant to the Offer prepared by the Investment Manager in connection with the C Shares pursuant to the PRIIPs Regulation can be provided to you in paper or by means of a website, but that where you are applying under the Offer directly and not through an adviser or other intermediary, unless requested in writing otherwise, the lodging of an Application Form represents your consent to being provided the key information document via the website at www.bpcruk.com, or on such other website as has been notified to you. Where your application is made on an advised basis or through another intermediary, the terms of your engagement should address the means by which such key information document will be provided to you;
- (v) warrant that you are entitled to acquire the C Shares under the applicable laws of all relevant jurisdictions, you have fully observed all such laws and obtained all governmental and other consents which may be required thereunder and complied with all necessary formalities and you have paid or will pay all issue, transfer or other taxes due in connection with your acceptance in any jurisdiction of the C Shares and that you have not taken any action, or omitted to take any action, which may result in the Company or the Joint Bookrunners, or their respective directors, officers, agents, employees and advisers, being in breach of the laws of any jurisdiction in connection with the Issue or your acceptance of participation in the Issue; and
- (w) acknowledges that any person acquiring Correspondent Ordinary Shares upon conversion of its C Shares will be deemed to have agreed, acknowledged, represented and warranted to each of the Company, the Investment Manager, the Registrar and the Joint Bookrunners all of the statements set out in paragraphs (a) to (v) above.

7. MONEY LAUNDERING

- (i) You agree that, in order to ensure compliance with the Money Laundering Regulations (where applicable), the Company, the Investment Manager, the Receiving Agent or any of the Joint Bookrunners may respectively, in their absolute discretion, require verification of identity from any person lodging an Application Form.
- (ii) The Receiving Agent may undertake electronic searches and take other steps for the purpose of verifying your identity. To do so the Receiving Agent may verify the details against your identity, but may also request further proof of your identity. The Receiving Agent reserves the right to withhold any entitlement (including any refund cheque) until such verification of identity is completed to its satisfaction.
- (iii) Payments being made by cheque or banker's draft must be made in US Dollars drawn on a United Kingdom branch of a bank or building society. Cheques, which must be drawn on your personal account where you have sole or joint title to the funds, should be made payable to **Link Market Services Ltd Re: BioPharma Credit CHQ A/C**. Third party cheques may not be accepted with the exception of building society cheques or bankers' drafts where the building society or bank has inserted the full name of the account holder and have added the building society or bank branch stamp by stamping or endorsing the back of the cheque/banker's draft by following the instructions in paragraph (vii) below.
- (iv) The name on the bank account must be the same as that shown on the Application Form.
- (v) Where you appear to the Receiving Agent to be acting on behalf of some other person, certifications of identity of any persons on whose behalf you appear to be acting may be required.
- (vi) Failure to provide the necessary evidence of identity may result in application(s) being rejected or in delays in the despatch of documents.
- (vii) In all circumstances, verification of the identity of applicants will be required. If you use a building society cheque, banker's draft or money order, you should ensure that the bank or building society enters the name, address and account number of the person whose account

is being debited on the reverse of the cheque, banker's draft or money order and adds its stamp.

- (viii) You should endeavour to have the certificate contained in Box 8 of the Application Form signed by an appropriate firm as described in that Box. If you cannot provide the certificate, you must provide with the Application Form the identity documents detailed in section 7 of the Application Form.

8. OVERSEAS PERSONS

The attention of potential investors who are not resident in, or who are not citizens of, the United Kingdom is drawn to this paragraph 8:

- (i) The offer of C Shares under the Offer to persons who are resident in, or citizens of, countries other than the United Kingdom ("**Overseas Persons**") may be affected by the law of the relevant jurisdictions. Such persons should consult their professional advisers as to whether they require any government or other consents or need to observe any applicable legal requirements to enable them to subscribe for C Shares under the Offer. It is the responsibility of all Overseas Persons receiving this Prospectus and/or wishing to subscribe to the C Shares under the Offer, to satisfy themselves as to full observance of the laws of any relevant territory or jurisdiction in connection therewith, including obtaining all necessary governmental or other consents that may be required and observing all other formalities required to be observed and paying any issue, transfer or other taxes due in such territory.
- (ii) No person receiving a copy of this Prospectus in any territory other than the United Kingdom may treat the same as constituting an offer or invitation to him, unless in the relevant territory such an offer can lawfully be made to him without compliance with any further registration or other legal requirements.
- (iii) Persons (including, without limitation, custodians, nominees and trustees) receiving this Prospectus should not distribute or send it to Australia, Canada, South Africa, the US or Japan, their respective territories or possessions or any other jurisdiction where to do so would or might contravene local securities laws or regulations.
- (iv) The Company reserves the right to treat as invalid any agreement to subscribe for C Shares pursuant to the Offer if it appears to the Company or its agents to have been entered into in a manner that may involve a breach of the securities legislation of any jurisdiction.

9. DATA PROTECTION

- 9.1 Pursuant to the Data Protection Act 1998 (the "**DP Act**") the Company, the Registrar, the Receiving Agent and/or the Administrator may hold "personal data" (as defined in the DP Act) relating to past and present Shareholders.
- 9.2 The Registrar has acknowledged that it will generally hold personal data as a "data processor" (as defined in the DP Act). Personal data held by the Registrar may be used to process basic changes to shareholder records, process bank account information for processing dividend payments, and to carry out other ancillary processing functions in order to ensure that the Registrar is able to discharge its obligations under the Registrar Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Registrar in respect of the services under the Registrar Services Agreement, the Registrar's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Registrar shall ensure that any Affiliates outside the EEA to whom personal data is disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the DP Act) and to any third parties who are involved in carrying out functions related to the services under the Registrar Services Agreement.
- 9.3 The Receiving Agent has acknowledged that it will generally hold personal data as a "data processor" (as defined in the DP Act). Personal data held by the Receiving Agent may be used to maintain and update a record of Shareholders (for example, by logging Application Forms), to process bank account information in connection with distribution payments and to perform other ancillary processing functions in order to ensure that the Receiving Agent is able to discharge its obligations under the Receiving Agent Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Receiving

Agent in respect of the services under the Receiving Agent Services Agreement, the Receiving Agent's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Receiving Agent shall ensure that any Affiliates outside the EEA to whom personal data is disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the DP Act) and to any third parties who are involved in carrying out functions related to the services under the Receiving Agent Services Agreement.

- 9.4 The Administrator has acknowledged that it will generally hold personal data as a “data processor” (as defined in the DP Act). The Administrator may use and disclose any personal data held by it, as is necessary for the performance of the Fund Administration Services Agreement and to any person with legal, administrative or regulatory power over the Administrator in respect of the services under the Fund Administration Services Agreement, or the Administrator's Affiliates who are involved in carrying out functions related to such services including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Administrator shall ensure that any such Affiliate has put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the DP Act).
- 9.5 By becoming registered as a holder of C Shares, a person becomes a “data subject” (as defined in the DP Act) and is deemed to have consented to the processing by the Company, Registrar, the Receiving Agent or the Administrator of any personal data relating to them in the manner described above.
- 9.6 From 25 May 2018 data protection law in Europe will change and paragraphs 9.1-9.5 above will be superseded by paragraphs 9.7-9.11 below.
- 9.7 Pursuant to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (the “**General Data Protection Regulation**”) and any equivalent legislation in force from time to time in the United Kingdom (the **data protection laws**), the Company, the Registrar, the Receiving Agent and/or the Administrator may hold “personal data” (as defined in the data protection laws) relating to past and present Shareholders.
- 9.8 The Registrar has acknowledged that it will generally hold personal data as a “data processor” (as defined in the data protection laws). Personal data held by the Registrar may be used to process basic changes to shareholder records, process bank account information for processing dividend payments, and to carry out other ancillary processing functions in order to ensure that the Registrar is able to discharge its obligations under the Registrar Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Registrar in respect of the services provided by the Registrar under the Registrar Services Agreement, the Registrar's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Registrar shall ensure that any Affiliates outside the EEA to whom personal data is disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the data protection laws) and to any third parties who are involved in carrying out functions related to the services provided under the Registrar Services Agreement.
- 9.9 The Receiving Agent has acknowledged that it will generally hold personal data as a “data processor” (as defined in the data protection laws). Personal data held by the Receiving Agent may be used to maintain and update a record of Shareholders (for example, by logging Application Forms), to process bank account information in connection with distribution payments and to perform other ancillary processing functions in order to ensure that the Receiving Agent is able to discharge its obligations under the Receiving Agent Services Agreement; and may be disclosed to any person with legal, administrative or regulatory power over the Receiving Agent in respect of the services provided by the Receiving Agent under the Receiving Agent Services Agreement, the Receiving Agent's Affiliates, including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Receiving Agent shall ensure that any Affiliates outside the EEA to whom personal data is

disclosed have put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the data protection laws) and to any third parties who are involved in carrying out functions related to the services provided under the Receiving Agent Services Agreement.

- 9.10 The Administrator has acknowledged that it will generally hold personal data as a “data processor” (as defined in the data protection laws). The Administrator may use and disclose any personal data held by it, as is necessary for the performance of the Fund Administration Services Agreement and to any person with legal, administrative or regulatory power over the Administrator in respect of the services provided by the Administrator under the Fund Administration Services Agreement, or the Administrator’s Affiliates who are involved in carrying out functions related to such services including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use (provided that the Administrator shall ensure that any such Affiliate has put in place proper security measures to ensure at least the same level of protection of the personal data as is required under the data protection laws).
- 9.11 By becoming registered as a holder of C Shares, a person becomes a “data subject” (as defined in the data protection laws) and acknowledges that the processing by the Registrar, the Receiving Agent or the Administrator of any personal data relating to them will take place in the manner described above. Processing by the Company of any personal data relating to them will be undertaken in accordance with the Company’s privacy policy. Please refer to the Company’s website for a copy of the privacy policy.

10. MISCELLANEOUS

- (i) The rights and remedies of the Company, the Investment Manager, the Registrar, the Receiving Agent and the Joint Bookrunners under these Terms and Conditions of the Offer for Subscription are in addition to any rights and remedies which would otherwise be available to any of them and the exercise or partial exercise of one will not prevent the exercise of others.
- (ii) The Company reserves the right to shorten or extend the closing time and/or date of the Offer from 11:00 am (London time) on 12 April 2018 (provided that if the closing time is extended this Prospectus remains valid at the closing time as extended) by giving notice to the London Stock Exchange and, as required, TISEA. The Company will notify investors via an RIS and any other manner, having regard to the requirements of the London Stock Exchange and, as required, TISEA.
- (iii) The Company may terminate the Offer, in its absolute discretion, at any time prior to Initial Admission. If such right is exercised, the Offer will lapse and any monies will be returned to you as indicated at your own risk and without interest.
- (iv) The dates and times referred to in these Terms and Conditions of the Offer for Subscription may be altered by the Company, including but not limited to so as to be consistent with the Placing Agreement (as the same may be altered from time to time in accordance with its terms).
- (v) Save where the context requires otherwise, terms used in these Terms and Conditions of the Offer for Subscription bear the same meaning as used elsewhere in this Prospectus.

PART XIII – DEFINITIONS

“2010 PD Amending Directive”	Directive 2010/73/EU of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
“2017 Annual Report”	the annual report and audited accounts of the Company for the period from 24 October 2016 (the date of incorporation of the Company) to 31 December 2017
“Act”	the UK Companies Act 2006, as amended from time to time
“Administrator”	Link Alternative Fund Administrators Limited, a limited liability company incorporated in England and Wales with registration number 02056193, whose registered office is at The Registry, 34 Beckenham Road, Kent BR3 4TU
“Admission”	in relation to the Initial Placing and Offer and any subsequent Placing, the admission of the relevant Issue Shares to trading on the Specialist Fund Segment becoming effective in accordance with the LSE Admission Standards and to listing and trading on the Official List of TISEA becoming effective in accordance with the TISEA Listing Rules
“Advisers Act”	the United States Investment Advisers Act of 1940, as amended
“Affiliate”	an affiliate of, or person affiliated with, a specified person being a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified and, in the case of the Investment Manager, includes Royalty Pharma and its affiliates
“AIC”	the Association of Investment Companies
“AIC Code”	the AIC’s Code of Corporate Governance, as amended from time to time
“AIC Guide”	the AIC’s Corporate Governance Guide for Investment Companies, as amended from time to time
“AIF”	an alternative investment fund, within the meaning of the AIFM Directive
“AIFM Directive”	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No. 1095/2010; the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
“Application Forms” and, each, an “Application Form”	the application forms on which applicants may apply for C Shares to be issued to them pursuant to the Offer, as set out in Appendix 1 to this Prospectus or as may otherwise be provided by the Company
“Articles”	the articles of association of the Company as at the date of this Prospectus
“Associate”	in relation to the Investment Manager: Royalty Pharma and any company which is its subsidiary undertaking or parent undertaking or a fellow subsidiary undertaking of the parent undertaking or any company whose directors are accustomed to

	act in accordance with the Investment Manager's directions or instruction;
"Audit and Risk Committee"	the committee of this name established by the Board and having the duties described in the paragraph entitled "Audit and Risk Committee" in Part IV (Directors, Management and Administration) of this Prospectus
"BAML" or "BofA Merrill Lynch"	Merrill Lynch International
"billion"	one thousand million
"BioPharma I"	BioPharma Secured Debt Fund, LP, together with its subsidiaries
"BioPharma II"	BioPharma Secured Debt Investments II, S.à r.l., together with its subsidiaries
"BioPharma III"	BioPharma Secured Investments III Partners, LP, an exempted limited partnership established under the laws of the Cayman Islands
"BioPharma III Holdings, LP"	BioPharma Secured Investments III Holdings Cayman, LP, an exempted limited partnership established under the laws of the Cayman Islands
"BioPharma III Interest"	the limited partnership interest in BioPharma III Holdings, LP acquired by the Company from BioPharma III in connection with the IPO
"BioPharma IV"	BioPharma Credit Investments IV, S.à r.l., together with its subsidiaries
"Bookrunner Placing"	a placing of C Shares and / or New Ordinary Shares by the Joint Bookrunners on behalf of the Company under the Placing Programme as described in this Prospectus, on the terms of and subject to the conditions set out in the Placing Agreement and this Prospectus
"Borrower"	a LifeSci Company or a Royalty Owner issuing relevant Debt
"Business Day"	a day (excluding Saturdays and Sundays or public holidays in England and Wales) on which banks generally are open for non-automatic business in London for the transaction of normal business
"C Shares"	redeemable C Shares, of US\$0.01 each in the capital of the Company carrying the rights set out in the Articles, to be issued pursuant to the Issue
"Carried Forward Amount"	has the meaning given to it in Part IV (Directors, Management and Administration) of this Prospectus
"certificated" or "in certificated form"	not in uncertificated form
"Chairman"	the chairman of the Board
"Commitment Letter"	an amended and restated commitment letter dated 6 March 2018 between the Company, Bank of America N.A. and Goldman Sachs Bank USA
"Common Reporting Standard"	the global standard for the automatic exchange of financial information between tax authorities developed by the Organisation for Economic Co-operation and Development
"Company"	BioPharma Credit plc, a limited liability company incorporated under the Act in England and Wales with registration number 10443190, whose registered office is at Beaufort House, 51 New North Road, Exeter EX4 4EP
"Company Placing"	a placing of C Shares and / or New Ordinary Shares under the Placing Programme by the Company directly, as principal, as

	described in this Prospectus, on the terms and subject to the conditions set out in the Placing Agreement and in this Prospectus
“Company Secretarial Services Agreement”	the agreement dated 1 March 2017, between the Company and Link Market Services Limited summarised in paragraph 10.3 of Part VIII (Additional Information on the Company) of this Prospectus
“Company Secretary”	Link Company Matters Limited, a limited liability company incorporated in England and Wales with registration number 05306796, whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent, BR3 4TU
“Competition and Markets Authority”	the UK Competition and Markets Authority
“Conversion”	has the meaning given to it in paragraph 4 of Part V (C Shares) of this Prospectus
“Conversion Calculation Date”	has the meaning given to it in paragraph 4 of Part V (C Shares) of this Prospectus
“Conversion Date”	has the meaning given to it in paragraph 4 of Part V (C Shares) of this Prospectus
“Correspondent Ordinary Shares”	has the meaning given to it in paragraph 4 of Part V (C Shares) of this Prospectus
“Credit Linked Notes”	derivative instruments referencing Debt Assets, being a synthetic obligation between the Company and another party where the repayment of principal and/or the payment of interest is based on the performance of the obligations under the underlying Debt Assets
“CREST”	the relevant system as defined in the CREST Regulations in respect of which Euroclear UK & Ireland Limited is operator (as defined in the CREST Regulations) in accordance with which securities may be held in uncertificated form
“CREST Account”	an account in CREST
“CREST Regulations”	the UK Uncertificated Securities Regulations 2001 (SI 2001 No. 2001/3755), as amended
“data protection laws”	General Data Protection Regulation and any equivalent legislation in force from time to time in the United Kingdom
“Debt”	includes loans, notes, bonds and other debt instruments and securities, including convertible debt, and, for the purposes of this Prospectus, Priority Royalty Tranches
“Debt Assets”	Royalty Investments, Senior Secured Debt, Unsecured Debt and Credit Linked Notes
“default Shares”	has the meaning given in paragraph 5.2.10 of Part VIII (Additional Information on the Company) of this Prospectus
“Director Resolution”	any resolution of members concerning the appointment or removal of one or more of directors of the Company
“Directors” or “Board”	the board of directors of the Company, including any duly constituted committee of the board of directors of the Company
“Disclosure Guidance and Transparency Rules”	the disclosure guidance and transparency rules made by the FCA under Part VI of FSMA
“EEA”	the European Economic Area
“ERISA”	the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the applicable regulations thereunder

“EU”	the European Union
“Exchange Act”	the United States Securities Exchange Act of 1934, as amended
“Existing Shares”	the Ordinary Shares in issue as at the date of this Prospectus
“FATCA”	Sections 1471 to 1474 of the US Tax Code, known as the US Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such US Tax Code sections and any applicable intergovernmental agreement or information exchange agreement and related statutes, regulations, rules and other guidance thereunder)
“FCA” or “Financial Conduct Authority”	the Financial Conduct Authority of the United Kingdom including any replacement or substitute thereof, and any regulatory body or person succeeding, in whole or in part, to the functions thereof
“FCA Handbook”	the FCA Handbook of Rules and Guidance issued by the FCA, as amended
“FDA”	the United States Food and Drug Administration
“Final Date”	has the meaning given to it in paragraph 10.1.2 of Part VIII (Additional Information on the Company) of this Prospectus
“First Admission”	the first admission of Ordinary Shares to listing on the Official List of TISEA and to trading on the Specialist Fund Segment pursuant to the IPO on 27 March 2017
“Follow On Investments”	means an investment or prospective investment subject to a commitment (being an offer and acceptance of heads of terms or a letter of intent in respect to such investment (whether or not such heads of terms or letters of intent are legally binding)) made by the Company or the Investment Manager (acting on behalf of the Company) on or prior to the termination of, or a material amendment (as appropriate) to, the Shared Services Agreement;
“FSMA”	the UK Financial Services and Markets Act 2000, as amended
“Fund Administration Services Agreement”	the agreement dated 1 March 2017, between the Company and the Administrator summarised in paragraph 10.4 of Part VIII (Additional Information on the Company) of this Prospectus
“General Data Protection Regulation”	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data
“Gross Initial Proceeds”	the gross proceeds of the Initial Placing and Offer, being the number of C Shares issued pursuant to the Initial Placing and Offer multiplied by the Issue Price of US\$1.00 per C Share
“Gross IRR”	the aggregate, annual, compound (as applicable) IRR, calculated on the basis of historical and projected capital inflows and outflows related to a particular investment, without taking into account the impact of management fees, incentive compensation, taxes, or transaction and organisational costs and expenses
“Gross Placing Proceeds”	the gross proceeds of a Placing other than the Initial Placing, being the number of Issue Shares issued pursuant to such Placing multiplied by the applicable Issue Price
“Group”	the Company and its subsidiaries for the time being and, as at the date of this Prospectus, means the Company and BPCR Ongdapa Ltd
“GSI”	Goldman Sachs International
“HMRC”	HM Revenue & Customs
“IFRS”	International Financial Reporting Standards
“Initial Admission”	the Admission of all C Shares issued in connection with the Initial Placing and the Offer

“Initial Expenses”	the initial expenses, including placing commissions, that are incurred by the Company in connection with the Initial Placing and Offer and Initial Admission and borne by the Placees participating in the Initial Placing and subscribers under the Offer
“Initial Placing”	the first Placing of C Shares under the Placing Programme which is expected to close on or around 12 April 2018
“Investment Company Act”	the United States Investment Company Act of 1940, as amended
“Investment Management Agreement”	the agreement dated 1 March 2017, between the Company and the Investment Manager summarised in paragraph 10.2 of Part VIII (Additional Information on the Company) of this Prospectus
“Investment Manager”	Pharmakon Advisors L.P., a limited partnership established under the laws of the State of Delaware registered as an investment adviser with the SEC under the Advisers Act
“IPO”	the initial public offering of the Ordinary Shares that took place in March 2017
“IPO Issue Price”	the issue price for the Ordinary Shares issued at IPO being US\$1.00 per Ordinary Share
“IRR”	internal rate of return
“IRS”	the United States Internal Revenue Service
“ISA”	an individual savings account approved in the UK by HMRC
“ISIN”	International Securities Identification Number
“Issue”	the Placing Programme and the Offer
“Issue Price”	the price at which Issue Shares are issued, being US\$1.00 for C Shares and, in relation to the New Ordinary Shares, a price, after issue expenses, not lower than latest published Net Asset Value per Ordinary Share at the relevant time
“Issue Shares”	the C Shares and/or the New Ordinary Shares, as the context so requires, issued pursuant to the Issue
“Joint Bookrunner”	GSI, JPMC and BAML in their capacity as bookrunners for the Issue
“Joint Global Coordinators”	GSI and JPMC, in their capacity as global coordinators for the Issue
“JPMC”	J.P. Morgan Securities plc
“Key Person”	Pedro Gonzalez de Cosio, or such other person designated as such by the Investment Manager with the Board’s prior written consent
“Key Person Event”	has the meaning given in paragraph 10.2.15(H) of Part VIII (Additional Information on the Company)
“Lexicon”	Lexicon Pharmaceuticals, Inc.
“LifeSci Companies”	companies operating in the life sciences industry
“Listing Rules”	the listing rules made by the UK Listing Authority under section 73A of FSMA
“London Stock Exchange” or “LSE”	London Stock Exchange plc, a limited liability company registered in England and Wales with registration number 02075721, whose registered office is at 10 Paternoster Square, London, EC4M 7LS
“Long Stop Date”	30 April 2018

“LSE Admission Standards”	the rules issued by the London Stock Exchange in relation to the admission to trading of, and continuing requirements for, securities admitted to trading on the Specialist Fund Segment
“Main Market”	the main market for securities of the London Stock Exchange
“Managed Entities” or “Managed Entity”	investment vehicles or accounts managed by the Manager Affiliated Parties including but not limited to BioPharma I, BioPharma II, BioPharma III, BioPharma IV and any such investment vehicle or accounts that may be managed in the future, other than the Company and any of its wholly owned subsidiaries
“Management Fee”	has the meaning given to it in Part IV (Directors, Management and Administration) of this Prospectus
“Manager Affiliated Parties”	the Investment Manager, its principals and their respective Affiliates
“Market Abuse Regulation”	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing the Directive of the European Parliament and of the Council of 28 January 2003 and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
“Member State” or “EEA State”	any member state of the European Economic Area
“Minimum Gross Proceeds”	the minimum gross proceeds in respect of the Initial Placing and Offer of C Shares being US\$120 million
“Money Laundering Regulations”	the UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
“NAV” or “Net Asset Value”	the Company’s net asset value, calculated as set out in Part I (The Company) of this Prospectus
“Net Asset Value per C Share” or “NAV per C Share”	in relation to each class of C Shares, the Net Asset Value attributable to that class of C Shares divided by the number of C Shares in that class in issue (excluding any C Shares of that class held in treasury) at the relevant time
“Net Asset Value per Ordinary Share” or “NAV per Ordinary Share”	the Net Asset Value attributable to the Ordinary Shares divided by the number of Ordinary Shares in issue (excluding any Ordinary Shares held in treasury) at the relevant time
“Net Initial Proceeds”	the net proceeds of the Initial Placing and the Offer, being the number of C Shares issued under the Initial Placing and the Offer multiplied by the Issue Price, less the Initial Expenses
“Net IRR”	the IRR calculated based on consolidated gross capital inflows and outflows for all relevant investments and entities, taking into account the impact of management fees, incentive compensation, taxes, transaction, organisational, and other costs and expenses
“Net Placing Proceeds”	the net proceeds of a Placing other than the Initial Placing, being the number of Issue Shares issued under that Placing multiplied by the applicable Issue Price, less the Subsequent Expenses
“New Ordinary Shares”	Ordinary Shares to be issued pursuant to the Placing Programme
“Non-Qualified Holder”	any person: (i) whose ownership of Shares may cause the Company’s assets to be deemed “plan assets” for the purposes of ERISA or the US Tax Code; (ii) whose ownership of Shares may cause the Company to be required to register as an “investment company” under the Investment Company Act or to lose an exemption or a status thereunder to which it might otherwise be entitled (including because the holder of Shares is not a “qualified purchaser” as defined in the Investment Company Act); (iii) whose ownership of Shares may cause the Company to

be required to register under the Exchange Act or any similar legislation; (iv) whose ownership of Shares may cause the Company to be a “controlled foreign corporation” for the purposes of the US Tax Code, or may cause the Company to suffer any pecuniary disadvantage (including any excise tax, penalties or liabilities under ERISA or the US Tax Code); (v) whose ownership of Shares may cause the Company to cease to be considered a “foreign private issuer” for the purposes of the Securities Act or the Exchange Act; or (vi) whose ownership of Shares would or might result in the Company not being able to satisfy its obligations on the Common Reporting Standard developed by the Organisation for Economic Co-Operation and Development or such similar reporting obligations on account of, *inter alia*, non-compliance by such person with any information request made by the Company

“NovoCure”	NovoCure Limited
“NURS”	a non-UCITS retail scheme, an authorised fund which is neither a UCITS nor a qualified investor scheme
“Offer” or “Offer for Subscription”	the offer for subscription of C Shares at the Issue Price, as described in this Prospectus
“Official List”	the official list maintained by the UK Listing Authority
“Official List of TISEA”	the official list maintained by TISEA
“Ordinary Shares”	ordinary shares of US\$0.01 each in the capital of the Company
“Overseas Persons”	persons who are resident in, or who are citizens of, or who have registered addresses in, territories other than the UK
“Performance Fee”	has the meaning given to it in Part IV (Directors, Management and Administration) of this Prospectus
“Placee”	a person subscribing for Issue Shares under a Placing
“Placer”	(i) in relation to a Bookrunner Placing, any of the Joint Bookrunners; and (ii) in relation to a Company Placing, the Company or any person acting on behalf of the Company in relation to such Company Placing
“Placing”	a Bookrunner Placing or a Company Placing or both (including the Initial Placing)
“Placing Agreement”	the agreement dated 14 March 2018, between the Company, the Investment Manager and the Joint Bookrunners summarised in paragraph 10.1 of Part VIII (Additional Information on the Company) of this Prospectus
“Placing Letter”	has the meaning given to it in paragraph 1 of Part XI (Terms and Conditions of the Placing Programme) of this Prospectus
“Placing Programme”	the proposed programme of Placings of C Shares and/or New Ordinary Shares, as described in this Prospectus (including the Initial Placing)
“PRIIPs Regulation”	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and its implementing and delegated acts
“Principal”	Pedro Gonzalez de Cosio, Pablo Legorreta and Martin Friedman and such other person(s) as may be agreed between the Company and the Investment Manager from time to time
“Priority Royalty Tranches”	contracts with Borrowers that provide the Company with the right to receive payment of all or a fixed percentage of the future

	royalty payments receivable in respect of a Product (or Products) that would otherwise belong to the Borrower up to a fixed monetary amount or a pre-set rate of return, with such royalty payments being secured by Royalty Collateral in respect of that Product (or Products)
“Product”	a life sciences product in respect of which a Borrower, directly or indirectly, holds an interest in the royalty rights attached thereto
“Promissory Note”	a promissory note in favour of the Company issued by the RPS Borrower
“Prospectus”	this document
“Prospectus Directive”	Directive 2003/71/EC of the European Parliament and of the Council and any relevant implementing measure in each Relevant Member State (as amended, supplemented and/or replaced by the 2010 PD Amending Directive and the Prospectus Regulation)
“Prospectus Regulation”	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
“Prospectus Rules”	the rules and regulations made by the FCA under section 73A of FSMA
“Qualified Purchaser”	a “qualified purchaser” as defined in the Investment Company Act
“Receiving Agent”	Link Market Services Limited trading as Link Asset Services, a limited liability company incorporated in England and Wales with registration number 2605568, whose registered office is at Corporate Actions, The Registry, 34 Beckenham Road, Beckenham, Kent, BR3 4TU
“Receiving Agent Services Agreement”	the agreement dated 14 March 2018, between the Company and the Receiving Agent summarised in paragraph 10.6 of Part VIII (Additional Information on the Company) of this Prospectus
“Register”	the Company’s register of members
“Registrar”	Link Market Services Limited trading as Link Asset Services, a limited liability company incorporated in England and Wales with registration number 2605568, whose registered office is at The Registry, 34 Beckenham Road, Beckenham, Kent, BR3 4TU
“Registrar Services Agreement”	the agreement dated 1 March 2017, between the Company and the Registrars summarised in paragraph 10.5 of Part VIII (Additional Information on the Company) of this Prospectus
“Regulation S”	Regulation S under the Securities Act
“Regulatory Information Service” or “RIS”	a service authorised by the UK Listing Authority to release regulatory announcements to the London Stock Exchange
“Relevant Member State”	each Member State of the EEA which has implemented the Prospectus Directive or where the Prospectus Directive is applied by the regulator
“Restricted Territory”	Australia, Canada, Japan, South Africa, and any other jurisdiction where the extension or availability of a Placing (including the Initial Placing) or the Offer would breach any applicable law
“Royalty Collateral”	with respect to a Debt Asset: (i) future royalty payments receivable by the Borrower on one or more Products; (ii) future distributions receivable by the Borrower based on royalty payments generated from one or more Products; or (iii) both (i) and (ii)

“Royalty Debt Instruments”	Debt issued by a Royalty Owner where the Royalty Owner’s obligations in relation to the Debt are secured as to repayment of principal and payment of interest by Royalty Collateral, including the RPS Note
“Royalty Investments”	Royalty Debt Instruments and Priority Royalty Tranches
“Royalty Owner”	an entity, other than a LifeSci Company, which directly or indirectly holds an interest in royalty rights to certain Products, including any investment vehicle or special purpose vehicle
“Royalty Pharma”	RP Management LLC, a limited liability corporation established under the laws of the State of Delaware registered as an investment adviser with the SEC under the Advisers Act
“Royalty Pharma Select”	Royalty Pharma Select, a limited liquidity unit trust constituted under the laws of Ireland and authorised by the Bank of Ireland pursuant to the Unit Trusts Act, 1990
“RPS Borrower”	RPS BioPharma Investments, LP, an exempted limited partnership established under the laws of the Cayman Islands
“RPS Credit Agreement”	a credit agreement entered into between the Company and the RPS Borrower
“RPS Note”	together, the RPS Credit Agreement and the Promissory Note
“SDRT”	UK stamp duty reserve tax
“SEC”	the United States Securities and Exchange Commission
“Second Admission”	the second admission of Ordinary Shares to listing on the Official List of the TISEA and to trading on the Specialist Fund Segment pursuant to the IPO on 30 March 2017
“Securities Act”	the United States Securities Act of 1933, as amended
“SEDOL”	the Stock Exchange Daily Official List
“Senior Secured Debt”	Debt issued by a LifeSci Company, and which is secured as to repayment of principal and payment of interest by a first priority charge over some or all of such LifeSci Company’s assets, which may include: (i) Royalty Collateral; or (ii) other intellectual property and marketing rights to the Products of that LifeSci Company
“Service Standard”	has the meaning given to it in paragraph 10.2.8 of Part VIII (Additional Information on the Company) of this Prospectus
“Shared Services Agreement”	the shared services agreement dated 30 November 2016 between the Investment Manager and Royalty Pharma
“Shareholder”	a holder of Shares in the capital of the Company
“Shares”	all shares of any class in the capital of the Company in issue at any time
“SIPP”	a self-invested personal pension as defined in Regulation 3 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001 of the UK
“Specialist Fund Segment”	the Specialist Fund Segment of the Main Market of the London Stock Exchange
“Sterling” or “£”	pounds sterling, the lawful currency of the UK
“Subsequent Expenses”	the expenses, including placing commissions, that are incurred by the Company in connection with a Placing other than the Initial Placing and the related Admission and borne by the Placees participating in such Placing (including any excess initial expenses incurred in connection with the Initial Placing and Offer payable out of the related Gross Placing Proceeds)
“Takeover Code”	the City Code on Takeovers and Mergers

“Takeover Panel”	the UK Panel on Takeovers and Mergers
“Target Dividend”	has the meaning given in Part I (The Company) of this Prospectus
“Target Return”	has the meaning given in Part I (The Company) of this Prospectus
“Tesarö”	Tesarö Inc.
“Tesarö Debt Asset”	Senior Secured Debt issued by Tesarö Inc.
“TISEA”	The International Stock Exchange Authority
“TISEA Listing Rules”	the listing rules made by TISEA
“Transaction Fees”	has the meaning given to it in Part IV (Directors, Management and Administration) of this Prospectus
“Treaty”	means the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains of 24 July 2001, including any related protocols
“trillion”	one thousand billion
“UCITS”	an authorised fund authorised by the FCA in accordance with the UCITS Directive
“UCITS Directive”	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended
“UK Corporate Governance Code”	the United Kingdom Corporate Governance Code as published by the UK Financial Reporting Council
“UK Listing Authority”	the FCA acting in its capacity as the competent authority for the purposes of admissions to the Official List
“uncertificated” or in “uncertificated form”	a Share recorded on the Register as being held in uncertificated form in CREST and title to which, by virtue of the CREST Regulations, may be transferred by means of CREST
“United Kingdom” or “UK”	the United Kingdom of Great Britain and Northern Ireland
“United States” or “US”	the United States of America, its territories and possessions, any state of the United States of America and the District of Columbia
“Unsecured Debt”	Debt issued by a LifeSci Company which is either not secured or is secured by a second lien on assets of the Borrower
“US Person”	a “U.S. Person” as defined in Regulation S
“US Plan Assets Regulations”	the regulations promulgated by the US Department of Labor at 29 CFR 2510.3-101, as modified under section 3(42) of ERISA
“US Resident”	a resident of the United States within the meaning of Rule 405 under the Securities Act or Rule 3b-4(c) under the Exchange Act
“US Tax Code”	the US Internal Revenue Code of 1986, as amended (including any successor statute)
“US\$” or “US Dollar”	United States dollars, the lawful currency of the United States

ANNEX

SECTION 1 – TESARO CERTIFICATE OF INCORPORATION

EX-3.1 3 a2210125zex-3_1.htm EX-3.1

Exhibit 3.1

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
TESARO, INC.**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

TESARO, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is TESARO, Inc. (the “**Corporation**”) and that this corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware (the “**General Corporation Law**”) on March 26, 2010 under the name TESARO, Inc. The Restated Certificate of Incorporation of TESARO, Inc. was filed on May 10, 2010. The Second Amended and Restated Certificate of Incorporation of TESARO, Inc. was filed on December 10, 2010. The Third Amended and Restated Certificate of Incorporation of TESARO, Inc. was filed on June 6, 2011 and amended on July 7, 2011 and June 19, 2012.

SECOND: This Fourth Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation and by the stockholders of the Corporation in accordance with Sections 228, 242, and 245 of the Delaware General Corporation Law.

THIRD: Pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Fourth Amended and Restated Certificate of Incorporation restates and integrates and also further amends the provisions of the certificate of incorporation of the Corporation as heretofore amended or supplemented. The certificate of incorporation of the Corporation, as heretofore amended or supplemented, is superseded by this Fourth Amended and Restated Certificate of Incorporation and is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

The name of this corporation is TESARO, Inc. (the “**Corporation**”).

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle.

The name of the Corporation’s registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the the General Corporation Law of the State of Delaware (the “**General Corporation Law**”). The Corporation shall have all power necessary or convenient to the conduct, promotion or attainment of such acts and activities.

ARTICLE IV

A. Authorized Shares. The total number of shares of all classes of stock that the Corporation shall have the authority to issue is one hundred ten million (110,000,000), of which one hundred million (100,000,000) of such shares shall be Common Stock having a par value of \$0.0001 per share (“Common Stock”), and ten million (10,000,000) of such shares shall be Preferred Stock, having a par value of \$0.0001 per share (“Preferred Stock”).

B. Common Stock.

1. Relative Rights. The Common Stock shall be subject to all of the rights, privileges, preferences and priorities of the Preferred Stock as set forth in the certificate of designations filed to establish the respective series of Preferred Stock. Each share of Common Stock shall have the same relative rights as and be identical in all respects to all the other shares of Common Stock.

2. Dividends. Whenever there shall have been paid, or declared and set aside for payment, to the holders of shares of any class of stock having preference over the Common Stock as to the payment of dividends, the full amount of dividends and of sinking fund or retirement payments, if any, to which such holders are respectively entitled in preference to the Common Stock, then dividends may be paid on the Common Stock and on any class or series of stock entitled to participate therewith as to dividends, out of any assets legally available for the payment of dividends thereon, but only when and as declared by the Board of Directors of the Corporation.

3. Dissolution, Liquidation, Winding Up. In the event of any dissolution, liquidation, or winding up of the Corporation, whether voluntary or involuntary, the holders of the Common Stock, and holders of any class or series of stock entitled to participate therewith, in whole or in part, as to the distribution of assets in such event, shall become entitled to participate in the distribution of any assets of the Corporation remaining after the Corporation shall have paid, or provided for payment of, all debts and liabilities of the Corporation and after the Corporation shall have paid, or set aside for payment, to the holders of any class of stock having preference over the Common Stock in the event of dissolution, liquidation or winding up the full preferential amounts (if any) to which they are entitled.

4. Voting Rights. Each holder of shares of Common Stock shall be entitled to attend all special and annual meetings of the stockholders of the Corporation and,

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share for share and without regard to class, together with the holders of all other classes of stock entitled to attend such meetings and to vote (except any class or series of stock having special voting rights), to cast one vote for each outstanding share of Common Stock so held upon any matter or thing (including, without limitation, the election of one or more directors) properly considered and acted upon by the stockholders; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Fourth Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Fourth Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the General Corporation Law.

C. Preferred Stock. The Board of Directors is authorized, subject to limitations prescribed by the General Corporation Law and the provisions of this Fourth Amended and Restated Certificate of Incorporation, to provide, by resolution or resolutions from time to time and by filing a certificate of designations pursuant to the General Corporation Law, for the issuance of the shares of Preferred Stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the powers, designations, preferences and relative, participating, optional or other special rights of the shares of each such series and to fix the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following: (1) the number of shares constituting that series and the distinctive designation of that series; (2) the dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series; (3) whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights; (4) whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine; (5) whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; (6) whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund; (7) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of

shares of that series; and (8) any other relative powers, preferences, and rights of that series, and qualifications, limitations or restrictions on that series.

ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the bylaws of the Corporation.

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ARTICLE VI

A. Number of Directors. The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the bylaws of the Corporation. Each director of the Corporation shall be entitled to one vote per director on all matters voted or acted upon by the Board of Directors.

B. Management of Business and Affairs of the Corporation. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

C. Written Ballots. Elections of directors need not be by written ballot unless the bylaws of the corporation shall so provide.

ARTICLE VII

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

ARTICLE VIII

A. Actions by Consent. Except as may be provided in a resolution or resolutions of the Board of Directors providing for any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected only at a duly called annual or special meeting of such stockholders and may not be effected by any written consent in lieu of a meeting by such stockholders.

B. Special Meetings of Stockholders. Except as may be provided in a resolution or resolutions of the Board of Directors providing for any series of Preferred Stock, special meetings of stockholders of the Corporation may be called at any time by the Board of Directors, and shall be called by the Chief Executive Officer or Secretary of the Corporation at the request in writing of a majority of the Board of Directors, but such special meetings may not be called by any other person or persons.

ARTICLE IX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this ARTICLE IX to

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authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any amendment, repeal or modification of the foregoing provisions of this ARTICLE IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Fourth Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights, preferences and privileges of any nature conferred upon stockholders, directors, or any other persons herein are granted subject to this reservation.

ARTICLE XI

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the General Corporation Law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors, or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable provisions of the General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation and its stockholders.

Any amendment, repeal or modification of the foregoing provisions of this ARTICLE XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE XII

Unless the corporation consents in writing to an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising

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against the Corporation pursuant to any provision of the General Corporation Law, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine.

* * *

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IN WITNESS WHEREOF, this Fourth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 3rd day of July, 2012.

/s/ Richard J. Rodgers
Richard J. Rodgers

SECTION 2 – TESARO ARTICLES OF ASSOCIATION

EX-3.2 4 a2210125zex-3_2.htm EX-3.2

Exhibit 3.2

AMENDED AND RESTATED BY-LAWS OF**TESARO, INC.****A DELAWARE CORPORATION**

Dated: July 3, 2012

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ARTICLE I

OFFICES

Section 1. Registered Office. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. All meetings of the stockholders may be held at such place within or without the State of Delaware as may be fixed from time to time by the Board of Directors, the Chairman or the Chief Executive Officer, or if not so designated, at the registered office of the Corporation. Notwithstanding the foregoing, the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of Delaware. If so authorized, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in, and be deemed present in person and vote at, a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2. Annual Meeting. An annual meeting of stockholders may be held at such date and time, and by such means of remote communication, if any, as shall be designated from time to time by the Board of Directors, the Chairman or the Chief Executive Officer, at which meeting the stockholders shall elect a board of directors and shall transact such other business as may be properly brought before the meeting.

Section 3. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may, unless otherwise prescribed by statute or by the Certificate of Incorporation, be called by the Board of Directors and shall be called by the Chief Executive Officer or Secretary at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 4. Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, annual or special, stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting. Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Sections 222 and 232 (or any successor section or sections) of the Delaware General Corporation Law.

(A) Advance Notice of Stockholder Business at Annual Meetings.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only:

- (a) pursuant to the Corporation's notice of meeting (or any supplement thereto),
- (b) by or at the direction of the Board of Directors, or
- (c) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 4 of this Article I is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 4.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 4, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than sixty days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual

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meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

- (3) The stockholder's notice required by paragraph (A)(2) of this Section 4 shall set forth:
 - (a) as to each person whom the stockholder proposes to nominate for election as a director:
 - (i) such person's name, age, business address and, if known, residence address;
 - (ii) such person's principal occupation or employment;
 - (iii) the class and series and number of shares of stock of the Corporation that are, directly or indirectly, owned, beneficially or of record, by such person;
 - (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder;
 - (v) any other information concerning such person that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as if the nominee had been nominated, or intended to be nominated, by the Board of Directors; and
 - (vii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected;
 - (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and any other

information concerning such matter that must be disclosed in proxy solicitations pursuant to Regulation

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14A under the Exchange Act, as if the matter had been proposed, or intended to be proposed, by the Board of Directors;

(c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner;

(ii) the class and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner;

(iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with the foregoing;

(iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder and such beneficial owner, with respect to shares of stock of the Corporation;

(v) any other information relating to such stockholder and such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(vi) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination; and

(vii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination; and

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(d) such other information that the Board of Directors may request in its discretion.

(4) The foregoing notice requirements of this Section 4 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the

eligibility of such proposed nominee to serve as a director of the Corporation.

(5) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 4 to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased effective at the annual meeting and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 4 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(B) Advance Notice of Stockholder Business at Special Meetings.

(1) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

(2) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof, or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 4 of this Article I is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 4.

(3) In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 4 shall

be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) Advance Notice of Stockholder Business in General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 4 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 4.

(2) Except as otherwise provided by law, the chairman of the meeting shall have the power and duty:

(a) to determine whether a nomination, or any business proposed to be brought before the meeting, was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 4 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(3)(c)(vi) of this Section 4); and

(b) if any proposed nomination or business was not made or proposed in compliance with

this Section 4, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

(3) Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded, and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(4) For purposes of this Section 4, to be considered a qualified representative of the stockholder, a person must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

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(5) For purposes of this Section 4, “public announcement” shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(6) Notwithstanding the foregoing provisions of this Section 4, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 4; provided, however, that any references in these By-Laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 4 (including paragraphs (A)(1)(c) and (B) hereof), and compliance with paragraphs (A)(1)(c) and (B) of this Section 4 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the first sentence of paragraph (A)(4), matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 4 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act, or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 5. Voting List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address (but not the electronic address or other electronic contact information) of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting, either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the Corporation’s principal place of business. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 6. Quorum. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or by remote communication, or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute, the Certificate of Incorporation or these By-

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Laws. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or by remote communication, or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. Once a share is represented for any purpose at a meeting (other than solely to object (1) to holding the meeting or transacting business at the meeting, or (2) (if it is a special meeting) to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice), it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting. If no quorum shall be present or represented at any meeting of stockholders, such meeting may be adjourned in accordance with Section 7 hereof, until a quorum shall be present or represented.

Section 7. Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws, which time and place shall be announced at the meeting, by a majority of the stockholders present in person or by remote communication, or represented by proxy at the meeting and entitled to vote (whether or not a quorum is present), or, if no stockholder is present or represented by proxy, by any officer entitled to preside at or to act as Secretary of such meeting, without notice other than announcement at the meeting. At such adjourned meeting, any business may be transacted which might have been transacted at the original meeting, provided that a quorum either was present or represented at the original meeting or is present or represented at the adjourned meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Action at Meetings. The Chairman (or in the Chairman's absence, the Chief Executive Officer, or in the absence of the Chief Executive Officer, the President, or in the President's absence, any Vice President) shall preside over a meeting of stockholders. In the absence of the Chairman, the Chief Executive Officer, the President and all of the Vice Presidents, the Board of Directors shall elect a chairman. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairman at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant,

determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 9. Voting and Proxies. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy, entitled to vote and voting on the matter shall decide any matter (other than the election of directors) brought before such meeting, unless the matter is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such matter. Notwithstanding the foregoing, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. The stock of holders who abstain from voting on any matter shall be deemed not to have been voted on such matter. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of capital stock having voting power held of record by such stockholder. If the Certificate of Incorporation provides for more or less than one

vote for any share, on any matter, every reference in these Bylaws to a majority or other proportion of stock, voting stock or shares shall refer to a majority or other proportion of the votes of such stock, voting stock or shares. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed appointment of proxy shall be irrevocable if the appointment form states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

ARTICLE III

DIRECTORS

Section 1. Number, Election, Tenure and Qualification. The number of Directors which shall constitute the whole board shall be not less than one. Within such limit, the number of Directors shall be determined by resolution of the Board of Directors. The directors shall be elected at the annual meeting of stockholders. Each director elected shall hold office until his or her successor is elected and qualified, unless sooner displaced. Directors need not be stockholders.

Section 2. Enlargement. Subject to any limitations which may be contained in the Certificate of Incorporation or pursuant to a written agreement entered into among the stockholders of the Corporation, the number of the Board of Directors may be increased at any time by vote of a majority of the Directors then in office.

Section 3. Vacancies. Unless otherwise provided in the Certificate of Incorporation or pursuant to a written agreement entered into among the stockholders of the Corporation,

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vacancies and newly created Directorships resulting from any increase in the authorized number of Directors may be filled by a majority of the Directors then in office, though less than a quorum, or by a sole remaining director, and the Directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by the affirmative vote of a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until the next election of directors of the class to which such director was appointed, and until his or her successor is elected and qualified, unless sooner displaced. In the event that one or more directors resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office until the next election of directors, and until his or her successor is elected and qualified, unless sooner displaced. If there are no Directors in office, then an election of Directors may be held in the manner provided by statute. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law or these By-Laws, may exercise the powers of the full board until the vacancy is filled.

Section 4. Resignation and Removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation at its principal place of business or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, unless otherwise specified by law, the Certificate of Incorporation or these By-Laws. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 5. General Powers. The business and affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 6. Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board, who need not be an employee or officer of the Corporation. If the Board of Directors appoints a Chairman of

the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman of the Board is also designated as the corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 4 of Article IV of these By-laws. Unless otherwise provided by the Board of Directors, the Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders.

Section 7. Place of Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

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Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors; provided that any director who is absent when such a determination is made shall be given prompt notice of such determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman, Chief Executive Officer, Secretary, or on the written request of two (2) or more Directors, or by one director in the event that there is only one director in office. Twenty-four hours' notice to each director, either personally or by telegram, cable, telecopy, electronic mail, commercial delivery service, telex or similar means sent to his or her business or home address, or three (3) days' notice by written notice deposited in the mail, shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the business to be transacted at or the purposes of the meeting. A meeting may be held at any time without notice if all the Directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing, either before or after such meeting.

Section 10. Quorum. Action at Meeting. Adjournments. At all meetings of the Board a majority of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. Action by Consent. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 12. Telephonic Meetings. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 13. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such

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committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may

authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (a) adopting, amending or repealing the By-Laws of the Corporation or any of them or (b) approving or adopting, or recommending to the stockholders any action or matter expressly required by law to be submitted to stockholders for approval. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and make such reports to the Board of Directors as the Board of Directors may request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the conduct of its business by the Board of Directors. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 14. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board of Directors shall have the authority to fix from time to time the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and the performance of their responsibilities as Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated salary as director. No such payment shall preclude any director from serving the Corporation or its parent or subsidiary Corporations in any other capacity and receiving compensation therefor. The Board of Directors may also allow compensation for members of special or standing committees for service on such committees.

Section 15. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of such meeting. Such right to dissent shall not apply to a director who voted in favor of the action.

ARTICLE IV

OFFICERS

Section 1. Enumeration. The officers of the Corporation shall be chosen by the Board of Directors and shall be a Chief Executive Officer, a President, a Secretary and a Treasurer and such other officers with such titles, terms of office and duties as the Board of Directors may from time to time determine, including, without limitation, one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers. If authorized by resolution of the Board of Directors, the Chief Executive Officer may be empowered to appoint from time to time

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Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these By-Laws otherwise provide.

Section 2. Election. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a Chief Executive Officer, a President, a Secretary and a Treasurer. Other officers may be appointed by the Board of Directors at such meeting, at any other meeting, or by written consent, with such powers as shall be determined by the Board of Directors.

Section 3. Tenure. The officers of the Corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing him or her, or until his or her earlier death, resignation or removal. Any officer elected or appointed by the Board of Directors or by the Chief Executive Officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board of Directors or a committee duly authorized to do so, except that any officer appointed by the Chief Executive Officer may also be removed at any time, with or without cause, by the Chief Executive Officer. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors, at its discretion. Any officer may resign by delivering his or her written resignation to the Corporation at its principal place of business or to the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 4. Chief Executive Officer and President. Unless the Board of Directors has designated another person as the Corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board of Directors. The Chief Executive Officer shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Executive Officer and the President shall each have the authority to execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

Section 5. Vice-Presidents. In the absence of the Chief Executive Officer or the President, or in the event of his or her inability or refusal to act, the Vice-President, or if there be more than one Vice-President, the Vice-Presidents in the order designated by the Board of Directors or the Chief Executive Officer (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the Chief Executive Officer or

President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer and the President, as the case may be. The Vice-Presidents shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer or the President may from time to time prescribe.

Section 6. Secretary. The Secretary shall have such powers and perform such duties as are incident to the office of Secretary. The Secretary shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be from time to time prescribed by the Board of Directors or Chief Executive Officer, under whose supervision the Secretary shall be. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or an assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature.

Section 7. Assistant Secretaries. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, the Chief Executive Officer or the Secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

Section 8. Treasurer. The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall

render to the Chief Executive Officer and the Board of Directors, when the Chief Executive Officer or Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

Section 9. Assistant Treasurers. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, the Chief

Executive Officer or the Treasurer (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe.

ARTICLE V

NOTICES

Section 1. Delivery. Whenever, under the provisions of law, or of the Certificate of Incorporation or these By-Laws, notice is required to be given to any person, such notice may be given by mail, addressed to such person, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Unless written notice by mail is required by law, notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such person at his or her address as it appears on the records of the Corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the Corporation or the person sending such notice and not by the addressee. Notice may also be given to stockholders by a form of electronic transmission in accordance with and subject to the provisions of Section 232 of the General Corporation Law of Delaware. Oral notice or other in-hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

Section 2. Waiver of Notice. Whenever any notice is required to be given under the provisions of law or of the Certificate of Incorporation or of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, and, having objected, such person takes no further active part in the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Board of Directors or members of a committee need be specified in any waiver of notice unless required by law.

ARTICLE VI

INDEMNIFICATION

Section 1. Actions other than by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another Corporation,

partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order,

settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. The Board of Directors in its sole discretion shall have power on behalf of the Corporation to indemnify any person, other than a director or officer, made a party to any action, suit or proceeding by reason of the fact that he or she, his or her testator or intestate, is or was an employee or agent of the Corporation.

Section 2. Actions by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Success on the Merits. To the extent that any person described in Section 1 or 2 of this Article VI has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. Specific Authorization. Any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (1) by the Board of Directors by a majority vote of Directors who were not parties to such action, suit or proceeding (even though less than a quorum), or (2) if there are no disinterested Directors or if a majority of disinterested Directors so directs, by independent legal counsel (who may be regular legal counsel to the Corporation) in a written opinion, or (3) by the stockholders of the Corporation.

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Section 5. Advance Payment. Expenses incurred in defending a pending or threatened civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in Sections 1 or 2 to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by the Corporation as authorized in this Article VI. Notwithstanding the foregoing, the Corporation shall not be required to advance such expenses to an agent who is a party to an action, suit or proceeding brought by the Corporation and approved by a majority of the Board of Directors of the Corporation that alleges willful misappropriation of corporate assets by such agent, disclosure of confidential information in violation of such agent's fiduciary or contractual obligations to the Corporation or any other willful and deliberate breach in bad faith of such agent's duty to the Corporation or its stockholders.

Section 6. Non-Exclusivity. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VI shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any By-Law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 7. Insurance. The Board of Directors may authorize, by a vote of the majority of the full board, the Corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VI. The Corporation's

indemnification or any otherwise applicable insurance coverage under a policy maintained by the Corporation or any other person.

Section 8. Continuation of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person. The foregoing provisions of this Article VI shall be deemed to be a contract between the Corporation and each director who serves in such capacity at any time while this By-law is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

Section 9. Severability. If any word, clause or provision of this Article VI or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 10. Intent of Article. The intent of this Article VI is to provide for indemnification and advancement of expenses to the fullest extent permitted by Section 145 of

the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article VI shall be amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by law.

ARTICLE VII

CAPITAL STOCK

Section 1. Certificates of Stock. The shares of stock of the Corporation shall be represented by certificates, or shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock, or a combination of both. To the extent that shares are represented by certificates, such certificates whenever authorized by the Board of Directors, shall be in such form as shall be approved by the Board of Directors. The certificates representing shares of stock of each class shall be signed by, or in the name of the Corporation by, the Chairman, Chief Executive Officer, President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such holder in the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Lost Certificates. The Board of Directors, Chairman, Chief Executive Officer, President or Secretary may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors or any such officer may, in its or his/her discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to give reasonable evidence of such loss, theft or destruction, to advertise the same in such manner as it

shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be

made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

Section 3. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and proper evidence of compliance with other conditions to rightful transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty days nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for the determination of stockholders entitled to vote therewith at the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted, and which shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

Section 5. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, if any, subject to the provisions of the Certificate of Incorporation, may be declared by the Board of Directors at any regular or special meeting or by written consent, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Directors from time to time, in their sole discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any

property of the Corporation, or for such other purposes as the Directors think conducive to the interests of the Corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

Section 3. Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 5. Seal. The Board of Directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the word "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board of Directors.

Section 6. Certificate of Incorporation. In the event of any conflict between the provisions of the Corporation's Certificate of Incorporation and these By-Laws, the provisions of the Certificate of Incorporation shall govern, and the Certificate of Incorporation is hereby made a part of these By-Laws. All references in these By-Laws to the Certificate of Incorporation shall be construed to mean the Certificate of Incorporation of the Corporation as from time to time amended, including (unless the context shall otherwise require) all certificates and any agreement of consolidation or merger filed pursuant to the Delaware General Corporation Law, as amended.

ARTICLE IX

AMENDMENTS

These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors

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provided, however, that in the case of a regular or special meeting of stockholders, notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting.

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Register of Amendments to the By-Laws

<u>Date</u>	<u>Section Affected</u>	<u>Change</u>
July 3, 2012	All	Amendment and Restatement

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SECTION 3 – TESARO 2017 PROXY STATEMENT

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- ☒ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☐ Soliciting Material under §240.14a-12

TESARO, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.
- ☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies: _____
- (2) Aggregate number of securities to which transaction applies: _____
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined): _____
- (4) Proposed maximum aggregate value of transaction: _____
- (5) Total fee paid: _____
- ☐ Fee paid previously with preliminary materials.
- ☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- (1) Amount Previously Paid: _____
- (2) Form, Schedule or Registration Statement No.: _____
- (3) Filing Party: _____
- (4) Date Filed: _____



TESARO, Inc.
1000 Winter Street
Waltham, Massachusetts 02451

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The 2017 Annual Meeting of Stockholders will be held on May 11, 2017, at 8:30 a.m. local time, at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, MA 02451 for the following purposes:

1. to elect ten members of the board of directors from the nominees named in the accompanying proxy statement;
2. to approve, by non-binding vote, the Company's executive compensation;
3. to ratify the appointment of Ernst & Young, LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2017; and
4. to consider any other matters that properly come before the Annual Meeting or any adjournment or postponement thereof.

Each outstanding share of TESARO, Inc. common stock (NASDAQ: TSRO) entitles the holder of record at the close of business on March 14, 2017, to receive notice of and to vote at the Annual Meeting or any adjournment or postponement of the Annual Meeting.

WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING, WE URGE YOU TO VOTE YOUR SHARES BY INTERNET, TELEPHONE, OR BY SIGNING, DATING AND RETURNING THE PROXY CARD. IF YOU CHOOSE TO ATTEND THE ANNUAL MEETING, YOU MAY STILL VOTE YOUR SHARES IN PERSON, EVEN THOUGH YOU HAVE PREVIOUSLY VOTED OR RETURNED YOUR PROXY BY ANY OF THE METHODS DESCRIBED IN OUR PROXY STATEMENT. IF YOUR SHARES ARE HELD IN A BANK OR BROKERAGE ACCOUNT, PLEASE REFER TO THE MATERIALS PROVIDED BY YOUR BANK OR BROKER FOR VOTING INSTRUCTIONS.

ALL STOCKHOLDERS ARE EXTENDED A CORDIAL INVITATION TO ATTEND THE MEETING.

By Order of the Board of Directors

A handwritten signature in black ink, appearing to read "Leon O. Moulder, Jr.", written over a horizontal line.

Leon O. Moulder, Jr.
Chief Executive Officer
April 7, 2017

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TESARO, Inc.
1000 Winter Street
Waltham, Massachusetts 02451
PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS
To Be Held On Thursday, May 11, 2017

This Proxy Statement (the "Proxy Statement") and the accompanying proxy are furnished to the stockholders of TESARO, Inc. (hereinafter, "we," "us," "TESARO" and the "Company") in connection with the solicitation of proxies by the board of directors, to be voted at the Annual Meeting of Stockholders (the "Annual Meeting") and at any adjournment or postponement of the Annual Meeting, which will be held at 8:30 a.m. local time on Thursday, May 11, 2017, at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, MA 02451, for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders. The board of directors mailed this Proxy Statement and accompanying materials to each of the Company's stockholders entitled to vote at the Annual Meeting on or about April 7, 2017.

Important Notice Regarding the Internet Availability of Proxy Materials for the Stockholder Meeting to Be Held on Thursday, May 11, 2017.

Our Annual Report to Stockholders and this Proxy Statement are also available electronically on the Internet at <http://www.proxyvote.com>.

ABOUT THE ANNUAL MEETING

Purpose of the Annual Meeting

The purpose of the Annual Meeting is for our stockholders to consider and act upon the proposals described in this Proxy Statement and any other matters that properly come before the Annual Meeting or any adjournment or postponement thereof. In addition, management will report on TESARO's performance and respond to questions from stockholders. Management is presently aware of no other business to come before the Annual Meeting.

Proposals to be Voted Upon at the Annual Meeting

At the Annual Meeting, our stockholders will be asked to consider and vote upon the following three proposals:

- Proposal No. 1: To elect ten members of the board of directors, each of whom will hold office until the next annual meeting of stockholders and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal.
- Proposal No. 2: To approve, by non-binding vote, the Company's executive compensation.
- Proposal No. 3: To ratify the appointment of Ernst & Young, LLP ("Ernst & Young") as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2017.

In addition, any other matters that properly come before the Annual Meeting or any adjournment or postponement thereof will be considered. Management is presently aware of no other business to come before the Annual Meeting.

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Recommendation of the Board of Directors

The board of directors recommends that you vote FOR each of the nominees to the board (Proposal 1), FOR approval, on a non-binding basis, of the Company's executive compensation (Proposal 2), and FOR the ratification of the appointment of Ernst & Young as our independent registered public accounting firm for the fiscal year ending December 31, 2017 (Proposal 3).

Voting at the Annual Meeting

Stockholders will be entitled to vote at the Annual Meeting on the basis of each share held of record at the close of business on March 14, 2017 (the "Record Date").

If on the Record Date you held shares of our common stock that are registered directly in your name with our transfer agent, Computershare Trust Company, N.A. ("Computershare"), you are considered the stockholder of record with respect to those shares, and Computershare is sending these proxy materials directly to you on our behalf. As a stockholder of record, you may vote in person at the Annual Meeting or by proxy. Whether or not you plan to attend the Annual Meeting in person, you may vote by signing and submitting your proxy card or by submitting your vote by telephone or the Internet. Whether or not you plan to attend the Annual Meeting, we urge you to vote by way of the Internet, by telephone, or by filling out and returning the proxy card. If you submit a proxy but do not give instructions as to how your shares should be voted on a particular proposal at the Annual Meeting, your shares will be voted in accordance with the recommendations of our board of directors stated in this Proxy Statement. Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use by (1) delivering a written notice of revocation addressed to TESARO, Inc., Attn: Corporate Secretary, 1000 Winter Street, Waltham, Massachusetts 02451, (2) a duly executed proxy bearing a later date, (3) voting again by the Internet or by telephone, or (4) attending the Annual Meeting and voting in person. Your last vote or proxy will be the vote or proxy that is counted. Attendance at the Annual Meeting will not cause your previously granted proxy to be revoked unless you specifically so request.

If on the Record Date you held shares of our common stock in an account with a brokerage firm, bank, or other nominee, you are considered a beneficial owner of those shares and hold such shares in street name. These proxy materials have been forwarded to you by the nominee holding your shares. As a beneficial owner, you have the right to direct your broker, bank, or other nominee on how to vote the shares held in their account, and the nominee has enclosed or provided voting instructions for you to use in directing it how to vote your shares. The nominee that holds your shares, however, is considered the stockholder of record for purposes of the Annual Meeting. Because you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you bring a letter from your nominee confirming your beneficial ownership of the shares to the Annual Meeting. Whether or not you plan to attend the Annual Meeting, we urge you to vote by following your nominee's voting instructions to ensure that your vote is counted.

If you are a beneficial owner and do not direct your broker, bank, or other nominee on how to vote, and your broker, bank or other nominee does not have discretionary power to vote your shares, your shares may constitute "broker non-votes." Shares that constitute broker non-votes will be counted for the purpose of establishing a quorum at the Annual Meeting. Voting results will be tabulated and certified by the inspector of elections appointed for the Annual Meeting. If you receive more than one Proxy Statement, it is because your shares are registered in more than one name or are registered in different accounts. Please follow the instructions provided with each Proxy Statement received to ensure that all of your shares are voted.

A list of stockholders of record as of the Record Date will be available for inspection during ordinary business hours at our offices located at 1000 Winter Street, Waltham, Massachusetts 02451,

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from April 17, 2017 to the date of our Annual Meeting. The list will also be available for inspection at the Annual Meeting.

Quorum Requirement for the Annual Meeting

The presence at the Annual Meeting, whether in person or by valid proxy, of persons holding a majority of the shares of common stock outstanding on the Record Date will constitute a quorum, permitting us to conduct our business at the Annual Meeting. On the Record Date, there were 53,801,752 shares of common stock outstanding and entitled to vote, held by 27 stockholders of record. Abstentions (i.e., if you or your broker mark "ABSTAIN" on a proxy) and "broker non-votes" will be considered to be shares present at the meeting for purposes of a quorum. Broker non-votes occur when shares held by a broker for a beneficial owner are not voted with respect to a particular proposal and generally occur because the broker (1) does not receive voting instructions from the beneficial owner and (2) lacks discretionary authority to vote the shares. Brokers and other nominees have discretionary authority to vote on ratification of our independent registered public accounting firm for clients who have not provided voting instructions. However, without voting instructions from their clients, they cannot vote on "non-routine" proposals, such as the election of directors.

Required Votes

Election of directors. Each director will be elected by the vote of the plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Abstentions and broker non-votes are not taken into account in determining the outcome of the election of directors. In addition, as further described below under the heading "Corporate Governance Matters," in December 2016, the board of directors amended our Corporate Governance Guidelines to provide that any nominee for director in an uncontested election who receives a greater number of votes "withheld" from his or her election than votes "for" such election shall, promptly following certification of the stockholder vote, offer his or her resignation to the board for consideration.

Approval of executive compensation. The affirmative vote from stockholders present in person or represented by proxy at the Annual Meeting representing a majority of the votes cast on the proposal is required to approve the Company's executive compensation. Abstentions and broker non-votes are not taken into account in determining the outcome of this vote. As noted above, the proposal to approve the Company's executive compensation is non-binding.

Ratification of our independent registered public accounting firm. Approval of the proposal to ratify the audit committee's appointment of Ernst & Young as our independent registered public accounting firm for the fiscal year ending December 31, 2017 requires the affirmative vote of the holders of at least a majority of the shares of common stock present in person or represented by proxy at the Annual Meeting, entitled to vote and voting on the matter. Abstentions and broker non-votes are not taken into account in determining the outcome of this proposal.

Solicitation of Proxies

We will bear the cost of solicitation of proxies. This includes the charges and expenses of brokerage firms and others for forwarding solicitation material to beneficial owners of our outstanding common stock. We may solicit proxies by mail, personal interview, telephone or via the Internet through our officers, directors and other management employees, who will receive no additional compensation for their services.

CORPORATE GOVERNANCE STANDARDS AND DIRECTOR INDEPENDENCE

The board of directors has adopted Corporate Governance Guidelines (the "Guidelines"), a Code of Business Conduct and Ethics (the "Code of Ethics"), and a Policy for Related Person Transactions as part of our corporate governance practices and in accordance with rules of the Securities and Exchange Commission (the "SEC") and the listing standards of The NASDAQ Stock Market ("NASDAQ").

Corporate Governance Matters

The Guidelines set forth a framework to assist the board of directors in the exercise of its responsibilities. The Guidelines cover, among other things, the duties and responsibilities of the directors; the composition, responsibilities and operation of the board of directors; the establishment and operation of board committees; succession planning for our Chief Executive Officer; convening executive sessions of independent directors; the board's interaction with management and third parties; and the evaluation of the performance of the board and the Chief Executive Officer. In addition, in December 2016, the board of directors amended the Guidelines to provide that any nominee for director in an uncontested election who receives a greater number of votes "withheld" from his or her election than votes "for" such election shall, promptly following certification of the stockholder vote, offer his or her resignation to the board for consideration. The independent members of the board will evaluate the best interests of the Company and decide the action to be taken with respect to such offered resignation, which may include: (i) accepting the resignation; (ii) maintaining the director but addressing what the independent directors believe to be the underlying cause or causes of the withheld votes; (iii) resolving that the director will not be re-nominated in the future for election; or (iv) rejecting the resignation.

The Code of Ethics is designed to promote the highest standards of ethical conduct by our directors, executive officers and employees. The Code of Ethics requires that our directors, executive officers and employees avoid conflicts of interest, comply with applicable laws and other legal requirements, conduct business in an honest and ethical manner and otherwise act with integrity and in our best interest. Under the terms of the Code of Ethics, directors, executive officers and employees are required to report any existing or potential violation of the Code of Ethics of which they become aware. We intend to disclose future amendments to the Code of Ethics, or any waivers of its requirements, on our website or in filings under the Securities Exchange Act of 1934 (the "Exchange Act"), to the extent required by the applicable rules and exchange requirements.

The Guidelines and Code of Ethics are available in the "Investors—Corporate Governance" section of our corporate website, which is www.tesarobio.com. The Guidelines and Code of Ethics are reviewed periodically by our governance and nominating committee, which recommends changes to our board of directors for approval as appropriate.

Certain Relationships and Related Person Transactions

Policies and Procedures for Related Person Transactions

Under our Policy for Related Person Transactions, all related person transactions are reviewed and approved by our governance and nominating committee (or any other committee of the board of directors consisting of independent directors) or our full board of directors. This review covers any material transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, the amount involved exceeds \$120,000, and a related person had or will have a direct or indirect material interest, including, but not limited to, purchases of goods or services by or from a related person or entities in which the related person has a material interest, and indebtedness, guarantees of indebtedness and employment by us of a related person. A "related person," as determined since the beginning of our last fiscal year, is any executive

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officer, director or nominee to become director, a holder of more than 5% of our common stock, including any immediate family members of such persons, or any entity which is owned or controlled by such a person.

Related Person Transactions

The following is a description of transactions since January 1, 2016 to which we have been a party, in which the amount involved exceeded or will exceed \$120,000, and in which any of our executive officers, directors or holders of more than 5% of any class of our voting securities, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest, other than compensation, termination and change in control arrangements, which are described below under "Non-Employee Director Compensation," "Director Compensation" and "Compensation of Executive Officers."

In March 2016 we issued common stock to certain accredited investors, including funds associated with three of our directors. The stock was issued at a price per share of \$35.19, which was equal to the volume-weighted average trading price of our common stock over a 10 trading day period prior to entering into the agreement, for an aggregate purchase price of \$155.0 million. Entities associated with New Enterprise Associates purchased \$50.0 million of shares in this transaction. Entities associated with New Enterprise Associates beneficially own more than 5% of our common stock, and one of our directors, David M. Mott, is a general partner of New Enterprise Associates. Entities associated with Kleiner Perkins Caufield & Byers purchased \$50.0 million of shares. Entities associated with Kleiner Perkins Caufield & Byers beneficially owned more than 5% of our common stock as a result of this purchase. One of our directors, Beth Seidenberg, M.D., is a general partner of Kleiner Perkins Caufield & Byers. InterWest Partners X, LP purchased \$5.0 million of shares. One of our directors, Arnold L. Oronsky, Ph.D., is a general partner of InterWest Management Partners X, LLC, the general partner of InterWest Partners X, LP. The foregoing transaction was reviewed and recommended for approval by a special independent committee of the board comprised only of directors without any direct interest in the transaction.

In connection with this transaction, we also amended our Second Amended and Restated Investors' Rights Agreement to provide these funds with registration rights for the shares acquired that are the same as the registration rights already provided under the agreement. The amendment also extended the term of those registration rights until March 18, 2019.

Board Independence and Leadership Structure

Our board of directors believes, and NASDAQ Marketplace Rules require, that a majority of its members should be independent directors. In addition, the respective charters of the audit, compensation and governance and nominating committees currently require that each member of such committee be an independent director. Consistent with NASDAQ's independence criteria, the board of directors has affirmatively determined that each of our directors and nominees for director other than Leon O. Moulder, Jr., who is our Chief Executive Officer, and Mary Lynne Hedley, Ph.D., who is our President and Chief Operating Officer, is independent of TESARO and our management. NASDAQ's independence criteria includes a series of objective tests, including that the director is not an employee of TESARO and has not engaged in various types of business dealings with us. In addition, as further required by NASDAQ rules, the board of directors has subjectively determined as to each independent director and nominee for director that no relationship exists that, in the opinion of the board of directors, would interfere with each such person's exercising independent judgment in carrying out his or her responsibilities as a director. In making these determinations on the independence of our directors and nominees for director, the board of directors considered the relationships that each such director or nominee has with the Company and our management and all other facts and circumstances the board deemed relevant in determining independence, including the beneficial ownership of our capital stock by each such person.

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In accordance with the Guidelines, the independent members of our board of directors meet in "executive session" at least quarterly. If the Chairperson of the board is not an independent director, the Guidelines provide that the Lead Director, as selected by the independent directors, will preside over and develop the agenda for these sessions. The purpose of the executive sessions is to promote open and candid discussion among non-employee directors.

The Guidelines require the board of directors to elect its Chairperson based on the board's view of what is best for the Company at the time of the election. Although neither the Company's bylaws nor the Guidelines require separating the positions of Chairperson of the board of directors and Chief Executive Officer, the board believes that having separate positions is the appropriate current leadership structure for the Company, and the positions of the Chairperson of the board of directors and Chief Executive Officer are currently separated. Separating these positions allows our Chief Executive Officer to focus on our day-to-day business, while allowing the Chairperson of the board of directors to lead the board in its fundamental role of providing advice to, and independent oversight of, management. The board of directors recognizes the time, effort and energy that the Chief Executive Officer must devote to his position in the current business environment, as well as the commitment required to serve as our Chairperson. The board believes that this structure ensures an appropriate role for the independent directors in the oversight of the Company and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of our board of directors. The board recognizes that other leadership models, such as combining the role of Chairperson of the board with the role of Chief Executive Officer, could also be appropriate. The board may periodically review its leadership structure.

Board's Role in Risk Oversight

The board of directors believes that risk management is an important part of establishing, updating and executing on the Company's business strategy. The board, both as a whole and at the committee level, has oversight responsibility relating to risks that could affect the corporate strategy, business objectives, compliance, operations, financial condition, and performance of the Company. The board focuses its oversight on the most significant risks facing the Company and on its processes to identify, prioritize, assess, manage and mitigate those risks. The board and its committees receive regular reports from members of the Company's senior management on areas of material risk to the Company, including strategic, operational, financial, legal and regulatory risks. While the board has an oversight role, management has direct responsibility for managing and assessing risks and implementing processes and controls to mitigate their effects on the Company.

The board of directors carries out its oversight responsibilities in part through its committees. The audit committee, as part of its responsibilities, oversees the management of financial risks, including but not limited to accounting matters, liquidity and credit risks, corporate tax positions, insurance coverage, and cash investment strategy and results. The audit committee also oversees the management of risks relating to the performance of the Company's independent registered public accounting firm, as well as our systems of internal control over financial reporting and disclosure controls and procedures. The compensation committee is responsible for overseeing the management of risks relating to our executive compensation and overall compensation and benefit strategies, plans, arrangements, practices and policies, and compensation of the board of directors. The governance and nominating committee oversees the management of risks associated with overall compliance and corporate governance practices, and the independence and composition of the board. These committees provide regular reports to the full board.

Meetings of the Board of Directors and its Committees

Information concerning the board of directors and its three standing committees is set forth below. Each board committee currently consists only of directors who are not employees of TESARO.

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The board of directors and its committees meet regularly throughout the year and hold special meetings from time to time. The board held 10 meetings during the year ended December 31, 2016. During this time, each of our directors attended at least 75% of the aggregate number of meetings held by the board and all committees of the board on which such director served (during the period that such director served). The board has adopted a policy that encourages, but does not require, attendance by our board members at our annual meetings of stockholders. All of the members of the board, except for one, attended the 2016 annual meeting of stockholders.

The board of directors has three standing committees: the audit committee; the compensation committee; and the governance and nominating committee. The charters for these committees can be accessed electronically on the "Investors—Corporate Governance" section of our corporate website, which is www.tesarbio.com.

The Guidelines require the board of directors to conduct, and the governance and nominating committee to oversee, an annual evaluation of the board's operations and performance in order to enhance its effectiveness. Pursuant to the Guidelines, following this evaluation, the governance and nominating committee is required to make recommendations to the full board for its consideration.

BOARD COMMITTEES AND THEIR FUNCTIONS

The following table presents the current composition of the standing committees of the board of directors.

Name	Audit Committee	Compensation Committee	Governance and Nominating Committee
Leon O. Moulder, Jr.			
Mary Lynne Hedley, Ph.D.			
David M. Mott(2)		X(1)	X
Lawrence M. Alleva	X(1)		
James O. Amitage, M.D.		X	
Earl M. (Duke) Collier, Jr.		X	X(1)
Garry A. Nicholson	X		
Arnold L. Oronsky, Ph.D.			X
Kavita Patel, M.D.			X
Beth Seidenberg, M.D.	X		

(1) Chairperson of the committee.

(2) Chairperson of the board.

Audit Committee

The board of directors has established a separately designated standing audit committee in accordance with Section 3(a)(58)(A) of the Exchange Act. The audit committee met five times during 2016. The audit committee is responsible for assisting the board in its oversight of the integrity of our financial statements, the qualifications and independence of our independent auditors, and our internal financial and accounting controls. The audit committee has direct responsibility for the appointment, compensation, retention (including termination) and oversight of our independent auditors, and our independent auditors report directly to the audit committee. The audit committee also prepares the audit committee report that the SEC rules require to be included in this Proxy Statement.

The members of the audit committee are Mr. Alleva, Mr. Nicholson and Dr. Seidenberg. Under NASDAQ's applicable corporate governance standards and Rule 10A-3 under the Exchange Act, the

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audit committee must be comprised solely of independent directors. Mr. Alleva, Mr. Nicholson and Dr. Seidenberg each qualifies as an independent director under NASDAQ's corporate governance standards and the independence requirements of Rule 10A-3 of the Exchange Act. The board has determined that Mr. Alleva and Mr. Nicholson each qualifies as an "audit committee financial expert" as such term is currently defined in Item 407(d)(5) of Regulation S-K. Each member of the audit committee is able to read and understand fundamental financial statements, including our balance sheet, statement of operations and statement of cash flows.

Compensation Committee

The compensation committee approves the compensation objectives for the Company, provides a recommendation on the compensation of the Chief Executive Officer, which is subject to approval by the independent members of the full board of directors, and establishes the compensation for other executives. The compensation committee reviews all compensation components including base salary, bonus, benefits and other perquisites. The compensation committee may delegate any of its responsibilities to one or more subcommittees as the committee deems appropriate. See "Compensation Discussion & Analysis—Compensation Setting Process" below for more information regarding the roles of the compensation committee, the board, and compensation consultants in determining or recommending the amount or form of executive compensation. The compensation committee met four times during 2016.

The members of the compensation committee are Mr. Mott, Dr. Armitage and Mr. Collier. Each member of the compensation committee is a non-employee director within the meaning of Rule 16b-3 of the rules promulgated under the Exchange Act, an outside director, as defined by Section 162(m) of the Code, and an independent director, as defined by NASDAQ.

Governance and Nominating Committee

The governance and nominating committee is responsible for making recommendations to the board of directors regarding candidates for directorships and the size and composition of the board of directors. In addition, the governance and nominating committee is responsible for overseeing the Guidelines and our overall compliance practices and reporting and making recommendations to the board concerning corporate governance matters. The committee met three times during 2016. See "Director Nominations and Communication with Directors" below for information about the governance and nominating committee's policy regarding nominations of directors by stockholders.

The members of the governance and nominating committee are Mr. Mott, Mr. Collier, Dr. Oronsky and Dr. Patel. Each member of the governance and nominating committee is a non-employee director within the meaning of Rule 16b-3 of the rules promulgated under the Exchange Act and an independent director, as defined by NASDAQ.

DIRECTOR NOMINATIONS AND COMMUNICATION WITH DIRECTORS

Director Nomination Process

The governance and nominating committee recommends, and the board of directors nominates, candidates to stand for election as directors. Stockholders may also nominate persons to be elected as directors. If a stockholder wishes to nominate a person for election as director, he or she must follow the procedures contained in our bylaws and satisfy the requirements of Regulation 14A of the Exchange Act. To nominate a person to stand for election as a director at the annual meeting of stockholders for 2018, a stockholder must provide our Corporate Secretary with timely notice of the nomination. To be timely, the stockholder's notice must be delivered to, or mailed and received by us not later than 90 days, nor earlier than 120 days prior to the anniversary date of the preceding year's annual meeting, except that if the annual meeting is set for a date that is not within 30 days before or

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60 days after such anniversary date, we must receive the notice not earlier than the 120th day prior to such annual meeting and not later than the 90th day prior to such annual meeting or the 10th day following the day on which we provide the notice or public disclosure of the date of the meeting. The notice must include the following information:

- As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:
 - the name and address of the stockholder and of such beneficial owner, if any;
 - the class and number of shares of our capital stock owned beneficially and of record by such stockholder and such beneficial owner, if any;
 - if applicable, a description of all agreements, arrangements or understandings with respect to the nomination or proposal between or among such stockholder and such beneficial owner, if any, any of their respective affiliates or associates, and any others acting in concert with the foregoing;
 - if applicable, a description of all agreements, arrangements or understandings (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that have been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owner, if any, the effect or intent of which is to mitigate loss, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder and such beneficial owner, if any, with respect to our shares of stock;
 - such other information relating to such stockholder and such beneficial owner, if any, as would be required to be included in a proxy statement or other filings to be made in connection with solicitations of proxies for the election of directors in a contested election under the SEC's proxy rules;
 - a representation that the stockholder is a holder of record of our stock, entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination;
 - a representation whether the stockholder or the beneficial owner, if any, intends, or is part of a group which intends, (a) to deliver a proxy statement and/or form of proxy to holder of at least the percentage of our outstanding capital stock required to approve or adopt the proposal or elect the nominee(s) and/or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination; and
 - such other information that the board of directors may request in its discretion.
- As to each person whom a stockholder proposes to nominate for election as a director:
 - such person's name, age, business address and, if known, residential address;
 - such person's principal occupation or employment;
 - the class, series and number of shares of our stock that is, directly or indirectly, owned, beneficially or of record, by such person;
 - if applicable, a description of all agreements, arrangements or understandings between the stockholder and each nominee and any other person or persons, naming such person or persons, pursuant to which the nomination is to be made by the stockholder;

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- such other information regarding each nominee as would be required to be included in a proxy statement filed under the SEC's proxy rules if the nominee had been nominated, or intended to be nominated, by the board of directors; and
- the consent of each nominee to be named in the proxy statement as a nominee and to serve as a director if elected.

Each director will be elected by the vote of the plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. However, pursuant to our Corporate Governance Guidelines, as amended in December 2016, any nominee for director in an uncontested election who receives a greater number of votes "withheld" from his or her election than votes "for" such election shall, promptly following certification of the stockholder vote, offer his or her resignation to the board for consideration.

Additional information regarding requirements for stockholder nominations for next year's annual meeting is described in this Proxy Statement under "General Matters—Stockholder Proposals and Nominations."

Contacting the Board of Directors

Stockholders wishing to communicate with our board of directors may do so by writing to the board, Chairperson of the board or the non-employee members of the board as a group, at:

TESARO, Inc.
1000 Winter Street
Waltham, Massachusetts 02451
Attention: Corporate Secretary

The communication must prominently display the legend "BOARD COMMUNICATION" in order to indicate to the Corporate Secretary that it is a communication for the board. Upon receiving such a communication, the Corporate Secretary will promptly forward the communication to the relevant individual or group to which it is addressed. The board has requested that certain items that are unrelated to the board's duties and responsibilities should be excluded, such as spam, junk mail and mass mailings, resumes and other forms of job inquiries, surveys and business solicitations or advertisements.

The Corporate Secretary will not forward any communication determined in his or her good faith belief to be frivolous, unduly hostile, threatening, illegal or similarly unsuitable. The Corporate Secretary maintains a list of each communication that was not forwarded because it was determined by the Corporate Secretary to be frivolous. Such list is delivered to the Chairperson of the board at each quarterly meeting of the board (and made available to each other member of the board). In addition, each communication subject to this policy that was not forwarded because it was determined by the Corporate Secretary to be frivolous is retained in the Company's files and made available at the request of any member of the board to whom such communication was addressed.

PROPOSAL NO. 1—ELECTION OF DIRECTORS

Our nominees for the election of directors at the Annual Meeting include eight independent non-employee directors, our Chief Executive Officer and our President and Chief Operating Officer. Each director is elected to serve a one-year term, with all directors subject to annual election. At the recommendation of the governance and nominating committee, the board has nominated the following persons to serve as directors for the term beginning at the Annual Meeting on May 11, 2017: Leon O. Moulder, Jr.; Mary Lynne Hedley, Ph.D.; David M. Mott; Lawrence M. Alleva; James O. Armitage, M.D.; Earl M. (Duke) Collier, Jr.; Garry A. Nicholson; Arnold L. Oronsky, Ph.D.; Kavita Patel, M.D.; and Beth Seidenberg, M.D. All of the nominees are currently serving on the board.

It is intended by the persons named as proxies that proxies received in response to this solicitation will be voted FOR the election of each nominee named in this section unless (a) otherwise stated in the proxy or (b) in the case of a broker non-vote with respect to the proposal. Proxies submitted for the Annual Meeting can only be voted for those nominees named in this Proxy Statement. If, however, any director nominee is unable or unwilling to serve as a nominee at the time of the Annual Meeting, the persons named as proxies may vote for a substitute nominee designated by the board of directors, or the board may reduce the size of the board. Each nominee has consented to serve as a director if elected, and the board does not believe that any nominee will be unwilling or unable to serve. Each director will hold office until his or her successor is duly elected and is qualified or until his or her earlier death, resignation or removal.

Criteria for Evaluating Director Nominees

The board of directors provides strategic direction to the Company and oversees the performance of the Company's business and management. The governance and nominating committee periodically identifies and reviews with the board desired skills and attributes of both individual board members and the overall board within the context of current and future needs. The governance and nominating committee develops the general criteria, subject to approval by the full board, for identifying, evaluating and selecting qualified candidates for election or re-election to the board. The governance and nominating committee reviews the appropriate skills and characteristics required of directors in the context of the current composition of the board, our operating requirements and the long-term interests of our stockholders. The committee may use outside consultants to assist in identifying candidates. Among the characteristics the committee may consider are the collective knowledge and diversity of professional skills and background, experience in relevant industries, age and geographic background, in addition to the qualities of integrity, judgment, acumen, and the time and ability to work professionally and effectively with other board members and management and make a constructive contribution to the board. The committee considers candidates submitted by directors and management, as well as candidates recommended by stockholders, which are evaluated in the same manner as other candidates identified to it. Final approval of director candidates is determined by the full board.

The board has determined that all of our current directors and nominees are qualified to serve as directors of the Company.

The name of each nominee for director, each nominee's age as of April 1, 2017, and other information about each nominee is shown below. In addition, the biography of each of the nominees below contains information regarding the experiences, qualifications, attributes or skills that caused the

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governance and nominating committee and the board to determine that the person should serve as a director of the Company.

Name	Age	Principal Occupation	Director Since
Leon O. Moulder, Jr.	59	Chief Executive Officer of the Company	2010
Mary Lynne Hedley, Ph.D.	54	President and Chief Operating Officer of the Company	2010
David M. Mott	51	General Partner, New Enterprise Associates	2010
Lawrence M. Alleva	67	Retired Partner, PricewaterhouseCoopers, LLP	2012
James O. Amitage, M.D.	70	Professor of Medicine, University of Nebraska Medical Center	2013
Earl M. (Duke) Collier, Jr.	69	President, The Braxton Company	2014
Garry A. Nicholson	62	Retired Biopharmaceutical Executive	2015
Arnold L. Oronsky, Ph.D.	77	General Partner, InterWest Partners	2011
Kavita Patel, M.D.	43	Non-Resident Senior Fellow, The Brookings Institution, and Primary Care Physician, Johns Hopkins	2016
Beth Seidenberg, M.D.	60	General Partner, Kleiner Perkins Caufield & Byers	2011

Leon (Lonnie) O. Moulder, Jr. has served as Chief Executive Officer and as a member of our board of directors since co-founding the Company in March 2010. From April 2009 to January 2010, Mr. Moulder served as vice chairman of the board of directors and president and chief executive officer of Abraxis BioScience, Inc., a biotechnology company. Before that, Mr. Moulder served as vice chairman of Eisai Corporation of North America, from January 2008 until January 2009, following Eisai Co. Ltd.'s acquisition of MGI PHARMA, Inc., a pharmaceutical company, in January 2008. Mr. Moulder served as president and chief executive officer and as a member of the board of directors of MGI PHARMA, Inc. from May 2003 through January 2008. Mr. Moulder joined MGI PHARMA, Inc. in September 1999 as executive vice president and was promoted to president and chief operating officer in May 2002. Mr. Moulder earned a bachelor of science degree in pharmacy from Temple University and a master of business administration degree from the University of Chicago. Mr. Moulder currently serves as chairman of the board of directors of Trevena, Inc. (NASDAQ: TRVN), as a trustee of Temple University, and is on the board of the Fox Chase Cancer Center. Mr. Moulder also served as a director of Cubist Pharmaceuticals, Inc. through the sale of the company to Merck & Co., Inc. in 2015. The board of directors believes Mr. Moulder's perspective and experience as our co-founder and Chief Executive Officer, his depth of operating and senior management experience in our industry and his experience serving on the boards of directors of public and private companies in the life sciences industry provide him with the qualifications and skills to serve as a director.

Mary Lynne Hedley, Ph.D. has served as our President and as a member of our board of directors since co-founding the Company in March 2010. She also served in the role of Chief Scientific Officer from the Company's founding until she became Chief Operating Officer in July 2014. From July 2009 to February 2010, Dr. Hedley served as executive vice president of operations and chief scientific officer of Abraxis BioScience, Inc., a biotechnology company. Dr. Hedley served as executive vice president of Eisai Corporation of North America from January 2008 until July 2009, following Eisai Co. Ltd.'s acquisition of MGI PHARMA, Inc. in January 2008. Dr. Hedley served in various positions at MGI PHARMA, Inc. from 2004 through its acquisition in January 2008, most recently as executive vice president and chief scientific officer. Prior to that, Dr. Hedley co-founded and served as the president and chief executive officer of ZYCOS, Inc., a biotechnology company, which was acquired

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by MGI PHARMA, Inc. in 2004. Before co-founding ZYCOS, Dr. Hedley completed two consecutive postdoctoral fellowships at Harvard University. Dr. Hedley earned a bachelor of science degree in microbiology from Purdue University and a doctoral degree in immunology from the University of Texas, Southwestern Medical Center. Dr. Hedley currently serves on the board of directors of Youville Place, Inc. She also served on the board of directors of Receptos, Inc. prior to its acquisition by Celgene Corp. in August 2015. The board of directors believes Dr. Hedley's perspective and experience as our co-founder and President, her educational background and her operating and management experience in the life sciences industry provide her with the qualifications and skills to serve as a director.

David M. Mott has served on our board of directors since May 2010 and as the Chairperson of the board of directors since July 2011. Mr. Mott has served as a general partner of New Enterprise Associates, an investment firm focused on venture capital and growth equity investments, since September 2008, where he leads the healthcare investing practice. From 1992 until 2008, Mr. Mott worked at MedImmune Limited, a biotechnology company that was acquired by AstraZeneca plc (NYSE:AZN) in June 2008, where he served in numerous roles during his tenure, including serving from October 2000 to July 2008 as president and chief executive officer, and previously as chief financial officer, and as president and chief operating officer. Mr. Mott also served as executive vice president of AstraZeneca plc from June 2007 to July 2008 following AstraZeneca's acquisition of MedImmune. Prior to joining MedImmune, Mr. Mott was a vice president in the healthcare investment banking group at Smith Barney, Harris Upham & Co. Inc. Mr. Mott received a bachelor of arts degree from Dartmouth College. Mr. Mott serves as the chairman of the board of directors for Adaptimmune Therapeutics plc (NASDAQ: ADAP), Ardelyx, Inc. (NASDAQ: ARDX) and Epizyme, Inc. (NASDAQ: EPZM). He also serves on the boards of directors of several privately held life sciences companies, namely: 3-V Biosciences; Clementia Pharmaceuticals; Cydan Development; Imara, Inc.; Mersana Therapeutics; NightstaRx Ltd.; Vtesse, Inc.; and XTuit Pharmaceuticals. Mr. Mott also served as a director of Prosensa Holding N.V. through its acquisition by BioMarin Pharmaceutical Inc. in early 2015 and as a director of Omthera Pharmaceuticals, Inc. from April 2011 until its acquisition by AstraZeneca plc in July 2013. The board of directors believes Mr. Mott's experience in the life sciences industry as a senior executive and venture capitalist and his service on the boards of directors of other life sciences companies provide him with the qualifications and skills to serve as a director.

Lawrence M. Alleva has served on our board of directors since March 2012. Mr. Alleva is currently retired. Prior to his retirement in June 2010, Mr. Alleva was employed by PricewaterhouseCoopers LLP ("PwC"), for 39 years, including 28 years as a partner with the firm. Mr. Alleva served clients primarily in the technology sector, including pharmaceutical and biotechnology companies. Additionally, he served in a variety of office and regional practice leadership roles, most recently as ethics and compliance leader (assurance) for PwC from 2006 until his retirement. Mr. Alleva is a Certified Public Accountant (inactive). Mr. Alleva received a bachelor of science degree in accounting from Ithaca College and attended the Columbia University Executive MBA (non-degree) Program. Mr. Alleva also serves as a director for Bright Horizons Family Solutions Inc. (NYSE: BFAM), Mima Therapeutics, Inc. (NASDAQ: MIRN), and Adaptimmune Therapeutics plc (NASDAQ: ADAP). The board of directors believes Mr. Alleva's extensive experience and expertise working with public companies on corporate finance and accounting matters as a Certified Public Accountant (inactive), his experience serving on other corporate boards, and his experience in a senior leadership role at PwC provide him with the qualifications and skills to serve as a director.

James O. Armitage, M.D. has served on our board of directors since May 2013. Dr. Armitage has been a professor of internal medicine in the division of hematology and oncology at the University of Nebraska Medical Center since 2003, after having served as chairman of the department of internal medicine, dean of the college of medicine, and in various other capacities since joining the Center in 1982. He also holds a hospital appointment at The Nebraska Medical Center. Dr. Armitage has

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authored or co-authored more than 600 articles, 108 book chapters and edited or co-edited 27 textbooks. He has previously served as president of the American Society of Clinical Oncology ("ASCO"), and as a member of the ASCO board of directors. Dr. Armitage received a bachelor of science degree from the University of Nebraska and a medical degree from the University of Nebraska Medical Center and completed his post-graduate training at the University of Nebraska Medical Center and the University of Iowa Hospitals and Clinics. The board of directors believes that Dr. Armitage's training as a physician, his research, clinical and administrative experience, and his previous service as a director of a publicly traded biopharmaceutical company provide him with the qualifications and skills to serve as a director.

Earl M. (Duke) Collier, Jr. has served on our board of directors since May 2014. He has served as President of The Braxton Company, a healthcare strategy consulting firm, since 2015. From 2010 to 2014, Mr. Collier served as chief executive officer of 480 Biomedical and executive chair of Arsenal Medical, Inc., both of which are polymer biotherapeutics companies focused on serious clinical problems unable to be solved by current therapies. Mr. Collier was president at deCODE genetics, Inc., a biopharmaceutical company, from 2009 to 2010, and was executive vice president at Genzyme Corporation ("Genzyme"), a biotechnology company acquired by Sanofi S.A. in 2011, from 1997 to 2009. During his tenure at Genzyme, Mr. Collier was responsible for building the biosurgery, oncology and cardiovascular businesses and overseeing the company's efforts in multiple sclerosis. He also led some of Genzyme's significant acquisitions and the formation of MG Biotherapeutics, a Genzyme joint venture that focused on cardiac cell therapy. He also has served as president of Vitas Healthcare, a hospice provider, a partner at the law firm of Hogan & Hartson LLP, and deputy administrator of the Health Care Finance Administration (now Centers for Medicare & Medicaid Services) in the U.S. Department of Health & Human Services. Mr. Collier received a bachelor of arts degree from Yale University and a law degree from the University of Virginia Law School. Mr. Collier serves on the board of directors of Capricor Therapeutics (OTC: CAPR), a regenerative medicine company, and GenSight Biologics S.A. He is also chairman of the board of trustees of Newton-Wellesley Hospital, serves on the board of Partners HealthCare System and is chair of the Innovation Advisory Board of Partners Healthcare Innovation. The board of directors believes Mr. Collier's experience in the life sciences industry as a senior executive and his service on the boards of directors of other life sciences companies provide him with the qualifications and skills to serve as a director.

Garry A. Nicholson has served on our board of directors since May 2015. Mr. Nicholson is currently retired. He served as president and chief executive officer of XTuit Pharmaceuticals, Inc. ("XTuit"), a biopharmaceutical company, from September 2015 to October 2016, and continues to serve on its board of directors. Prior to that, he served as president, Pfizer Oncology, from May 2008 until March 2015. He joined Pfizer, Inc. ("Pfizer"), as the first leader of its global, dedicated oncology business, with direct responsibility for business strategy and operations. He was responsible for clinical development for both early and late stage medicines, for all oncology sales and marketing organizations globally, and for licensing, acquisitions, and the oncology therapeutic area strategy. In addition to his oncology role, he was a member of the Portfolio Strategy and Investment Committee, the governance body with the oversight responsibility for Pfizer research and development. He also served as a member of the Pfizer Foundation board of directors. Prior to joining Pfizer, Mr. Nicholson worked at Eli Lilly and Company ("Lilly"), in a number of leadership roles, including sales management, marketing, human resources, and as the pharmaceutical commercial leader in Italy. He assumed responsibility for the sales and marketing of Lilly's cancer products in the U.S. in 1996 and subsequently managed oncology drug development. Mr. Nicholson earned a bachelor of science degree in pharmacy from the University of North Carolina, Chapel Hill, and a master of business administration degree from the University of South Carolina, Columbia. Mr. Nicholson has also served on the board of directors of XTuit since September 2015, and of SQZ Biotech, a cell therapy company, since December 2015. The board of directors believes Mr. Nicholson's experience in the pharmaceutical industry as a senior executive provide him with the qualifications and skills to serve as a director.

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Arnold L. Oronsky, Ph.D. has served on our board of directors since June 2011. Dr. Oronsky has been a general partner with InterWest Partners, a venture capital firm, since 1994, focusing primarily on life science companies. Dr. Oronsky also serves as a senior lecturer at Johns Hopkins Medical School. Prior to joining InterWest Partners, Dr. Oronsky served as the vice president for discovery research at the Lederle Laboratories division of American Cyanamid Company. Dr. Oronsky holds a Ph.D. in immunology from Columbia University and an A.B. degree from New York University. Dr. Oronsky serves as chairman of the board of directors for Dynavax Technologies (NASDAQ: DVAX) and serves on the board of directors of Applied Genetic Technologies Corp. (NASDAQ: AGTC) and KalVista Pharmaceuticals (NASDAQ: KALV), all of which are biotechnology companies. In addition, Dr. Oronsky serves on the boards of directors of several privately held life science companies and served on the board of directors of MacroGenics, Inc. (NASDAQ: MGNX) until June 2014. The board of directors believes Dr. Oronsky's experience in the life sciences industry as a venture capitalist, his educational background and his service on the boards of directors of other public and private life sciences companies provide him with the qualifications and skills to serve as a director.

Kavita Patel, M.D. has served on our board of directors since March 2016. Dr. Patel has been a Non-Resident Senior Fellow at The Brookings Institution, a premier research and thought leadership organization, since January 2011. In this role, Dr. Patel provides senior level vision and guidance for the Center for Health Policy in the Department of Economic Studies of the Institution, specifically helping healthcare systems understand how to transform their clinical environments to become more accountable for the care they provide. Dr. Patel has also been a practicing primary care physician at Johns Hopkins since January 2011. From 2009 to 2010, she served as Director of Policy for the Office on Intergovernmental Affairs and Public Engagement at The White House. Prior to that, she served as Deputy Staff Director for Health for Senator Edward M. Kennedy from 2007 to 2009. Dr. Patel currently serves as a member of the board of directors of SSM Healthcare, a nonprofit integrated delivery system, Community Catalyst, a national advocacy organization, and the National Initiative for Children's Healthcare Quality. She is also a member of the advisory board for the National Commission on Physician Payment Reform, the Robert Graham Center for Policy Studies in Family Medicine and Primary Care, and the Johns Hopkins Medicine Sibley Hospital Innovation Hub. Dr. Patel earned her bachelor of arts from the University of Texas at Austin, her M.D. from the University of Texas Health Science Center, and her master of science in health sciences from the University of California, Los Angeles. The board of directors believes Dr. Patel's years of healthcare leadership experience and clinical work in primary care, research, innovation, policy and advocacy provide her with the qualifications and skills to serve as a director.

Beth Seidenberg, M.D. has served on our board of directors since June 2011. Dr. Seidenberg has been a partner at Kleiner Perkins Caufield & Byers, a venture capital firm, since May 2005, where she has primarily focused on life science investing. Dr. Seidenberg was previously the senior vice president, head of global development and chief medical officer at Amgen, Inc. (NASDAQ: AMGN), a biotechnology company. In addition, Dr. Seidenberg was a senior executive in research and development at Bristol Myers Squibb Company (NYSE: BMY), a biopharmaceutical company, and Merck & Co., Inc. (NYSE: MRK), a healthcare company. Dr. Seidenberg received a bachelor of science degree from Barnard College and a medical degree from the University of Miami School of Medicine and completed her post-graduate training at Johns Hopkins University and the National Institutes of Health. Dr. Seidenberg serves on the boards of directors of Atara Biotherapeutics, Inc. (NASDAQ: ATRA), Epizyme, Inc. (NASDAQ: EPZM) and several privately held life sciences companies. The board of directors believes Dr. Seidenberg's training as a physician and her experience in the life sciences industry as a senior executive and venture capitalist provide her with the qualifications and skills to serve as a director.

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Required Vote and Board Recommendation

In order to be elected as a director, a nominee must be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors at the Annual Meeting. Stockholders do not have the right to cumulate their votes in the election of directors. In addition, in December 2016, the board of directors amended our Corporate Governance Guidelines to provide that any nominee for director in an uncontested election who receives a greater number of votes "withheld" from his or her election than votes "for" such election shall, promptly following certification of the stockholder vote, offer his or her resignation to the board for consideration.

THE BOARD RECOMMENDS A VOTE "FOR" ELECTION OF EACH OF THE TEN NOMINATED DIRECTORS.

Non-Employee Director Compensation

In February 2016, our board of directors approved a new non-employee director compensation policy, which became effective for all non-employee directors on May 11, 2016. This compensation policy has been in effect for all non-employee directors since that date.

The compensation policy for our non-employee directors is set forth in the chart below. Under the policy, non-employee directors receive a base retainer for their service on the board of directors and fees for certain service and attendance. Non-employee directors are permitted to elect to receive their retainer and fees in cash or unrestricted common stock and are also permitted to elect to defer the receipt of that stock to a date selected by the director or to the date of termination of their service as a director.

	2016 Amount
Annual base retainer	\$ 50,000
Annual base retainer for Chairperson of the board of directors*	\$ 80,000
Audit committee service	\$ 10,000
Audit committee Chairperson*	\$ 70,000
Compensation committee service	\$ 7,500
Compensation committee Chairperson*	\$ 65,000
Governance and nominating committee service	\$ 5,000
Governance and nominating committee Chairperson*	\$ 60,000
Fee for meetings of the board of directors in excess of 10 meetings per year	\$ 1,500
Fee for meetings of committees of the board of directors in excess of six meetings per year	\$ 1,500

* A director who serves as Chairperson of our board of directors or a committee of our board of directors receives only the retainer or fee associated with service as the Chairperson and does not receive, in addition to the amount, the retainer or fee associated with service on the board or committee generally.

The amounts described in the chart above are paid in a single payment on the first business day of the month following our annual meeting. In 2017, these payments will be made on the first business day of June.

In addition, in 2016, newly appointed non-employee directors received a one-time initial award of options to purchase 24,000 shares of our common stock, which vest annually over a three-year period subject to the director's continued service on the board of directors. In 2016, each incumbent non-employee director received an annual award of options to purchase 12,000 shares of our common

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stock, which vests on the earlier of the one-year anniversary of the date of grant and the date of our next annual meeting, subject to the director's continued service on the board of directors.

Director Compensation

The following table summarizes the compensation paid to or earned by our non-employee directors during the year ended December 31, 2016:

Name	Fees Earned Or Paid in Cash(1)	Option Awards(2)	Total
Lawrence M. Alleva	\$ 70,000	\$ 296,838	\$ 366,838
James O. Armitage, M.D.	57,500	296,838	354,338
Earl M. (Duke) Collier, Jr.	67,500	296,838	364,338
David M. Mott	100,000	296,838	396,838
Garry A. Nicholson	60,000	296,838	356,838
Arnold L. Oronsky, Ph.D.	57,000	296,838	353,838
Kavita Patel, M.D.(3)	55,000	565,102	620,102
Beth Seidenberg, M.D.	60,000	296,838	356,838

- (1) Includes annual fees, committee chairpersonship fees and meeting fees, including fees paid in the form of Company common stock pursuant to the Company's 2015 Non-Employee Director Stock Incentive Plan. Except for Dr. Armitage, Mr. Collier and Dr. Oronsky, the directors elected to receive their entire 2016 annual retainer in fully vested shares of common stock. The number of shares issued in lieu of cash for the retainer fees and committee fees were: Mr. Alleva, 1,480 shares; Mr. Mott, 2,115 shares; Mr. Nicholson, 1,269 shares; and Dr. Patel, 1,163 shares. Dr. Seidenberg elected to defer the receipt of the 1,269 shares owed to her until the termination of her service as a director. In each case, the shares had a fair market value of \$47.27 per share on the date of issuance.
- (2) Each non-employee director except Dr. Patel, who was newly elected in 2016, was granted an option to purchase 12,000 shares of our common stock at an exercise price of \$47.27 per share, which vests on the earlier of the one-year anniversary of the grant date and the date of our next annual meeting. Amounts shown do not reflect compensation actually received by the director but represent the aggregate full grant date fair value of stock option awards granted to the director and calculated in accordance with Accounting Standards Codification Topic 718, Compensation—Stock-Based Compensation ("ASC 718"), disregarding adjustments for forfeiture assumptions. The assumptions used to value the stock option awards are set forth in Note 9 of the Notes to Financial Statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of our Annual Report on Form 10-K for the year ended December 31, 2016.
- (3) Dr. Patel was elected to the board of directors in March 2016 and was granted an option to purchase 24,000 shares of our common stock on March 31, 2016 at an exercise price of \$44.03 per share. The option vests in three equal annual installments beginning March 31, 2017.

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The following table sets forth, as of December 31, 2016, the aggregate number of exercisable and unexercisable option awards outstanding held by our current non-employee directors:

Name	Option Awards (shares)	
	Exercisable	Unexercisable
Lawrence M. Alleva	58,570	12,000
James O. Armitage, M.D.	45,000	12,000
Earl M. (Duke) Collier, Jr.	26,666	20,334
David M. Mott	30,000	12,000
Garry A. Nicholson	8,333	28,667
Arnold L. Oronsky, Ph.D.	30,000	12,000
Kavita Patel, M.D.	—	24,000
Beth Seidenberg, M.D.	30,000	12,000

Director and Officer Stock Ownership Guidelines

We believe that it is important that directors focus on long-term stockholder value and that their interests are aligned with those of our stockholders. Accordingly, in February 2016, our board adopted stock ownership guidelines, effective May 11, 2016, requiring each director to hold shares of our common stock with a value equal to three times the amount of the annual base retainer fee paid to directors for service on the board. In December 2016, our board adopted amended stock ownership guidelines, effective May 11, 2017, requiring (i) our CEO and our President to hold shares of our common stock with a value equal to at least five times the amount of his or her annual base salary, and (ii) each officer with a title of Senior Vice President or higher who is required to report ownership of the Company's equity securities in accordance with Section 16(a) of the Securities Exchange Act of 1934, as amended ("Section 16 Officers"), to hold shares of our common stock with a value equal to at least one and a half times the amount of his or her annual base salary. For this purpose, "value" includes both the market value of shares held directly by such director or officer, or through a trust, and 60% of the value of any vested, in-the-money stock options issued under any Company equity compensation plan. This amount will be re-calculated whenever there is a change in the annual base retainer fee. Each director is required to achieve the applicable level of ownership by the later of the date of our 2019 annual meeting and the date that is three years after the date on which the person became a director. Each officer covered by the guidelines is required to achieve the applicable level of ownership by the later of the date of our 2022 annual meeting and the date that is five years after the date on which the person became an officer.

EXECUTIVE OFFICERS

TESARO has seven executive officers: Mr. Moulder, our Chief Executive Officer; Dr. Hedley, our President and Chief Operating Officer; Timothy R. Pearson, our Executive Vice President and Chief Financial Officer; Grant C. Bogle, our Senior Vice President and Chief Commercial Officer; Joseph L. Farmer, our Senior Vice President, General Counsel and Secretary; Martin H. Huber, M.D., our Senior Vice President and Chief Medical Officer; and Orlando Oliveira, our Senior Vice President and General Manager, International. In addition, Jeffrey H. Hanke, Ph.D., our Executive Vice President, Research and Development, and Chief Scientific Officer, was considered to be an executive officer of the Company during 2016. Information on Mr. Moulder and Dr. Hedley and their business experience is set forth above in "Proposal No. 1—Election of Directors." Information on Mr. Pearson, Dr. Huber, Mr. Bogle, Mr. Farmer and Mr. Oliveira and their business experience is set forth below.

Timothy R. Pearson (49) has served as Executive Vice President and Chief Financial Officer since May 2014. Mr. Pearson served as Chief Financial Officer, Executive Vice President and Treasurer of Catalyst Health Solutions, Inc., a publicly held pharmacy benefit manager, from August 2011 until

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Catalyst was acquired by SXC Health Solutions (now Catamaran Corporation) in July 2012. Prior to joining Catalyst, Mr. Pearson served as Chief Financial Officer and Executive Vice President of MedImmune, the global biologics business for AstraZeneca plc. Mr. Pearson, a Certified Public Accountant, holds dual B.S. degrees from the University of Delaware (in business administration) and the University of Maryland University College (in accounting), as well as an M.S. in Finance from Loyola University. Mr. Pearson serves on the board of directors of GlycoMimetics, Inc. (NASDAQ: GLYC) and RA Pharmaceuticals, Inc. (NASDAQ: RARX).

Grant C. Bogle (59) has served as Senior Vice President and Chief Commercial Officer since July 2015. Prior to joining us, Mr. Bogle was Senior Vice President, Pharmaceutical and Biotech Solutions at McKesson Specialty Health, where he was part of the executive leadership team and led the informatics, health economics and outcomes research, reimbursement access and safety services, and U.S. Oncology Clinical Research business units. These business units were comprised of approximately 1,000 employees. Mr. Bogle was an employee of McKesson for eight years prior to joining us. Previously, he was Senior Vice President of Sales and Marketing for Millennium Pharmaceuticals, where he was responsible for the oncology product, VELCADE. Prior to joining Millennium, Mr. Bogle held senior sales and marketing roles at numerous other pharmaceutical companies. He holds an M.B.A. from Columbia University and a B.A. in economics from Dartmouth College.

Joseph L. Farmer (45) has served as Senior Vice President, General Counsel and Secretary since March 2015. From November 2012 until February 2015, Mr. Farmer served as Vice President, Chief Corporate Counsel and Assistant Secretary of Cubist Pharmaceuticals, Inc., prior to its sale to Merck & Co., Inc. Prior to joining Cubist, Mr. Farmer served as Vice President, General Counsel and Secretary of publicly-traded software company Pegasystems Inc. from June until November 2012. From February 2005 until June 2012, Mr. Farmer held management positions with increasing levels of responsibility at AMAG Pharmaceuticals, Inc., a publicly-traded specialty pharmaceutical company, including as its Chief Administrative Officer, General Counsel and Secretary. He received his B.A. in economics from Boston University and his J.D. from Boston College Law School.

Martin H. Huber, M.D. (57) has served as Senior Vice President and Chief Medical Officer since September 2015. Prior to joining the Company, beginning in 2009, Dr. Huber served as Vice President, Oncology Clinical Research, at Merck Research Laboratories. Dr. Huber has over 20 years of leadership experience in the biopharmaceutical industry. Prior to Merck, he served in roles of increasing responsibility at Schering-Plough, Hoffmann-La Roche and Rhone-Poulenc Rorer, where he led teams in the areas of oncology clinical development, drug safety and pharmacovigilance. He previously served as an assistant professor of oncology at the University of Texas MD Anderson Cancer Center. Dr. Huber received his M.D. from Baylor College of Medicine.

Orlando Oliveira (41) has served as Senior Vice President and General Manager, International since September 2015. Prior to joining TESARO, Mr. Oliveira was Vice President, Europe and Intercontinental Operations at Cubist Pharmaceuticals, where he led a team of executives that managed operations in 19 countries across Europe, Canada and Australia and was responsible for all alliances within Cubist covering Japan, China, Latin America and the Middle East and North Africa regions. Previously, from 2001 through 2014, Mr. Oliveira held several positions of increasing responsibility at Amgen, Inc., including country leadership roles in Portugal and Mexico and international oncology marketing roles. He began his career in sales at Johnson and Johnson. He earned his pharmacy degree from the University of Coimbra, Portugal.

COMPENSATION OF EXECUTIVE OFFICERS

Compensation Discussion & Analysis

This Compensation Discussion & Analysis addresses the principles underlying our policies and decisions with respect to the compensation of our executive officers who are named in the "Summary

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Compensation Table" below, or our "named executive officers," and material factors relevant to these policies and decisions. It should be read together with the related tables and disclosures that follow. Our named executive officers for the year ended December 31, 2016 were:

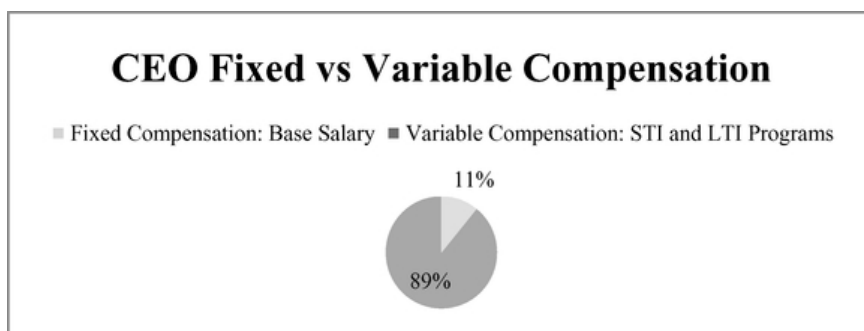
- Leon O. Moulder, Jr., our Chief Executive Officer;
- Mary Lynne Hedley, Ph.D., our President and Chief Operating Officer;
- Timothy R. Pearson, our Executive Vice President and Chief Financial Officer;
- Jeffrey H. Hanke, Ph.D., our Executive Vice President, Research and Development and Chief Scientific Officer; and
- Martin H. Huber, M.D., our Senior Vice President and Chief Medical Officer.

Compensation Philosophy and Objectives

Our primary objectives with respect to the compensation of our named executive officers are to retain and motivate them because we believe they have experience and competencies that are critical to achievement of our business goals. This is consistent with the overall approach of our compensation system generally, which is to attract, retain and motivate employees (including our officers), who have relevant, critical skills and experience, and can make important contributions to the achievement of our business goals. We seek to achieve these objectives by:

- **Establishing the components of our compensation packages at competitive levels.** For our named executive officers, this means using comparative market data as an integral element in setting compensation levels.
- **Implementing annual variable incentive compensation that is tied to specific corporate goals.** Our annual incentive program is focused on motivating our executives to achieve both company-wide and individual goals that are tied to our strategic plan.
- **Using equity awards that vest over time and deliver greater value as our stock price increases.** Using equity awards in order to align our named executive officers' interests with the interest of our stockholders in increasing long-term stockholder value.

As the pie chart below indicates, nearly 90% of our Chief Executive Officer's target compensation is variable compensation tied to either future operational or stock-price performance of the Company. Similarly, over 80% of the target compensation for our other named executive officers is tied to future performance of the Company.



Strong Compensation Practices

Our compensation program features a number of practices designed to further align the interests of our named executive officers with those of our stockholders.

Practices we employ:

- **We pay for performance.** Compensation tied to Company performance comprises a significant part of an executive's total compensation, and long-term equity-linked compensation is the largest element of total compensation.
- **We target pay competitively.** We seek to target pay to verifiable market data in order to ensure that we are both paying fairly and not overpaying our executives.
- **We use an independent compensation consultant.** For 2016 compensation decisions, the compensation committee engaged Radford, an AON Hewitt Consulting company, as an independent compensation consultant to advise the committee and help verify market and best practices.
- **We have meaningful vesting periods.** Our equity awards generally have four-year ratable vesting from the date of grant.
- **We have a recoupment policy.** Our incentive plans require repayment of awards in the event of an accounting restatement involving certain forms of misconduct.
- **We have director and executive officer stock ownership guidelines.** Each of our directors and Section 16 Officers is required to hold shares of our common stock with a value equal to at least (i) in the case of directors, three times the amount of the annual base retainer fee paid to directors, (ii) in the case of our CEO and President, five times the amount of his or her annual base salary, and (iii) in the case of our Section 16 Officers, one and a half times the amount of his or her annual base salary.

Practices we do not employ:

- **We do not offer single trigger change of control payments.** Our severance arrangements are "double trigger" and in the event of a change of control will only provide severance payments if there is a termination of employment.
- **We do not provide for excessive perquisites.** We do not provide any perquisites to our named executive officers, other than limited amounts with respect to insurance payments.
- **We do not offer guaranteed bonuses.** The Company's annual incentive plan does not provide payment without achievement of performance goals, regardless of the reason for the failure to achieve performance goals.
- **We do not provide for tax gross-ups.** We do not provide any tax gross-ups to executives (other than customary payments in connection with relocation payments), including on any severance/change in control payments.
- **We do not permit hedging or pledging of our securities.** We prohibit our directors and officers from profiting from short-term speculative swings in the value of the Company's stock through "short sales," "put" and "call" options or other derivative securities, forward sale contracts and other hedging transactions. We also prohibit our directors and officers from pledging, borrowing against any account in which Company securities are held, or creating any other encumbrance with respect to securities of the Company.

Compensation Setting Process

Determination of Compensation. The compensation committee of our board of directors makes compensation decisions regarding our named executive officers, other than our Chief Executive Officer. For our Chief Executive Officer, the compensation committee makes formal recommendations to the independent members of the board of directors, who make the final compensation decisions for our Chief Executive Officer.

Because the Company is relatively young, the compensation arrangements and packages for our named executive officers have been influenced over time by the arrangements entered into when these officers have joined the Company. For example, Mr. Moulder and Dr. Hedley are also our founders. The framework for each of their respective compensation packages was initially established when the Company completed our original Series A financing in 2010. As the Company has grown, we have gradually transitioned their compensation packages from those appropriate for a venture-backed company to ones competitive with a peer group of companies described below, including increased base salaries, the use of corporate objectives under our short-term incentive ("STI") program under which they receive annual cash awards, and the continued grant of equity awards under our long-term incentive program. In addition, in 2016, we began to incorporate the use of restricted stock units ("RSUs") into our equity award program to take into account the relative growth of the Company as we transitioned to a more mature, commercial-stage biopharmaceutical company.

Mr. Pearson joined the Company in May 2014, and Dr. Hanke and Dr. Huber joined the Company in June 2015 and September 2015, respectively. For each of these executives, our compensation committee considered the recommendations of Mr. Moulder and the committee's compensation consultant regarding a competitive compensation package based upon, among other things, the Company's peer group, our existing compensation structure for other senior executives and the status of our operations, including our product development programs. Their eventual compensation was based on those considerations together with the arms-length negotiation process that took place in attracting these executives to the Company.

When making decisions about compensation for the named executive officers other than Mr. Moulder, the compensation committee considers and gives substantial weight to the recommendations of Mr. Moulder regarding their performance and the committee's compensation consultant, as well as its industry experience and business judgment. The compensation committee and the board of directors evaluate the performance of Mr. Moulder and make determinations as to his compensation based on their assessment of his and the Company's performance and the recommendation of the independent compensation consultant.

Independent Compensation Consultant. For 2016 compensation decisions, the compensation committee engaged Radford, an AON Hewitt Consulting company, as an independent compensation consultant. Radford provided analysis and recommendations to the compensation committee regarding:

- trends and emerging topics with respect to executive compensation;
- peer group selection for executive compensation benchmarking;
- compensation practices for our peer group;
- compensation programs for executives and all of our associates; and
- stock utilization and related metrics.

When requested, Radford consultants attended meetings of the compensation committee, including executive sessions in which executive compensation issues were discussed. Radford reported to the compensation committee and not to management, although Radford met with management for purposes of gathering information for its analyses and recommendations.

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In determining to engage Radford, the compensation committee considered the independence of Radford, taking into consideration relevant factors, including the absence of other services provided to the Company by Radford, the amount of fees the Company paid to Radford as a percentage of Radford's total revenue, the policies and procedures of Radford that are designed to prevent conflicts of interest, any business or personal relationship of the individual compensation advisors employed by Radford with an executive officer of the Company, any business or personal relationship the individual compensation advisors employed by Radford had with any member of the compensation committee, and any stock of the Company owned by Radford or the individual compensation advisors employed by Radford. The compensation committee has determined, based on its analysis in light of all relevant factors, including the factors listed above, that the work of Radford and the individual compensation advisors employed by Radford as compensation consultants to the compensation committee did not create any conflicts of interest, and that Radford qualified as independent pursuant to the independence standards set forth in the NASDAQ listing standards promulgated pursuant to Section 10C of the Exchange Act.

Comparative Framework. As part of its consideration of executive officer compensation for 2016, the compensation committee used a comparative framework developed with the assistance of Radford. This framework blended equally information from the proxy statements of a peer group of companies and from the Radford 2015 Global Life Sciences Survey, assembled by Radford from publicly-traded biotechnology and life sciences companies with between 100 and 1,500 employees, in order to develop a competitive market composite against which compensation can be measured.

To develop the peer group of companies, the compensation committee, with assistance from Radford, considered the market capitalization and other key business metrics of biotechnology and biopharmaceutical companies. The selected peer group consisted of the following companies:

Acorda Therapeutics	Agiros Pharmaceuticals	AMAG Pharmaceuticals
Anacor Pharmaceuticals	Ariad Pharmaceuticals	bluebird bio
Celldex Therapeutics	Clovis Oncology	Exelixis
FibroGen	Halozyne Therapeutics	ImmunoGen
Intercept Pharmaceuticals	Ironwood Pharmaceuticals	Ionis Pharmaceuticals
MannKind	Medivation	Merrimack Pharmaceuticals
Momenta Pharmaceuticals	Nektar Therapeutics	Portola Pharmaceuticals
PTC Therapeutics	Puma Biotechnology	Seattle Genetics
The Medicines Company		

In October 2015, when this peer group was confirmed by the compensation committee for use in setting 2016 compensation, our market capitalization was at approximately the 51st percentile of the group.

Prior Votes on Executive Compensation. The Company's only prior non-binding vote on executive compensation took place after the Company set executive compensation for 2016, and was therefore not considered in setting 2016 compensation. In 2016, approximately 97% of the stockholder votes cast on this proposal were voted in favor of the Company's executive compensation proposal, and the compensation committee considered this level of overwhelming support in setting 2017 compensation levels. The compensation committee of the board expects to take into account the outcome of future votes on executive compensation as it considers the Company's executive compensation program.

Components of our Compensation Program

The compensation program for our named executive officers consists of base salary, annual variable incentives under our STI program and long-term incentives that are comprised of equity awards. Our named executive officers are also entitled to certain compensation upon termination of

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their employment. We believe these different forms of compensation provide appropriate incentives to achieve our business goals within the context of our overall philosophy for compensation.

The compensation committee generally tries to establish compensation for our named executive officers so that base salary and short-term incentive target opportunities are at approximately the 50th percentile of the competitive market composite and so that long-term incentive opportunities are at approximately the 75th percentile of the competitive market composite. The compensation committee believes these targets are consistent with our philosophy discussed above of establishing compensation at competitive levels in order to attract and retain high performing executives, while focusing on opportunities to align our named executive officers' interests with the interest of our stockholders in increasing long-term stockholder value.

Base Salary. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive's skill set, experience, roles and responsibilities.

For 2016, the compensation committee and board of directors approved increasing the base salary for each of Mr. Moulder and Dr. Hedley to \$640,000 and \$585,000, respectively. The increases to Mr. Moulder's and Dr. Hedley's base salaries, 6.7% and 6.4%, respectively, were made, in part, to make them competitive with the 50th percentile of base salaries of similarly situated executives at our peer companies, as well as to address customary annual base salary increases and to recognize their performance.

Mr. Pearson's base salary was increased for 2016 to \$402,325, reflecting a market-based merit increase of approximately 4.5%. Drs. Hanke and Huber's base salaries were increased to \$412,000 and \$422,300, respectively, reflecting market-based merit increases of 3.0%. The foregoing increases were made, in part, to make each executive's salary competitive with the 50th percentile of base salaries of similarly situated executives at our peer companies, as well as to address customary annual base salary increases and to recognize their performance.

Short-term Incentive Program.

General. Our STI program is intended to provide a cash incentive to our named executive officers for achieving both company-wide and individual goals approved at the beginning of each year by our compensation committee and board of directors. We believe that having an annual STI program provides an important and customary retention tool and motivates our executives to achieve the specific goals that are a part of the program.

Relative Weighting Between Company-wide and Individual Goals. For 2016, the company-wide goals and individual goals for our named executive officers were established by the compensation committee and approved by our board of directors. The compensation committee and the board of directors

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determined that for 2016 the STI program would weight company-wide goals and individual goals as set forth in the chart below for each of our named executive officers:

Named Executive Officer	Weighting of Company-Wide Goals	Weighting of Individual Goals
Leon O. Moulder, Jr., Chief Executive Officer	100%	0%
Mary Lynne Hedley, Ph.D., President and Chief Operating Officer	90%	10%
Timothy R. Pearson, Executive Vice President and Chief Financial Officer	80%	20%
Jeffrey H. Hanke, Ph.D., Executive Vice President, Research and Development, and Chief Scientific Officer	80%	20%
Martin H. Huber Jr., M.D., Senior Vice President and Chief Medical Officer	80%	20%

The relative weighting between the company-wide goals and the individual goals reflects our belief that if the primary focus of our named executive officers is the achievement of company-wide goals, then we will increase the likelihood of achieving our strategic plan.

Target Payout. The STI program is structured so that achievement of the company-wide goals and the individual goals at a level of 100% would result in the named executive officer receiving an STI target payment in an amount equal to a specified percentage of his or her base salary. For each named executive officer, a 100% achievement under the STI program would result in a target payment expressed as a percentage of base salary, which was equal to 60% for Mr. Moulder and Dr. Hedley and 50% for the other named executive officers. The target STI percentage for each of our named executive offices is intended to approximate the 50th percentile of the percentage STI opportunity available to similarly situated executives at our peer companies so that, when combined with such executive's base salary, the total potential cash compensation of each officer is at approximately the 50th percentile of his or her peers. The STI program for 2016 was also structured so that each named executive officer could achieve up to 150% of the target award with respect to the achievement of the company-wide goals, and up to 120% with respect to achievement of the individual goals. The compensation committee believes that payment of more than 100% of a target award with respect to the achievement of company-wide or individual goals is an appropriate reward for exceptional performance, but it also believes that there should be an upper limit on the opportunities under the STI program.

Company-wide Goals. For 2016, we had six company-wide goals. The six goals were based on our operating plan and long-term strategy. The compensation committee and the board of directors agreed that each of our company-wide goals should be weighted based on their subjective judgment regarding the relative importance of each of these goals. The compensation committee believes it established target goals that were achievable with an appropriate amount of dedication and hard work and, therefore, it was more likely than not that each executive officer would earn a payment under the STI program, but not necessarily the target award under the STI program, which is consistent with our compensation philosophy. Our compensation committee believes that at the time the objectives were set, there would be a substantial degree of difficulty in achieving the objectives at the target 100% level and a much greater degree of difficulty in achieving them at the stretch level.

In early 2017, our compensation committee reviewed our progress on the company-wide goals for 2016 and concluded that the company-wide goals had been achieved at a 117% level. For each of the

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named executive officers, this meant that they earned 117% of the company-wide goals portion of their STI target payment, or 117% of the total STI target payment for Mr. Moulder of 100%, 105.3% of the total STI target payment for Dr. Hedley, and 93.6% of the total STI target payment for the other named executive officers.

The following table reflects the company-wide goals for 2016, the respective weighting and the level of achievement for each goal, as determined by the board of directors, based on the recommendation of the compensation committee:

Company-Wide Goal	Weighting	Level of Achievement (weighted achievement)
VARUBI® , the oral formulation of rolapitant: Achieve 2016 net sales revenue goal and complete the European Union ("EU") Marketing Authorization Application ("MAA") submission.	15%	50% (7.5%) The level of achievement reflects that the Company fell short of our 2016 VARUBI net sales goal but submitted the EU MAA ahead of schedule in the first quarter of 2016.
IV formulation of rolapitant : Acceptance of the submission of the New Drug Application ("NDA") for the intravenous ("IV") formulation of rolapitant for filing by the U.S. Food and Drug Administration ("FDA").	15%	95% (14.25%) The level of achievement reflects that the rolapitant IV NDA submission was accepted for filing by the FDA on schedule in the second quarter.
Niraparib : Achievement of regulatory and clinical development milestones for niraparib, including NDA filing and acceptance based upon NOVA clinical trial data, NDA submission strategy defined for QUADRA, advancement of PRIMA study, and complete enrollment in dose escalation phase of the TOPACIO pembrolizumab combination study.	35%	145% (50.75%) The level of achievement reflects the filing and acceptance of the niraparib NDA for priority review by the FDA based on the landmark results from the NOVA study, and the achievement of all other niraparib-related regulatory and clinical goals, which exceeded expectations.
Pipeline : Development achievements for immuno-oncology candidates, including initiate Phase I study of TSR-042, initiate Phase I study of TSR-022, select anti-LAG-3 antibody clinical candidate and select bi-specific antibody clinical candidates targeting PD-1/TIM-3 and PD-1/LAG-3.	15%	100% (15%) The level of achievement reflects the successful initiation of Phase I studies of TSR-042 and TSR-022, the selection of an anti-LAG-3 antibody candidate, and the selection of a bi-specific antibody candidate targeting PD-1/LAG-3 in a timely manner.
Capital : Achievement of the financial objectives of the company, including achievement of budget and a reasonable level of year-end cash.	10%	150% (15%) The level of achievement reflects that the financial goals were exceeded, including the Company's budget and year-end cash level goals, in part due to highly successful capital market transactions in March, July and November of 2016 and alignment of operating results with the Company's budget.
Organization : Improving the organization through successful talent and culture management; integration of key leaders, achieve U.S. & international staffing goals and successful implementation of TESARO Associate value proposition.	10%	145% (14.5%) The level of achievement reflects the extensive and successful recruitment, hiring and integration of a large number of new employees while preserving the Company culture in 2016.
	100%	Total Achievement of 117% of Company-wide Goals

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Individual Goals. At the beginning of 2016, the compensation committee established individual goals for each of our named executive officers who were then serving, other than our Chief Executive Officer, whose performance is evaluated 100% based upon achievement of the company-wide goals. The rationale behind assigning individual goals to each of our other named executive officers is that each of them is responsible for activities within their respective job functions that support achieving company-wide goals and the Company's strategic plan. We believe that it is important that these individual goals be achieved and incentivized. Nevertheless, as demonstrated by the relative weighting between the company-wide goals and the individual goals for each of our named executive officers, we believe that achievement of the company-wide goals has a more direct and immediate impact on the creation of stockholder value than the achievement of the individual goals.

We assigned each of the named executive officers, other than the Chief Executive Officer, between four and five individual goals. Each of those individual goals was then weighted to reflect the decision of our compensation committee, based on the recommendation of our Chief Executive Officer, as to the relative importance of each goal to the officer's job function and the contribution that successfully performing the goal would make to our company-wide goals and strategic plan. If the officer accomplished all of his or her individual goals at his or her expected performance level, then the officer would receive 100% of the target STI payment with respect to the officer's individual goals. For Dr. Hedley, this would equate to 10% of her STI target payment. For Mr. Pearson, Dr. Hanke and Dr. Huber, this would equate to 20% of each of their respective STI target payments. For 2016, the officers also had the opportunity to achieve at a level of up to 120% of the target STI payment related to the individual goals.

For the named executive officers other than Mr. Moulder, our compensation committee determines the level of achievement of their respective individual goals. This determination is made following consultation with Mr. Moulder and is based in large part on his recommendation.

The following paragraphs describe for each of our named executive officers their individual goals, the relative weighting of each of those individual goals, the level of achievement by the executive officer for each individual goal, and the percentage STI payment arising from the achievement of the individual goal.

Leon O. Moulder, Jr., Chief Executive Officer. Mr. Moulder's STI payment is based 100% upon the achievement of the Company-wide annual goals. Accordingly, for 2016, Mr. Moulder earned 117% of his target STI payment.

Mary Lynne Hedley, Ph.D., President and Chief Operating Officer. Dr. Hedley was assigned goals related to (1) providing leadership for the Company (30% weighting), (2) ensuring organizational alignment and scalability to support the Company's long-range strategic plan (20% weighting), (3) maintaining successful alliances with key partners and supporting new business development initiatives (25% weighting), and (4) contributing to investor relations goals of the Company (25% weighting). Based on the achievement of her individual goals, particularly her exceptional leadership and operational achievement with respect to the execution of the niraparib development program, the compensation committee determined that Dr. Hedley achieved her individual goals at the 120% level. Accordingly, for 2016, Dr. Hedley earned 120% of the 10% portion of the STI target payment that was attributed to the achievement of her individual performance goals.

Timothy R. Pearson, Executive Vice President and Chief Financial Officer. Mr. Pearson was assigned goals related to (1) continuing to build organizational structure and staffing for finance and information technology functions (30% weighting), (2) achieving financial goals related to capital raising activities (20% weighting), (3) contributions to the development of the Company's strategic plan and overall risk assessment plan (20% weighting), (4) enhancing financial planning and analytic capabilities and processes (10% weighting) and (5) management of certain governance and compliance processes (20% weighting).

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weighting). Based on the achievement of his individual goals, particularly his exceptional leadership with respect to execution of three very successful capital raising transactions, the compensation committee determined that Mr. Pearson achieved his individual goals at the 112% level. Accordingly, for 2016, Mr. Pearson earned 112% of the 20% portion of the STI target payment that was attributed to the achievement of his individual performance goals.

Jeffrey H. Hanke, Ph.D., Executive Vice President, Research and Development, and Chief Scientific Officer. Dr. Hanke was assigned goals related to (1) ensuring on time and high quality research and development to support the Company's various NDA and investigational new drug application filings (20% weighting), (2) continuing to progress and develop our early-stage pipeline (20% weighting), (3) successfully integrating new research and development roles, creating a research organizational plan in support of the Company's long range plan, developing an enhanced governance structure within the research and development function, and ensuring goals and development plans are in place throughout the organization which are aligned with the functional goals (weighting 50%), and (4) establishing a compliance team to ensure inspection readiness (weighting 10%). Based on the achievement of each of his individual goals, the compensation committee determined that Dr. Hanke achieved his individual goals at the 100% level. Accordingly, for 2016, Dr. Hanke earned 100% of the 20% portion of the STI target payment that was attributed to the achievement of his individual performance goals.

Martin H. Huber Jr., M.D., Senior Vice President and Chief Medical Officer. Dr. Huber was assigned goals related to (1) building a high quality global clinical development organization (15% weighting), (2) ensuring FDA acceptance of the NDA for niraparib (30% weighting), (3) ensuring robust clinical development plans for TSR-022 and TSR-042 are in place to ensure alignment with the corporate goals (30% weighting), (4) creating a global clinical development organizational plan in support of the Company's long range plan (15% weighting) and (5) developing an enhanced global clinical team governance structure (10% weighting). Based on the achievement of each of his individual goals, the compensation committee determined that Dr. Huber achieved his individual goals at the 100% level. Accordingly, for 2016, Dr. Huber earned 100% of the 20% portion of the STI target payment that was attributed to the achievement of his individual performance goals.

Overall STI Program Payments for 2016. The following table sets forth for each of our named executive officers, their target STI payment, the percentages of the STI payment attributable to company-wide and individual goals, the level of performance achieved by each named executive officer with respect to both the company-wide and individual goals, and the total STI payment to each named executive officer as a result of his or her participation in the STI program for 2016. Where appropriate, we have included this information both as a percentage and as a dollar amount.

Named Executive Officer	Target Award (%)	Target Award (\$)	Company-wide Goal Achievement (%)	Company-wide Goal Achievement (\$)	Individual Goal Achievement (%)	Individual Goal Achievement (\$)	STI Payout (%)	STI Payout (\$)
Leon O. Moulder, Jr.	60%	\$384,000	117%	\$ 449,280	—	\$ —	117%	\$449,280
Mary Lynne Hedley, Ph.D.	60%	\$351,000	117%	\$ 369,603	120%	\$ 42,120	117%	\$411,723
Timothy R. Pearson	45%	\$181,046	117%	\$ 169,459	112%	\$ 40,555	116%	\$210,014
Jeffrey H. Hanke, Ph.D.	45%	\$185,400	117%	\$ 173,534	100%	\$ 37,080	114%	\$210,614
Martin H. Huber, M.D.	45%	\$190,035	117%	\$ 177,873	100%	\$ 38,007	114%	\$215,880

Long-term Incentive Program. Our use of equity awards is intended to align our named executive officers' interests with the interests of our stockholders by providing an incentive to our named executive officers to increase long-term stockholder value. Furthermore, we believe that in the biopharmaceutical industry, equity awards are a primary motivator to retain executives. We determine the size and frequency of awards based on numerous factors, including the executive's skills and experience, the executive's responsibilities, internal equity and the approach to setting compensation described under "—Determination of Compensation" above.

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In February 2016, the compensation committee and the board of directors granted a mix of stock options and RSUs to each of Mr. Moulder, Dr. Hedley, Mr. Pearson, Dr. Hanke and Dr. Huber. In 2016, the compensation committee began to incorporate the use of RSUs into our equity award program to take into account the relative growth of the Company as we transitioned to a more mature commercial-stage biopharmaceutical company. In part due to the significant increase in the value of our common stock, the compensation committee believed that RSUs would be an effective method of both rewarding and incentivizing our named executive officers in a less dilutive manner than stock options, while also continuing to align their interests with those of our stockholders by creating a mechanism to encourage executives to take a larger ownership stake in the Company. The compensation committee also believed it was important to continue to utilize stock options because it believes that stock options are very effective tools for motivating executives to increase long-term value and align our executives' interests with those of our stockholders.

To determine the exact number of equity awards to grant to each executive, the compensation committee determined an approximate dollar value delivered to similarly-situated executives at our peer group companies, in each case targeted at the 75th percentile of the competitive market composite. Taking into account the rationale discussed above for the use of options and RSUs, the compensation committee determined to split the grant values relatively equally between stock options and RSUs, with approximately 10% more value delivered in stock options than RSUs. The specific number of options that was awarded to each of Mr. Moulder, Dr. Hedley, Mr. Pearson, Dr. Hanke and Dr. Huber was determined using a Black-Scholes option pricing model, and the specific number of RSUs was determined using the then-current fair market value of our common stock.

All of the stock options issued to the named executive officers in 2016 vest in 48 equal installments on each monthly anniversary of the grant date. The RSUs granted as part of the annual grant to executives in 2016 vest in equal installments on each of the first four annual anniversaries of the grant date.

In addition to the foregoing grants, during 2016 the compensation committee also approved a special performance-based RSU program for employees who were critical to ensuring the success of the Company's niraparib NDA and MAA filings. Under this program, certain of our employees were granted RSUs, whose vesting was conditioned upon the achievement of certain milestones related to the submission and approval of each of the niraparib NDA and MAA in a timely manner. Under the foregoing program, the compensation committee awarded Dr. Huber an RSU grant for 5,000 shares of our common stock, subject to the foregoing vesting conditions. The compensation committee believed the foregoing grant was appropriate given the critical role that Dr. Huber would play in ensuring the timely submission and approval of the niraparib NDA and MAA, the achievement of which would likely create substantial value for our stockholders.

Offer Letters and Employment Letter Agreements

In May 2010, in connection with our Series A preferred stock financing, we entered into offer letters with Mr. Moulder and Dr. Hedley that reflect the framework for executive compensation discussed above. In June 2012, these agreements were amended and restated in anticipation of our initial public offering. These amended agreements were designed to be a part of a competitive compensation package for a publicly-traded company and to keep our named executive officers focused on our business goals and objectives. In February 2017, in connection with a periodic review of the terms of the employment letters by the compensation committee to ensure that the terms of our executives' employment arrangements remain competitive with similarly-situated executives in the peer group, Mr. Moulder and Dr. Hedley each entered into an amended and restated employment letter agreement with the Company.

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We entered into offer letters when each of Mr. Pearson, Dr. Hanke and Dr. Huber joined the Company. In February 2017, in connection with the periodic review discussed above, Mr. Pearson, Dr. Hanke and Dr. Huber each entered into an amended and restated employment letter agreement with the Company. In general, the employment letter agreements with Mr. Pearson, Dr. Hanke and Dr. Huber are consistent with the amended and restated employment letter agreements with Mr. Moulder and Dr. Hedley.

Payments on Termination

Pursuant to their amended and restated employment letter agreements, each of our named executive officers is entitled to specified benefits in the event of the termination of their employment under specified circumstances, including termination following a change of control of the Company. The terms of these arrangements are more fully described below under "—Employment Letter Agreements" and "—Potential Payments Upon a Termination or Change in Control." We believe these protections are appropriate for the senior executives of a biopharmaceutical company such as the Company, including because of the level of acquisition activity in this industry. We believe that providing benefits in the event of a change of control of the Company allows our named executive officers to focus their attention on building our business rather than on the personal implications of a transaction.

Federal Tax Considerations under Section 162(m)

Section 162(m) of the Code disallows a federal income tax deduction to any publicly traded corporation for any remuneration in excess of \$1.0 million of compensation paid to specified executive officers in a calendar year. Compensation in excess of \$1.0 million may be deducted if, among other things, it qualifies as performance-based compensation within the meaning of Section 162(m). We expect that our compensation committee will periodically consider the potential consequences of Section 162(m) on the various elements of our executive compensation program. In its judgment, where the compensation committee determines it is reasonably practicable and consistent with our overall compensation program objectives, it will seek to structure the equity incentives component of our executive compensation program to comply with the exemptions in Section 162(m). Our 2012 Omnibus Incentive Plan has been structured to facilitate this process. However, our board of directors or compensation committee may, in their judgment, authorize compensation payments that do not comply with the exemptions in Section 162(m) in situations where they believe that such payments are appropriate.

Summary Compensation Table

The following table presents summary information regarding the total compensation awarded to, earned by, or paid to our named executive officers for services rendered to us for the year ended December 31, 2016 and, where applicable, the prior years.

Name and Principal Position(s)	Year(1)	Salary (\$)	Bonus (\$)(2)	Stock Awards (\$)(3)	Option Awards (\$)(3)	Non-Equity Incentive Plans (\$)(4)	All Other Compensation (\$)(5)	Total (\$)
Leon O. Moulder, Jr. <i>Chief Executive Officer</i>	2016	639,385	—	2,169,500	2,392,230	449,280	5,453	5,655,848
	2015	618,077	—	—	4,564,042	291,900	5,402	5,479,421
	2014	493,654	—	—	2,801,313	263,500	5,074	3,563,541
Mary Lynne Hedley, Ph.D. <i>President and Chief Operating Officer</i>	2016	584,462	—	1,735,600	1,913,784	411,723	12,781	4,658,350
	2015	566,904	—	—	3,749,035	270,050	12,621	4,598,610
	2014	462,000	—	—	2,353,103	224,186	12,634	3,051,923
Timothy R. Pearson <i>Executive Vice President and Chief Financial Officer</i>	2016	402,058	—	759,325	837,281	210,014	34,688	2,243,366
	2015	399,308	—	—	1,793,017	151,844	14,503	2,358,672
	2014	207,692	75,000	—	2,098,400	80,584	1,919	2,463,595
Jeffrey H. Hanke, Ph.D. <i>Executive Vice President, Research and Development, and Chief Scientific Officer</i>	2016	411,815	—	759,325	837,281	210,614	81,542	2,300,577
	2015	200,000	—	2,826,000	3,316,910	79,150	61,365	6,483,425
Martin H. Huber, M.D. <i>Senior Vice President and Chief Medical Officer</i>	2016	422,111	—	1,226,225	837,281	215,880	94,531	2,796,028

- (1) Information is provided for 2015 and 2016 only for Dr. Hanke because he was not a named executive officer in 2014, and for 2016 only for Dr. Huber because he was not a named executive officer in 2014 and 2015.
- (2) The amount shown for Mr. Pearson in 2014 reflects his signing bonus.
- (3) The amounts reflect the aggregate grant date fair value of stock and stock option awards granted during the year computed in accordance with the provisions of ASC 718. For information regarding assumptions underlying the value of stock option awards, see Note 9 of the Notes to Financial Statements included in Part II, Item 8, "Financial Statements and Supplementary Data," and the discussion within Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Significant Judgments and Estimates—Stock-Based Compensation," of our Annual Report on Form 10-K for the year ended December 31, 2016.
- (4) The figures shown for non-equity incentive plan compensation represent amounts earned for the years ended December 31, 2014, 2015 and 2016, respectively, which were paid during 2015, 2016 and 2017, respectively. See "—Compensation Discussion & Analysis—Short-term Incentive Program" for more information.
- (5) The amounts shown represent the sum of Company 401(k) contributions and the dollar value of life, AD&D and short- and long-term disability insurance premiums we paid for the applicable named executive officer. The amounts shown for Dr. Hanke in 2016 and 2015 also include \$76,587 and \$59,818, respectively, in relocation compensation. The amount shown for Dr. Huber in 2016 also includes \$78,478 in relocation compensation.

Narrative Disclosure Relating to Summary Compensation Table

For an explanation of the amount of salary, bonus, stock and option awards and other compensation paid to our named executive officers, please see "—Compensation Discussion & Analysis—Components of our Compensation Program," and the disclosure provided in "—Summary Compensation Table" above.

Grants of Plan-Based Awards

The following table provides information regarding grants of plan-based awards to each of our named executive officers during 2016.

Name	Grant Date	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/Sh)(2)	Grant Date Fair Value of Stock and Option Awards (\$)(3)
		Threshold (\$)	Target (\$)(1)	Maximum (\$)				
Leon O. Moulder, Jr.	3/1/2016	\$ —	\$384,000	\$ 576,000	50,000	100,000	\$ 43.39	\$4,561,730
Mary Lynne Hedley, Ph.D.	3/1/2016	\$ —	\$351,000	\$ 515,970	40,000	80,000	\$ 43.39	\$3,649,384
Timothy R. Pearson	3/1/2016	\$ —	\$181,046	\$ 260,707	17,500	35,000	\$ 43.39	\$1,596,606
Jeffrey H. Hanke, Ph.D.	3/1/2016	\$ —	\$185,400	\$ 266,976	17,500	35,000	\$ 43.39	\$1,596,606
Martin H. Huber, M.D.(4)	3/1/2016	\$ —	\$190,035	\$ 273,650	17,500	35,000	\$ 43.39	\$1,596,606
	7/27/2016	\$ —	\$ —	\$ —	5,000	—	\$ —	\$ 466,900

- (1) Amounts shown as estimated possible payouts under non-equity incentive plan awards are the target and maximum cash incentive each executive was eligible to receive pursuant to the terms of our STI program. For actual amounts paid, see "—Summary Compensation Table." For more information regarding these payments, see "—Compensation Discussion & Analysis—Components of our Compensation Program—Short-term Incentive Program."
- (2) Amounts represent the closing price of our common stock as reported on the NASDAQ Global Select Market on the grant date. For a description of the terms of stock options granted, see "—Compensation Discussion & Analysis—Components of our Compensation Program—Long-term Incentive Program."
- (3) Reflects the grant date fair value of each award computed in accordance with ASC 718. These amounts do not correspond to the actual value that will be recognized by the named executive officers. The assumptions used in the valuation of these awards are consistent with the valuation methodologies specified in Note 9 of the Notes to Financial Statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of our Annual Report on Form 10-K for the year ended December 31, 2016.
- (4) The Company granted an award of 5,000 RSUs to Dr. Huber, subject to performance and service conditions, on July 27, 2016.

Outstanding Equity Awards at Fiscal Year-End

The following table provides information regarding equity awards held by each of our named executive officers that were outstanding as of December 31, 2016.

Name	Option Awards					Stock Awards	
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised, Unearned Options	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested(14)
Leon O. Moulder, Jr.	18,750	81,250(1)	—	\$ 43.39	3/1/2026	50,000(2)	\$6,724,000
	61,250	78,750(3)	—	\$ 55.11	3/6/2025	—	—
	88,541	36,459(4)	—	\$ 33.74	2/27/2024	—	—
	187,500	12,500(5)	—	\$ 24.18	3/6/2023	—	—
	371,428	—(6)	—	\$ 6.615	3/16/2022	—	—
	314,285	—(7)	—	\$ 1.33	7/19/2021	—	—
Mary Lynne Hedley, Ph.D.	15,000	65,000(1)	—	\$ 43.39	3/1/2026	40,000(2)	\$5,379,200
	50,312	64,688(3)	—	\$ 55.11	3/6/2025	—	—
	74,375	30,625(4)	—	\$ 33.74	2/27/2024	—	—
	164,062	10,938(5)	—	\$ 24.18	3/6/2023	—	—
	342,857	—(6)	—	\$ 6.615	3/16/2022	—	—
	285,714	—(7)	—	\$ 1.33	7/19/2021	—	—
Timothy R. Pearson	6,562	28,438(1)	—	\$ 43.39	3/1/2026	17,500(2)	\$2,353,400
	24,062	30,938(3)	—	\$ 55.11	3/6/2025	—	—
	80,729	44,271(8)	—	\$ 25.27	5/27/2024	—	—
Jeffrey H. Hanke, Ph.D.	6,562	28,438(1)	—	\$ 43.39	3/1/2026	17,500(2)	\$2,353,400
	8,334	62,500(9)	—	\$ 56.52	6/29/2025	37,500(10)	\$5,043,000
Martin H. Huber, M.D.	—	—	—	\$ —	—	4,000(11)	\$ 537,920
	6,562	28,438(1)	—	\$ 43.39	3/1/2026	17,500(2)	\$2,353,400
	23,437	51,563(12)	—	\$ 55.14	9/21/2025	3,750(13)	\$ 504,300

- (1) The options were granted on March 1, 2016 and have vested or will vest in 48 equal monthly installments beginning on April 1, 2016.
- (2) Represents RSUs granted on March 1, 2016, which have vested or will vest in four equal annual installments beginning on March 1, 2017.
- (3) The options were granted on March 6, 2015 and have vested or will vest in 48 equal monthly installments beginning on April 6, 2015.
- (4) The options were granted on February 27, 2014. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options have vested or will vest on each monthly anniversary of the grant date.
- (5) The options were granted on March 6, 2013. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options have vested or will vest on each monthly anniversary of the grant date.
- (6) The options were granted on March 16, 2012. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options vested on each monthly anniversary of the grant date.
- (7) The options were granted on July 19, 2011. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options vested on each monthly anniversary of the grant date.

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- (8) The options were granted on May 27, 2014. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options have vested or will vest on each monthly anniversary of the grant date.
- (9) The options were granted on June 29, 2015 and 1/30th of the unexercisable options will vest on the 29th of each month from January 2017 through June 29, 2019.
- (10) Represents RSUs granted on June 29, 2015, which vest in four equal annual installments beginning on June 29, 2016.
- (11) Represents RSUs granted on July 27, 2016, which vest upon the fulfillment of specified performance and service conditions. Of the total 5,000 RSUs granted, 1,000 vested on November 1, 2016. An additional 500 RSUs vested on January 1, 2017. The remaining 3,500 RSUs will vest when and if the remaining performance and service conditions are fulfilled on or before the dates specified in the award agreement.
- (12) The options were granted on September 21, 2015. On the one-year anniversary of the grant date, 25% of these options vested and, thereafter, 1/36th of the remaining options have vested or will vest on each monthly anniversary of the grant date.
- (13) Represents RSUs granted on September 21, 2015, which have vested or will vest in four equal annual installments beginning on September 21, 2016.
- (14) Represents the market value of the shares based on the closing price on December 30, 2016 of \$134.48 per share.

Option Exercises and Stock Vested

The following table sets forth information regarding the number of shares of stock awards acquired on vesting by our named executive officers during the year ended December 31, 2016.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting(2)
Leon O. Moulder, Jr.	—	\$ —	—	\$ —
Mary Lynne Hedley, Ph.D.	—	\$ —	—	\$ —
Timothy R. Pearson	—	\$ —	—	\$ —
Jeffrey H. Hanke, Ph.D.	29,166	\$ 862,439	12,500	\$ 967,500
Martin H. Huber, M.D.	—	\$ —	2,250	\$ 255,590

- (1) The value realized upon exercise is the difference between the fair value of our common stock at the time of exercise and the exercise price, multiplied by the number of shares acquired on exercise.
- (2) The value realized upon vesting is the fair value of our common stock on the vesting date multiplied by the number of shares acquired on vesting.

Pension Benefits and Deferred Compensation

We maintain a defined contribution employee retirement plan for our employees. Our 401(k) plan is intended to qualify as a tax-qualified plan under Section 401 of the Code so that contributions to our 401(k) plan, and income earned on such contributions, are not taxable to participants until withdrawn or distributed from the 401(k) plan. Our 401(k) plan provides for employer matching contributions equal to (1) 100% of employee deferral contributions up to a deferral rate of 3% of base salary compensation plus (2) 50% of employee deferral contributions up to a deferral rate of an additional 2% of base salary compensation. We did not maintain any deferred compensation plans for any named executive officer for the year ended December 31, 2016.

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Employment Letter Agreements

In February 2017, we entered into amended and restated employment letter agreements with each of Mr. Moulder, Dr. Hedley, Mr. Pearson, Dr. Hanke and Dr. Huber in connection with a periodic review of the terms of the employment letters by the compensation committee to ensure that the terms remain competitive with similarly-situated executives in the peer group.

The Company originally entered into offer letter agreements with Mr. Moulder and Dr. Hedley on May 10, 2010, which were amended and restated on June 18, 2012 in anticipation of our initial public offering. On February 23, 2017, Mr. Moulder and Dr. Hedley each entered into an amended and restated employment letter agreement with the Company. The Company entered into an offer letter agreement with Mr. Pearson on May 27, 2014 and an amended and restated employment letter on February 23, 2017. The Company entered into an offer letter agreement with Dr. Hanke on June 2, 2015 and an amended and restated employment letter on February 23, 2017. The Company entered into an offer letter agreement with Dr. Huber on September 4, 2015 and an amended and restated employment letter on February 23, 2017. The amended and restated employment letter agreements with Mr. Moulder, Dr. Hedley, Mr. Pearson, Dr. Hanke and Dr. Huber are collectively referred to herein as the "employment letter agreements." These at-will agreements were designed to be a part of a competitive compensation package and to keep our executive officers focused on our business goals and objectives. The agreements provide for base salaries, incentive compensation benefits and, in certain circumstances, severance benefits.

The amended and restated employment letter agreements set forth the 2017 base salary and annual bonus target (expressed as a percentage of base salary) for each of the named executive officers, as reflected in the following table:

<u>Name</u>	<u>2017 Base Salary</u>	<u>2017 Bonus Target(1)</u>
Leon O. Moulder, Jr.	\$ 660,000	65%
Mary Lynne Hedley, Ph.D.	\$ 610,000	60%
Timothy R. Pearson	\$ 420,000	50%
Jeffrey H. Hanke, Ph.D.	\$ 430,000	50%
Martin H. Huber, M.D.	\$ 460,000	50%

(1) Expressed as a percentage of the 2017 base salary.

Prior to their amendment and restatement, the employment letter agreements provided for a bonus target of 30% of the annual base salary of each of Mr. Moulder and Dr. Hedley (which had previously been increased to 50%), and 40% of the annual base salary of each of Mr. Pearson, Dr. Hanke and Dr. Huber.

Annual bonuses are payable upon attainment of objectives as determined by our board of directors. In addition to base salary and bonus, the employment letter agreements provide for vacation benefits and the ability to participate in our employee benefit plans on the same terms as other similarly situated executive officers.

The employment letter agreements also provide the named executive officers with certain payments and benefits upon certain terminations of employment. Pursuant to the employment letter agreements, in order to receive certain severance benefits, each named executive officer is required to execute a general release in favor of the Company, which includes, among other things, non-solicitation and non-disparagement provisions.

Under the terms of the employment letter agreements, in the event that the named executive officer resigns without "Good Reason," as defined below, or their employment terminates due to death or disability (as such term is defined in the employment letter agreements), such executive is entitled to

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receive the following: (i) unpaid annual base salary for services rendered prior to the date of termination or resignation; (ii) any earned but unpaid annual bonus for any year prior to the year in which termination of employment occurs; (iii) reimbursement of any un-reimbursed business expenses; (iv) accrued but unused vacation pay; and (v) any other payments, benefits or fringe benefits to which the executive is entitled to under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan or program or grant (items (i) through (v) collectively referred to herein as "accrued benefits"). In the event that the Company terminates the executive's employment for "Cause," as defined below, the executive will be entitled to receive all of his or her accrued benefits, with the exception of any earned but unpaid bonus.

In the event the named executive officer's employment is terminated for any reason other than for "Cause," death, or disability, or if the named executive officer resigns for "Good Reason," and such termination is not in connection with or within 12 months following a "Change in Control," as defined below, the named executive officer is entitled, provided he or she executes a release in favor of the Company and any revocation period in connection with such release has lapsed, to receive the following payments and compensation (in accordance with our regular pay policies and commencing 60 days following termination):

- his or her accrued benefits;
- in the case of Mr. Moulder, 18 months' base salary, in the case of Dr. Hedley, 15 months' base salary (12 months' salary prior to the amendment and restatement of her employment letter agreement), and in the case of the other executives, 12 months' base salary, payable in lump sums; and
- payment of a monthly COBRA coverage premium for the lesser of (i) in the case of Mr. Moulder, 18 months, in the case of Dr. Hedley, 15 months (12 months prior to the amendment and restatement of her employment letter agreement), and in the case of the other executives, 12 months, or (ii) the period from termination until the date upon which the executive commences full-time employment or employment that provides such executive with eligibility for healthcare benefits substantially comparable to those provided by the Company.

If, in connection with or within 12 months following a "Change in Control," as defined below, the named executive officer's employment is terminated for any reason other than for "Cause" or if the named executive officer resigns for "Good Reason," the named executive officer is entitled, provided he or she executes a release in favor of the Company and any revocation period in connection with such release has lapsed, to receive the following payments and compensation:

- his or her accrued benefits;
- in the case of Mr. Moulder, 21 months' base salary (18 months' salary prior to the amendment and restatement of his employment letter agreement), in the case of Dr. Hedley, 18 months' base salary (15 months' salary prior to the amendment and restatement of her employment letter agreement), and in the case of the other executives, 15 months' base salary, payable in a lump sum within 60 days after termination;
- in the case of Mr. Moulder, 150% of the target bonus for the year his employment terminates, and in the case of the other executives, 100% of the target bonus for the year his or her employment terminates, payable in a lump sum within 60 days after termination of employment;
- payment of a monthly COBRA coverage premium for the lesser of (i) in the case of Mr. Moulder and Dr. Hedley, 18 months following termination of employment (for Dr. Hedley, 15 months prior to the amendment and restatement of her employment letter agreement), and in the case of the other executives, 15 months following termination of employment (12 months prior to the amendment and restatement of their employment letter agreements), or (ii) the

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period from termination to the date upon which the executive commences full-time employment or employment that provides such executive with eligibility for healthcare benefits substantially comparable to those provided by the Company; and

- the immediate vesting of all of such executive's outstanding equity awards.

If any of the payments or benefits received by the executive in connection with a Change in Control or termination of employment, whether received pursuant to the employment letter agreements or otherwise, referred to as 280G payments, constitute "parachute payments" within the meaning of Section 280G of the Code and would be subject to the excise tax imposed by Section 4999 of the Code, then, pursuant to the terms of the employment letter agreements, such 280G payments shall be reduced by us so that the executive will not be considered to have received a parachute payment, unless the executive would receive a greater after-tax amount by receiving all such 280G payments without reduction pursuant to the terms of the employment letter agreements. Prior to the amendment and restatement, this provision had only been included in Mr. Moulder and Dr. Hedley's employment letter agreements.

For purposes of the employment letter agreements, termination for "Cause" shall mean termination for such named executive officer's: (i) willful misconduct or gross negligence as to a material matter in connection with his or her duties; (ii) act constituting material dishonesty or fraud with respect to the Company; (iii) indictment for, conviction of, or a plea of guilty or *nolo contendere* to, a felony under applicable law; (iv) material violation of a material term in the case of Mr. Moulder and Dr. Hedley, or material violation of a term, in the case of the other named executive officers, of any written Company policy made available to the executive; (v) failure to attempt in good faith to perform his or her duties in all material respects or follow a clear, lawful and reasonable directive of the board of directors; or (vi) material breach of fiduciary duty owed to the Company that has caused or could reasonably be expected to cause a material injury to the Company's business; provided, however, that the Company has provided the executive with written notice of the existence of such event or circumstance and, with respect to the circumstances in clauses (iv) and (v) only, the executive fails to substantially cure the event or circumstance identified within 30 days of receipt of such notice. The amendment and restatement clarified that the circumstances described in clauses (iv) and (v) shall not apply following a Change in Control.

A resignation by the named executive officer shall be deemed a resignation for "Good Reason" if the executive provides written notice to the Company of the specific circumstances alleged to constitute Good Reason within 90 days after any one or more of the following events: (i) the executive is required to report to another person other than the board of directors, in the case of Mr. Moulder, and the Chief Executive Officer, in the case of Dr. Hedley, or the assignment to the executive of any duties or responsibilities that result in the material diminution of the executive's position as, in the case of Mr. Moulder, the Chief Executive Officer of the Company, in the case of Dr. Hedley, the President and Chief Operating Officer of the Company, in the case of Mr. Pearson, the Chief Financial Officer of the Company, in the case of Dr. Hanke, the Executive Vice President of Research and Development and Chief Scientific Officer of the Company, and in the case of Dr. Huber, the Senior Vice President and Chief Medical Officer of the Company, subject to certain exceptions; (ii) a reduction by the Company in the executive's annual base salary or target bonus percentage, in the case of Mr. Moulder and Dr. Hedley, and in the case of Mr. Pearson, Dr. Hanke and Dr. Huber such reduction without the executive's consent; (iii) the relocation of the executive's primary office at the Company's headquarters in the Boston, Massachusetts metropolitan area to another location by more than 30 miles or relocation of the executive's primary office at the Company's headquarters to another location that is not the Company's headquarters (50 miles in the case of Mr. Moulder before the amendment and restatement of his employment letter agreement); or (iv) a breach by the Company of the terms of the executive's employment letter agreement. In each case, the Company shall have 30 days to cure such circumstances in all material respects upon the receipt of notice from the executive of such circumstances. In no event

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shall termination for Good Reason occur after the 180th day following the first occurrence of any Good Reason event.

For purposes of the employment letter agreements, the term "Change in Control" shall mean the occurrence of any of the following: (i) subject to certain exceptions, a person or group becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the total voting power of the voting stock of the Company, on a fully diluted basis; (ii) individuals who on the effective date of the 2012 Incentive Plan constitute the board of directors (together with any new directors whose election by such board or whose nomination by such board for election by the stockholders of the Company was approved by a vote of at least a majority of the members of such board then in office who either were members of such board on the effective date of the 2012 Incentive Plan or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of such board then in office; (iii) the Company consolidates with, or merges with or into, any person, or any person consolidates with, or merges with or into, the Company, other than any such transaction in which the holders of securities that represented 100% of the voting stock of the Company immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the voting power of the voting stock of the surviving person in such merger or consolidation transaction immediately after such transaction; (iv) there is consummated any direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to any person or group; or (v) the stockholders of the Company adopt a plan or proposal for the liquidation, winding up or dissolution of the Company.

Potential Payments Upon a Termination or Change in Control

As discussed under the caption "—Employment Letter Agreements" above, we have agreements with our named executive officers pursuant to which they will receive severance payments upon certain termination events. The information below describes and quantifies certain compensation that would be available under our existing plans and arrangements if (a)(i) the named executive officer was terminated as of December 31, 2016 or (ii) if a Change in Control, as defined herein, occurred on December 31, 2016 and the named executive officer had been subsequently terminated on the same date and (b) the amended and restated employment letter agreements entered into in February 2017 had been in place as of that date. The changes to such compensation as a result of the amendments and restatements are described in "—Employment Letter Agreements" above.

In addition, if, in connection with or within 12 months following a Change in Control, the named executive officer's employment is terminated for any reason other than for Cause or if the named executive officer resigns for Good Reason, all equity awards granted under the Company's 2010 Stock Incentive Plan, 2012 Incentive Plan, or any other applicable equity plan that are outstanding immediately prior to such termination or resignation shall become fully vested and exercisable.

Termination Other than for Cause, Death or Disability; Resignation for Good Reason. Assuming a December 31, 2016 termination event not in connection with or within 12 months following a Change in Control, the aggregate value of the payment and benefits to which each named executive officer would be entitled to in the event that the named executive officer's employment is terminated by the

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Company for any reason other than for Cause, death, or disability, or, in the case of Mr. Moulder and Dr. Hedley, he or she resigns for Good Reason, would be as follows:

Name	Cash Severance (\$)(1)	Benefits And Health Programs (\$)(2)	Total (\$)
Leon O. Moulder, Jr.	960,000	31,508	991,508
Mary Lynne Hedley, Ph.D.	731,250	25,206	756,456
Timothy R. Pearson	402,325	22,150	424,475
Jeffrey H. Hanke, Ph.D.	412,000	23,326	435,326
Martin H. Huber, M.D.	422,300	21,005	443,305

- (1) This amount represents, in the case of Mr. Moulder, 18 months' base salary, in the case of Dr. Hedley, 15 months' base salary, and in the case of the other executives, 12 months' base salary, each at the rate in effect immediately prior to the executive's termination of employment.
- (2) This amount represents, in the case of Mr. Moulder, 18 months, in the case of Dr. Hedley, 15 months, and in the case of the other executives, 12 months, of continued Company-paid benefits and health coverage.

Termination in Connection With or Following a Change in Control. Assuming a December 31, 2016 termination in connection with or following a Change in Control for any reason other than Cause, death or disability, or if the named executive officer resigns for Good Reason in such a situation, the aggregate value of the payment and benefits to which each named executive officer would be entitled to would be as follows:

Name	Cash Severance (\$)(1)	Bonus (\$)(2)	Benefits and Health Programs (\$)(3)	Value of All Other Accelerated Equity (\$)(4)	Total (\$)
Leon O. Moulder, Jr.	1,120,000	576,000	31,508	41,157,780	42,885,288
Mary Lynne Hedley, Ph.D.	877,500	351,000	30,248	33,496,572	34,755,320
Timothy R. Pearson	502,906	181,046	27,687	24,131,713	24,843,352
Jeffrey H. Hanke, Ph.D.	515,000	185,400	29,157	24,392,167	25,121,724
Martin H. Huber, M.D.	527,875	190,035	26,256	18,231,263	18,975,429

- (1) This amount represents, in the case of Mr. Moulder, 21 months' base salary, in the case of Dr. Hedley, 18 months' base salary, and in the case of the other executives, 15 months' base salary, each at the rate in effect immediately prior to the executive's termination of employment.
- (2) This amount represents, in the case of Mr. Moulder, 150% of his target bonus for the year his employment terminates, and in the case of the other executives, 100% of the executive's target bonus for the year the executive's employment terminates.
- (3) This amount represents, in the case of Mr. Moulder and Dr. Hedley, 18 months, and in the case of the other executives, 15 months, of continued Company-paid benefits and health coverage.
- (4) Assuming a December 31, 2016 Change in Control and that the named executive officer's employment is terminated for any reason other than for Cause or if the named executive officer resigns for Good Reason as of that date, the value of all equity awards issued pursuant to the

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applicable equity plan that would vest and become exercisable for each named executive officer would be as follows:

<u>Name</u>	<u>Value of Stock Options (\$)</u>	<u>Value of Restricted Stock Units (\$)</u>
Leon O. Moulder, Jr.	34,433,780	6,724,000
Mary Lynne Hedley, Ph.D.	28,117,372	5,379,200
Timothy R. Pearson	21,778,313	2,353,400
Jeffrey H. Hanke, Ph.D.	16,995,767	7,396,400
Martin H. Huber, M.D.	14,835,643	3,395,620

The value of stock options upon vesting acceleration is calculated based on the closing price on December 30, 2016 of \$134.48 per share with respect to unvested stock options subject to acceleration, less the exercise price of these unvested options. The actual value will vary depending on the date the options are exercised. The value of RSUs upon vesting acceleration is calculated based on the closing price on December 30, 2016 of \$134.48 per share with respect to unvested RSUs subject to acceleration.

Compensation Committee Report

THE FOLLOWING REPORT OF THE COMPENSATION COMMITTEE DOES NOT CONSTITUTE SOLICITING MATERIAL AND SHOULD NOT BE DEEMED FILED OR INCORPORATED BY REFERENCE INTO ANY OTHER FILING BY US UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES EXCHANGE ACT OF 1934, EXCEPT TO THE EXTENT WE SPECIFICALLY INCORPORATE THIS REPORT.

The compensation committee of the board of directors of the Company has reviewed and discussed with management the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K. Based on such review and discussions, the compensation committee recommended to the board that the Compensation Discussion and Analysis be included in this Proxy Statement and in the Company's Annual Report on Form 10-K (including through incorporation by reference to this Proxy Statement).

COMPENSATION COMMITTEE (March 31, 2017)

David M. Mott, Chair
Earl M. Collier, Jr.
James O. Armitage, M.D.

PROPOSAL NO. 2—NON-BINDING VOTE ON EXECUTIVE COMPENSATION

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, we are seeking stockholder input on our executive compensation as disclosed in this Proxy Statement. The board and the compensation committee actively monitor our executive compensation practices in light of emerging compensation practices, the industry in which we operate and the marketplace for talent in which we compete.

As described in the "Compensation Discussion & Analysis" beginning on page 19 of this Proxy Statement, our primary objectives with respect to the compensation of our named executive officers are to retain and motivate them because we believe they have experience and competencies that are critical to achievement of our business goals. This is consistent with the overall approach of our compensation system generally, which is to attract, retain and motivate employees (including our officers), who have relevant, critical skills and experience, and can make important contributions to the achievement of our business goals. We seek to achieve these objectives by:

- **Establishing the components of our compensation packages at competitive levels.** For our named executive officers, this means using comparative market data to set compensation levels.
- **Implementing annual variable incentive compensation that is tied to specific corporate goals.** Our annual incentive program is focused on motivating our executives to achieve both company-wide and individual goals that are tied to our strategic plan.
- **Using equity awards that vest over time and deliver greater value as our stock price increases.** Using equity awards in order to align our named executive officers' interests with the interest of our stockholders in increasing long-term stockholder value.

In addition, our compensation program features a number of practices designed to align further the interests of our named executive officers with those of our stockholders.

Practices we employ:

- **We pay for performance.** Compensation tied to Company performance comprises a significant part of an executive's total compensation, and long-term equity-linked compensation is the largest element of total compensation.
- **We target pay competitively.** We seek to target pay to verifiable market data in order to ensure that we are both paying fairly and not overpaying our executives.
- **We use an independent compensation consultant.** For 2016 compensation decisions, the compensation committee engaged Radford, an AON Hewitt Consulting company, as an independent compensation consultant to advise the committee and help verify market and best practices.
- **We have meaningful vesting periods.** Our equity awards generally have four-year ratable vesting from the date of grant.
- **We have a recoupment policy.** Our incentive plans require repayment of awards in the event of an accounting restatement involving certain forms of misconduct.
- **We have director and executive officer stock ownership guidelines.** Each of our directors and Section 16 Officers is required to hold shares of our common stock with a value equal to at least (i) in the case of directors, three times the amount of the annual base retainer fee paid to directors, (ii) in the case of our CEO and President, five times the amount of his or her annual base salary, and (iii) in the case of our Section 16 Officers, one and a half times the amount of his or her annual base salary.

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Practices we do not employ:

- **We do not offer single trigger change of control payments.** Our severance arrangements are "double trigger" and in the event of a change of control will only provide severance payments if there is a termination of employment.
- **We do not provide for excessive perquisites.** We do not provide any perquisites to our named executive officers, other than limited amounts with respect to insurance payments.
- **We do not offer guaranteed bonuses.** The Company's annual incentive plan does not provide payment without achievement of performance goals, regardless of the reason for the failure to achieve performance goals.
- **We do not provide for tax gross-ups.** We do not provide any tax gross-ups to executives (other than customary payments in connection with relocation payments), including on any severance/change in control payments.
- **We do not permit hedging or pledging of our securities.** We prohibit our directors and officers from profiting from short-term speculative swings in the value of the Company's stock through "short sales," "put" and "call" options or other derivative securities, forward sale contracts and other hedging transactions. We also prohibit our directors and officers from pledging, borrowing against any account in which Company securities are held, or creating any other encumbrance with respect to securities of the Company.

Required Vote and Board Recommendation

The affirmative vote from stockholders present in person or represented by proxy at the Annual Meeting representing a majority of the votes cast on the proposal is required to approve the Company's executive compensation. Abstentions and broker non-votes are not taken into account in determining the outcome of this vote. The vote is advisory and is not binding on the board. However, the compensation committee of the board expects to take into account the outcome of this annual vote as it continues to consider the Company's executive compensation program.

THE BOARD RECOMMENDS A VOTE "FOR" THE APPROVAL OF EXECUTIVE COMPENSATION.

**PROPOSAL NO. 3—RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED
PUBLIC ACCOUNTING FIRM**

We are asking our stockholders to ratify the audit committee's appointment of Ernst & Young as our independent registered public accounting firm for the fiscal year ending December 31, 2017. Although ratification is not required by our bylaws or otherwise, the board of directors is submitting the appointment of Ernst & Young to our stockholders for ratification as a matter of good corporate practice. If the appointment is not ratified, the audit committee will consider whether it is appropriate to appoint another independent registered public accounting firm. Even if the appointment is ratified, the audit committee in its discretion may appoint a different independent registered public accounting firm at any time during the year if the committee determines that such a change would be in the best interests of the Company and our stockholders.

The board of directors first approved Ernst & Young as our independent auditors in 2010, and Ernst & Young has audited our consolidated financial statements since that time, including for the year ended December 31, 2016. Representatives of Ernst & Young are expected to be present at the Annual Meeting. They will be given an opportunity to make a statement at the meeting if they desire to do so, and they will be available to respond to appropriate questions.

**THE BOARD RECOMMENDS A VOTE "FOR" RATIFICATION OF THE APPOINTMENT OF ERNST & YOUNG AS THE COMPANY'S
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2017.**

Principal Accountant Fees and Services

We regularly review the services and fees of our independent accountants. These services and fees are also reviewed by the audit committee on an annual basis. The aggregate fees billed by Ernst & Young for its services rendered to the Company for the fiscal years ended December 31, 2016 and 2015 are as follows:

<u>Fee Category</u>	<u>2015</u>	<u>2016</u>
Audit Fees	\$ 1,050,000	\$ 1,440,800
Audit-Related Fees	—	—
Tax Fees	95,000	161,000
All Other Fees	2,000	2,000
Total Fees	\$ 1,147,000	\$ 1,603,800

Audit Fees. These fees consist of fees billed for professional services rendered for the audit of our annual financial statements and services provided in connection with our securities offerings and registration statements.

Audit-Related Fees. These fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported under "Audit Fees."

Tax Fees. These fees consist of fees billed for tax compliance, tax advice and tax planning and includes fees for tax return preparation.

All Other Fees. These fees consist of fees billed for products and services, other than those described above under Audit Fees, Audit-Related Fees and Tax Fees.

During the fiscal years ended December 31, 2016 and 2015, Ernst & Young has provided various services, in addition to auditing our financial statements. The audit committee has determined that the

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provision of such services is compatible with maintaining Ernst & Young's independence. In 2016 and 2015, all fees paid to Ernst & Young were pre-approved pursuant to the policy described below.

Audit Committee's Pre-Approval Policies and Procedures

The audit committee reviews with Ernst & Young and Company management the plan and scope of Ernst & Young's proposed annual financial audit and quarterly reviews, including the procedures to be utilized and Ernst & Young's compensation. The audit committee also pre-approves all auditing services, internal control related services and permitted non-audit services (including the fees and terms thereof) to be performed for us by Ernst & Young, subject to the *de minimis* exception for non-audit services that are approved by the audit committee prior to the completion of an audit. The audit committee may delegate pre-approval authority to one or more members of the audit committee consistent with applicable law and listing standards, provided that the decisions of such audit committee member or members must be presented to the full audit committee at its next scheduled meeting.

Audit Committee Report

THE FOLLOWING REPORT OF THE AUDIT COMMITTEE DOES NOT CONSTITUTE SOLICITING MATERIAL AND SHOULD NOT BE DEEMED FILED OR INCORPORATED BY REFERENCE INTO ANY OTHER FILING BY US UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES EXCHANGE ACT OF 1934, EXCEPT TO THE EXTENT WE SPECIFICALLY INCORPORATE THIS REPORT.

The audit committee operates under a written charter adopted by the board of directors, which is available in the "Investors—Corporate Governance—Overview" section of our corporate website, which is www.tesarobio.com. The audit committee reviews the charter and proposes necessary changes to the board on an annual basis.

During the fiscal year ended December 31, 2016, the audit committee fulfilled its duties and responsibilities generally as outlined in its charter. The audit committee has:

- reviewed and discussed with management the audited financial statements for the fiscal year ended December 31, 2016;
- discussed with Ernst & Young, the independent auditors for fiscal year 2016, the matters required to be discussed by Auditing Standard No. 16, Communications with Audit Committees, issued by the Public Company Accounting Oversight Board; and
- received the written disclosures and the letter from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent auditors' communications with the audit committee concerning independence, and has discussed with the independent auditors their independence.

On the basis of the reviews and discussions referenced above, the audit committee recommended to the board of directors that the audited financial statements be included in TESARO's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 for filing with the Securities and Exchange Commission.

AUDIT COMMITTEE (February 23, 2017)
Lawrence M. Alleva, Chair
Garry A. Nicholson
Beth Seidenberg, M.D.

SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

Equity Compensation Plan Information as of December 31, 2016

Plan Category	Number of securities to be issued upon exercise of outstanding options and rights (a)	Weighted-average exercise price of outstanding options and rights (b)	Number of securities remaining available for issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders(1) (2)(3)	7,663,744	\$ 39.59	1,186,712
Equity compensation plans not approved by security holders(4)	75,000	\$ 57.66	—
Total	<u>7,738,744</u>	<u>\$ 39.79</u>	<u>1,186,712</u>

- (1) As of December 31, 2016, 694,923 shares remained available for issuance under the 2012 Incentive Plan, which became effective in April 2012, including 6,857 remaining shares that were then available for future issuance under the 2010 Stock Incentive Plan (the "2010 Incentive Plan"), which were transferred to the 2012 Incentive Plan at its inception. The number of shares of our common stock reserved for issuance under the 2012 Incentive Plan is increased (i) from time to time by the number of shares of our common stock forfeited upon the expiration, cancellation, forfeiture, cash settlement or other termination of awards under the 2010 Incentive Plan and (ii) on January 1 of each year, by a number of shares of common stock equal to the lesser of (x) 4% of the shares of common stock outstanding at such time or (y) the number of shares determined by our board of directors. As of December 31, 2016, 151,075 shares of our common stock had been cancelled under the 2010 Incentive Plan and transferred to the 2012 Incentive Plan. Effective January 1, 2017, the number of shares authorized for issuance under the 2012 Incentive Plan was increased by 2,144,867 shares.
- (2) As of December 31, 2016, 194,245 shares were available for issuance under our 2012 Employee Stock Purchase Plan, which became effective in June 2012.
- (3) As of December 31, 2016, 297,544 shares were available for issuance under our 2015 Non-Employee Director Stock Incentive Plan, which became effective in May 2015.
- (4) On March 30, 2015, 75,000 shares were granted as part of an inducement award outside of the 2012 Incentive Plan.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires our directors, executive officers and 10% stockholders to file reports of ownership of our equity securities. To our knowledge, based solely on review of the copies of such reports furnished to us related to the year ended December 31, 2016, all such reports were made on a timely basis except for one report for Mr. Moulder reporting a gift of 100 shares of common stock.

BENEFICIAL OWNERSHIP OF COMMON STOCK

The following table sets forth certain information as of March 31, 2017 (unless otherwise specified), with respect to the beneficial ownership of our common stock by each person who is known to own beneficially more than 5% of the outstanding shares of common stock, each person currently serving as a director, each nominee for director, each named executive officer (as set forth in the Summary Compensation Table above), and all directors and executive officers as a group:

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Percentage of Class
5% Stockholders		
Entities affiliated with New Enterprise Associates(1)	10,275,113	19.1%
FMR LLC(2)	8,011,003	14.9%
T. Rowe Price Associates, Inc.(3)	7,119,254	13.2%
BlackRock, Inc.(4)	3,515,441	6.5%
Wellington Management Company, LLP(5)	3,442,523	6.4%
Franklin Resources, Inc.(6)	3,042,844	5.7%
Entities affiliated with Kleiner Perkins Caufield & Byers(7)	2,913,523	5.4%
Vanguard Group, Inc.(8)	2,812,373	5.2%
Directors and Named Executive Officers		
Leon O. Moulder, Jr.(9)	2,112,211	3.8%
Mary Lynne Hedley, Ph.D.(10)	1,544,991	2.8%
David M. Mott(11)	10,330,595	19.2%
Lawrence M. Alleva(12)	98,404	*
James O. Armitage, M.D.(13)	58,500	*
Earl M. (Duke) Collier, Jr.(14)	38,666	*
Garry A. Nicholson(15)	21,602	*
Arnold L. Oronsky, Ph.D.(16)	2,065,882	3.8%
Kavita Patel, M.D.(17)	9,163	*
Beth Seidenberg, M.D.(18)	2,977,590	5.5%
Timothy R. Pearson(19)	137,125	*
Martin H. Huber, M.D.(20)	48,429	*
Jeffrey H. Hanke, Ph.D.(21)	32,335	*
All of our directors and executive officers as a group (15 persons)(22)	19,566,021	34.6%

* Represents beneficial ownership of less than 1%.

- (1) Includes 9,564,684 shares of common stock held of record by New Enterprise Associates 13, L.P. ("NEA 13"), and 710,429 shares of common stock held of record by NEA 15 Opportunity Fund, L.P. ("NEA 15"). The shares directly held by NEA 13 are indirectly held by NEA Partners 13, L.P. ("NEA Partners 13"), the sole general partner of NEA 13, NEA 13 GP, LTD ("NEA 13 LTD" and together with NEA 13 and NEA Partners 13, the "NEA 13 Entities"), the

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sole general partner of NEA Partners 13 and each of the individual directors of NEA 13 GP, LTD (the "NEA 13 Directors"). The NEA 13 Directors are M. James Barrett, Peter J. Barris, Forest Baskett, Patrick J. Kerins, Krishna S. "Kittu" Kolluri, Mr. Mott, Scott D. Sandell, Ravi Viswanathan and Harry R. Weller. The shares directly held by NEA 15 are indirectly held by NEA Partners 15-OF, L.P. ("NEA Partners 15-OF"), the sole general partner of NEA 15, NEA 15 GP LLC ("NEA 15 LLC" and together with NEA 15 and NEA Partners 15-OF, the "NEA 15 Entities"), the sole general partner of NEA Partners 15, and each of the individual managers of NEA 15 GP LLC (the "NEA 15 Managers"). The NEA 15 Managers are Mr. Barris, Mr. Baskett, Mr. Kolluri, Mr. Mott, Mr. Sandell, Mr. Viswanathan and Mr. Weller. NEA 13 and NEA 15 may be deemed to share voting and dispositive power over all of the shares by virtue of their relationship as affiliated entities, whose control entities have overlapping individual controlling persons, and their control entities and overlapping control persons may also therefore be deemed to share voting and dispositive power over the shares. Thus, NEA Partners 13, NEA 13 LTD, NEA Partners 15-OF, NEA 15 LLC, and any NEA 13 Directors who are also NEA 15 Managers share voting and dispositive power with respect to all 10,275,113 shares. The NEA 13 Directors share voting and dispositive power with respect to the 9,564,684 shares held directly by NEA 13, and the NEA 15 Managers share voting and dispositive power with regard to the 710,429 shares held directly by NEA 15. The principal business address for New Enterprise Associates is 1954 Greenspring Drive, Suite 600, Timonium, Maryland 21093.

- (2) Based solely on a Schedule 13G/A filed by FMR LLC and Abigail P. Johnson on February 14, 2017. FMR LLC has sole dispositive power with respect to 8,011,003 shares and sole voting power with respect to 628,326 shares. The principal business address for FMR LLC is 245 Summer Street, Boston, Massachusetts 02210.
- (3) Based solely on a Schedule 13G/A filed by T. Rowe Price Associates, Inc. on February 7, 2017. These securities are owned by various individual and institutional investors for which T. Rowe Price Associates, Inc. ("Price Associates") serves as an investment advisor with power to direct investments and/or sole power to vote the securities. For the purposes of the reporting requirements of the Exchange Act, Price Associates is deemed to be a beneficial owner of such securities; however, Price Associates expressly disclaims that it is, in fact, the beneficial owner of such securities. Price Associates has sole dispositive power with respect to 7,119,254 shares and sole voting power with respect to 1,160,502 shares. The principal business address for T. Rowe Price Associates, Inc. is 100 East Pratt Street, Baltimore, Maryland 21202.
- (4) Based solely on a Schedule 13G filed by BlackRock, Inc. ("BlackRock") on behalf of itself and certain of its subsidiaries on January 30, 2017. BlackRock and its subsidiaries have sole dispositive power with respect to 3,515,441 shares and sole voting power with respect to 3,447,886 shares. The principal business address for BlackRock is 55 East 52nd Street, New York, New York 10055.
- (5) Based solely on a Schedule 13G/A filed by Wellington Management Group LLP, Wellington Group Holdings LLP, Wellington Investment Advisors Holdings LLP and Wellington Management Company LLP on February 9, 2017. Each of Wellington Management Group LLC, Wellington Group Holdings LLP and Wellington Investment Advisors Holdings LLP is deemed to be the beneficial owner with shared dispositive power with respect to 3,442,523 shares and shared voting power with respect to 2,838,948 shares, and Wellington Management Company LLP has shared voting power with respect to 2,801,892 shares and shared dispositive power with respect to 3,302,720 shares. The principal business address for each of these entities is 280 Congress Street, Boston, Massachusetts 02210.
- (6) Based solely on a Schedule 13G filed by Franklin Resources, Inc., Charles B. Johnson, Rupert H. Johnson, Jr., and Franklin Advisers, Inc. on February 7, 2017. Franklin Resources, Inc. has sole voting and dispositive power with respect to 3,042,049 shares and Franklin Templeton Investments

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(Asia) Ltd., a subsidiary of Franklin Resources, Inc., has sole voting and dispositive power with respect to 795 shares. The principal business address for Franklin Resources, Inc. is One Franklin Parkway, San Mateo, California 94403.

- (7) Includes 2,686,268 shares held by Kleiner Perkins Caufield & Byers XIV, LLC ("KPCB XIV") and 227,255 shares held by KPCB XIV Founders Fund, LLC ("KPCB XIV Founders"). The shares held by KPCB XIV and KPCB XIV Founders are held for convenience in the name of "KPCB Holdings, Inc., as nominee." KPCB Holdings, Inc. has no voting, dispositive or pecuniary interest in any such shares. The managing member of KPCB XIV and KPCB XIV Founders is KPCB XIV Associates, LLC ("KPCB XIV Associates"). The address for all entities affiliated with Kleiner Perkins Caufield & Byers is 2750 Sand Hill Road, Menlo Park, California 94025.
- (8) Based solely on a Schedule 13G filed by The Vanguard Group on February 10, 2017. The Vanguard Group has sole dispositive power with respect to 2,751,343 shares, sole voting power with respect to 58,900 shares, shared dispositive power with respect to 61,030 shares and shared voting power with respect to 3,887 shares. The principal business address for The Vanguard Group is 100 Vanguard Boulevard, Malvern, Pennsylvania 19355.
- (9) Includes 1,093,283 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (10) Includes 6,073 shares of common stock held directly by Dr. Hedley, 563,569 shares of common stock held directly by trusts of which Dr. Hedley is a trustee or co-trustee, with respect to which Dr. Hedley disclaims beneficial ownership except to the extent of her pecuniary interest therein, if any, and 975,349 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (11) Includes 12,149 shares of common stock held directly by Mr. Mott, 1,333 shares held directly by the David Mott Declaration of Trust dated March 31, 2001 (the "Mott Trust"), 42,000 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017, and the shares held directly by NEA 13 and NEA 15. Mr. Mott, a general partner at New Enterprise Associates, disclaims beneficial ownership of all of the shares held directly by NEA 13, NEA 15 and the Mott Trust except to the extent of his pecuniary interest therein, if any.
- (12) Includes 70,570 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (13) Includes 57,000 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017, and 1,500 shares of common stock held by a family trust.
- (14) Includes 38,666 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (15) Includes 20,333 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (16) Includes 10,096 shares of common stock held of record by Dr. Oronsky, 42,000 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017, and 2,013,786 shares held directly by InterWest Partners X, LP ("IW10"). Dr. Oronsky, a general partner at InterWest Partners, disclaims beneficial ownership of all of the shares held directly by IW10 except to the extent of his pecuniary interest therein, if any.
- (17) Includes 8,000 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (18) Includes 21,657 shares of common stock held of record by Dr. Seidenberg, 42,000 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31,

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2017, 410 shares held by trusts of which she and her spouse are co-trustees and her sons are beneficiaries, and the shares held directly by entities affiliated with Kleiner Perkins Caufield & Byers, whose beneficial ownership Dr. Seidenberg disclaims except to the extent of her pecuniary interest therein, if any.

- (19) Includes 134,197 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (20) Includes 41,907 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017, and 1,750 shares of common stock subject to outstanding RSUs that are releasable within 60 days of March 31, 2017.
- (21) Includes 29,407 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017.
- (22) Includes 2,675,818 shares of common stock subject to outstanding options that are exercisable within 60 days of March 31, 2017 and 1,750 shares of common stock subject to outstanding RSUs that are releasable within 60 days of March 31, 2017.

GENERAL MATTERS

Availability of Certain Documents

A copy of our 2016 Annual Report on Form 10-K has been posted on the Internet along with this Proxy Statement to all stockholders entitled to notice of and to vote at the Annual Meeting. The Annual Report is not incorporated into this Proxy Statement and is not considered proxy-soliciting material. We will mail to you without charge, upon written request, a copy of our 2016 Annual Report on Form 10-K, excluding exhibits. Please send a written request to our Corporate Secretary at:

TESARO, Inc.
1000 Winter Street
Waltham, Massachusetts 02451
Attention: Corporate Secretary

The charters for our audit, compensation and governance and nominating committees, as well as our Corporate Governance Guidelines and our Code of Ethics, are in the Investors—Corporate Governance section of our corporate website, which is www.tesarobio.com, and are also available in print without charge upon written request to the address above.

Stockholders residing in the same household who hold their stock through a bank or broker may receive only one set of proxy materials in accordance with a notice sent earlier by their bank or broker. This practice will continue unless instructions to the contrary are received by your bank or broker from one or more of the stockholders within the household. We will promptly deliver a separate copy of the proxy materials to such stockholders if you make a written or oral request to our Corporate Secretary at the address above, or by calling (339) 970-0900.

If you hold your shares in "street name" and reside in a household that received only one copy of the proxy materials, you can request to receive a separate copy in the future by following the instructions sent by your bank or broker. If your household is receiving multiple copies of the proxy materials, you may request that only a single set of materials be sent by following the instructions sent by your bank or broker.

Stockholder Proposals and Nominations

Requirements for Stockholder Proposals to be Considered for Inclusion in our Proxy Materials. To be considered for inclusion in next year's proxy statement, stockholder proposals must be received by our Corporate Secretary at our principal executive offices no later than the close of business on December 8, 2017.

Requirements for Stockholder Proposals to be Brought Before an Annual Meeting. Our bylaws provide that, for stockholder nominations to the board of directors or other proposals to be considered at an annual meeting, the stockholder must have given timely notice thereof in writing to the Corporate Secretary at TESARO, Inc., Attn.: Corporate Secretary, 1000 Winter Street, Waltham, Massachusetts 02451. To be timely for an annual meeting, the stockholder's notice must be delivered to or mailed and received by us not more than 120 days, and not less than 90 days, before the anniversary date of the preceding annual meeting, except that if the annual meeting is set for a date that is not within 30 days before or 60 days after such anniversary date, we must receive the notice not later than the close of business on the 10th day following the day on which we provide notice or public disclosure of the date of the meeting. Assuming the date of our 2018 annual meeting is not so advanced or delayed, stockholders who wish to make a proposal at the 2018 annual meeting must notify us no earlier than January 11, 2018 and no later than February 10, 2018. Such notice must provide the information required by our bylaws with respect to each matter the stockholder proposes to bring before the 2018 annual meeting.

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Other Matters

As of the date of this Proxy Statement, the board of directors does not intend to present any matters other than those described herein at the Annual Meeting and is unaware of any matters to be presented by other parties. If other matters are properly brought before the meeting for action by the stockholders, proxies will be voted in accordance with the recommendation of the board or, in the absence of such a recommendation, in accordance with the judgment of the proxy holder.

Directions to Annual Meeting

Directions to the 2017 Annual Meeting of Stockholders, to be held at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, MA 02451, are set forth below:

From Boston and Logan Airport—Take the Massachusetts Turnpike/I-90 West and follow the signs for I-95/128 North (Exit 15). Take I-95/128 North for approximately two miles to Exit 27B (Wyman Street/Winter Street). At the lights, turn right onto Wyman Street. Remain in the right lane and bear right onto Winter Street. Remain in the right lane. Remain in the far right lane through two sets of lights, passing the Embassy Suites Hotel on the left. Travel around the Cambridge Reservoir (on the right) for approximately 0.5 miles. Turn left at the granite sign announcing HealthPoint and Waltham Woods Corporate Center. Travel up the hill following the green signs to Waltham Woods Corporate Center for approximately 0.3 miles and turn left into the parking lot for the Massachusetts Medical Society/Conference Center at Waltham Woods. Park near the Conference Center entrance and enter the lobby through the glass doors.

By Order of the Board of Directors



Leon O. Moulder, Jr.
Chief Executive Officer
April 7, 2017

TESARO, INC.
1000 WINTER STREET
WALTHAM, MA 02451-1230

VOTE BY INTERNET - www.proxyvote.com

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

ELECTRONIC DELIVERY OF FUTURE PROXY MATERIALS

If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

VOTE BY PHONE - 1-800-690-6903

Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

KEEP THIS PORTION FOR YOUR RECORDS DETACH

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

AND RETURN THIS PORTION ONLY

The Board of Directors recommends you vote FOR the following:

For All Withhold For All Except

To withhold authority to vote for any individual nominee(s), mark "For All Except" and write the number(s) of the nominee(s) on the line below.

1. Election of Directors

Nominees

1a Leon O. Moulder, Jr.
1f Earl M. Collier, Jr.

1b Mary Lynne Hedley, Ph.D.
1g Garry A. Nicholson

1c David M. Mott
1h Arnold L. Oronskey, Ph.D.

1d Lawrence M. Alleve
1i Kavita Patel, M.D.

1e James O. Armitage, M.D.
1j Beth Seidenberg, M.D.

The Board of Directors recommends you vote FOR the following proposals:

2. To approve, by non-binding vote, the Company's executive compensation.

For Against Abstain

☐ ☐ ☐

3. To ratify the appointment of Ernst & Young, LLP as the independent registered public accounting firm for the Company for the fiscal year ending December 31, 2017.

☐ ☐ ☐

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name, by authorized officer.

Signature [PLEASE SIGN WITHIN BOX] Date

Signature (Joint Owners) Date

0000319604_1

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting: The Notice, Proxy Statement and Form 10-K are available at www.proxyvote.com.

TESARO, Inc.
Annual Meeting of Stockholders
May 11, 2017 8:30 AM
This proxy is solicited by the Board of Directors

The stockholder(s) hereby appoint(s) Leon O. Moulder, Jr. and Joseph L. Farmer, or either of them, as proxies, each with the power to appoint his substitute, and hereby authorizes them to represent and to vote, as designated on the reverse side of this ballot, all of the shares of common stock of TESARO, Inc. that the stockholder(s) is/are entitled to vote at the Annual Meeting of Stockholders to be held at 8:30 AM, EDT on May 11, 2017, at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, MA 02451, and any adjournment or postponement thereof.

This proxy, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors' recommendations.

If other matters are properly brought before the meeting, this proxy will be voted in accordance with the Board of Directors' recommendations or, in the absence of such recommendations, in accordance with the judgment of the proxies.

Continued and to be signed on reverse side

SECTION 4 – TESARO 2017 ANNUAL REPORT

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

FORM 10-K**

(Mark One)

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

For the Fiscal Year Ended December 31, 2017

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 number 001-35587

TESARO, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

27-2249687
(I.R.S. Employer
Identification No.)

**1000 Winter Street
Waltham, Massachusetts**
(Address of Principal Executive Offices)

02451
(Zip Code)

(339) 970-0900

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act: **Common Stock, par value \$0.0001 per share, NASDAQ Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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 ☒
Non-accelerated filer ☐
(Do not check if a smaller reporting company)
Emerging growth company ☐

Accelerated filer ☐
Smaller reporting 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 Act). Yes ☐ No ☒

The aggregate market value of the registrant's voting stock held by non-affiliates as of June 30, 2017 was approximately \$5,213,481,640 based on the closing price of \$139.86 of the Common Stock of the registrant as reported on the NASDAQ Global Select Market on such date. As of February 22, 2018, there were 54,563,915 shares of the registrant's Common Stock, par value \$0.0001 per share, outstanding.

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DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's Definitive Proxy Statement for its 2018 Annual Meeting of Stockholders, which is expected to be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 31, 2017, are incorporated by reference into Part III of this Annual Report on Form 10-K.

TESARO, INC.
ANNUAL REPORT ON FORM 10-K
For the Fiscal Year Ended December 31, 2017

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PART I

Except for the historical information contained in this Annual Report on Form 10-K, the matters discussed herein may be deemed to be forward-looking statements that involve risks and uncertainties. We make such forward-looking statements pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and other federal securities laws. In this Annual Report on Form 10-K, words such as “may,” “will,” “expect,” “anticipate,” “estimate,” “intend,” and similar expressions (as well as other words or expressions referencing future events, conditions or circumstances) are intended to identify forward-looking statements.

Examples of forward-looking statements contained in this report include statements regarding the following: our commercialization plans for niraparib and rlopitant, including the progress of the commercial launches of ZEJULA® (niraparib) in the U.S. and Europe, VARUBI®/VARUBY® (rlopitant) in the U.S. and Europe; our intent to in-license or acquire additional product candidates; our intent to commercialize our products in key markets; our expectations regarding product revenues and license, collaboration and other revenues; our expectations regarding product returns; our expectation that research and development and selling, general and administrative expenses will increase in the future; our expectations regarding the timing and design of our development plans, the timing of regulatory filings, and the timing of data from clinical trials, including with respect to each of our niraparib, TSR-042, TSR-022 and TSR-033 programs; our expected gross-to-net adjustment ranges for our products; our expectations regarding new clinical trials of our product candidates, including the commencement and timing thereof; our expectations regarding our discovery and development plans for immunotherapy antibodies, including the timing thereof; our anticipated milestone and royalty payment obligations; our expectations that our operating losses and negative operating cash flows will continue, and possibly increase, for the foreseeable future; the expected impact of the Tax Cuts and Jobs Act of 2017 and recent accounting pronouncements and guidance on our financial statements; and our needs for additional capital and the forecast of the period of time through which our financial resources will be adequate to support our operations.

Forward-looking statements are not guarantees of future performance. Actual future results, performance, achievements or the timing of certain events may differ significantly from those expressed or implied by the forward-looking statements. Risks and uncertainties involved in the forward-looking statements include, among others: uncertainties inherent in the development or commercialization of any new pharmaceutical product and the execution and completion of clinical trials; risks related to competition; the timing and availability of data from clinical trials; uncertainties regarding ongoing discussions with and actions by regulatory authorities; patient accrual rates for clinical trials; manufacturing and supply risks; risks related to intellectual property; and other matters that could affect the timing of data or the potential regulatory approval or commercial availability or success of our products. Forward-looking statements contained in this Annual Report on Form 10-K should be considered in light of these factors and the factors discussed elsewhere in this Annual Report on Form 10-K, including under the heading “Risk Factors”. You should read carefully the factors described in the “Risk Factors” section to better understand the risks and uncertainties inherent in our business and underlying any forward-looking statements. You are also advised to consult any further disclosures we make on related subjects in our Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and our website.

We caution readers not to place undue reliance on any forward-looking statements made by us, which speak only as of the date they are made. We disclaim any obligation, except as specifically required by law and the rules of the U.S. Securities and Exchange Commission, to publicly update or revise any such statements to reflect any change in our expectations or in events, conditions or circumstances on which any such statements may be based, or that may affect the likelihood that actual results will differ from those set forth in the forward-looking statements.

TESARO, the TESARO logo, VARUBI, VARUBY and ZEJULA are trademarks of TESARO, Inc. in the United States and in other selected countries. All other brand names or trademarks appearing in this report are the property of their respective holders. Unless the context requires otherwise, references in this report to “TESARO”, the “Company,” “we,” “us,” and “our” refer to TESARO, Inc.

ITEM 1. BUSINESS

Overview

We are a commercial-stage biopharmaceutical company devoted to providing transformative therapies to people bravely facing cancer. Our primary focus is to develop treatments for solid tumors using various approaches, including small molecules and immuno-oncology antibodies, as monotherapies or in combinations. We have in-licensed and are developing several oncology-related product candidates, and we have entered into several research collaborations with third parties for the discovery of new candidates. We have also entered into arrangements with other companies for the development and commercialization of certain of our product candidates in specific indications and/or geographies.

To date, we have received regulatory approvals for the following products, which are currently marketed and sold in the U.S. and in certain countries in Europe:

- The U.S. Food and Drug Administration, or FDA, approved ZEJULA® (niraparib) in March 2017 for the maintenance treatment of women with recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in a complete or partial response to platinum-based chemotherapy. The European Commission, or EC, approved ZEJULA in November 2017 as a monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed high grade serous epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy.
- VARUBI® (rolapitant) is a potent and long-acting neurokinin-1, or NK-1, receptor antagonist for the prevention of chemotherapy induced nausea and vomiting, or CINV. The FDA approved VARUBI in oral formulation in September 2015 for use in combination with other antiemetic agents in adults for the prevention of delayed (24 to 120 hours after chemotherapy administration) nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. The EC approved VARUBI®, the brand name of oral rolapitant in Europe, in April 2017 for the prevention of delayed nausea and vomiting associated with highly and moderately emetogenic chemotherapy in adults. The FDA approved the intravenous, or IV, formulation of VARUBI in October 2017. In January 2018, after post-marketing reports of side effects experienced following the commercial introduction of VARUBI IV, we updated the VARUBI IV package insert, including modifications to the contraindications, warnings and precautions, and adverse reactions sections, and issued a “Dear Healthcare Professional Letter” to healthcare providers to highlight the updates. In February 2018, we determined that we would cease marketing and distribution of VARUBI IV and pursue strategic alternatives for the VARUBI brand, including potentially out-licensing the VARUBI product line.

Development Programs

Niraparib

Niraparib is an orally active and potent poly (ADP-ribose) polymerase, or PARP, inhibitor. Based on research related to PARP inhibitors generally, we believe niraparib may also be active in the treatment of several tumor types. We are conducting several ongoing clinical trials evaluating niraparib for the treatment of various tumor types, as a monotherapy and in combination with other therapeutics, including our own immuno-oncology assets. We expect to initiate additional clinical trials of niraparib during 2018. We are also collaborating with various other organizations to evaluate niraparib in combination with other therapeutics for the treatment of various cancers.

Immuno-Oncology

Pursuant to our collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, we are developing several antibodies for immuno-oncology targets. The antibodies and related development activities are summarized as follows:

- TSR-042 (anti-PD-1): We initiated a Phase 1, dose escalation study of TSR-042 in March 2016. We have also initiated expansion cohorts in patients with advanced solid tumors, including non-small cell lung cancer, or NSCLC, endometrial cancer and metastatic microsatellite instability-high, or MSI-H, tumors. We plan to pursue an accelerated registration path for TSR-042 in metastatic MSI-H tumors.

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- TSR-022 (anti-TIM-3): We initiated a Phase 1, dose escalation study of TSR-022 in July 2016, evaluating TSR-022 as a monotherapy and in combination with TSR-042 in multiple tumor types.
- TSR-033 (anti-LAG-3): We initiated a Phase 1, dose escalation study of TSR-033 in August 2017 in multiple tumor types. We plan to initiate a combination trial of TSR-033 plus TSR-042 in 2018.
- We have initiated pre-clinical research for TSR-075, our bi-specific anti-PD-1/LAG-3 candidate.

In addition, we are evaluating our immuno-oncology anti-tumor agents in combination studies with niraparib and other anti-tumor agents. We have also entered into agreements with other third parties for the discovery of other potential oncology product candidates. In addition to potential candidates arising from such agreements, we intend to continue to leverage the experience and competencies of our senior management team to identify, acquire, develop and commercialize cancer therapeutics, including those that are potentially safer and more effective than existing treatments.

Upon successful development and regulatory approval of any of our product candidates, we intend to pursue commercialization of them in key product markets. At this time, we intend to focus on commercializing our products directly in North America and Europe, and in partnership with established companies in other key markets.

Our Strategy

Our strategy is to leverage the experience and competencies of our management team to identify, acquire and develop promising drug candidates and to commercialize cancer therapeutics that are potential improvements over existing treatments.

Key components of our strategy include:

- ***Continue the Clinical Development of and Successfully Commercialize Niraparib for the Treatment of Cancers that are Susceptible to PARP Inhibition.*** We are evaluating niraparib in several clinical trials in ovarian cancer with the goal of expanding the currently approved indication, and in other cancers. We plan to initiate further clinical trials during 2018. We are also evaluating niraparib in combination studies with our immuno-oncology anti-tumor agents, and with other therapeutics.
- ***Advance Potential Immuno-Oncology Antibody Product Candidates.*** Under our collaboration and exclusive license agreement with AnaptysBio, we received exclusive rights to monospecific antibody product candidates targeting PD-1, TIM-3 and LAG-3, and certain bi-specific antibody product candidates. We have clinical trials ongoing for each monospecific antibody, as monotherapies and in combinations. We have initiated pre-clinical research for TSR-075, our bi-specific anti-PD-1/LAG-3 candidate. In addition, we are evaluating our immuno-oncology candidates in combination studies with niraparib and other anti-tumor agents.
- ***In-license or Acquire Additional Product Candidates to Create a Balanced Product Portfolio.*** We intend to in-license or acquire additional product candidates across various stages of development. While we do not have, nor do we intend to establish, our own drug discovery capabilities, we have entered into multiple research collaborations for the discovery of new product candidates. We intend to focus on product candidates that we believe are differentiated from existing cancer therapeutics and that have well-defined, and potentially expeditious, clinical and regulatory pathways. Our objective is to build a portfolio of cancer therapeutics that is balanced by stage of development, resource requirements and development risk.
- ***Build Global Capabilities to Maximize the Value of Our Product Candidates.*** We have obtained exclusive worldwide rights to all of our current product candidates. We intend for our product candidates to be developed and commercialized globally, by us in key markets and in collaboration with other companies for other geographies. We are collaborating with other companies with regard to selected indications or geographical areas for our in-licensed product candidates. We will also seek to acquire global rights for product candidates we acquire or in-license in the future.

Overview of the Market for Cancer Therapeutics and Oncology Supportive Care Products

Cancer is a group of diseases characterized by uncontrolled growth and spread of abnormal cells. In January 2018, the American Cancer Society projected that there will be an estimated 1.7 million new cancer cases diagnosed and 609,640 cancer deaths in the United States in 2018. Current treatments for cancer include surgery, radiation therapy, chemotherapy, hormone therapy, targeted therapy and immunotherapy. The IQVIA Institute for Human Data Science reported in 2017 that total global spending on oncology medicines, including therapeutic treatments and supportive care, reached \$113 billion in 2016.

Many marketed products and product candidates for treating cancer patients that are currently being developed by biopharmaceutical companies are cytotoxic chemotherapies that exert their anti-tumor effect on cancer generally through nonspecific damage to cellular components with the goal of causing cancer cell malfunction and cell death. Other products and product candidates alter cell metabolism or internal repair mechanisms leading to the demise of the cancer cell.

More recently, targeted anti-cancer agents have been designed by scientists to inhibit the action of specific molecules within cancer cells that are driving the aberrant growth responsible for tumor development. Some of these targeted agents are developed in conjunction with companion diagnostic tests that are used by clinicians to determine if a patient's cancerous tumor contains these specific molecules and is, therefore, more likely to respond to a particular targeted therapy. Recent advances in cancer immunology have led to the development and availability of effective immunotherapies for the treatment of certain cancers. We have acquired product candidates for which we believe diagnostics or specific clinical criteria may allow us to identify cancer patients who will be more likely to be responsive to treatment. In the future, our preference will be to in-license or acquire cancer therapeutics that can be developed in a targeted patient population selected for those who may respond to the drug candidate. We expect that the characteristics of these compounds will permit us to design clinical trials that, if successful, may allow us to achieve clinical outcomes that will support regulatory approval for targeted patient groups and reimbursement by healthcare payors due to attractive risk/benefit metrics in the targeted population.

Treatment centers (such as hospitals and community cancer centers) and the healthcare professionals who treat cancer patients (physicians, nurse practitioners, physician assistants, nurses and pharmacists) utilize various combinations of cancer therapeutics and oncology supportive care products to extend and improve the quality of life of these patients.

All of these approaches may be associated with various side effects experienced by cancer patients that result from the treatments having an adverse impact on normal functioning cells and organ systems. Some of the more common side effects of cancer therapy include nausea, vomiting or emesis, infections, fatigue and diarrhea. Supportive care products are frequently prescribed or administered to cancer patients to prevent or treat these side effects thereby allowing the patients to continue to receive potentially life prolonging cancer therapies.

Our strategy is aligned with these trends in cancer care; that is, to acquire, in-license and develop product candidates and to commercialize products that selectively treat cancers.

Our Product Candidates

Niraparib

Key Characteristics of Niraparib

Based on nonclinical and clinical data, we believe niraparib may have advantages as a treatment for certain cancers, including:

- niraparib concentrations are higher in the tumor relative to plasma, deliver potent inhibition of PARP and demonstrated tumor growth inhibition in tumor models;
- favorable pharmacokinetic properties in humans;
- reduction of PARP activity in human subjects;
- dosage formulation amenable to further clinical and commercial development;

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- clinical activity with once daily oral administration as a monotherapy; and
- tolerability in a Phase 1 combination trial with full doses of another chemotherapy agent, temozolomide, and a biologically active dose of niraparib.

Based upon these key characteristics, we believe that niraparib has the potential to be effective in patients with several tumor types.

Immuno-Oncology

Background

Antibodies to immune checkpoint receptors have demonstrated promise in the treatment of tumors, including metastatic melanoma, renal cell carcinoma and NSCLC. Although the normal function of immune checkpoint receptors is to maintain immune homeostasis, they are co-opted by certain tumors to evade immune surveillance. PD-1, TIM-3 and LAG-3 are each checkpoint regulators that modulate the function of the immune system via different mechanisms and, when activated and interacting with their respective ligands, may limit the ability of the immune system to respond effectively to tumors. By blocking the interaction of PD-1, TIM-3 and LAG-3 with their respective ligands, antibodies targeting these checkpoint regulators aim to restore immune anti-cancer function in patients across a variety of tumor types. We believe that therapeutic antibodies selected from our collaboration with AnaptysBio could form the basis of a strategic platform that will potentially enable us to develop novel monotherapy and combination-based approaches with immuno-oncology and other anti-cancer agents in a variety of new tumor indications, both with our existing product candidates and potentially with new candidates we either in-license or access through collaborative transactions with others.

Anti-PD-1 Antibodies

Programmed cell death protein 1 (PD-1, CD279) is a well-validated target for tumor immunotherapy. PD-1 operates as a negative regulator of T-cell function and interacts with two ligands, PD-L1 and PD-L2. Many tumor types up-regulate PD-L1 on the cell surface as a means of modulating the host immune system and avoiding anti-tumor responses. Antibodies to PD-1 have now been studied in a number of clinical trials in several tumor types. Anti-tumor responses of long duration have been noted, which may be further promoted through combination therapy with additional immuno-regulatory therapeutics. Anti-PD-1 antibodies are now approved in multiple tumor types including, but not limited to, melanoma, NSCLC, bladder and renal carcinoma.

Anti-TIM-3 Antibodies

T-cell immunoglobulin domain and mucin domain-3 (TIM-3), initially identified on activated Th1 cells, has been shown to be a negative regulator of the immune response. Blockade of TIM-3 promotes T-cell mediated anti-tumor immunity and has anti-tumor activity in a range of mouse tumor models. Combinations of TIM-3 blockade with other immunotherapeutic agents such as TSR-042, anti-CD137 antibodies and others, can be additive or synergistic in increasing anti-tumor effects. TIM-3 expression has been associated with a number of different tumor types, including melanoma, NSCLC and renal cancer, and additionally, expression of intratumoral TIM-3 has been shown to correlate with poor prognosis across a range of tumor types, including NSCLC, cervical, and gastric cancers. Blockade of TIM-3 is also of interest in promoting increased immunity to a number of chronic viral diseases. TIM-3 has also been shown to interact with a number of ligands, including galectin-9, phosphatidylserine and HMGB1, although which of these, if any, are relevant in regulation of anti-tumor responses is not clear at present.

Anti-LAG-3 and Bi-Specific Anti-PD-1/LAG-3 Antibodies

Lymphocyte-activation gene-3 (LAG-3) is a CD4-related transmembrane protein expressed on activated T-cells and regulatory T-cells. Following T-cell activation and up-regulation of LAG-3, LAG-3 binds major histocompatibility complex, or MHC, class II molecules and results in down-regulation of the immune response. Affinity of LAG-3 for MHC class II is higher than that of CD4, allowing for potent dampening of T-cell activation via direct blocking of the interaction as well as direct signaling. Blockade of LAG-3 promotes T-cell mediated anti-tumor immunity and has anti-tumor activity in a range of mouse tumor models. Simultaneous blockade of LAG-3 with PD-1 appears to be synergistic with enhanced anti-tumor effects. In addition, we have selected a bi-specific antibody to PD-1 and LAG-3 as a potential clinical candidate.

Clinical Development

Our current clinical development program includes the following trials:

- *QUADRA* is a Phase 2, potential registration trial of niraparib for the treatment of patients with ovarian cancer who have received three or four regimens of therapy. Enrollment in this trial is now complete.
- *PRIMA* is a Phase 3 clinical trial of niraparib in the first-line maintenance setting in ovarian cancer patients. This study includes patients who have responded to first-line platinum chemotherapy.
- *OVARIO* is a Phase 2 trial of niraparib in combination with bevacizumab in patients with first-line ovarian cancer.
- *AVANOVA* is an investigator-sponsored collaboration with the Nordic Society of Gynaecological Oncology (in collaboration with the European Network for Gynaecological Oncological Trial groups) in their Phase 1/2 trial, evaluating niraparib plus bevacizumab against bevacizumab alone, in ovarian cancer patients.
- *TOPACIO* is a Phase 2 trial conducted in collaboration with Merck Sharp & Dohme Corp., a subsidiary of Merck, or Merck, to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® (pembrolizumab) in patients with triple negative breast cancer and patients with ovarian cancer. In June 2017, we announced that initial data demonstrated a disease control rate of 69% in patients with platinum-resistant ovarian cancer.
- *GARNET* is a Phase 1 dose escalation and cohort expansion study of TSR-042 in patients with advanced solid tumors, including NSCLC, endometrial cancer and metastatic MSI-H tumors.
- *AMBER* is Phase 1 dose escalation and cohort expansion study evaluating TSR-022, as a monotherapy and in combination with TSR-042, in patients with advanced solid tumors.
- *CITRINO* is a Phase 1 dose escalation trial of TSR-033.
- Phase 2 studies of niraparib in combination with TSR-042 in ovarian cancer and in NSCLC.
- Pursuant to our collaboration with Janssen Biotech, Inc., or Janssen, Janssen is conducting clinical trials of niraparib for the treatment of prostate cancer.

In March 2017, following an interim analysis of data by the independent data monitoring committee, we ceased enrollment in our BRAVO study (assessing niraparib in patients with breast cancer who are germline BRCA mutation carriers) after a determination that it is unlikely to produce data that is interpretable and therefore suitable for registration in this indication.

We expect our future clinical development of our current product portfolio to include a Phase 3 study of niraparib in combination with TSR-042 in first-line ovarian cancer, and a combination study of TSR-033 with TSR-042.

Licensing Agreements

License for Rolapitant

In December 2010, we entered into a license agreement with OPKO Health, Inc., or OPKO, to obtain an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell rolapitant. Under the OPKO license, we are obligated to use commercially reasonable efforts to conduct all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant.

Under the terms of the OPKO license, upon signing of the agreement, we paid OPKO \$6.0 million and issued to OPKO convertible preferred stock, then valued at \$0.6 million, which has since been converted to common stock. We have made all development milestone payments to OPKO, totaling \$30.0 million, based on achieving specified regulatory milestones in the U.S. and Europe. In addition, for each of the development programs under the OPKO license, we are required to make

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milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved. We pay OPKO tiered royalties on annual net sales achieved in the U.S. and Europe at percentage rates that range from the low teens to the low twenties, which we expect will result in an effective royalty rate in the low teens. The royalty rate on annual net sales outside of the United States and Europe is slightly above the single digits. We will pay royalties on rolapitant until the later of (i) the date that all of the patent rights licensed from OPKO and covering rolapitant expire, are invalidated or are not enforceable, and (ii) 12 years from the first commercial sale of the product, in each case, on a country-by-country and product-by-product basis. If we elect to develop and commercialize rolapitant in Japan through a third-party licensee, we will share equally with OPKO all amounts we receive in connection with such activities under our agreement with such third party, subject to certain exceptions and deductions.

The license with OPKO will remain in force until the expiration of the royalty term in each country, unless OPKO has cause to terminate the license earlier for our material breach of the license or bankruptcy. We have a right to terminate the license at any time during the term for any reason on three months' written notice to OPKO.

License for Niraparib

In May 2012, we entered into a license agreement with Merck, under which we obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib for all therapeutic and prophylactic uses in humans. Under the Merck license, we are obligated to use diligent efforts to develop and commercialize a licensed product. In April 2016, we entered into an amendment to the license agreement with Merck in connection with the entry into our collaboration agreement with Janssen to develop and commercialize niraparib in prostate cancer patients. Under the terms of the amendment, Merck agreed to waive or modify certain rights, including co-promotion, exclusivity, commercialization and diligence, solely with respect to products in prostate cancer developed or commercialized by Janssen.

Under the terms of the license agreement, we made an up-front payment to Merck of \$7.0 million in June 2012. We are required to make milestone payments to Merck of up to an aggregate of \$57.0 million in U.S. and European development and regulatory milestones for the first indication, up to an aggregate of \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. We have made \$52.2 million in milestone payments to date. We also pay Merck tiered royalties at percentage rates in the low teens based on worldwide annual net sales, until the later of the expiration of the last patent licensed from Merck covering or claiming niraparib, or the tenth anniversary of the first commercial sale of niraparib, in either case, on a country-by-country basis. We are responsible for all activities necessary to develop and commercialize niraparib.

The license with Merck will remain in effect until the expiration of the royalty term in such country, unless terminated earlier by the mutual agreement of the parties or due to the material breach or bankruptcy of a party. In addition, beginning upon completion of the first Phase 2 clinical trial of a licensed product candidate, we may terminate the license without cause by giving 180 days written notice.

In October 2012, we also entered into two license agreements with AstraZeneca UK Limited, having aggregate up-front payments of \$0.4 million. These agreements provide us with the exclusive right to certain methods of treating patients with PARP inhibitors solely with respect to niraparib. Under certain circumstances, we may be required to make milestone and royalty payments to AstraZeneca UK Limited based on the achievement of certain development and regulatory milestone events with regard to niraparib, and on net sales of niraparib.

License for Immuno-Oncology Platform

In March 2014, we entered into a collaboration and exclusive license agreement with AnaptysBio, a therapeutic antibody company. We executed an amendment in November 2014 to add an additional bi-specific antibody product candidate. We entered into another amendment in February 2016 to extend the term of the initial discovery period and our and AnaptysBio's associated activities under the agreement. Under the terms of the agreement, we possess an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of certain specified immunotherapy antibodies. Specifically, we received exclusive rights to monospecific antibody product candidates targeting PD-1 (TSR-042), TIM-3 (TSR-022), LAG-3 (TSR-033) and certain bi-specific antibody product candidates, including TSR-075, a bi-specific anti-PD-1/LAG-3 candidate. Under the agreement, AnaptysBio was responsible for performing initial discovery and development of therapeutic antibodies against immune checkpoint proteins, with the goal of generating immunotherapy antibodies for use in

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the treatment of cancer. We were required to reimburse AnaptysBio for specified costs incurred by AnaptysBio for these activities, which are now complete. We are responsible for all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs, and we are obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program.

Under the terms of this agreement, we made up-front, non-creditable and non-refundable cash payments of \$19.0 million to AnaptysBio. For each of the four development programs, we are required to make milestone payments to AnaptysBio of up to an aggregate of \$18.0 million if certain research and development milestone events are achieved, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. We have made \$21.0 million in development milestone payments to date. We will also be required to pay AnaptysBio tiered single-digit royalties, on a product-by-product basis, on worldwide annual net sales, and additional commercial milestone payments if specified levels of annual net sales of a product are attained.

This agreement expires on the earliest date after which no further payments are due to AnaptysBio, unless earlier terminated. Either party may terminate the agreement in the event of an uncured material breach by the other party. We may terminate the agreement at any time upon 90 days prior written notice to AnaptysBio.

Competition

While we believe that our development experience and scientific knowledge provide us with competitive advantages, our industry is highly competitive and subject to rapid and significant technological change. Compared to TESARO, many of our competitors may have significantly greater financial, technical and human resource capabilities. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. We may also face competition from smaller pharmaceutical and biotechnology companies, including specialty pharmaceutical companies and generic drug companies, academic institutions, government agencies and research institutions and others.

The acquisition or licensing of pharmaceutical products is also very competitive, and numerous other companies, including more established companies, have acknowledged strategies to in-license or acquire products. Other companies taking similar or different approaches to product acquisitions, including more established companies, may have competitive advantages.

Our commercial opportunity could be reduced or eliminated if our competitors develop or market products or other novel technologies that are more effective, safer or less costly than any that will be commercialized by us, or obtain regulatory approval for their products more rapidly than we may obtain approval for ours. Our success will be based in part on our ability to identify, develop, and manage a portfolio of drugs that are safer and more effective in the treatment and support of cancer patients.

Niraparib Competition

In addition to ZEJULA, there are currently two other commercially available PARP inhibitors. AstraZeneca Plc's LYNPARZA™ (olaparib) was approved in December 2014 by the FDA for use in ovarian cancer patients with a germline BRCA mutation who have been treated with three or more prior lines of chemotherapy, and in August 2017 for the maintenance treatment of adult patients with recurrent epithelial ovarian, fallopian tube or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. LYNPARZA was also approved by the EC following a positive opinion by the European Medicines Agency, or EMA, for use as a monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed BRCA-mutated (germline and/or somatic) high grade serous epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. LYNPARZA was also approved in patients with deleterious or suspected deleterious germline BRCA-mutated, human epidermal growth factor receptor 2 (HER2)-negative metastatic breast cancer who have previously been treated with chemotherapy in the neoadjuvant, adjuvant or metastatic setting. In February 2018, LYNPARZA received a positive opinion from the EMA's Committee for Medicinal Products for Human Use, or CHMP, for a new tablet formulation and a broad maintenance label, which is expected to lead to an EC marketing authorization in the near future. In July 2017, AstraZeneca and Merck announced a global oncology collaboration to co-develop and co-commercialize LYNPARZA for multiple cancer types. Clovis Oncology, Inc.'s RUBRACA™ (rucaparib) was approved in December 2016 by the FDA for use as a monotherapy for the treatment of patients with deleterious BRCA mutation (germline and/or somatic) associated with advanced ovarian cancer who have been treated

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with two or more chemotherapies. RUBRACA is currently under FDA review for maintenance treatment following complete or partial response to platinum-based chemotherapy, and is under EMA review as a third-line treatment in advanced ovarian cancer patients with a deleterious BRCA-mutation. In February 2018, the CHMP communicated a positive trend vote (meaning more voted yes than no) for RUBRACA to be authorized for the treatment of a subpopulation of platinum-sensitive ovarian cancer patients who also harbor a BRCA mutation. A final vote will occur at the CHMP's March 2018 meeting. We believe the additional products in clinical development targeting the PARP pathway consist of: Pfizer's talazoparib (MDV3800) and AbbVie's veliparib (ABT-888), both currently in Phase 3 clinical trials; and AbbVie's ABT-767, BeiGene/EMD Serono (Merck KGaA)'s pamiparib (BGB-290), Checkpoint Therapeutics' CK-102 (formerly CEP-9722) and Hengrui's fluzoparib, each currently in Phase 1 clinical trials. Both LYNPARZA and rucaparib have received "orphan drug designation" from the EMA, which provides certain benefits including market exclusivity for up to ten years in the approved indication post-approval.

In addition to other PARP inhibitors, ZEJULA also competes with AVASTINTM (bevacizumab), Roche's angiogenesis inhibitor. AVASTIN is FDA- and EMA-approved in combination with chemotherapy for the treatment of recurrent ovarian cancer following platinum-containing chemotherapy (platinum-sensitive and platinum-resistant) and has been approved by the EMA, in combination with chemotherapy, for front-line treatment. In the U.S., it is currently under FDA review for the front-line setting.

Rolapitant Competition

In addition to VARUBI, there are currently three other commercially available branded NK-1 receptor antagonists and two approved generic NK-1 receptor antagonists. Oral aprepitant and its IV pro-drug fosaprepitant, which are both known by the brand name EMEND®, are marketed by Merck. IV aprepitant, known by the brand name CINVANTITM, is marketed by Heron Therapeutics. We believe the IV formulation of EMEND accounted for a significant majority of all EMEND usage in the U.S. in 2017. A combination of netupitant and palonosetron, known by the brand name AKYNZEO®, is marketed by Helsinn Healthcare, or Helsinn, as a combination of NK-1 and 5-HT3 receptor antagonists. Helsinn introduced AKYNZEO in capsule form in October 2014, and has an IV formulation under FDA review. Sandoz launched a generic version of oral aprepitant in late 2016, which competes with oral VARUBI. Glenmark Pharmaceuticals USA also has an FDA-approved generic aprepitant.

Immuno-Oncology Competition

We are aware of several companies that have antibody-based products on the market or in clinical development that are directed at the same biological targets as some of our immuno-oncology programs. There are currently two anti-PD-1 antibody products being marketed. OPDIVO® (nivolumab), marketed by Bristol-Myers Squibb, is approved in a number of indications as a monotherapy or in combination with other products, including various forms of metastatic melanoma, metastatic NSCLC, advanced renal cell carcinoma, classical Hodgkin lymphoma, or cHL, recurrent or metastatic squamous cell carcinoma of the head and neck, or HNSCC, locally advanced or metastatic urothelial carcinoma, microsatellite instability-high, or MSI-H, or mismatch repair deficient, or dMMR, metastatic colorectal cancer, and hepatocellular carcinoma. KEYTRUDA, marketed by Merck, is approved in a number of indications, including various forms of unresectable or metastatic melanoma, metastatic NSCLC, metastatic nonsquamous NSCLC in the front line setting, recurrent or metastatic HNSCC, refractory cHL, locally advanced or metastatic urothelial carcinoma, unresectable or metastatic MSI-H or dMMR solid tumors (which includes colorectal cancer), and recurrent locally advanced or metastatic gastric or gastroesophageal junction adenocarcinoma.

There are currently three approved anti-PD-L1 antibodies. Roche's anti-PD-L1 antibody TECENTRIQ® (atezolizumab) is approved in patients with various forms of locally advanced or metastatic urothelial carcinoma or metastatic NSCLC. AstraZeneca's IMFINZI® (durvalumab) was approved in 2017 for patients with various forms of locally advanced or metastatic urothelial carcinoma. BAVENCIO® (avelumab, co-marketed by Merck KGa and Pfizer) was approved in 2017 for adults and pediatric patients 12 years and older with metastatic Merkel cell carcinoma and for patients with various forms of locally advanced or metastatic urothelial carcinoma. We are aware of several companies that are developing or co-developing anti-PDL-1 and/or anti-PD-1 modulators for various indications, including Novartis, Regeneron/Sanofi, Eli Lilly, Incyte, Boehringer Ingelheim, Celgene/BeiGene, Incyte/Macrogenics, Agenus, CytomX, Symhogen, Checkpoint Therapeutics, and Janssen/Johnson & Johnson.

There are currently no anti-TIM-3 antibody products or anti-LAG-3 antibody products being marketed. We are aware that two companies, Novartis and Eli Lilly, have anti-TIM-3 modulator antibodies in Phase 1/2 clinical development for

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various oncology indications. We are also aware of several companies that have anti-LAG-3 modulators in development for various oncology indications, including Bristol-Myers Squibb, which has an anti-LAG-3 antibody in Phase 2 clinical development; Novartis, which has an anti-LAG-3 antibody in Phase 1/2 and Phase 2 clinical development; and Merck, Boehringer Ingelheim and Regeneron Pharmaceuticals, each of which has an anti-LAG-3 antibody in Phase 1 clinical development. We are also aware of several other companies with immuno-oncology antibodies or programs in the preclinical or research phase.

For more information on the market for cancer therapeutics and oncology supportive care products, our competitors and the products that may compete with our product candidates, see “—Overview of the Market for Cancer Therapeutics and Oncology Supportive Care Products”, “—Our Product Candidates—Niraparib” and “—Our Product Candidates—Immuno-Oncology.”

Commercial Operations

Our U.S.-based commercial operations team consists of approximately 190 employees. Our European commercial operations team consists of approximately 55 employees in nine countries including those at our international headquarters office in Zug, Switzerland. The commercial infrastructure includes a targeted, oncology sales force to establish relationships with a focused group of oncologists, oncology nurses and pharmacists. Personnel in sales management, internal sales training, sales operations, marketing, marketing operations and distribution support the sales force. Additionally, the sales, marketing and market access teams manage relationships with key accounts such as managed care organizations, group purchasing organizations, hospital systems, oncology group networks, and government accounts. To further develop our commercial infrastructure in the event that any other product candidates receive regulatory approval, we expect to invest significant financial and management resources, much of which will be committed at the risk that any such product candidate may not be approved by any regulatory agency.

Government Regulation

As a biopharmaceutical company that operates in the United States, we are subject to extensive regulation by the FDA and other federal, state, and local regulatory agencies. The Federal Food, Drug, and Cosmetic Act, or the FDC Act, and the Public Health Service Act, or PHSA, and their implementing regulations set forth, among other things, requirements for the testing, development, manufacture, quality control, safety, effectiveness, approval, labeling, storage, record keeping, reporting, distribution, import, export, advertising and promotion of our products and product candidates. Although the discussion below focuses on regulation in the United States, we develop and market our products in other countries, including throughout Europe. Generally, our activities in other countries will be subject to regulation that, although similar in nature and scope in some respects to that imposed in the United States, includes important differences. Additionally, some significant aspects of regulation in the European Union, or the EU, are addressed in a centralized way through the EMA and the EC, but the specific regulation of EU Member States remains essential in many respects for certain types of authorization processes, pricing and reimbursement and promotional activities.

Development and Approval

Under the FDC Act, FDA approval of an NDA is required before any new drug can be marketed in the United States. Under the PHSA, FDA licensure of a biologics license application, or BLA, is required before a biologic can be marketed in the United States. NDAs and BLAs require extensive studies and submission of a large amount of data by the applicant.

Preclinical Testing. Before testing any compound in human subjects in the United States, a company must generate extensive preclinical data. Preclinical testing generally includes laboratory evaluation of product chemistry and formulation, as well as toxicological and pharmacological studies in several animal species to assess the quality and safety of the product. Animal studies must be performed in compliance with the FDA’s Good Laboratory Practice, or GLP, regulations and the U.S. Department of Agriculture’s Animal Welfare Act.

IND Application. Human clinical trials in the United States cannot commence until an IND application is submitted and becomes effective. A company must submit preclinical testing results to the FDA as part of the IND, and the FDA must evaluate whether there is an adequate basis for testing the drug in initial clinical studies in human volunteers. Unless the FDA raises concerns, the IND becomes effective 30 days following its receipt by the FDA. Once human clinical trials have commenced, the FDA may stop the clinical trials by placing them on “clinical hold” because of concerns about the safety of the product being tested, or for other reasons.

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Clinical Trials. Clinical trials involve the administration of the drug to healthy human volunteers or to patients, under the supervision of a qualified investigator. The conduct of clinical trials is subject to extensive regulation, including compliance with the FDA's bioresearch monitoring regulations and Good Clinical Practice, or GCP, requirements, which establish standards for conducting, recording data from, and reporting the results of, clinical trials, and are intended to assure that the data and reported results are credible and accurate, and that the rights, safety, and well-being of study participants are protected. Clinical trials must be conducted under protocols that detail the study objectives, parameters for monitoring safety, and the efficacy criteria, if any, to be evaluated. Each protocol is reviewed by the FDA as part of the IND. In addition, each clinical trial must be reviewed and approved by, and conducted under the auspices of, an institutional review board, or IRB. Companies sponsoring the clinical trials, investigators, and IRBs also must comply with applicable regulations and guidelines for obtaining informed consent from the study subjects, following the protocol and investigational plan, adequately monitoring the clinical trial, and timely reporting of adverse events. Foreign studies conducted under an IND must meet the same requirements that apply to studies being conducted in the United States. Data from a foreign study not conducted under an IND may be submitted in support of an NDA or BLA if the study was conducted in accordance with GCP and the FDA is able to validate the data.

A study sponsor is required to publicly post certain details about active clinical trials and clinical trial results on government or independent websites (e.g., <http://clinicaltrials.gov>). Human clinical trials typically are conducted in three sequential phases, although the phases may overlap with one another:

- Phase 1 clinical trials include the initial administration of the investigational drug to humans, typically to a small group of healthy human subjects, but occasionally to a group of patients with the targeted disease or disorder. Phase 1 clinical trials generally are intended to determine the metabolism and pharmacologic actions of the drug, the side effects associated with increasing doses, and, if possible, to gain early evidence of effectiveness.
- Phase 2 clinical trials generally are controlled studies that involve a relatively small sample of the intended patient population, and are designed to develop data regarding the product's effectiveness, to determine dose response and the optimal dose range, and to gather additional information relating to safety and potential adverse effects.
- Phase 3 clinical trials are conducted after preliminary evidence of effectiveness has been obtained, and are intended to gather the additional information about safety and effectiveness necessary to evaluate the drug's overall risk-benefit profile, and to provide a basis for physician labeling. Generally, Phase 3 clinical development programs consist of expanded, large-scale studies of patients with the target disease or disorder to obtain statistical evidence of the efficacy and safety of the drug at the proposed dosing regimen, or the safety, purity, and potency of a biological product.

The sponsoring company, the FDA, or the IRB may suspend or terminate a clinical trial at any time on various grounds, including a finding that the subjects are being exposed to an unacceptable health risk. Further, success in early-stage clinical trials does not assure success in later-stage clinical trials. Data obtained from clinical activities are not always conclusive and may be subject to alternative interpretations that could delay, limit or prevent regulatory approval.

NDA/BLA Submission and Review. After completing clinical testing of an investigational drug or biologic, a sponsor must prepare and submit an NDA or BLA for review and approval by the FDA. The NDA is a comprehensive, multi-volume application that includes, among other things, the results of preclinical and clinical studies, information about the drug's composition, and the sponsor's plans for manufacturing, packaging, and labeling the drug. For certain candidates, such as immunotherapeutic antibodies, this information is submitted in a BLA. When an NDA or BLA is submitted, the FDA conducts a preliminary review to determine whether the application is sufficiently complete to be accepted for filing. If it is not, the FDA may refuse to file the application and request additional information, in which case the application must be resubmitted with the supplemental information, and review of the application is delayed.

FDA performance goals generally provide for action on an application within 12 months of submission, but that deadline is extended in certain circumstances. Moreover, the review process is often significantly extended by FDA requests for additional information or clarification. The FDA also has programs intended to expedite the development and review of new drugs intended to address unmet medical needs for serious or life-threatening conditions. Through priority review designation, for example, the FDA can expedite the target action date to eight months from application submission, if the agency finds that a drug is intended to treat a serious condition and, if approved, would provide a significant improvement in

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safety or effectiveness. Another example is fast-track designation, which the FDA may grant to a drug that is intended to treat a serious condition and that demonstrates the potential to address an unmet medical need. Under the fast track program, the FDA allows a sponsor to submit completed portions of an NDA on a rolling basis, rather than requiring the entire application to be submitted before review begins. Product candidates with fast-track designation also may be eligible for more frequent meetings or correspondence with the agency during the development process.

As part of its review, the FDA may refer an NDA or BLA to an advisory committee for evaluation and a recommendation as to whether the application should be approved. Although the FDA is not bound by the recommendation of an advisory committee, the agency usually has followed such recommendations. The FDA may determine that a Risk Evaluation and Mitigation Strategy, or REMS, is necessary to ensure that the benefits of a new product outweigh its risks, and the product can therefore be approved. A REMS may include various elements, ranging from a medication guide or patient package insert to limitations on who may prescribe or dispense the drug, depending on what the FDA considers necessary for the safe use of the drug. Under the Pediatric Research Equity Act, certain applications for approval must include an assessment, generally based on clinical study data, of the safety and effectiveness of the subject drug or biological product in relevant pediatric populations.

After review of an NDA or BLA, the FDA may decide to not approve the application or issue a complete response letter outlining the deficiencies in the submission. The complete response letter also may request additional information, including additional preclinical or clinical data. Even if such additional information and data are submitted, the FDA may decide that the NDA still does not meet the standards for approval. Data from clinical trials are not always conclusive and the FDA may interpret data differently than the sponsor. Obtaining regulatory approval often takes a number of years, involves the expenditure of substantial resources, and depends on a number of factors, including the severity of the disease in question, the availability of alternative treatments, and the risks and benefits demonstrated in clinical trials. Additionally, as a condition of approval, the FDA may impose restrictions that could affect the commercial success of a drug or require post-approval commitments, including the completion within a specified time period of additional clinical studies, which often are referred to as “Phase 4” or “post-marketing” studies.

Post-approval modifications to the drug or biologic product, such as changes in indications, labeling, or manufacturing processes or facilities, may require a sponsor to develop additional data or conduct additional preclinical or clinical trials, to be submitted in a new or supplemental NDA or BLA, which would require FDA approval.

Post-Approval Regulation

Once approved, products are subject to continuing regulation by the FDA. If ongoing regulatory requirements are not met or if safety problems occur after the product reaches the market, the FDA may at any time withdraw product approval or take actions that would limit or suspend marketing. Additionally, the FDA may require post-marketing studies or clinical trials if new safety information develops.

Good Manufacturing Practices. Companies engaged in manufacturing drug products or their components must comply with applicable current Good Manufacturing Practice, or cGMP, requirements and product-specific regulations enforced by the FDA and other regulatory agencies. Compliance with cGMP includes adhering to requirements relating to organization and training of personnel, buildings and facilities, equipment, control of components and drug product containers and closures, production and process controls, quality control and quality assurance, packaging and labeling controls, holding and distribution, laboratory controls, and records and reports. The FDA regulates and inspects equipment, facilities, and processes used in manufacturing pharmaceutical or biologic products, prior to approval. If, after receiving approval, a company makes a material change in manufacturing equipment, location, or process (all of which are, to some degree, incorporated in the NDA or BLA), additional regulatory review and approval may be required. The FDA also conducts regular, periodic visits to re-inspect equipment, facilities, and processes following the initial approval of a product. Failure to comply with applicable cGMP requirements and conditions of product approval may lead the FDA to seek sanctions, including fines, civil penalties, injunctions, suspension of manufacturing operations, operating restrictions, withdrawal of FDA approval, seizure or recall of products, and criminal prosecution. Although we periodically monitor the FDA compliance of our third-party manufacturers, we cannot be certain that our present or future third-party manufacturers will consistently comply with cGMP and other applicable FDA regulatory requirements.

Advertising and Promotion. The FDA and other federal regulatory agencies closely regulate the marketing and promotion of drugs and biologics through, among other things, standards and regulations for direct-to-consumer advertising, advertising and promotion to healthcare professionals, communications regarding unapproved uses, industry-sponsored

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scientific and educational activities, and promotional activities involving the Internet. A product cannot be commercially promoted before it is approved. After approval, product promotion can include only those claims relating to safety and effectiveness that are consistent with the labeling approved by the FDA. Healthcare providers are permitted to prescribe drugs and biologics for “off-label” uses—that is, uses not approved by the FDA and therefore not described in the product’s labeling—because the FDA does not regulate the practice of medicine. However, FDA regulations impose stringent restrictions on manufacturers’ communications regarding off-label uses. Broadly speaking, a manufacturer may not promote a drug or biologic for off-label use, but under certain conditions may engage in non-promotional, balanced, scientific communication regarding off-label use. Failure to comply with applicable FDA requirements and restrictions in this area may subject a company to adverse publicity and enforcement action by the FDA, the Department of Justice, or the Office of Inspector General of the Department of Health and Human Services, as well as state authorities. This could subject a company to a range of penalties that could have a significant commercial impact, including civil and criminal fines and agreements that materially restrict the manner in which a company promotes or distributes drug or biological products.

Other Requirements. In addition, companies that manufacture or distribute drug or biological products or that hold approved NDAs or BLAs must comply with other regulatory requirements, including submitting annual reports, reporting information about adverse drug experiences, and maintaining certain records.

Hatch-Waxman Act

The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, establishes two abbreviated approval pathways for pharmaceutical products that are in some way follow-on versions of already approved products.

Generic Drugs. A generic version of an approved drug is approved by means of an abbreviated new drug application, or ANDA, by which the sponsor demonstrates that the proposed product is the same as the approved, brand-name drug, which is referred to as the “reference listed drug,” or RLD. Generally, an ANDA must contain data and information showing that the proposed generic product and RLD (1) have the same active ingredient, in the same strength and dosage form, to be delivered via the same route of administration, (2) are intended for the same uses, and (3) are bioequivalent. This is instead of independently demonstrating the proposed product’s safety and effectiveness, which are inferred from the fact that the product is the same as the RLD, which the FDA previously found to be safe and effective.

505(b)(2) NDAs. If a product is similar, but not identical, to an already approved product, it may be submitted for approval via an NDA under Section 505(b)(2) of the FDC Act. Unlike an ANDA, this does not excuse the sponsor from demonstrating the proposed product’s safety and effectiveness. Rather, the sponsor is permitted to rely to some degree on the FDA’s finding that the RLD is safe and effective, and must submit its own product-specific data of safety and effectiveness to an extent necessary because of the differences between the products.

RLD Patents. An NDA sponsor must identify to the FDA patents that claim the drug substance or drug product or a method of using the drug. When the drug is approved, those patents are among the information about the product that is listed in the FDA publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*, which is referred to as the *Orange Book*. The sponsor of an ANDA or 505(b)(2) application seeking to rely on an approved product as the RLD must make one of several certifications regarding each listed patent. A “Paragraph III” certification is the sponsor’s statement that it will wait for the patent to expire before obtaining approval for its product. A “Paragraph IV” certification is an assertion that the patent does not block approval of the later product, either because the patent is invalid or unenforceable or because the patent, even if valid, is not infringed by the new product.

Regulatory Exclusivities. The Hatch-Waxman Act provides periods of regulatory exclusivity for products that would serve as RLDs for an ANDA or 505(b)(2) application. If a product is a “new chemical entity,” or NCE—generally meaning that the active moiety has never before been approved in any drug—there is a period of five years from the product’s approval during which the FDA may not accept for filing any ANDA or 505(b)(2) application for a drug with the same active moiety. An ANDA or 505(b)(2) application may be submitted after four years, however, if its sponsor makes a Paragraph IV certification.

A product that is not an NCE may qualify for a three-year period of exclusivity if the NDA contains new clinical data, derived from studies conducted by or for the sponsor, that were necessary for approval. In that instance, the exclusivity period does not preclude filing or review of the ANDA or 505(b)(2) application; rather, the FDA is precluded from granting final approval to the ANDA or 505(b)(2) application until three years after approval of the RLD. Additionally, the exclusivity

applies only to the conditions of approval that required submission of the clinical data. For example, if an NDA is submitted for a product that is not an NCE, but that seeks approval for a new indication, and clinical data were required to demonstrate the safety or effectiveness of the product for that use, the FDA will not finally approve an ANDA or 505(b)(2) application for another product with that active moiety for that use until the expiration of the applicable three-year period.

Once the FDA accepts for filing an ANDA or 505(b)(2) application containing a Paragraph IV certification, the applicant must within 20 days provide notice to the RLD NDA holder and patent owner that the application has been submitted, and provide the factual and legal basis for the applicant's assertion that the patent is invalid or not infringed. If the NDA holder or patent owner files suit against the ANDA or 505(b)(2) applicant for patent infringement within 45 days of receiving the Paragraph IV notice, the FDA is prohibited from approving the ANDA or 505(b)(2) application for a period of 30 months or the resolution of the underlying suit, whichever is earlier. If the RLD has NCE exclusivity and the notice is given and suit filed during the fifth year of exclusivity, the 30-month stay does not begin until five years after the RLD approval. The FDA may approve the proposed product before the expiration of the 30-month stay if a court finds the patent invalid or not infringed or if the court shortens the period because the parties have failed to cooperate in expediting the litigation. At present, each of rolapitant and niraparib is an NCE with five-year NCE exclusivity.

Patent Term Restoration. A portion of the patent term lost during product development and FDA review of an NDA or BLA is restored if approval of the application is the first permitted commercial marketing of a drug containing the active ingredient. The patent term restoration period is generally one-half the time between the effective date of the IND or the date of patent grant (whichever is later) and the date of submission of the NDA or BLA, plus the time between the date of submission of the NDA or BLA and the date of FDA approval of the product. The maximum period of restoration is five years, and the patent cannot be extended to more than 14 years from the date of FDA approval of the product. Only one patent claiming each approved product is eligible for restoration and the patent holder must apply for restoration within 60 days of approval. The U.S. Patent and Trademark Office, or the USPTO, in consultation with the FDA, reviews and approves the application for patent term restoration. When any of our products is approved, we intend to seek patent term restoration for an applicable patent when it is appropriate. At present, we anticipate that rolapitant and niraparib will qualify for patent term restoration. We have applied for patent term restoration for rolapitant and niraparib.

The Biologics Price Competition and Innovation Act

The Biologics Price Competition and Innovation Act, or BPCI Act, authorizes the FDA to license a biological product that is biosimilar to an FDA-licensed biologic through an abbreviated pathway. The BPCI Act establishes criteria for determining that a product is biosimilar to an already-licensed biologic, or reference product, and establishes a process by which an abbreviated BLA for a biosimilar product is submitted, reviewed and approved. The BPCI Act provides periods of exclusivity that protect a reference product from biosimilars competition. Under the BPCI Act, the FDA may not accept a biosimilar application for review until four years after the date of first licensure of the reference product, and the biosimilar may not be licensed until at least 12 years after the reference product's approval. Additionally, the BPCI Act establishes procedures by which the biosimilar applicant provides information about its application and product to the reference product sponsor, and by which information about potentially relevant patents may be shared and litigation over patents may proceed in advance of approval. The BPCI Act also provides a period of exclusivity for the first biosimilar determined by the FDA to be interchangeable with the reference product.

We anticipate that the contours of the BPCI Act will continue to be defined as the statute is implemented over a period of years. This likely will be accomplished by a variety of means, including decisions related to the statute by the relevant federal courts, FDA issuance of guidance documents, and FDA decisions in the course of considering specific applications. The FDA has to date issued various guidance documents and other materials indicating the agency's thinking regarding a number of issues implicated by the BPCI Act. Additionally, the FDA's approval of several biosimilar applications in recent years has helped define the agency's approach to certain issues.

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America Invents Act

As part of the passage of the America Invents Act in 2011, new post-grant review proceedings were added to U.S. patent law. Among these procedures are post-grant reviews and inter partes reviews, which allow any member of the public to file a petition with the USPTO seeking to review the patentability of one or more claims in an issued U.S. patent. Post-grant review proceedings are conducted before Administrative Patent Judges in the USPTO using a lower standard of proof than used in Federal District Court. In addition, the challenged patents are not accorded a presumption of validity as they are in Federal District Court.

Other Exclusivities

Pediatric Exclusivity. Section 505A of the FDC Act provides for six months of additional exclusivity and patent protection if an NDA sponsor submits pediatric data that fairly respond to a written request from the FDA for such data. The data does not need to show the product to be effective in the pediatric population studied; rather, if the clinical trial is deemed to fairly respond to the FDA's request, the additional protection is granted. If reports of requested pediatric studies are submitted to and accepted by the FDA within the statutory time limits, whatever statutory or regulatory periods of exclusivity or *Orange Book* listed patent protection that cover the drug are extended by six months. This is not a patent term extension, but it effectively extends the regulatory period during which the FDA cannot approve an ANDA or 505(b)(2) application with reference to RLD owing to regulatory exclusivity or listed patents. The BPCI Act incorporates by reference many provisions of Section 505A of the FDC Act, such that if pediatric studies for a biological product fairly respond to a written request from the FDA, are completed in a timely fashion, and otherwise comply with applicable requirements, the 12-year exclusivity period will be deemed to be 12 and a half years, and the four year period will be deemed to be four and a half years. However, six-month pediatric exclusivity does not attach to patents for a biological product under the BPCI Act. When any of our products is approved, we anticipate seeking pediatric exclusivity when it is appropriate.

Orphan Drug Exclusivity. The Orphan Drug Act provides incentives for the development of drugs and biological products intended to treat rare diseases or conditions, which generally are diseases or conditions affecting less than 200,000 individuals in the United States. If a sponsor demonstrates that a drug or biologic is intended to treat a rare disease or condition, the FDA grants orphan drug designation to the product for that use. The benefits of orphan drug designation include research and development tax credits and exemption from user fees. A drug or biologic that is approved for the orphan drug designated indication is granted seven years of orphan drug exclusivity. During that period, the FDA generally may not approve any other application for the same product for the same indication, although there are exceptions, most notably when the later product is shown to be clinically superior to the product with exclusivity. We intend to seek orphan drug designation and exclusivity for our products whenever it is available.

21st Century Cures Act

In December 2016, the United States Congress passed the 21st Century Cures Act, or the Cures Act, which includes a number of provisions designed to speed development of innovative therapies, provide funding authorization to the National Institutes of Health, or NIH, and provide funding for certain oncology-directed research. Because the Cures Act was enacted recently, it is difficult to know whether or how it will directly affect our business. However, it also includes a provision which requires us to post our policies on the availability of certain expanded access programs. In addition, the Cures Act includes provisions that may be beneficial to us in the future, including a requirement that the FDA assess and publish guidance on the use of novel clinical trial designs, the use of real world evidence in applications, the availability of summary level review for supplemental applications for certain indications, and the qualification of drug development tools. Because these provisions allow the FDA several years to develop these policies, their effects on us, if any, could be delayed.

The Cures Act also authorizes \$1.8 billion in funding for the "Cancer Moonshot" initiative. The Cancer Moonshot initiative's strategic goals encourage inter-agency cooperation and fund research and innovation to catalyze new scientific breakthroughs, bring new therapies to patients, and strengthen prevention and diagnosis. This initiative aims to stimulate drug development through the creation of a public-private partnership with 20 to 30 pharmaceutical and biotechnology companies to expedite cancer researchers' access to investigational agents and approved drugs. This partnership is designed to permit researchers to obtain drugs and other technologies from a preapproved "formulary" list without having to negotiate with each company for individual research projects. We will continue to monitor these developments to assess their potential impacts on our business.

Foreign Regulation

In addition to laws and regulations in the United States, we are subject to a variety of laws and regulations in other jurisdictions governing, among other things, clinical trials and any commercial sales and distribution of our products.

Whether or not we obtain FDA approval for a product, we must obtain the requisite marketing authorizations from regulatory authorities in foreign countries prior to the commencement of clinical trials or marketing of a product in those countries. Certain countries outside of the United States have a similar process that requires the submission of a clinical trial application, or CTA, much like an IND, prior to the commencement of clinical trials. In the EU, for example, a CTA must be submitted to the national health authority of each EU Member State in which the clinical trial is to be conducted and to an independent ethics committee, much like the FDA and an IRB, respectively. Once the CTA is approved in accordance with a country's requirements, clinical trial development may proceed.

The requirements and process governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. In all cases in EU Member States, for example, the clinical trials must be conducted in accordance with GCP, applicable regulatory requirements, and ethical principles that have their origin in the Declaration of Helsinki.

In the EU, a marketing authorization for a medicinal product can be obtained through a centralized, mutual recognition, decentralized procedure, or national procedure (single EU Member State). In accordance with the centralized procedure, the applicant can submit a single application for marketing authorization to the EMA that will provide a positive opinion regarding the application if it meets certain quality, safety, and efficacy requirements. Following the opinion of the EMA, the EC makes a final decision to grant a centralized marketing authorization that permits the marketing of a product in all 28 EU Member States and three of the four European Free Trade Association, or EFTA, States, Iceland, Liechtenstein and Norway. The centralized procedure is mandatory for certain medicinal products, including orphan medicinal products, medicinal products derived from certain biotechnological processes, advanced therapy medicinal products and certain other medicinal products containing a new active substance for the treatment of certain diseases, and optional for certain other products, including medicinal products that are a significant therapeutic, scientific or technical innovation, or whose authorization would be in the interest of public or animal health. Under the centralized procedure in the EU, the maximum timeframe for the evaluation of a marketing authorization application is 210 days (excluding clock stops, when additional written or oral information is to be provided by the applicant in response to questions asked by the CHMP). Accelerated evaluation may be granted by the CHMP in exceptional cases. These are defined as circumstances in which a medicinal product is expected to be of a "major public health interest". Three cumulative criteria must be fulfilled in such circumstances: the seriousness of the disease, such as heavy disabling or life-threatening diseases, to be treated; the absence or insufficiency of an appropriate alternative therapeutic approach; and anticipation of high therapeutic benefit. In these circumstances, the EMA ensures that the opinion of the CHMP is given within 150 days.

Unlike the centralized authorization procedure, the decentralized marketing authorization procedure requires a separate application to, and leads to separate approval by, the competent authorities of each EU Member State in which the product is to be marketed. This application is identical to the application that would be submitted to the EMA for authorization through the centralized procedure. The reference EU Member State prepares a draft assessment and drafts of the related materials within 120 days after receipt of a valid application. The resulting assessment report is submitted to the concerned EU Member States who, within 90 days of receipt, must decide whether to approve the assessment report and related materials. If a concerned EU Member State cannot approve the assessment report and related materials due to concerns relating to a potential serious risk to public health, disputed elements may be referred to the EC, whose decision is binding on all EU Member States.

The mutual recognition procedure similarly is based on the acceptance by the competent authorities of the EU Member States of the marketing authorization of a medicinal product by the competent authorities of other EU Member States. The holder of a national marketing authorization may submit an application to the competent authority of an EU Member State requesting that this authority recognize the marketing authorization delivered by the competent authority of another EU Member State.

A medicinal product may be granted an orphan designation in the EU if: (i) it would be used to treat or prevent a life-threatening or chronically debilitating condition and either affects no more than five in 10,000 people in the EU or for economic reasons would be unlikely to be developed without incentives; and (ii) no satisfactory method of diagnosis, prevention or treatment of the condition concerned exists, or, if such a method exists, the medicinal product would be of

significant benefit to those affected by the condition. The application for orphan designation must be submitted to the EMA and approved prior to market authorization. Once authorized, orphan medicinal products are entitled to ten years of market exclusivity. During this ten-year period, with limited exceptions, neither the competent authorities of the EU Member States, the EMA, nor the EC are permitted to accept applications or grant marketing authorization for other similar medicinal products with the same therapeutic indication. However, marketing authorization may be granted to a similar medicinal product with the same orphan indication during that period with the consent of the holder of the marketing authorization or if the manufacturer of the product is unable to supply sufficient quantities. Marketing authorization may also be granted to a similar medicinal product with the same orphan indication if the latter product is safer, more effective or otherwise clinically superior to the original product. The period of market exclusivity may be reduced to six years if it can be demonstrated on the basis of available evidence that the original orphan medicinal product is sufficiently profitable not to justify maintenance of market exclusivity.

Once an applicant receives marketing authorization in an EU Member State, through any application route, the applicant is then required to engage in pricing discussions and negotiations with a separate pricing authority in that country. The legislators, policymakers and healthcare insurance funds in the EU Member States continue to propose and implement cost-containing measures to keep healthcare costs down, due in part to the attention being paid to health care cost containment and other austerity measures in the EU. Certain of these changes could impose limitations on the prices pharmaceutical companies are able to charge for their products. The amounts of reimbursement available from governmental agencies or third-party payors for these products may increase the tax obligations on pharmaceutical companies such as ours, or may facilitate the introduction of generic competition with respect to our products. Furthermore, an increasing number of EU Member States and other foreign countries use prices for medicinal products established in other countries as “reference prices” to help determine the price of the product in their own territory. Consequently, a downward trend in prices of medicinal products in some countries could contribute to similar downward trends elsewhere. In addition, the ongoing budgetary difficulties faced by a number of EU Member States, including Greece and Spain, have led and may continue to lead to substantial delays in payment and payment partially with government bonds rather than cash for medicinal products, which could negatively impact our revenues and profitability. Moreover, in order to obtain reimbursement of our medicinal products in some countries, including some EU Member States, we may be required to conduct clinical trials that compare the cost-effectiveness of our products to other available therapies. There can be no assurance that our medicinal products will obtain favorable reimbursement status in any country.

The sole legal instrument at the EU level governing the pricing and reimbursement of medicinal products is Council Directive 89/105/EEC, or the Transparency Directive. The aim of this directive is to ensure that pricing and reimbursement mechanisms established in the EU Member States are transparent and objective, do not hinder the free movement and trade of medicinal products in the EU and do not hinder, prevent or distort competition on the market. The Transparency Directive does not provide any guidance concerning the specific criteria on the basis of which pricing and reimbursement decisions are to be made in individual EU Member States. Neither does it have any direct consequence for pricing nor reimbursement levels in individual EU Member States. The EU Member States are free to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices and/or reimbursement levels of medicinal products for human use. Certain individual EU Member States adopt policies according to which a specific price or level of reimbursement is approved for the medicinal product. Others adopt a system of reference pricing, basing the price or reimbursement level in their territories either on the pricing and reimbursement levels in other countries or on the pricing and reimbursement levels of medicinal products intended for the same therapeutic indication. Further, some EU Member States impose direct or indirect controls on the profitability of the company placing the medicinal product on the market.

Health Technology Assessment, or HTA, of medicinal products is becoming an increasingly common part of the pricing and reimbursement procedures in some EU Member States. These EU Member States include the United Kingdom, France, Germany, Ireland, Italy and Sweden. The HTA process in European Economic Area, or EEA, countries is governed by the national laws of these countries. HTA is the procedure according to which the assessment of the public health impact, therapeutic impact and the economic and societal impact of use of a given medicinal product in the national healthcare systems of the individual country is conducted. HTA generally focuses on the clinical efficacy and effectiveness, safety, cost, and cost-effectiveness of individual medicinal products as well as their potential implications for the healthcare system. Those elements of medicinal products are compared with other treatment options available on the market.

The outcome of HTA regarding specific medicinal products will often influence the pricing and reimbursement status granted to these medicinal products by the competent authorities of individual EU Member States. The extent to which pricing and reimbursement decisions are influenced by the HTA of the specific medicinal product vary between EU Member States.

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In 2011, Directive 2011/24/EU was adopted at the EU level. This directive concerns the application of patients' rights in cross-border healthcare. This directive is intended to establish rules for facilitating access to safe and high-quality cross-border healthcare in the EU. Pursuant to this directive, a voluntary network of national authorities or bodies responsible for HTA in the individual EU Member States was established. The purpose of the network is to facilitate and support the exchange of scientific information concerning HTAs. This may lead to harmonization of the criteria taken into account in the conduct of HTAs between EU Member States and in pricing and reimbursement decisions and may negatively affect price in at least some EU Member States.

In the EU, the advertising and promotion of our products will also be subject to EU Member States' laws concerning promotion of medicinal products, interactions with physicians, misleading and comparative advertising and unfair commercial practices, as well as other EU Member State legislation that may apply to the advertising and promotion of medicinal products. These laws require that promotional materials and advertising in relation to medicinal products comply with the product's Summary of Product Characteristics, or SmPC, as approved by the competent authorities. The SmPC is the document that provides information to physicians concerning the safe and effective use of the medicinal product. It forms an intrinsic and integral part of the marketing authorization granted for the medicinal product. Promotion of a medicinal product that does not comply with the SmPC is considered to constitute off-label promotion. The off-label promotion of medicinal products is prohibited in the EU. The applicable laws at the EU level and in the individual EU Member States also prohibit the direct-to-consumer advertising of prescription-only medicinal products. Violations of the rules governing the promotion of medicinal products in the EU could be penalized by administrative measures, fines and imprisonment. These laws may further limit or restrict communications concerning the advertising and promotion of our products to the general public and may also impose limitations on our promotional activities with healthcare professionals.

Failure to comply with the EU Member State laws implementing the Community Code on medicinal products, and EU rules governing the promotion of medicinal products, interactions with physicians, misleading and comparative advertising and unfair commercial practices, with the EU Member State laws that apply to the promotion of medicinal products, statutory health insurance, bribery and anti-corruption or with other applicable regulatory requirements can result in enforcement action by the EU Member State authorities, which may include any of the following: fines, imprisonment, orders forfeiting products or prohibiting or suspending their supply to the market, or requiring the manufacturer to issue public warnings, or to conduct a product recall.

Interactions between pharmaceutical companies and physicians are also governed by strict laws, regulations, industry self-regulation codes of conduct and physicians' codes of professional conduct in the individual EU Member States. The provision of benefits or advantages to physicians to induce or encourage the prescription, recommendation, endorsement, purchase, supply, order or use of medicinal products is prohibited in the EU. The provision of benefits or advantages to physicians is also governed by the national anti-bribery laws of the EU Member States. One example is the UK Bribery Act of 2010, or the UK Bribery Act. This act applies to any company incorporated in or "carrying on business" in the UK, irrespective of where in the world the alleged bribery activity occurs. This act could have implications for our interactions with physicians in and outside the UK. Violation of these laws could result in substantial fines and imprisonment.

The national laws of certain EU Member States require payments made to physicians to be publicly disclosed. Moreover, the European Federation of Pharmaceutical Industries and Associations, or EFPIA, Code on disclosure of transfers of value from pharmaceutical companies to healthcare professionals and healthcare organizations imposes a general obligation on members of the EFPIA or related national industry bodies to disclose transfers of value to healthcare professionals. In addition, agreements with physicians must often be the subject of prior notification and approval by the physician's employer, his/her competent professional organization, and/or the competent authorities of the individual EU Member States. These requirements are provided in the national laws, industry codes, or professional codes of conduct, applicable in the EU Member States.

For other countries outside of the EU, such as countries in Eastern Europe, Central and South America or Asia, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. In all cases, again, the clinical trials are conducted in accordance with GCP, applicable regulatory requirements, and ethical principles that have their origin in the Declaration of Helsinki.

If we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, warning letters or untitled letters, injunctions, civil, administrative, or criminal penalties, monetary fines or imprisonment, suspension or withdrawal of regulatory approvals, suspension of ongoing clinical studies, refusal to approve pending

applications or supplements to applications filed by us, suspension or the imposition of restrictions on operations, product recalls, the refusal to permit the import or export of our products or the seizure or detention of products.

Coverage and Reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any products for which we have or may obtain regulatory approval. Sales of ZEJULA, VARUBI, and any of our other product candidates will depend, in part, on the extent to which the costs of the products will be covered by third-party payors, including government healthcare programs such as Medicare and Medicaid, commercial health insurers and managed care organizations. The process for determining whether a payor will provide coverage for a product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the product once coverage is approved. Third-party payors may limit coverage to specific products on an approved list, or formulary, which might not include all FDA-approved products for a particular indication.

In order to secure coverage and reimbursement for ZEJULA, VARUBI, or any other product that might be approved for sale, we may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of the product, in addition to the costs required to obtain FDA or other comparable regulatory approvals. Our product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a product does not imply that an adequate reimbursement rate will be approved. Third-party reimbursement may not be sufficient to enable us to maintain price levels high enough to realize an appropriate return on our investment in product development.

In the past, payors have implemented reimbursement metrics and periodically revised those metrics as well as the methodologies used as the basis for reimbursement rates, such as average sales price, or ASP, average manufacturer price, or AMP, and actual acquisition cost. The existing data for reimbursement based on these metrics is relatively limited, although certain states have begun to survey acquisition cost data for the purpose of setting Medicaid reimbursement rates. The Centers for Medicare and Medicaid Services, or CMS, surveys and publishes retail pharmacy acquisition cost information in the form of National Average Drug Acquisition Cost, or NADAC, files to provide state Medicaid agencies with a basis of comparison for their own reimbursement and pricing methodologies and rates. It may be difficult to project the impact of these evolving reimbursement mechanics on the willingness of payors to cover our products for which we receive regulatory approval.

Our participation in the Medicaid rebate program established by the Omnibus Budget Reconciliation Act of 1990 and under multiple subsequent amendments of that law, including the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, together the ACA, requires us to pay a rebate for each unit of drug reimbursed by Medicaid. The amount of the "basic" portion of the rebate for each product is set by law as the larger of: (i) 23.1% of quarterly AMP, or (ii) the difference between quarterly AMP and the quarterly best price available from us to any commercial or non-governmental customer, or Best Price. AMP must be reported on a monthly and quarterly basis and Best Price is reported on a quarterly basis only. In addition, the rebate also includes the "additional" portion, which adjusts the overall rebate amount upward as an "inflation penalty" when the drug's latest quarter's AMP exceeds the drug's AMP from the first full quarter of sales after launch, adjusted for increases in the Consumer Price Index—Urban. The upward adjustment in the rebate amount per unit is equal to the excess amount of the current AMP over the inflation-adjusted AMP from the first full quarter of sales. The rebate amount is required to be recomputed each quarter based on our report to CMS of current quarterly AMP and Best Price for our drug. The terms of our participation in the program impose a requirement for us to report revisions to AMP or Best Price within a period not to exceed 12 quarters from the quarter in which the data was originally due. Any such revisions could have the impact of increasing or decreasing our rebate liability for prior quarters, depending on the direction of the revision. The ACA and subsequent legislation also changed the definition of AMP. In February 2016, final guidance and regulations were issued by the federal government clarifying these and certain other ACA changes and which relate to the calculation of AMP and the related rebate liability for pharmaceutical products.

Federal law also requires that a company that participates in the Medicaid rebate program report ASP information each quarter to CMS for certain categories of drugs that are paid under Part B of the Medicare program. Manufacturers calculate ASP based on a statutorily defined formula and interpretations of the statute by CMS. CMS uses these submissions to determine payment rates for drugs under Medicare Part B and the resulting Medicare payment rate.

Beginning April 1, 2013, Medicare payments for all items and services, including drugs and biologics, were reduced by 2% under the sequestration (i.e., automatic spending reductions) required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012. Subsequent legislation extended the 2% reduction, on average, to 2027. This

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may cause Medicare Part D plans to seek lower prices from manufacturers. Other legislative or regulatory cost containment provisions, as described below, could have a similar effect.

The containment of healthcare costs has become a priority of federal, state and foreign governments, and the prices of drugs have been a focus in this effort. Government healthcare programs and other third-party payors are increasingly challenging the prices charged for medical products and services and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. If these payors do not consider our products to be cost-effective compared to other available therapies, they may not cover our products after approval as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products at a profit. The U.S. government, state legislatures and foreign governments also have shown significant interest in implementing cost-containment programs to limit the growth of government-paid healthcare costs, including price controls, restrictions on reimbursement and requirements for substitution of generic products for branded prescription drugs. Certain states have enacted legislation with the goal of controlling prices on branded prescription drugs and placing restrictions on price increases, the effect of which is unknown. Adoption of such controls and measures, and tightening of restrictive policies in jurisdictions with existing controls and measures, could limit payments for products such as ZEJULA, VARUBI, and any other product candidates that we are developing and could adversely affect our net revenues and operating results.

The marketability of ZEJULA, VARUBI, and any other products for which we receive regulatory approval for commercial sale may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement. In addition, emphasis on managed care in the United States has increased and we expect will continue to increase the pressure on drug pricing. Coverage policies, third-party reimbursement rates and drug pricing regulation may change at any time.

In the United States, most outpatient prescription drugs may be covered under Medicare Part D. Medicare Part D is a voluntary prescription drug benefit, through which Medicare beneficiaries may enroll in prescription drug plans offered by private entities for coverage of outpatient prescription drugs. Part D plans include both stand-alone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans provided for under Medicare Part C.

Coverage and reimbursement for covered outpatient drugs under Part D are not standardized. Part D prescription drug plan sponsors are not required to pay for all covered Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Although Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, they have some flexibility to establish those categories and classes and are not required to cover all of the drugs in each category or class. Medicare Part D prescription drug plans may use formularies to limit the number of drugs that will be covered in any therapeutic class and/or impose differential cost sharing or other utilization management techniques.

The availability of coverage under Medicare Part D may increase demand for ZEJULA and VARUBI and for products for which we receive marketing approval. However, in order for the products that we market to be included on the formularies of Part D prescription drug plans, we likely will have to offer pricing that is lower than the prices we might otherwise obtain. Changes to Medicare Part D that give plans more freedom to limit coverage or manage utilization, and/or other cost reduction initiatives in the program could decrease the coverage and price that we receive for any approved products and could seriously harm our business.

In the physician office setting, Medicare Part B generally pays for covered drugs, which would include VARUBI IV and in limited circumstances could also include the oral formulation, at a rate of 106% of the drug's ASP. ASP is defined by statute based on sales and price concession data, including rebates and chargebacks, for a defined period of time and manufacturers submit the required information to CMS on a quarterly basis. Prior to the quarter in which the payment rate will go into effect, CMS calculates and publishes the ASP-based payment rate. Under this methodology, payment rates change on a quarterly basis, and significant downward fluctuations in ASP, and therefore reimbursement rates, could negatively impact sales of a product. Because the ASP-based payment rate is defined by statute, changes to Medicare payment methodologies generally require a legislative change. While the statute requires Medicare Part B payments for most drugs furnished in the physician office setting to be at 106% of ASP, the statute does not have a similar requirement for hospital outpatient departments. For that setting, the Medicare payment for many covered Part B drugs also is at 106% of ASP, provided that the product exceeds a per day cost threshold. For those products that do not meet the threshold, as is true for many oral anti-emetic products, there is no separate payment for the drug when furnished in a hospital outpatient department. For those products that meet the threshold, the current 106% of ASP payment rate could be changed by CMS in future years through regulations,

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without any intervening legislation. The 106% of ASP payment rates for the physician office and hospital outpatient settings are subject to the 2% sequestration cuts mandated by federal statute as described above.

Further, the ACA substantially changes the way healthcare is financed by both governmental and private insurers, and contains provisions that may reduce the profitability of drug products. The ACA is intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on pharmaceutical and medical device manufacturers, and impose additional health policy reforms. The ACA expanded manufacturers' rebate liability under the Medicaid program from fee-for-service Medicaid utilization to include the utilization of Medicaid managed care organizations as well, increased the minimum Medicaid rebate due for most innovator drugs in general from 15.1% of AMP to 23.1% of AMP, and capped the total rebate amount for innovator drugs at 100% of AMP. The ACA and subsequent legislation also changed the definition of AMP. CMS regulations to implement the changes to the Medicaid drug rebate program under the ACA became effective on April 1, 2016.

The ACA requires pharmaceutical manufacturers of branded prescription drugs to pay a branded prescription drug fee to the federal government. Each such manufacturer is required to pay a prorated share of the branded prescription drug fee of \$4.1 billion in 2018 and \$2.8 billion in each year thereafter, based on the dollar value of its branded prescription drug sales to certain federal programs identified in the law. The ACA also expanded the Public Health Service's 340B Drug Pricing Program, or the 340B program (described below), to include additional types of covered entities. Substantial new provisions affecting compliance have also been enacted, which may affect our business practices with healthcare practitioners, and a number of provisions have only recently become effective. It appears likely that the ACA will continue the pressure on pharmaceutical pricing, especially under the Medicare and Medicaid programs, and may also increase our regulatory burdens and operating costs. Legislative changes to the ACA, including a possible repeal of the statute, remain possible under the Trump Administration. Certain changes, such as the removal of the ACA's individual health insurance mandate, have already been made by Congress via the enactment of the Tax Cuts and Jobs Act of 2017, and the effects of such legislative changes to the ACA are unknown. Even if we obtain favorable coverage and reimbursement status for ZEZULA, VARUBI, or any other products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

We participate in the 340B program. Federal law requires that any company that participates in the Medicaid rebate program also participate in the 340B program in order for federal funds to be available for the manufacturer's drugs under Medicaid and Medicare Part B. The 340B program requires participating manufacturers to agree to charge statutorily-defined covered entities no more than the 340B "ceiling price" for the manufacturer's covered outpatient drugs. In addition, in order to be eligible to have its products paid for with federal funds under the Medicaid and Medicare Part B programs and purchased by certain federal grantees and agencies, a manufacturer also must participate in the Department of Veterans Affairs Federal Supply Schedule, or FSS, pricing program, established by Section 603 of the Veterans Health Care Act of 1992. Under this program, the manufacturer is obligated to make products available for procurement on an FSS contract and charge a price to four federal agencies—the Department of Veterans Affairs, the Department of Defense, the Public Health Service and the Coast Guard—that is at least 24% less than the Non-Federal Average Manufacturing Price, or non-FAMP, for the prior fiscal year. The requirements under the 340B and FSS programs could reduce the revenue we may generate from ZEZULA, VARUBI, and any other products that we commercialize in the future and could adversely affect our business and operating results.

Fraud and Abuse Laws

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal laws have been applied to restrict certain marketing practices in the pharmaceutical industry in recent years. These laws include anti-kickback and false claims statutes.

The federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration, directly or indirectly, in cash or in kind, to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any healthcare item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly and practices that involve remuneration to those who prescribe, purchase, or recommend pharmaceutical and biological products, including certain

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discounts, or engaging consultants as speakers or consultants, may be subject to scrutiny if they do not fit squarely within the exemption or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. Moreover, there are no safe harbors for many common practices, such as educational and research grants or patient assistance programs.

The federal civil False Claims Act prohibits, among other things, any person from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment of government funds, or knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money to the government or knowingly concealing or knowingly and improperly avoiding, decreasing, or concealing an obligation to pay money to the federal government. In recent years, several pharmaceutical and other healthcare companies have faced enforcement actions under the federal False Claims Act for, among other things, allegedly submitting false or misleading pricing information to government health care programs and providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have faced enforcement actions for causing false claims to be submitted because of the company's marketing the product for unapproved, and thus non-reimbursable, uses. Federal enforcement agencies also have showed increased interest in pharmaceutical companies' product and patient assistance programs, including reimbursement and co-pay support services, and a number of investigations into these programs have resulted in significant civil and criminal settlements. In addition, the ACA amended federal law to provide that the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Criminal prosecution is possible for making or presenting a false or fictitious or fraudulent claim to the federal government.

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, also created several new federal crimes, including healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors. The false statements 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 healthcare benefits, items or services.

The majority of states also have statutes or regulations similar to the federal anti-kickback and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Several states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products in those states and to report gifts and payments to individual health care providers in those states. Some of these states also prohibit certain marketing-related activities including the provision of gifts, meals, or other items to certain health care providers. In addition, several states require pharmaceutical companies to implement compliance programs or marketing codes.

The federal Physician Payment Sunshine Act, being implemented as the Open Payments Program, requires certain manufacturers of drugs, devices, biologics and medical supplies to engage in extensive tracking of payments and other transfers of value to physicians and teaching hospitals, including physician ownership and investment interests, and public reporting of such data. Pharmaceutical and biological manufacturers with products for which payment is available under Medicare, Medicaid or the State Children's Health Insurance Program are required to track such payments, and must submit a report on or before the 90th day of each calendar year disclosing reportable payments made in the previous calendar year.

In addition, the U.S. Foreign Corrupt Practices Act, or the FCPA, prohibits corporations and individuals from engaging in certain activities to obtain or retain business or to influence a person working in an official capacity. It is illegal to pay, offer to pay or authorize the payment of anything of value to any official of another country, government staff member, political party or political candidate in an attempt to obtain or retain business or to otherwise influence a person working in that capacity. In many other countries, healthcare providers who prescribe pharmaceuticals are employed by government entities, and the purchasers of pharmaceuticals are government entities. Our dealings with these prescribers and purchasers may be subject to the FCPA.

Other countries, including a number of EU Member States, have laws of similar application, including anti-bribery or anti-corruption laws such as the UK Bribery Act. The UK Bribery Act prohibits giving, offering, or promising bribes to any person, as well as requesting, agreeing to receive, or accepting bribes from any person. Under the UK Bribery Act, a company that carries on a business or part of a business in the United Kingdom may be held liable for bribes given, offered or promised to any person in any country by employees or other persons associated with the company in order to obtain or retain business or

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a business advantage for the company. Liability under the UK Bribery Act is strict, but a defense of having in place adequate procedures designed to prevent bribery is available.

Because of the breadth of these various fraud and abuse laws, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Such a challenge could have material adverse effects on our business, financial condition and results of operations. In the event governmental authorities conclude that our business practices do not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations, they may impose sanctions under these laws, which are potentially significant and may include civil monetary penalties, damages, exclusion of an entity or individual from participation in government health care programs, criminal fines and imprisonment, as well as the potential curtailment or restructuring of our operations. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could harm our financial condition and divert the attention of our management from operating our business.

Patents and Proprietary Rights

We have in-licensed and continue to develop several patent portfolios, including for our rolapitant, niraparib, and immunotherapeutic antibodies programs.

Our NK-1 receptor antagonist portfolio, which relates to rolapitant, consists of patent families currently being prosecuted or maintained, including applications and patents directed to compositions of matter, formulations (including oral and IV), solid forms, methods of treatment (including both delayed and acute onset nausea and/or vomiting and timing of administration in relation to chemotherapy) and methods of preparing rolapitant. Rolapitant is a NK-1 receptor antagonist being developed for the prevention of chemotherapy induced nausea and/or vomiting. The portfolio for rolapitant consists of a number of issued U.S. patents and issued non-U.S. patents across the families.

Our PARP inhibitor portfolio includes patent families relating to niraparib. The patent families in-licensed from Merck are being prosecuted or maintained by Merck in consultation with us. Our patent families relating to niraparib include applications and patents directed to compositions of matter, methods of treatment (including treatment of cancer and other diseases), particular salts of niraparib, niraparib formulations, and methods of preparing niraparib. The Merck portfolio for niraparib comprises of a number of issued United States and non-United States patents.

Our immunotherapeutic antibodies portfolios presently consist of patent and patent applications pending in multiple jurisdictions, which cover particular antibodies and binding fragments thereof to identified targets of interest, as well as their use individually and in combination. We have rights to all patents owned or controlled by our collaborator, AnaptysBio, to the extent that they claim the manufacture, composition, or use of an antagonist antibody developed under the program.

Intellectual Property Protection Strategy

We seek and intend to continue seeking patent protection whenever available for any patentable aspects of our existing products or product candidates and related technology or any new products or product candidates we acquire in the future. Where our intellectual property is not protectable by patents, we seek to protect it through other means, including maintenance of trade secrets and careful protection of our proprietary information. Our license from Merck for niraparib requires Merck to, subject to certain exceptions, prosecute and maintain, upon consultation with us, its patent rights as they relate to the licensed compounds. If Merck decides to cease prosecution of the licensed patent rights, we have the right to take over such prosecution activities. Our license from OPKO for rolapitant grants us the right to control all prosecution and maintenance activities for the licensed compounds, at our sole discretion.

The patent positions of biopharmaceutical companies like us are generally uncertain and involve complex legal, scientific and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Consequently, we do not know whether any of the product candidates we in-license or acquire will be protectable or remain protected by enforceable patents. We cannot predict whether the patent applications we are pursuing will issue as patents in any particular jurisdiction, and furthermore, we cannot determine whether the claims of any issued patents will provide sufficient proprietary protection to protect us from competitors, or will be challenged, circumvented or invalidated by third parties. Even where we succeed in obtaining patents covering our products, third parties may challenge or seek to invalidate or circumvent our patents.

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As part of the passage of the America Invents Act in 2011, new post-grant review proceedings were added to U.S. patent law. Post-grant reviews and inter partes reviews allow any member of the public to file a petition with the USPTO seeking to review the patentability of one or more claims in an issued U.S. patent. Post-grant review procedures are conducted before Administrative Patent Judges in the USPTO using a lower standard of proof than used in Federal District Court. In addition, the challenged patents are not accorded a presumption of validity as they are in Federal District Court. The patents covering our products may become involved in such post-grant review proceedings in the U.S. and/or in other jurisdictions (such as oppositions in the European Patent Office) that challenge the patentability of our patents. Such proceedings could result in a finding of unpatentability or invalidity of our patents. They could also result in substantial cost, even if the eventual outcome is favorable to us.

Because patent applications in the United States and certain other jurisdictions are maintained in secrecy for at least 18 months from their earliest filing date, and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain of the priority of inventions covered by pending patent applications. In March 2013, the United States transitioned to a ‘first to file’ system in which the first inventor to file a patent application will be entitled to the patent. Previously, in the United States, the first to make the claimed invention was entitled to the patent. For patents or patent applications not subject to the ‘first to file’ system, we may have to participate in interference proceedings declared by the USPTO to determine priority of invention.

Although we control issued patents covering a number of different attributes of our products, and pending applications on others, there can be no assurance that any issued patents would be held valid by a court of competent jurisdiction. An adverse outcome could subject us to significant liabilities to third parties, require disputed rights to be licensed from third parties or require us to cease using specific compounds or technology. To the extent prudent, we intend to bring litigation against third parties that we believe are infringing our patents.

The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a non-provisional patent application. In the United States, a patent’s term may be lengthened by patent term adjustment, which compensates a patentee for administrative delays by the USPTO in granting a patent, or may be shortened if a patent is terminally disclaimed over another patent.

In the United States, the term of a patent that covers an FDA-approved drug or biological product may also be eligible for patent term extension, which permits patent term restoration as compensation for the patent term lost during drug development and the FDA regulatory review process. The Hatch-Waxman Act permits a patent term extension of up to five years beyond the expiration of the patent. The length of the patent term extension is related to the length of time the drug or biologic is under development and regulatory review. A patent term cannot be extended beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be extended. Patent term extension is available only if the approval of the product represents the first permitted commercial marketing of the active ingredient. Similar provisions are available in the EU and other non-U.S. jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our products receive FDA approval, we expect to apply for patent term extensions on patents covering those products. We intend to seek patent term adjustments and extensions to any of our issued patents in any jurisdiction where these are available; however, there is no guarantee that the applicable authorities, including the FDA and the USPTO in the United States, will agree with our assessment of whether such extensions should be granted, and even if granted, the length of such adjustments or extensions. We have applied for patent term extension for rolapitant and niraparib in the United States.

To protect our rights to any of our issued patents and proprietary information, we may need to litigate against infringing third parties, or avail ourselves of the courts or participate in hearings to determine the scope and validity of those patents or other proprietary rights. These types of proceedings are often costly and could be time-consuming to us, and we cannot be certain that the deciding authorities will rule in our favor. An unfavorable decision could result in the invalidation or a limitation in the scope of our patents or forfeiture of the rights associated with our patents or pending patent applications. Any such decision could result in our key technologies not being protectable, allowing third parties to use our technology without being required to pay us licensing fees, or may compel us to license needed technologies from third parties to avoid infringing third-party patent and proprietary rights. Such a decision could even result in the invalidation or a limitation in the scope of our patents or could cause us to lose our rights under existing issued patents or not to have rights granted under our pending patent applications.

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We also rely on trade secret protection for our confidential and proprietary information. Although we take steps to protect our proprietary information and trade secrets, including through contractual means with our employees and consultants, no assurance can be given that others will not independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets or disclose such technology, or that we can meaningfully protect our trade secrets. It is our policy to require our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to execute confidentiality agreements upon the commencement of employment or consulting relationships with us. These agreements provide that all confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances. In the case of employees, the agreements provide that all inventions conceived by the individual shall be our exclusive property. There can be no assurance, however, that these agreements will provide meaningful protection or adequate remedies for our trade secrets in the event of unauthorized use or disclosure of such information.

While the expiration of a composition of matter patent may result in a loss of market exclusivity for the covered pharmaceutical product, that is not always the case. Market exclusivity may continue to be derived from, among other things: (i) patents relating to the use of the product; (ii) patents on processes to make the product; (iii) patents on intermediates of the active ingredient of such product; and (iv) patents relating to novel compositions and formulations. The effect of composition of matter patent expiration on market exclusivity also depends upon many other factors such as the nature of the market and the position of the product in it, the growth of the market, and the complexities and economics of the process for manufacture of the active ingredient of the product.

PARP Inhibitor

We have an exclusive, worldwide license from Merck to a portfolio of patents related to niraparib, an inhibitor of poly (ADP-ribose) polymerase. Our portfolio, including patent families in-licensed from Merck, includes patent families related to niraparib comprising patent and patent applications claiming compounds, certain salt forms, methods of use, formulations, and processes to make niraparib.

A United States patent claiming the composition of matter of niraparib has been granted and, with patent term adjustment, has a patent term until at least March 2030. Corresponding patent applications and issued patents in multiple foreign jurisdictions have similar claims and have a patent term until at least January 2028. Additional patent families claiming certain compounds, salt forms, methods of use, formulations, and processes to make niraparib have been filed in the United States and multiple foreign jurisdictions and, if granted, will have patent terms until at least 2027 to 2038.

Many jurisdictions also grant patent term extensions, typically up to five years, for post-issuance regulatory delay. In the United States, only one patent may be extended per approved product. We have applied for patent term extension for niraparib in the United States, and we believe that patent term extension under the Hatch-Waxman Act could be available to extend our patent exclusivity for niraparib's composition of matter up to March 2031 in the United States. With respect to Europe, we intend to file supplementary protection certificates (which are issued on a country-by-country basis) in available countries. We believe that supplementary protection certificates could be available to extend our patent exclusivity for niraparib in each European country in which a patent is issued and in which supplementary protection certificates are available, with the period of extension depending on the timing of our first approval. In general, supplementary protection certificates are available up to a maximum of five years and, if granted, any available supplementary protection certificate extension will be capped at fifteen years from the first approval. There is no guarantee that any extension will be granted in either the United States or Europe, and even if granted, the extension may be less than the maximum allowable extension.

NK-1 Receptor Antagonists

We have an exclusive, worldwide license from OPKO to a portfolio of patents related to rolapitant, including issued claims covering the composition of matter and certain formulations and methods of use.

A United States Patent claiming the composition of matter of rolapitant has been granted and, with the patent term adjustment, has a patent term until at least December 2023. Corresponding applications and issued patents in multiple foreign jurisdictions have similar composition of matter claims. In foreign jurisdictions, this family of patents and/or applications has a patent term until at least December 2022. A United States patent claiming methods of treating nausea and/or emesis comprising administering an intravenous formulation of rolapitant has been granted and, with patent term adjustment, expires in July 2032. Corresponding applications and issued patents in multiple foreign jurisdictions have similar claims directed to

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methods of treating nausea and/or emesis comprising administering an intravenous formulation of rolapitant and have patent terms until at least 2030.

We have applied for patent term extension for rolapitant in the United States, and we believe that patent term extension under the Hatch-Waxman Act could be available to extend our patent exclusivity for rolapitant up to August 2028 in the United States. With respect to Europe, we believe that supplementary protection certificates could be available to extend our patent exclusivity for rolapitant in each European country in which a patent is issued and in which supplementary protection certificates are available, with the period of extension depending on the timing of our first approval. We have filed for supplementary protection certificates in available European countries based upon our EC approval. If granted, the supplementary protection certificates could extend our patent exclusivity for rolapitant's composition of matter to December 2027. There is no guarantee that the maximum allowable extension (generally 15 years) will be granted in either the United States or Europe, and any extension granted may be shorter than this, or not granted at all.

Our license also includes additional patent families related to rolapitant, comprising patent and patent applications claiming certain compounds, forms, formulations, methods of use, and processes to make rolapitant. These patent families have patent terms until at least 2027 to 2030, including patent term adjustment in certain patents.

Immuno-Oncology

Pursuant to our collaboration and exclusive license agreement with AnaptysBio, we have ownership and/or exclusive worldwide license rights in patent filings relating to certain antibodies that bind to PD-1, LAG-3, and/or TIM-3 developed by AnaptysBio. Our immuno-oncology portfolio comprises patent filings covering composition of matter for the relevant antibodies and binding fragments thereof, as well as their use individually and in combination; additional filings are contemplated as research and development continues.

A patent has issued from the relevant patent filings, and any patents granted from the patent filings will be expected to have terms that extend into the mid to late 2030s. Ultimate expiration dates, which may differ by jurisdiction, may depend on, for example, patent term adjustments or patent term extensions available for patent office and/or regulatory delays, payment of annuities and/or maintenance fees, and/or terminal disclaimers of related cases.

Manufacturing

We contract with third parties for the manufacture of ZEJULA and VARUBI, and for the manufacture of our product candidates for preclinical studies and clinical trials, and we intend to continue to do so in the future. We currently work with one contract manufacturing organization, or CMO, for the production of VARUBI drug substance used for oral drug product and VARUBI IV, and one other CMO for the commercial production of oral drug product. We currently work with one CMO for the production of VARUBI IV drug product for our commercial needs. We currently work with two CMOs for the production of ZEJULA drug substance, and one other CMO for niraparib drug product supply, for our clinical and commercial needs. We contract with one CMO for the manufacture of TSR-042, TSR-022, TSR-033 and other antibody products, and may contract with additional CMOs that have biologics capabilities. For each of our product candidates, we may elect to pursue relationships with other CMOs for manufacturing clinical supplies for later-stage trials and for commercialization. We do not own or operate manufacturing facilities for the production of clinical quantities of our product candidates. We currently have no plans to build our own clinical or commercial scale manufacturing capabilities. To meet our projected needs for clinical supplies to support our activities through regulatory approval and commercial manufacturing, the CMOs with which we currently work will need to increase scale of production or we will need to secure alternate suppliers. We have not currently qualified alternate suppliers in the event the current CMOs we utilize are unable to scale production. We have personnel with pharmaceutical development and manufacturing experience who are responsible for the relationships with our CMOs.

Employees

As of December 31, 2017, we had 715 full-time employees, 150 of whom hold Ph.D. or M.D. degrees. Of these full-time employees, 272 were directly engaged in development activities, 232 were engaged in selling, marketing and related activities, 72 in medical affairs, with the remainder serving in primarily general and administrative and commercial support capacities. None of our employees are represented by labor unions or covered by collective bargaining agreements. We consider our relationship with our employees to be good.

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Research and Development

We have dedicated a significant portion of our resources to our efforts to develop our product candidates. We incurred research and development expenses, including acquired in-process research and development, of \$157.4 million, \$254.1 million and \$318.7 million during the years ended December 31, 2015, 2016 and 2017, respectively. We anticipate that a significant portion of our operating expenses will continue to be related to research and development in 2018 as we continue to advance our product candidates through clinical development.

Available Information

Our internet website address is <http://www.tesarobio.com>. Through our website, we make available, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the U.S. Securities and Exchange Commission, or the SEC. These materials can be accessed through the “Investors” section of our website. The information found on our website is not part of this or any other report we file with, or furnish to, the SEC. Paper copies of our SEC reports are available free of charge upon request in writing to Investor Relations, TESARO, Inc., 1000 Winter Street, Waltham, MA 02451. The content on any website referred to in this Annual Report on Form 10-K is not incorporated by reference into this Annual Report on Form 10-K unless expressly noted.

We currently operate in one segment. For additional information regarding our financial results, including our comprehensive loss, revenues and assets, refer to Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following discussion of risk factors, in its entirety, in addition to the other information contained in this Annual Report on Form 10-K, including the information in our financial statements and the related notes, and the other filings we make with the Securities and Exchange Commission. We cannot assure you that any of the events discussed in the risk factors below will not occur. These risks, or other events that we do not currently anticipate or that we currently deem immaterial, may have a material adverse effect on our business, prospects, financial condition and results of operations.

Risks Related to Our Financial Position and Capital Needs

We have incurred significant losses since our inception and anticipate that we will continue to incur losses in the future.

We are a biopharmaceutical company with a limited operating history. Investment in biopharmaceutical product development and commercialization is highly speculative because, among other things, it entails substantial up-front capital expenditures and significant risk that product candidates will fail to gain regulatory approval or approved products will fail to become commercially successful. We have recognized limited revenue from product sales to date, and we continue to incur significant development and other expenses related to our ongoing operations. As a result, we are not profitable and have incurred losses in each period since our inception in 2010. We reported a net loss of \$496.1 million for the year ended December 31, 2017 and had an accumulated deficit of \$1.5 billion as of December 31, 2017.

Although we have obtained approval from regulatory authorities and launched ZEJULA® (niraparib) in the U.S. and European Union, or the EU, VARUBI® (rolapitant) IV and tablets in the United States and VARUBY® (rolapitant) tablets in the EU, we expect to continue to incur losses for the foreseeable future. These losses may increase as we continue to invest in product development and commercialization activities for our products and continue our development of, and seek regulatory approvals for, all of our product candidates. We may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business. The size of our future net losses will depend, in large part, on the rate of future growth of our expenses, and our ability to generate and continue to grow revenues from our products and any product candidates. Because of the numerous risks and uncertainties associated with product development, including the risk that our product candidates may not advance through development or achieve the endpoints of applicable clinical trials, we are unable to predict with certainty the timing or amount of increased expenses, or when or if we will be able to achieve or maintain profitability. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our prior losses and expected future losses have had, and will continue to have, an adverse effect on our stockholders' equity and working capital.

We have recognized limited revenues from sales of our products, and we may never become profitable.

To date, we have recognized limited product revenues from sales of ZEJULA and VARUBI/VARUBY, and we have not generated any revenues from sales of any other product candidates. Our ability to continue to generate revenue and become profitable depends upon our ability to successfully commercialize our products, including ZEJULA, and our other product candidates, including niraparib in additional indications as both a monotherapy and in combination with other assets, including our own immuno-oncology assets. Even if we are able to successfully achieve regulatory approval for additional product candidates, we do not know when any of those product candidates will generate revenue for us, if at all.

In addition, because of the numerous risks and uncertainties associated with product development, including the risk that our product candidates may not advance through development or achieve the endpoints of applicable clinical trials, we are unable to predict with certainty the timing or amount of increased expenses, or when or if we will be able to achieve or maintain profitability. Even if we are able to obtain approval for our product candidates, we anticipate incurring significant costs associated with commercializing these products.

Even if we are able to generate revenues from the sale of our current and future products, we may not become profitable and may need to obtain additional funding to continue operations. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels and be forced to reduce our operations.

We may require additional capital to fund our operations, and if we fail to obtain necessary financing, we may be unable to successfully complete the development and commercialization of our product candidates.

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts to advance the development of our product candidates, including niraparib as a monotherapy and in combination with other therapeutics, and our immuno-oncology assets, and to continue to commercialize ZEZULA and VARUBI/VARUBY. We also may spend substantial amounts for any additional product candidates that we may acquire or in-license in the future. We may require additional capital for these and other needs. If additional capital is needed and not obtained on a timely basis, we would be required to change our current operating plans to reduce our future expenses.

Until we can generate a sufficient amount of revenue from our products, if ever, we expect to finance future cash needs through public or private equity or debt offerings and facilities, including potentially an additional draw under our existing term loan agreement, and we may seek additional capital through arrangements with strategic partners or from other sources. Additional capital may not be available to us on reasonable terms, if at all. If we are unable to raise additional needed capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our products or product candidates and/or other areas of our business. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. Furthermore, these securities may have rights senior to those of our common stock and could contain covenants that would restrict our operations and potentially impair our competitiveness, 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. Any of these events could significantly harm our business, financial condition and prospects.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is based on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements, both short and long-term, will depend on many factors, including:

- our ability to generate sufficient revenues from sales of ZEZULA and, if approved, our other product candidates;
- the cost of continuing to expand our development and commercial capabilities for our products and our product candidates, both in the U.S. and in certain foreign markets, including Europe;
- the outcome, timing and cost of regulatory approvals by the U.S. Food and Drug Administration, or FDA, and comparable foreign regulatory authorities and the potential that the FDA or comparable foreign regulatory authorities may require that we perform more studies than those that we currently expect;
- the initiation, progress, timing, costs and results of clinical trials for our current product candidates and any future product candidates we may in-license;
- the cost and timing of preclinical and clinical development and manufacturing activities associated with our immuno-oncology antibody product candidates;
- our obligations to make milestone payments, royalty payments, or both under our in-licensing agreements;
- the cost of in-licensing or acquiring additional product candidates;
- the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights that we own or control;
- the amount and timing of potential conversion requests, if any, and interest expense associated with our 3.00% convertible senior notes due October 1, 2021, or the Convertible Notes; and
- our need to repay amounts due under our loan agreement dated November 21, 2017, or the Loan Agreement.

Servicing our debt will require significant amounts of cash, and we may not have sufficient cash flow from our business to pay our debt.

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Our ability to make scheduled payments of the principal of, to pay interest on, to pay any cash due upon conversion of, or to refinance, our indebtedness, including the Convertible Notes and borrowings under the Loan Agreement, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying capital expenditures, selling assets, restructuring or refinancing debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Risks Related to Our Business and Industry

Our current business plan relies heavily on our ability to successfully commercialize ZEJULA. Our products may not achieve market acceptance or be commercially successful.

Our ability to successfully commercialize our current products and product candidates, including ZEJULA as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets, is critical to the execution of our business strategy. Our products and product candidates may not achieve market acceptance among physicians, patients, and third-party payors, and may not be commercially successful. The degree of market acceptance and commercial success of our approved products and our product candidates, including ZEJULA as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets, if approved, will depend on a number of factors, including the following:

- the acceptance of our products by patients and the medical community and the availability, perceived advantages and relative cost, safety and efficacy of alternative and competing treatments;
- the effectiveness of our marketing, sales and distribution strategy and operations;
- the ability of our third-party manufacturers to manufacture sufficient commercial supplies of our products, to remain in good standing with regulatory agencies, and to develop, validate and maintain commercially viable manufacturing processes that are, to the extent required, compliant with current good manufacturing practice, or cGMP, regulations;
- the degree to which the approved labeling supports promotional initiatives for commercial success;
- the availability of reimbursement from managed care plans and other third-party payors and the willingness and ability of patients to pay for our products;
- a continued acceptable safety profile of our products and product candidates;
- any new or unexpected results from additional clinical trials or further analysis of clinical data of completed clinical trials by us or our competitors;
- our ability to enforce our intellectual property rights;
- our ability to avoid third-party patent interference or patent infringement claims; and
- our ability to maintain compliance with all applicable regulatory requirements.

As many of these factors are beyond our control, we cannot assure you that we will ever be able to generate meaningful revenue through product sales. Any inability on our part to successfully commercialize our products in the United States or any foreign territories where they may be approved, or any significant delay in such approvals, could have a material adverse impact on our ability to execute upon our business strategy and our future business prospects.

Our future success is dependent primarily on our ability to obtain regulatory approvals for and successfully commercialize our product candidates, including additional indications for niraparib as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets.

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The success of our business depends heavily upon our ability to develop and commercialize product candidates. We have recognized only limited product revenue from sales of ZEJULA and VARUBI/VARUBY, and our only later clinical-stage programs include niraparib as a monotherapy and in combination with other therapeutics, including our own immuno-oncology assets.

We cannot commercialize product candidates, including niraparib in additional indications as a monotherapy or in combination with other therapeutics, in the United States without first obtaining regulatory approval from the FDA. Similarly, we cannot commercialize product candidates outside of the United States without obtaining regulatory approval from comparable foreign regulatory authorities. Before obtaining regulatory approvals for the commercial sale of any product candidate, including any combination, for a target indication, we must demonstrate with substantial evidence gathered in preclinical and well-controlled clinical studies, and, with respect to approval in the United States, to the satisfaction of the FDA, that the product candidate or combination is safe and effective for use for that target indication and that the manufacturing facilities, processes and controls are adequate. The process to develop, obtain regulatory approval for and commercialize product candidates is long, complex and costly both inside and outside of the United States. Even if a product candidate or combination were to successfully obtain approval from the FDA and comparable foreign regulatory authorities, any approval might contain significant limitations, including use restrictions for certain patient populations; warnings, precautions or contraindications; or burdensome post-approval study or risk management requirements.

Despite the results reported in clinical trials for niraparib, we do not know whether the clinical trials we are continuing to conduct or may in the future conduct will demonstrate adequate efficacy and safety to result in regulatory approval for niraparib in any additional indications, as a monotherapy or in combination with other assets, or in any particular jurisdiction or jurisdictions other than those for which niraparib has already been approved. If we do not obtain regulatory approvals for niraparib in the various additional indications and/or combinations for which it is being developed, or do not obtain such approvals in a timely manner, it would negatively affect our ability to generate revenue in the future, our ability to become profitable, and our growth prospects.

We face substantial competition for our marketed products, ZEJULA and VARUBI/VARUBY, which could limit our ability to generate significant product sales.

The development and commercialization of new drug products is highly competitive. Many of our competitors are more established companies and may therefore have competitive advantages due to their size, cash flows, and institutional experience. We may be unable to compete successfully against these more established companies.

There are a number of large pharmaceutical and biotechnology companies that market and sell products or are pursuing the development of products that compete or we expect will compete with ZEJULA. There are currently two commercially available PARP inhibitors other than ZEJULA. AstraZeneca Plc's LYNPARZA™ (olaparib) was initially approved by the FDA for use by ovarian cancer patients with a germline BRCA mutation, and was granted a new approval in August 2017 by the FDA for use as a maintenance treatment for recurrent, epithelial ovarian, fallopian tube or primary peritoneal adult cancer who are in response to platinum-based chemotherapy, regardless of BRCA status. In February 2018, LYNPARZA received a positive opinion from the Committee for Medicinal Products for Human Use, or CHMP, of the European Medicines Agency, or EMA, for a new tablet formulation and a broad maintenance label, which is expected to lead to an EC marketing authorization in the near future. In addition, Clovis Oncology, Inc.'s RUBRACA™ (rucaparib) was approved in December 2016 by the FDA for use as a monotherapy for the treatment of patients with deleterious BRCA mutation (germline and/or somatic) associated advanced ovarian cancer who have been treated with two or more chemotherapies. Clovis has filed with the FDA for expanded approval of RUBRACA as a second-line and later maintenance treatment for all women with ovarian cancer who have responded to their latest treatment with platinum chemotherapy, regardless of BRCA status, and has filed for initial approval with the European Commission as a third-line treatment in advanced ovarian cancer patients with a deleterious BRCA-mutation. In February 2018, the CHMP communicated a positive trend vote (meaning more voted yes than no) for RUBRACA to be authorized for the treatment of a subpopulation of platinum-sensitive ovarian cancer patients who also harbor a BRCA mutation. A final vote will occur at the CHMP's March 2018 meeting. We believe there are also several additional products in clinical development targeting the PARP pathway, as detailed in Part I, Item 1, "Business – Competition". Both LYNPARZA and rucaparib have received "orphan drug designation" from the EMA, which provides certain benefits including market exclusivity for up to ten years in the approved indication post-approval. In addition to other PARP inhibitors, ZEJULA also competes with AVASTIN™ (bevacizumab), Roche's angiogenesis inhibitor. AVASTIN is FDA- and EMA-approved in combination with chemotherapy for the treatment of recurrent ovarian cancer following platinum-containing chemotherapy (platinum-sensitive and platinum-resistant) and has been

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approved by the EMA, in combination with chemotherapy, for front-line treatment. In the U.S., it is currently under FDA review for the front-line setting.

We also face substantial competition with respect to oral and IV formulations of VARUBI and with respect to VARUBY. VARUBI/VARUBY competes with EMEND, an NK-1 receptor antagonist marketed by Merck, as well as AKYNZEO, an oral combination NK-1 receptor antagonist and 5-HT₃ receptor antagonist (netupitant plus ALOXI (palonosetron HCl)) that is marketed by Helsinn Healthcare, and Sandoz's generic version of aprepitant. Additionally, Heron Therapeutics recently received FDA approval, and launched marketing of, its aprepitant IV formulation product, CINVANTI™. VARUBI/VARUBY would face additional competition if additional generics are introduced to the market, or other products are developed and approved, for the treatment and prevention of CINV, or if an IV formulation of AKYNZEO is developed.

We are aware of several companies that have antibody-based products on the market or in clinical development that are directed at the same biological targets as some of our immuno-oncology programs. There are currently two anti-PD-1 antibody products and three anti-PD-L1 antibody products being marketed. OPDIVO® (nivolumab, marketed by Bristol-Myers Squibb) is approved in a number of indications as a monotherapy or in combination with other products; KEYTRUDA® (pembrolizumab, marketed by Merck) is approved in a number of indications; TECENTRIQ® (atezolizumab, marketed by Roche) is approved in patients with various forms of locally advanced or metastatic urothelial carcinoma or metastatic NSCLC; IMFINZI® (durvalumab, marketed by AstraZeneca) was approved in 2017 for patients with various forms of locally advanced or metastatic urothelial carcinoma; and BAVENCIO® (avelumab, co-marketed by Merck KGa and Pfizer) was approved in 2017 for adults and pediatric patients 12 years and older with metastatic Merkel cell carcinoma and for patients with various forms of locally advanced or metastatic urothelial carcinoma. Although there are currently no anti-TIM-3 antibody products or anti-LAG-3 antibody products being marketed, we are aware that two companies, Novartis and Eli Lilly, have anti-TIM-3 modulator antibodies in Phase 1/2 clinical development for various indications. We are also aware of several companies that have anti-LAG-3 modulators in development for various indications, including Bristol-Myers Squibb, which has an anti-LAG-3 antibody in Phase 2 clinical development; Novartis, which has an anti-LAG-3 antibody in Phase 1/2 and Phase 2 clinical development; and Merck, Boehringer Ingelheim and Regeneron Pharmaceuticals, each of which has an anti-LAG-3 antibody in Phase 1 clinical development.

For further detail on the specific competition that VARUBI/VARUBY, ZEJULA and our immuno-oncology antibody product candidates face, see Part I, Item 1, “*Business – Competition*”.

Many of the approved drugs with which our products or product candidates may compete are well-established therapies or products and are widely accepted by physicians, patients and third-party payors. Insurers and other third-party payors may also encourage the use of generic products. Any of our product candidates that are approved may be priced at a significant premium over competitive generic products.

Our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. Our competitors may also develop drugs that are more effective, more widely used and less costly than ours, and may also be more successful than us in manufacturing and marketing their products.

Even if our product candidates receive regulatory approval, they may still face future development and regulatory difficulties.

Even after regulatory approval is obtained, products are still subject to ongoing requirements of the FDA and comparable foreign regulatory authorities, including requirements related to manufacturing, quality control, further development, labeling, packaging, storage, distribution, safety surveillance, import, export, advertising, promotion, recordkeeping and reporting of safety and other post-market information.

In addition, manufacturers of drug and biological products and their facilities are subject to continual review and periodic inspections by the FDA, other regulatory authorities or comparable foreign regulatory authorities for compliance with cGMP requirements. If we or a regulatory agency discover previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with a facility where the product is manufactured, a regulatory agency may impose restrictions on that product, the manufacturing facility or us, including requiring recall or withdrawal of the product from the market or suspension of manufacturing.

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If we, our approved products or product candidates, or the manufacturing facilities for our approved products or product candidates fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters or untitled letters;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend, vary or withdraw regulatory approval;
- suspend any ongoing clinical studies;
- refuse to approve pending applications or supplements to applications filed by us;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; and/or
- seize or detain products, refuse to permit the import or export of products, or require us to initiate a product recall.

The occurrence of any event or penalty described above may inhibit our ability to commercialize our products and generate revenue.

Advertising and promotion of our products and any product candidate that obtains approval in the United States will be heavily scrutinized by the FDA, the Department of Justice, the Department of Health and Human Services Office of Inspector General, or the HHS OIG, state attorneys general, members of Congress, and the public. Violations of applicable advertising and promotion laws and regulations, including promotion of our products for unapproved (or off-label) uses, are subject to enforcement letters, inquiries and investigations, and civil and criminal sanctions by the FDA. Advertising and promotion of any product candidate that obtains approval outside of the United States will be heavily scrutinized by comparable foreign regulatory authorities. In the United States, engaging in impermissible promotion of approved products for off-label uses can also subject us to false claims litigation under federal and state statutes, which can lead to civil and criminal penalties and fines and agreements that materially restrict the manner in which a company promotes or distributes drug products. Advertising and promotion of our products are similarly subject to close scrutiny in the EU.

Because the results of preclinical testing or clinical studies are not necessarily predictive of future results, product candidates we advance into clinical trials may not have favorable results in later clinical trials or receive regulatory approval for any particular use, if at all.

Success in preclinical testing or human clinical studies does not ensure that later clinical trials will generate adequate data to demonstrate the efficacy and safety of an investigational drug, or the safety, purity, and potency of an investigational biological product for any particular use, or at all. A number of companies in the pharmaceutical and biotechnology industries, including many with greater resources and experience than us, have suffered significant setbacks in clinical trials, even after seeing promising results in prior clinical trials. For example, we do not know whether the clinical trials we are currently conducting or may in the future conduct will demonstrate adequate efficacy and safety, or safety to result in regulatory approval for ZEJULA in additional indications as a monotherapy or in combination with other therapeutics, including our own immuno-oncology assets. If we do not obtain regulatory approval for our product candidates, or do not obtain such approval in a timely manner or for anticipated patient populations, it would negatively affect our ability to generate significant revenue and our growth prospects.

Clinical drug development involves a lengthy and expensive process with an uncertain outcome.

Clinical testing is expensive and can take many years to complete, and its outcome is inherently uncertain. Failure can occur at any time during the clinical trial process. We have various ongoing clinical trials related to our development

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programs for ZEJULA and our various immuno-oncology assets including in various combinations with each other and other assets. We may experience delays in our ongoing or future clinical trials, and we do not know whether planned clinical trials will begin or enroll subjects on time, need to be redesigned, or be completed on schedule, if at all. Clinical trials may be delayed, suspended or prematurely terminated for a variety of reasons, including the rate of patient enrollment, and other factors, such as:

- delay or failure in reaching agreement with the FDA or comparable foreign regulatory authorities on a trial design that we are able to execute;
- delay or failure in reaching agreement on acceptable terms with prospective contract research organizations, or CROs, and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- delay or failure in obtaining institutional review board, or IRB, approval or the approval of other reviewing entities, including comparable foreign entities, to conduct a clinical trial at each site;
- withdrawal of clinical trial sites from our clinical trials as a result of changing standards of care or the inability of a site to participate due to prior engagement in other clinical trial programs, including some that may be for the same indication;
- delay or failure in recruiting and enrolling suitable subjects and having subjects complete a trial or return for post-treatment follow-up;
- ambiguous or negative interim results, or results that are inconsistent with earlier results;
- feedback from the FDA, an IRB, a data safety monitoring board, or comparable foreign entities; or results from earlier stage or concurrent preclinical and clinical studies, that might require modification to the protocol for a given study;
- unacceptable risk-benefit profile or unforeseen safety issues or adverse side effects;
- failure to demonstrate a benefit from using a drug or biologic;
- manufacturing issues, including problems with manufacturing or obtaining from third parties sufficient quantities of raw materials, active pharmaceutical ingredients or product candidates for use in clinical trials; and
- changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

If we experience delays in the completion of, or the termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process, and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

The regulatory approval processes of the FDA and comparable foreign regulatory authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.

The time required to obtain approval by the FDA and comparable foreign regulatory authorities for a product candidate is unpredictable, but typically takes many years following the commencement of preclinical studies and clinical trials and depends upon numerous factors, including the substantial discretion of regulatory authorities. In addition, approval policies, regulations, or the type and amount of clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. Although we have obtained FDA and EMA regulatory approval for ZEJULA and VARUBI/VARUBY, we may not ever obtain regulatory approval for our current product

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candidates or any other product candidates, including ZEJULA in additional indications, as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets.

The FDA or comparable foreign regulatory authorities may require more information, including additional preclinical or clinical data or trials, to support approval, which may delay or prevent approval and our commercialization plans, or we may decide to abandon the development program. If we were to obtain approval, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that is not desirable for the successful commercialization of that product candidate. In addition, if our product candidate produces undesirable side effects or safety issues, the FDA may require the establishment of a Risk Evaluation and Mitigation Strategy, or REMS, or a comparable foreign regulatory authority may require the establishment of similar strategies, that may, for instance, restrict distribution of our product or otherwise impose burdensome implementation requirements on us. Any of the foregoing scenarios could materially harm the commercial prospects of our product candidates, including ZEJULA in additional indications, as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets.

Certain of our product candidates, including ZEJULA in additional indications, as a monotherapy and in combination with other therapeutics, including our immuno-oncology assets, could be approved or deemed approvable by the FDA or equivalent foreign regulatory authorities only in combination with a diagnostic test for certain uses, which could increase the risk that the product candidate does not receive approval by the relevant regulatory authorities, or receives approval under conditions that adversely impact the commercial potential of the product candidate.

Certain clinical trials that we have conducted in the past, are currently conducting, or may in the future conduct for certain of our therapeutic product candidates, such as ZEJULA, included or may include the use of a diagnostic test to help identify patients who may be more likely to respond to the product candidate for certain uses.

If the FDA or any equivalent foreign regulatory authority determines that any of our product candidates can be approved for use only with an approved companion diagnostic test, we may have difficulty receiving regulatory approval for such product candidate in those uses if the relevant diagnostic test is not also cleared or approved for use by the applicable regulatory authority. Diagnostic tests, including companion diagnostics, are subject to regulation by the FDA and comparable foreign regulatory authorities as medical devices and require separate regulatory clearance or approval prior to commercialization. We do not develop diagnostic tests internally. We are therefore dependent on the sustained cooperation and effort of third-party collaborators in developing and obtaining approval for these tests. For example, the diagnostic tests that are being utilized in our completed and ongoing ZEJULA clinical studies are owned and administered by a third party. If clearance or approval of these diagnostic tests is required by the FDA or equivalent foreign regulatory authorities, this third party may encounter difficulties in obtaining clearance or approval for the applicable tests, or may fail to support the clinical development of ZEJULA in additional indications as a monotherapy or in combination with other therapeutics, including our immuno-oncology assets, as we expect, or may fail to keep the test on the market even if it is cleared or approved. Any such delay or failure could delay or prevent approval or adoption in additional indications of ZEJULA, or other products we may later acquire with similar characteristics.

In addition, if any product candidate is approved in a particular indication for use only in connection with such a companion diagnostic test by the FDA or any comparable foreign regulatory agencies, the commercial opportunity for such product candidate may be more limited, and we may have difficulty achieving adoption of the product candidate, if the diagnostic test is not commercially available or if the diagnostic test is restricted in its use by payors or other market forces.

Any one of our products or product candidates may cause undesirable side effects or have other properties that could delay or prevent its regulatory approval, limit its commercial viability, or result in significant negative consequences following any marketing approval.

The safety profile of our products will continue to be closely monitored by the FDA and comparable foreign regulatory authorities after approval. If we, the FDA or comparable foreign regulatory authorities become aware of new safety information about any of our products or product candidates after approval, we or those authorities may issue labeling changes, or the authorities may require the establishment of a REMS, or similar strategy, impose restrictions on a product's indicated uses or marketing, or impose ongoing requirements for potentially costly post-approval studies or post-market surveillance. For example, in January 2018, after post-marketing events of anaphylaxis, anaphylactic shock, and other serious hypersensitivity reactions, some requiring hospitalization were reported to us following the commercial launch of VARUBI IV, we updated the package insert for the IV formulation of VARUBI in collaboration with the FDA to include certain warnings

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and precautions with respect to these events. We also issued what is commonly referred to as a “Dear Healthcare Professional Letter” in connection with the updates to the package insert to inform healthcare providers of these changes. In February 2018, we determined that we would cease marketing and distribution of VARUBI IV and pursue strategic alternatives for the VARUBI brand, including potentially out-licensing the VARUBI product line.

Undesirable side effects caused by any of our products or product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials, could result in a more restrictive label, or could result in the delay or denial of regulatory approval by the FDA or other comparable foreign regulatory authorities. Drug-related side effects could also affect patient recruitment or the ability of enrolled subjects to complete a clinical trial, and could result in potential product liability claims. Such side effects, such as those experienced with VARUBI IV following the commercial introduction of the product, could also materially limit the commercial potential for such product, especially if competing products are not associated with similar side effects. Any of these occurrences may harm our ability to generate revenues from the affected product and adversely affect our business, financial condition and prospects.

Additionally, if we or others identify undesirable side effects caused by our marketed products, such as those we have observed with VARUBI IV, a number of potentially significant negative consequences could result, including:

- we may suspend marketing of such product;
- we may be obliged to conduct a product recall or product withdrawal;
- regulatory authorities may withdraw approvals of such product;
- regulatory authorities may require additional warnings on the label for such product;
- we may be required to develop a REMS for such product or, if a REMS is already in place, to incorporate additional requirements under the REMS, or to develop a similar strategy as required by a comparable foreign regulatory authority;
- we may be required to conduct additional post-market studies;
- we may record significant inventory impairment charges to write down the value of inventories to estimated net realizable value;
- we may experience significant product returns;
- we could be sued and held liable for harm caused to subjects or patients; or
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product or product candidate, and could significantly harm our ability to generate revenues from sales of such product and our business, results of operations and prospects.

Failure to obtain regulatory approval in international jurisdictions would prevent our product candidates from being marketed abroad.

In order to market and sell any of our product candidates in Europe or any other foreign jurisdictions, we must obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the United States, it is required that the product be approved for reimbursement before the product can be approved for sale in that country. We or our licensees may not obtain approvals from regulatory authorities outside the United States on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the United States does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. We may not be able to file for marketing approvals and may not receive necessary approvals to commercialize our products in

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any market. If we are unable to obtain approval of any of our product candidates by regulatory authorities in Europe or other foreign territories, the commercial prospects of that product candidate may be diminished and our business prospects could be adversely impacted.

Our products and any product candidates we are able to commercialize may become subject to unfavorable pricing regulations, third-party reimbursement practices or pricing pressure due to healthcare reform initiatives, which could harm our business.

Our ability to successfully market and commercialize our current and future products will depend in part on the extent to which coverage and reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers and other organizations. If these third-party payors do not sufficiently cover and reimburse the cost of our products and related procedures or services or these products are considered too costly for general use, physicians may prescribe them less frequently, adversely affecting our future revenues and profitability.

The Medicare program and certain government pricing programs, including the Medicaid drug rebate program, the Public Health Service's 340B Drug Pricing Program, or the 340B program, and the pricing program under Section 603 of the Veterans Health Care Act of 1992, or the VHCA, impact the revenues we may derive from current and future products that we may commercialize. Any future legislation or regulatory actions altering these programs or imposing new compliance requirements could have a significant adverse effect on our business. Any such measures could indirectly impact demand for pharmaceutical products because they can cause payors and providers to apply heightened scrutiny and/or austerity actions to their entire operations, including pharmacy budgets.

Also, the trend toward managed health care in the U.S., as well as the implementation of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, together the ACA, and the concurrent growth of organizations such as managed care organizations, accountable care organizations and integrated delivery networks, may result in increased pricing pressures for pharmaceutical products, including any products that may be offered by us in the future. Moreover, legislative and regulatory changes to the ACA, including a possible repeal, remain possible under the Trump Administration. Certain changes, such as the removal of the ACA's individual health insurance mandate, have already been made by Congress via the enactment of the Tax Cuts and Jobs Act of 2017, and the effects of such legislative changes to the ACA are unknown. In addition, third-party payors are increasingly making patients responsible for a higher percentage of the total cost of drugs in the outpatient setting. This can lower the demand for our products if the increased patient cost sharing obligations are more than they can afford. We are unable to predict what changes in legislation or regulation relating to the health care industry or third-party coverage and reimbursement, including possible repeal of the ACA, may be enacted in the future or what effect such legislation or regulation would have on our business.

There may be significant delays in obtaining coverage and reimbursement our products, and coverage may be more limited than the purposes for which the drug is approved by the FDA or comparable foreign regulatory authorities. Moreover, eligibility for coverage and reimbursement does not imply that any drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacturing, selling and distribution costs. Interim reimbursement levels for new drugs, if applicable, may also not be sufficient to cover our costs and may only be temporary.

If we fail to comply with our reporting and payment obligations under U.S. governmental pricing and contracting programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We are required to calculate and report certain pricing data to the U.S. federal government in connection with federal drug pricing programs as a pre-condition to: (i) the availability of federal funds to pay for our products under Medicaid and Medicare Part B; and (ii) procurement of our products by the Department of Veterans Affairs, or the VA, and by covered entities under the 340B program. Pharmaceutical manufacturers have been prosecuted under federal and state false claims laws for submitting inaccurate and/or incomplete pricing information to the government. The rules governing the calculation of certain reported prices are highly complex. Although it is our intention to maintain and follow strict procedures to ensure the maximum possible integrity for our federal price calculations, the process for making the required calculations involves subjective judgments and the risk of errors always exists, which creates the potential for exposure under the false claims laws. We cannot assure you that our pricing submissions will not be found to be incomplete or incorrect. Governmental agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid.

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The Medicaid rebate amount for each manufacturer is computed each quarter based on the manufacturer's submission to the Centers for Medicare and Medicaid Services, or CMS, of its current average manufacturer price, or AMP, and, in the case of innovator products like ZEJULA and VARUBI, best price figures, for the quarter. If we become aware that our AMP or best price reporting for a prior quarter was incorrect, or has changed, we are obligated to resubmit the corrected data, increasing our costs for complying with the laws and regulations governing the Medicaid drug rebate program. Any corrections to our rebate calculations could result in an overage or underage in our rebate liability for past quarters, depending on the nature of the correction. Price recalculations also may affect the ceiling price at which we would be required to offer our products to certain covered entities, such as safety-net providers, under the 340B program.

We are liable for errors associated with our submission of average sales price, or ASP, pricing data under Medicare Part B. In addition to retroactive rebates and the potential for 340B program refunds, if we are found to have knowingly submitted false AMP, ASP, or best price information to the government, we may be liable for significant civil monetary penalties. Such failure also could be grounds for CMS to terminate our Medicaid drug rebate agreement, pursuant to which we participate in the Medicaid program and receive federal payments under Medicaid or Medicare Part B for our covered outpatient drugs.

To be eligible to have our products paid for with federal funds under the Medicaid and Medicare Part B programs as well as to be purchased by certain federal agencies and certain federal grantees, we also must participate in the VA FSS pricing program. To participate, we are required to enter into an FSS contract with the VA, under which we must make our innovator "covered drugs" available at pricing that is based on a weighted average wholesaler price known as the Non-FAMP. Knowing provision of false information in connection with a Non-FAMP filing or failure to make necessary disclosures and/or to identify contract overcharges can subject us to substantial penalties for each item of false information as well as allegations against us under the False Claims Act and other laws and regulations. Unexpected refunds to the government, and responding to a government investigation or enforcement action, would be expensive and time-consuming, and could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Our relationships with customers and third-party payors will be subject to applicable anti-kickback, fraud and abuse, transparency and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, exclusion, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, specialty distributors, specialty pharmacies, physicians and third-party payors play a primary role in the distribution, recommendation and prescription of any pharmaceutical product for which we obtain marketing approval. Our arrangements with third-party payors and customers are governed by applicable federal and state healthcare laws and regulations, including the following:

- the federal healthcare Anti-Kickback Statute;
- the federal civil False Claims Act;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act;
- the federal Physician Payment Sunshine Act, being implemented as the Open Payments Program;
- analogous state laws and regulations, such as state anti-kickback and false claims laws; and
- similar restrictions imposed on the promotion and marketing of medicinal products in Europe and other foreign territories, including restrictions prohibiting the promotion of a compound prior to its approval.

The shifting commercial compliance environment and the need to build and maintain robust and expandable systems to comply with different compliance or reporting requirements in multiple jurisdictions increase the possibility that a healthcare or pharmaceutical company may fail to comply fully with one or more of these requirements. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of

significant resources and generate negative publicity, which could harm our financial condition and divert resources and the attention of our management from operating our business.

Our ability to successfully commercialize our products and generate revenues outside of the U.S. depends heavily on the availability of adequate pricing and reimbursement from government and other third-party payors.

Outside the U.S., certain countries, including a number of EU Member States and other European countries, set prices and reimbursement for pharmaceutical products, or medicinal products as they are commonly referred to in the EU, with limited participation from the marketing authorization holders. We cannot be sure that such prices and reimbursement will be acceptable to us or our collaborators. If the regulatory authorities in these foreign jurisdictions set prices or reimbursement levels that are not commercially attractive for us or our collaborators, our revenues from sales by us or our collaborators, and the potential profitability and commercial viability of our drug products, in those countries would be negatively affected. An increasing number of countries are taking initiatives to attempt to reduce large budget deficits by focusing cost-cutting efforts on pharmaceuticals for their state-run health care systems. These international price control efforts have impacted all regions of the world, but have been most drastic in the EU.

Additionally, some countries require approval of the sale price of a product before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. As a result, we might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay our commercial launch of the product, possibly for lengthy time periods, which could negatively impact the revenues we are able to generate from the sale of the product in that particular country.

If we breach the license agreements for our products or product candidates, we could lose the ability to continue the development and commercialization of our product candidates.

If we fail to meet our obligations under our agreements with our licensors, including Merck, OPKO and AnaptysBio, our licensors have the right to terminate our exclusive licenses and re-obtain the licensed technology as well as aspects of any intellectual property controlled by us and developed during the period the agreements were in force that relate to the licensed technology. This means that our licensors could effectively take control of the development and commercialization of our products and product candidates after an uncured, material breach of our license agreements by us. This would also generally be the case if we voluntarily terminated the agreements. While we would expect to exercise all rights and remedies available to us, including seeking to cure any breach by us, and otherwise seek to preserve our rights under the patents licensed to us, we may not be able to do so in a timely manner, at an acceptable cost or at all. Any uncured, material breach under the licenses could result in our loss of exclusive rights and may lead to a complete termination of our product development and any commercialization efforts for the applicable product or product candidate.

We may not be successful in obtaining necessary rights to additional product candidates for our development pipeline through acquisitions and in-licenses.

We generally do not intend to develop product candidates from our own original research. Our business model is predicated, in part, on our ability to successfully identify and acquire or in-license product candidates for the treatment and support of cancer patients. However, we may be unable to acquire or in-license any product candidates from third parties for various reasons, including because we are focusing on a specific area of care, and we may be unable to identify product candidates that we believe are an appropriate strategic fit for our company.

The in-licensing and acquisition of product candidates is a competitive area, and many more established companies are also pursuing strategies to in-license or acquire product candidates that we may consider attractive. These established companies may have a competitive advantage over us due to their size, financial resources and greater clinical development and commercialization capabilities. Furthermore, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to in-license or acquire the relevant product candidate on terms that would allow us to generate an appropriate return on our investment.

In addition, we expect that competition for the in-licensing or acquisition of product candidates that are attractive to us may increase in the future, which may mean fewer suitable opportunities for us as well as higher acquisition or licensing prices. If we are unable to successfully obtain rights to suitable product candidates, our business, financial condition and prospects for growth could suffer.

Product liability lawsuits against us could cause us to incur substantial liabilities and could limit commercialization of any products that we may develop.

We face an inherent risk of product liability exposure in connection with the commercialization of ZEZULA, VARUBI/VARUBY, and any of our current or future product candidates and in connection with the testing of our product candidates in human clinical trials. Product liability claims may be brought against us by patients, healthcare providers or others using, administering or selling our products, or subjects enrolled in our clinical trials. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we could incur substantial liabilities and financial and reputational harm, regardless of merit or eventual outcome, including:

- significant costs to defend the related litigation;
- substantial monetary awards to patients or trial subjects;
- loss of revenue; and
- diversion of management and scientific resources from our business operations.

We currently hold what we believe to be a commercially reasonable amount of product liability insurance coverage, which may not be adequate to cover all liabilities that we may incur. Insurance coverage is increasingly expensive. A successful product liability claim or series of claims brought against us, particularly if judgments exceed our insurance coverage, could consume significant amounts of our cash and adversely affect our business.

We market our products in certain countries and territories outside of the United States, including Europe, and are subject to the risks of doing business outside of the United States, but we have limited experience operating internationally.

We only recently initiated our operations outside of the United States, including the addition of international employees in the EU and other European countries. Because we market ZEZULA, VARUBY, and if approved, our other product candidates, outside of the United States, we will need to continue to grow our international operations over the next several years. Accordingly, our business is subject to risks associated with doing business outside of the United States, including our own limited experience operating internationally, the cost and time required to develop an international sales, marketing and distribution organization, changes in a specific country's or region's political, cultural or economic condition, unexpected changes in foreign laws and regulations, inadequate intellectual property protection in foreign countries, difficulty of effective enforcement of contractual provisions in local jurisdictions, and significant adverse changes in foreign currency exchange rates.

In addition to FDA and related regulatory requirements in the U.S. and abroad, we are subject to extensive additional federal, state and foreign anti-bribery regulation, which include the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and similar laws in other countries outside of the U.S. We have developed and implemented a corporate compliance program based on what we believe are current best practices in the pharmaceutical industry for companies similar to ours, but we cannot guarantee that we, our employees, our consultants or our third-party contractors are or will be in compliance with all federal, state and foreign regulations regarding bribery and corruption. Moreover, our partners and third-party contractors located outside the U.S. may have inadequate compliance programs or may fail to respect the laws and guidance of the territories in which they operate. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which could also have an adverse effect on our business, financial condition and results of operations.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss, or NOL, carryforwards, and other pre-change tax attributes (such as research tax credits) to offset its post-change income or tax liabilities may be limited. We have completed several financings since our inception, which we believe have resulted in a change in control as defined by IRC Section 382. We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we earn net taxable income, our ability to use our pre-change NOL carryforwards to offset U.S. federal taxable income may be subject to

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limitations, which could potentially result in increased future tax liability to us. In addition, at the state level, there may be periods during which the use of NOL carryforwards is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

Taxing authorities could challenge our historical and future tax positions or our allocation of taxable income among our subsidiaries, and tax laws to which we are subject could change in a manner adverse to us.

We operate through various subsidiaries in a number of countries throughout the world. Consequently, we are subject to tax laws, treaties, and regulations in the countries in which we operate, and these laws and treaties are subject to interpretation. We have taken, and will continue to take, tax positions based on our interpretation of such tax laws. Our transfer pricing arrangements are not generally binding on applicable tax authorities. The price charged for products, services, or the royalty rates and other amounts paid for intellectual property rights, could be challenged by the various tax authorities, resulting in additional tax liability, interest, and/or penalties. There can be no assurance that a taxing authority will not have a different interpretation of applicable law and assess us with additional taxes. If we are assessed with additional taxes, this may result in a material adverse effect on our results of operations and/or financial condition. For further discussion related to income taxes, refer to Note 10, “Income Taxes,” in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, in this Annual Report on Form 10-K.

Any changes to existing accounting pronouncements or taxation rules or practices may cause adverse fluctuations in our reported results of operations or affect how we conduct our business.

A change in accounting pronouncements or taxation rules or practices can have a significant effect on our reported results and may affect our reporting of transactions completed before the change is effective. New accounting pronouncements, taxation rules and varying interpretations of accounting pronouncements or taxation rules have occurred in the past and may occur in the future. The change to existing rules, future changes, if any, or the need for us to modify a current tax or accounting position may adversely affect our reported financial results or the way we conduct our business.

We will need to continue to grow the size of our organization, and we may experience difficulties in managing this growth.

As of December 31, 2017, we had 715 full-time employees compared to 446 at the end of 2016. As our development and commercialization plans and strategies for our existing products and product candidates continue to develop, we will need to continue to add managerial, operational, sales, marketing, financial and other resources. The management, personnel and systems that we currently have in place may not be adequate to support our recent or future growth. Such growth will impose significant added responsibilities on members of management.

As our operations expand, we will need to manage additional relationships with various strategic partners, suppliers and other third parties in both the United States and in foreign territories, including Europe. Our future financial performance and our ability to commercialize our current and future products and product candidates and to compete effectively will depend, in part, on our ability to manage our growth effectively. To that end, we must be able to manage our development and commercialization efforts effectively and hire, train and integrate additional management, administrative, sales, and marketing personnel. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company.

If we are unable to attract and retain highly qualified personnel, we may not be able to grow effectively.

Our future growth and success depend on our ability to recruit, retain, manage and motivate our employees. Because of the specialized scientific nature of our business, we rely heavily on our ability to attract and retain qualified scientific, technical and managerial personnel. Our ability to compete and grow depends in large part upon the continued service of our senior management team, including our co-founders, Leon O. Moulder, Jr., our Chief Executive Officer, and Mary Lynne Hedley, Ph.D., our President and Chief Operating Officer. The loss of one or more of our senior executive officers could be detrimental to us if we cannot recruit suitable replacements in a timely manner. The competition for qualified personnel in the biopharmaceutical field is intense and as a result, we may be unable to continue to attract and retain qualified personnel necessary for the development of our business or to recruit suitable replacement personnel. Although we have letter agreements with our key executives, these agreements are at will and do not prevent them from terminating their employment with us at any time. We do not maintain “key person” insurance for any of our executives or other employees.

In addition to in-licensing or acquiring product candidates, we may engage in future acquisitions that could disrupt our business, cause dilution to our stockholders and harm our financial condition and operating results.

From time to time, we evaluate acquisition opportunities and may, in the future, make acquisitions of, or investments in, companies that we believe have products or capabilities that are a strategic or commercial fit with our current product candidates and business or otherwise offer opportunities for our company. In connection with these acquisitions or investments, we may issue stock that would dilute our stockholders' percentage of ownership, incur debt and assume liabilities, incur amortization expenses related to intangible assets, or incur large and immediate write-offs. We may be unable to find suitable acquisition candidates, and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete an acquisition, we cannot assure you that it will ultimately strengthen our competitive position, that it will not be viewed negatively by customers, financial markets or investors, or that we can effectively integrate the operations, products or personnel gained through any such acquisition without a material adverse effect on our business, financial condition and 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 collaborators, our CROs and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our drug development programs and business operations. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials could result in delays in our regulatory approval efforts for our product candidates and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach was to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liabilities and the further development of our product candidates could be delayed or our commercial operations could be impacted.

Our failure to comply with data protection laws and regulations could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results.

We are subject to U.S. data protection laws and regulations (i.e., laws and regulations that address privacy and data security) at both the federal and state levels. The legislative and regulatory landscape for data protection continues to evolve, and in recent years there has been an increasing focus on privacy and data security issues which may affect our business. Numerous federal and state laws and regulations, including state security breach notification laws, state health information privacy laws, and federal and state consumer protection laws, govern the collection, use, disclosure and protection of health-related and other personal information. Failure to comply with such laws and regulations could result in government enforcement actions and create liability for us (which could include civil and/or criminal penalties), private litigation, and/or adverse publicity that could negatively affect our business. Finally, a data breach affecting sensitive personal information, including health information, could result in significant legal and financial exposure and reputational damages that could potentially have an adverse effect on our business.

EU Member States, Switzerland and other countries have also adopted data protection laws and regulations, which impose significant compliance obligations and impose substantial fines for breaches of the data protection rules. Data protection authorities from the different EU Member States may interpret the various laws and regulations differently and impose additional requirements, which add to the complexity of processing personal data in the EU. The various laws and regulations will increase our responsibility and liability in relation to personal data that we process, and we may be required to put in place additional mechanisms to ensure compliance with the new data protection rules. Our failure to comply with these laws, or changes in the way in which these laws are implemented, could lead to government enforcement actions and significant penalties against us, and adversely impact our operating results.

The results of the United Kingdom's referendum on withdrawal from the EU may have a negative effect on global economic conditions, financial markets and our business.

In June 2016, a majority of voters in the United Kingdom, or the UK, elected to withdraw from the EU in a national referendum. The UK government initiated the formal withdrawal procedure on March 29, 2017. The procedure involves a two-year negotiation period in which the UK and the EU must agree to terms of the UK's withdrawal and arrangements for the UK's future relationship with the EU. This negotiation period could be extended by a unanimous decision of the European Council, in agreement with the UK. The referendum has created significant uncertainty about the future relationship between

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the UK and the EU, including with respect to the laws and regulations that will apply as the UK determines which EU laws to replace or replicate in the event of a withdrawal. From a regulatory perspective, the UK's withdrawal could bear significant complexity and risks. A basic requirement related to the grant of a marketing authorization for a medicinal product in the EU is that the applicant is established in the EU. Following the withdrawal of the UK from the EU, marketing authorizations previously granted to applicants established in the UK may no longer be valid. We currently hold the European marketing authorizations for both ZEZULA and VARUBY through a subsidiary in the UK.

Depending upon the exact terms of the UK's withdrawal, the scope of a marketing authorization for a medicinal product granted by the European Commission pursuant to the centralized procedure might not, in the future, include the UK. In these circumstances, an authorization granted by competent UK authorities would be required to place medicinal products on the UK market. In addition, the laws and regulations that will apply after the UK withdraws from the EU would affect the manufacturing sites that hold a certification issued by the UK competent authorities. Our capability to rely on these manufacturing sites for products intended for the EU market would also depend upon the exact terms of the UK withdrawal.

The referendum has also given rise to calls for the governments of other EU Member States to consider withdrawal from the EU. These developments, or the perception that any of them could occur, have had and may continue to have a material adverse effect on global economic conditions and the stability of global financial markets, and may significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Any of these factors could significantly increase the complexity of our activities in the EU and in the UK, could depress our economic activity and restrict our access to capital, which could have a material adverse effect on our business, financial condition and results of operations and reduce the price of our common stock.

We derive, and may continue to derive, a substantial amount of our product revenue from a limited number of customers and the loss of one or more of these customers or a decline in revenue from one or more of these customers could have an adverse impact on our results of operations and financial condition.

In the U.S., we currently sell our products principally to a limited number of specialty distributors and specialty pharmacy providers and therefore a significant portion of our net product revenue is generated by a small number of customers. Three customers accounted for 93% of our net product revenue during 2017 and two customers accounted for 80% of our accounts receivable balance at December 31, 2017. The loss of, material reduction in sales volume to, or a significant adverse change in our relationship with any of our key wholesalers or customers could have a material adverse effect on our revenue in any given period and may result in significant annual or quarterly revenue fluctuations.

Wholesaler and distributor buying patterns and other factors may cause our quarterly results to fluctuate, and these fluctuations may adversely affect our short-term results.

Our results of operations, including, in particular, net product revenues, may vary from period to period due to a variety of factors, including the buying patterns of our U.S. wholesalers and distributors, which vary from quarter to quarter. In the event wholesalers and distributors with which we do business determine to limit their purchases, product sales could be adversely affected. For example, in advance of an anticipated price increase or a reduction in expected rebates or discounts, customers may order product in larger than normal quantities, which could cause product sales of to be lower in subsequent quarters than they would have been otherwise. Further, any changes in purchasing patterns, inventory levels, increases in returns, delays in purchasing products or delays in payment for products by one of our wholesalers or distributors could also have a negative impact on our revenue and results of operations.

Risks Related to Our Dependence on Third Parties

We have no manufacturing facilities, and we are dependent on a limited number of third-party manufacturers for the manufacture and supply of ZEZULA, VARUBI (oral and IV), VARUBY and our product candidates, including our immuno-oncology assets. If we experience problems with any of these third parties, the manufacturing of our products or our product candidates could be delayed, which could harm our ability to generate revenues from our approved products, our ability to obtain regulatory approval for our product candidates, and our results of operations.

We do not own or operate facilities for the manufacture of our products or product candidates. Our ability to successfully develop and commercialize our products and our product candidates will require us to establish large scale manufacturing capabilities through our contract manufacturing organizations, or CMOs. We currently have no plans to build our own clinical or commercial scale manufacturing capabilities. We currently work with two CMOs for the production of

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ZEJULA drug substance, and one other CMO, for ZEPJULA drug product supply, for our clinical and commercial needs. We currently work with one CMO for the production of rolapitant drug substance used for VARUBI (oral and IV) and VARUBY, one CMO for commercial production of VARUBI (oral) and VARUBY, and one other CMO for commercial production of VARUBI IV.

As our drug development pipeline matures and we continue to commercialize ZEPJULA and VARUBI/VARUBY and, if approved, our other product candidates, including our immuno-oncology assets, we will have a greater need for both clinical study supply and commercial manufacturing capacity. We have limited experience manufacturing pharmaceutical products on a commercial scale, and some of our suppliers will need to continue to increase their scale of production to meet our projected needs for commercial manufacturing. Manufacturing commercial quantities of our products to meet our projections may require our third-party manufacturers to invest substantial additional funds to increase capacity and to hire and retain additional personnel who have applicable large-scale commercial manufacturing experience. Our third-party manufacturers may not successfully complete any required increase to existing manufacturing capacity in a timely manner, or at all. Because of the complex nature of our compounds, our manufacturers may not be able to manufacture our compounds at an acceptable cost or in sufficient quantities or in a timely manner necessary to make commercially successful products, or may require us to pay significant costs, including for capital improvements to their facilities. If our contract manufacturers or other third parties fail to deliver our products for commercial sale on a timely basis, with sufficient quality, and at commercially reasonable prices, and we fail to find replacement manufacturers or to develop our own manufacturing capabilities, we may be required to delay or suspend commercialization of our current products or other potential future products.

For development of our immuno-oncology antibody product candidates, we currently work with one CMO for the production of biologics. For each of our product candidates, we may elect to pursue arrangements with other CMOs for manufacturing clinical supplies for later-stage trials and for commercialization. We have not yet qualified alternate suppliers in the event the current CMOs we utilize are unable to scale production, or if we otherwise experience any problems with them. If we are unable to arrange for alternative third-party manufacturing sources, or to do so on commercially reasonable terms or in a timely manner, we may not be able to complete development of our product candidates, or market or distribute them.

Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured product candidates or products ourselves, including reliance on the third party for regulatory compliance and quality assurance, the possibility of breach of the manufacturing agreement by the third party because of factors beyond our control (including a failure to synthesize and manufacture our product candidates or any products we may eventually commercialize in accordance with our specifications) and the possibility of termination or nonrenewal of the agreement by the third party, based on its own business priorities, at a time that is costly or damaging to us. In addition, the FDA and similar foreign authorities require that our product candidates and approved products be manufactured according to cGMP and similar foreign standards. Any failure by our third-party manufacturers to comply with cGMP or failure to scale up manufacturing processes, including any failure to deliver sufficient quantities of product candidates in a timely manner, could lead to a delay in, or failure to obtain, regulatory approval of any of our product candidates. In addition, such failure could be the basis for the FDA or an equivalent foreign regulatory authority to issue a warning or untitled letter, withdraw approvals previously granted to us for our products or product candidates, or take other regulatory or legal action, including recall or seizure, total or partial suspension of production, suspension of ongoing clinical trials, refusal to approve pending applications or supplemental applications, detention of product, refusal to permit the import or export of products, injunction, or imposition of civil and criminal penalties.

Any significant disruption in our supplier relationships could harm our business. We source key materials from third parties, either directly through agreements with suppliers or indirectly through our manufacturers who have agreements with suppliers. For example, we source key raw materials for ZEPJULA drug substance from one supplier. Such suppliers may not sell these key materials to us or our manufacturers at the times we need them or on commercially reasonable terms. In certain cases, we do not have any control over the process or timing of the acquisition of these key materials by our manufacturers. Any significant delay in the supply of a product or product candidate or its key materials for an ongoing clinical study could considerably delay completion of our clinical studies, product testing and potential regulatory approval of our product candidates. If our manufacturers or we are unable to purchase these key materials for products or product candidates after regulatory approval, the commercial launch of our product candidates could be delayed or there could be a shortage in supply, which would impair our ability to generate revenues from the sale of our products and product candidates.

We rely on third parties to conduct preclinical and clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may not be able to obtain regulatory approval for, or commercialize, our product candidates, and our business could be substantially harmed.

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We have relied upon and plan to continue to rely upon third-parties, including CROs, to execute, monitor, and manage data for our ongoing preclinical and clinical programs. We rely on these parties for execution of our preclinical and clinical trials, and we control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol and legal, regulatory and scientific standards, and our reliance on collaborators and CROs does not relieve us of our regulatory responsibilities. We also rely on these third parties to assist in conducting our preclinical studies in accordance with good laboratory practices and Animal Welfare Act requirements. We and our collaborators and CROs are required to comply with good clinical practices, or GCP, which are regulations and guidelines enforced by the FDA, the competent authorities of the member countries of the EEA, and comparable foreign regulatory authorities for all of our products in clinical development. Regulatory authorities enforce GCP through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our collaborators or CROs fail to comply with applicable GCP, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP requirements. Failure to comply with these regulations may require us to repeat preclinical and clinical trials, which would delay the regulatory approval process and our ability to generate and grow revenues.

The individuals at our third-party collaborators and CROs who conduct work on our behalf are not our employees, and except for remedies available to us under our agreements with such third parties, we cannot control whether or not they devote sufficient time and resources to our ongoing clinical, nonclinical and preclinical programs. If our collaborators and CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our preclinical and clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

Because we have relied and plan to continue to rely on third parties for the foregoing preclinical and clinical functions, our internal capacity to perform these functions is limited. Switching or adding additional CROs involves additional cost, requires management time and focus, and could result in substantial delays in our development programs. Identifying, qualifying and managing the performance of third-party service providers can be difficult, time consuming and cause delays in our development programs. In addition, there is a natural transition period when a new CRO commences work and the new CRO may not provide the same type or level of services as the original provider. If any of our relationships with our third-party CROs terminates, we may not be able to enter into arrangements with alternative CROs or do so on commercially reasonable terms.

Risks Related to Our Intellectual Property

If we are unable to protect our intellectual property rights, our competitive position could be harmed, and we could be required to incur significant expenses to enforce our rights.

We depend on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws, and confidentiality, licensing and other agreements with employees and third parties, all of which offer only limited protection. Our success depends in large part on our ability to obtain and maintain patent protection in the United States and other countries with respect to our proprietary technology and products. Protection for individual products extends for varying periods in accordance with the legal life of patents in the various countries. The protection afforded, which may also vary from country to country, depends upon the type of patent and its scope of coverage. We seek to protect our proprietary position by filing patent applications in the United States and abroad related to our novel technologies and products that are important to our business. The patent positions of biotechnology and pharmaceutical companies generally are highly uncertain, involve complex legal and factual questions and have in recent years been the subject of much litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our patents, including those patent rights licensed to us by third parties, are highly uncertain.

The steps we have taken to protect our proprietary rights may not be adequate to preclude misappropriation of our proprietary information or infringement of our intellectual property rights, both inside and outside the United States. The rights already granted under any of our currently issued patents and those that may be granted under future issued patents may not provide us with the proprietary protection or competitive advantages we are seeking. If we are unable to obtain and maintain patent protection for our technology and products, or if the scope of the patent protection obtained is not sufficient, our

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competitors could develop and commercialize technology and products similar or superior to ours, and our ability to successfully commercialize our technology and products may be adversely affected. Further, under our agreement with Merck for niraparib, Merck is responsible, subject to certain exceptions, for prosecuting the licensed patents, and we are reliant on them to do so in a diligent fashion, subject to our right to review and approve their prosecution activities. If Merck fails to conduct such activities diligently, does not take approved actions, or otherwise fails to adequately protect our licensed patent rights, we may not obtain or maintain broad proprietary protection for niraparib.

With respect to patent rights, we do not know whether any of the pending patent applications for any of our products or product candidates will result in the issuance of patents that protect our technology or products, or whether they will effectively prevent others from commercializing competitive technologies and products. Although we have a number of issued patents that we own or that we license under our licensing agreements covering our technology, our pending applications cannot be enforced against third parties practicing the technology claimed in such applications unless and until a patent issues from such applications. Further, our licensors, including Merck with respect to the licensed niraparib patents, may be responsible, subject to certain exceptions, for prosecuting the patents covering our products, and we are reliant on them to do so in a diligent fashion, subject to our right to review and approve their prosecution activities. If they fail to conduct such activities diligently, do not take approved actions, or otherwise fail to adequately protect our licensed patent rights, we may not obtain or maintain broad proprietary protection for our products. Further, the examination process may require us or our licensors (where applicable) to narrow the claims, which may limit the scope of patent protection that may be obtained. As the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, issued patents that we own or have licensed from third parties may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in the loss of patent protection, the narrowing of claims in such patents, or the invalidity or unenforceability of such patents, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection for our technology and products. Protecting against the unauthorized use of our patented technology, trademarks and other intellectual property rights is expensive, difficult and, may in some cases not be possible. In some cases, it may be difficult or impossible to detect third-party infringement or misappropriation of our intellectual property rights, even in relation to issued patent claims, and proving any such infringement may be even more difficult.

The patent prosecution process is expensive and time-consuming, and we or our licensors (where applicable) may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of inventions made in the course of our development and commercialization activities before it is too late to obtain patent protection on them. Further, given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. We expect to seek extensions of patent terms where they are available in any countries where we are prosecuting patents. This includes in the United States under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, which permits a patent term extension of up to five years beyond the expiration of the patent. However, the applicable authorities, including the FDA in the United States, and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available, and may refuse to grant extensions to our patents, or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States, and these foreign laws may also be subject to change. Publications of discoveries in the scientific literature lag behind actual discoveries, and patent applications in the United States and other jurisdictions typically are not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we or our licensors were the first to make the inventions claimed in our owned or licensed patents or pending patent applications, or that we or our licensors were the first to file for patent protection of such inventions.

Previously, in the United States, assuming the other requirements for patentability are met, the first to make the claimed invention was entitled to the patent. Outside the United States, the first to file a patent application is entitled to the patent. In March 2013, the United States transitioned to a ‘first to file’ system in which the first inventor to file a patent application will be entitled to the patent. Under either the previous or current system, third parties will be allowed to submit prior art prior to the issuance of a patent by the U.S. Patent and Trademark Office, or the USPTO, and may become involved in opposition, derivation, reexamination, post-grant review proceedings or interference proceedings challenging our patent rights or the patent rights of others. For example, in March 2017, Teva Pharmaceutical Industries Ltd. filed an opposition in the EPO seeking revocation of European Patent No. 20046464, or the ‘464 patent, covering the crystalline hydrochloride salt of

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rolapitant, the active ingredient in VARUBY. The natural term of the '464 patent is set to expire in April 2027. In December 2017, the Opposition Division of the EPO issued a summons to attend oral proceedings on this case, which are scheduled for June 2018. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, which could adversely affect our competitive position with respect to third parties.

We may become involved in lawsuits to protect or enforce our intellectual property, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents or misappropriate or otherwise violate our intellectual property rights. To counter infringement or unauthorized use, litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of our own intellectual property rights or the proprietary rights of others. This can be expensive and time consuming. Many of our current and potential competitors have the ability to dedicate substantially greater resources to defend their intellectual property rights than we can. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Litigation could result in substantial costs and diversion of management resources, which could harm our business and financial results. In addition, in an infringement proceeding, a court may decide that a patent owned by or licensed to us is invalid or unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated, held unenforceable or interpreted narrowly. In the U.S., the Hatch-Waxman Act provides generic companies valuable incentives to seek to invalidate patents for human pharmaceutical products approved under an NDA. As a result, it is likely that our U.S. patents covering approved drugs such as ZEJULA and VARUBI will be challenged in Hatch-Waxman litigation and administrative proceedings, and may not be upheld. We may face generic manufacturer challenges to our patents outside the U.S. as well. The entry of generic competitors typically results in a rapid decline in sales.

Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain and could have a material adverse effect on the success of our business.

Our commercial success depends upon our ability and the ability of our collaborators to develop, manufacture, market and sell our product candidates, and to use our proprietary technologies without infringing the proprietary rights of third parties. The patent landscape for our products and product candidates is continuously evolving due in part to the fact that patent applications in the United States and many other jurisdictions are maintained in secrecy for at least 18 months following their earliest filing date. We may become party to, or threatened with, future adversarial proceedings or litigation regarding intellectual property rights with respect to our products and technology, including interference proceedings before the USPTO. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future. For example, we are aware of third-party patents that contain claims potentially relevant to certain therapeutic uses of immune checkpoint inhibitors, and we are also aware of ongoing litigation involving third parties in the area, in each case which could impact the development of the various assets in our immuno-oncology portfolio. If we are found to infringe a third party's intellectual property rights, we could be required to obtain a license from such third party to continue developing and commercializing our products and technology, which could impact the profitability of our products. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. We could be forced, including by court order, to cease commercializing the infringing technology or product. In addition, in any such proceeding or litigation, we could be found liable for monetary damages. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could materially harm our business. Any claims by third parties that we have misappropriated their confidential information or trade secrets could have a similar negative impact on our business.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for some of our technology and products, we also rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position. We seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the

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outcome is unpredictable. In addition, some courts both within and outside the United States may be less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent such competitor from using that technology or information to compete with us, which could ham our competitive position.

Risks Related to Ownership of Our Common Stock

The price of our stock has been, and may continue to be, volatile, and you could lose all or part of your investment.

The trading price of our common stock is highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. From January 1, 2016 through December 31, 2017, the price of our common stock on the NASDAQ Global Select Market ranged from \$29.51 per share to \$192.94 per share. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this Annual Report on Form 10-K, these factors include:

- the success of competitive products or technologies;
- regulatory actions with respect to our products or our competitors’ products;
- actual or anticipated changes in our product revenue growth rate relative to our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, collaborations or capital commitments;
- results of clinical trials of our product candidates or those of our competitors;
- regulatory or legal developments in the United States and other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key personnel;
- the level of expenses related to any of our product candidates or clinical development programs;
- the results of our efforts to in-license or acquire additional product candidates or products;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- variations in our financial results or those of companies that are perceived to be similar to us;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us, our insiders or our other stockholders;
- changes in the structure of healthcare payment systems;
- market conditions in the pharmaceutical and biotechnology sectors;
- the publication of inaccurate or unfavorable research about us, end of coverage, or failure to publish reports regularly on us, in each case by any securities or industry analysts who publish research on us; and
- general economic, industry and market conditions.

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In addition, the stock market in general, and the NASDAQ Global Select Market and biotechnology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. The realization of any of the above risks or any of a broad range of other risks, including those described in these Risk Factors, could have a dramatic and material adverse impact on the market price of our common stock.

Forecasting sales of ZEJULA, VARUBI/VARUBY, and if approved our other product candidates, may be difficult, and if our revenue projections are inaccurate, our business may be harmed and our stock price may decline.

Our sales of ZEJULA and VARUBI/VARUBY are difficult to forecast, and we expect sales of any future products would also be difficult to forecast. Factors that increase the difficulty of forecasting sales of each of our current and future products include the following:

- the cost and availability of reimbursement for the product;
- treatment guidelines issued by government and non-government agencies;
- the timing of market entry relative to competitive products;
- the availability of alternative therapies;
- the price of the product relative to alternative therapies, including generic versions of products that compete with our product;
- the rates of returns and rebates;
- uncertainty about the pace of acceptance of the product;
- the ability of our third-party manufacturers to manufacture and deliver the product in commercially sufficient quantities;
- the ability of our third-party distributors and wholesalers to process orders in a timely manner and satisfy their obligations to us;
- the extent and success of our marketing efforts; and
- potential side effects or unfavorable publicity concerning our product or similar products.

The extent to which any of these or other factors individually or in the aggregate may impact future sales of our products is uncertain and difficult to predict. Our management must make forecasting decisions regarding future revenue in the course of business planning despite this uncertainty, and actual results of operations may deviate materially from projected results. If our revenues from product sales are lower than we anticipate, we will incur costs in the short term that will result in losses that are unavoidable. A shortfall in revenue would have a direct impact on our expected cash flow, our stock price and on our business generally. Furthermore, to the extent that any projections we disclosed publicly regarding future product sales or our financial performance are incorrect, including as a result of the challenges in forecasting such sales, our stock price could be adversely affected, and we could be subject to an increased risk of litigation. In addition, fluctuations in our quarterly results can adversely and significantly affect the market price of our common stock.

An adverse determination in any securities class action lawsuit against us could have a material adverse effect on us.

A putative class action complaint was filed on January 17, 2018 in the United States District Court for the District of Massachusetts, entitled *Roger Bowers v. TESARO Incorporated (sic), et. al.*, Case No. 18-10086. The complaint alleges that we and our Chief Executive Officer and our Chief Financial Officer violated certain federal securities laws, specifically under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and Rule 10b-5 thereunder. The plaintiff seeks unspecified damages on behalf of a purported class of purchasers of our common stock between March 14,

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2016 and January 12, 2018. We believe that the allegations contained in the complaint are without merit and intend to defend the case vigorously. However, whether or not the plaintiff's claims are successful, this type of litigation is often expensive and diverts management's attention and resources, which could adversely affect the operation of our business. If we are ultimately required to pay significant defense costs, damages or settlement amounts, such payments could adversely affect our operations.

We may be the target of similar litigation in the future. Any future litigation could result in substantial costs and divert our management's attention and resources, which could cause serious harm to our business, operating results and financial condition. We maintain liability insurance; however, if any costs or expenses associated with this or any other litigation exceed our insurance coverage, we may be forced to bear some or all of these costs and expenses directly, which could be substantial.

Our principal stockholders and management own a significant percentage of our stock and are collectively able to exert significant influence over matters subject to stockholder approval.

Our executive officers, directors and their respective affiliates beneficially owned approximately 29.7% of our voting stock as of December 31, 2017. This group of stockholders has the potential ability to control us through their ownership position. Acting together, these stockholders may be able to influence the outcomes of certain matters requiring stockholder approval. For example, this group may be able to influence elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The interests of this group of stockholders may not always coincide with your interests or the interests of other stockholders, and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

If we fail to maintain an effective system of internal control over financial reporting in the future, we may not be able to accurately report our financial condition, results of operations or cash flows, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure controls and procedures. We are required, under Section 404 of the Sarbanes-Oxley Act, to furnish an annual report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment must include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a control deficiency, or combination of control deficiencies, in internal control over financial reporting that results in more than a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis. Section 404 of the Sarbanes-Oxley Act also generally requires an attestation from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting.

Our compliance with Section 404 requires that we incur substantial accounting expense and expend significant management efforts. We have limited experience complying with Section 404, and if in the future we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective. Furthermore, we cannot assure you that there will not be material weaknesses or significant deficiencies in our internal control over financial reporting in the future. For example, in 2017, we began to implement an enterprise resource planning, or ERP system, which automated many of our internal controls over financial reporting. Because the ERP is a new system and we have no prior experience with it, there is an increased risk that one or more of our financial controls may fail. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition, results of operations or cash flows. If our independent registered public accounting firm determines we have a material weakness or significant deficiency in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by the NASDAQ, the SEC, or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

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We have never declared or paid cash dividends on our capital stock. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.

As of December 31, 2017, we had 54,464,039 shares of common stock outstanding. Sales of a substantial number of shares of our common stock or other securities in the public market or in private placements could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. Of these outstanding shares, 16,187,911 are currently held by directors, executive officers and other parties that may be deemed to be their affiliates and are available for sale subject to volume limitations and other restrictions under securities laws. We also have registered shares of common stock that we may issue under our equity compensation plans. These shares can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates.

Furthermore, certain persons who were stockholders prior to our initial public offering are entitled to registration rights under the Securities Act of 1933, or the Securities Act, with respect to shares they hold, which includes 12,727,272 shares held by our directors, executive officers and other parties that may be deemed to be their affiliates. Registration of these shares under the Securities Act would result in such shares becoming freely tradable without restrictions under the Securities Act, except with respect to shares purchased by affiliates. Any sales of shares by these stockholders could have a material adverse effect on the trading price of our common stock.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

We are subject to the periodic reporting requirements of the Exchange Act. We design our disclosure controls and procedures to reasonably assure that information we are required to disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements or insufficient disclosure due to error or fraud may occur and we may not detect them.

Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.

We may need additional capital in the future to continue our planned operations. To raise capital, we may sell substantial amounts of common stock or securities convertible into or exchangeable for common stock. These future issuances of common stock or common stock-related securities, together with the exercise of outstanding stock options, the vesting of outstanding restricted stock units, and any additional shares issued in connection with acquisitions, if any, may result in material dilution to our investors. Such sales may also result in material dilution to our existing stockholders, and new investors could gain rights, preferences and privileges senior to those of holders of our common stock.

Pursuant to our equity incentive plans, our compensation committee is authorized to grant equity-based incentive awards to our directors, executive officers and other employees and service providers, including officers, employees and service providers of our subsidiaries and affiliates. As of December 31, 2017, there were 1,810,240 shares of our common stock reserved for issuance under our 2012 Omnibus Incentive Plan and 198,433 shares of our common stock available for future grant under our 2015 Non-Employee Director Stock Incentive Plan. Future stock option grants and issuances of common stock under our equity plans may have an adverse effect on the market price of our common stock.

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Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders, or remove our current management. These provisions include:

- authorizing the issuance of “blank check” preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- prohibiting cumulative voting in the election of directors, which would otherwise allow for less than a majority of stockholders to elect director candidates;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, who are responsible for appointing the members of our management. Because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may discourage, delay or prevent someone from acquiring us or merging with us whether or not it is desired by or beneficial to our stockholders. Under Delaware law, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Any provision of our amended and restated certificate of incorporation or amended and restated bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

Risks Related to Our Indebtedness

Despite our current debt levels, we may still incur additional debt. If we incur substantial additional debt, these higher levels of debt may affect our ability to pay the principal of and interest on the Convertible Notes and our borrowings under the Loan Agreement.

In addition to our obligations to make payments on our existing indebtedness as discussed above, we and our subsidiaries may be able to incur substantial additional debt in the future, some of which may be secured debt. The indenture governing the Convertible Notes and the Loan Agreement allow us to incur additional indebtedness, subject to certain limitations, and do not restrict our ability to incur additional indebtedness or require us to maintain financial ratios or specified levels of net worth or liquidity. If we incur substantial additional indebtedness in the future, these higher levels of indebtedness may affect our ability to pay the principal of and interest on the Convertible Notes or our Loan Agreement, or to make payments under the indenture governing the Convertible Notes in connection with any fundamental change or pay any cash due upon conversion.

The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Convertible Notes is triggered, holders of notes will be entitled to convert their notes at any time during specified periods at their option. If one or more holders elect to convert their notes, unless we satisfy our conversion obligation by delivering solely shares of our common stock (other than cash in lieu of any fractional share), we would be required to settle all or a portion of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their notes, we could be required

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under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The accounting method for convertible debt securities that may be settled in cash, such as the Convertible Notes, could have a material effect on our reported financial results.

Pursuant to Accounting Standards Codification Subtopic 470-20, *Debt with Conversion and Other Options*, which we refer to as ASC 470-20, an entity must separately account for the liability and equity components of convertible debt instruments (such as the Convertible Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the Convertible Notes is that the equity component is required to be included in the additional paid-in capital caption of stockholders' equity on our consolidated balance sheet and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of the Convertible Notes. As a result, we will be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the Convertible Notes to their face amount over the term of the Convertible Notes. We will report greater losses in our financial statements because ASC 470-20 will require interest to include both the current period's amortization of the debt discount and the instrument's coupon interest, which could adversely affect our reported or future financial results, the market price of our common stock and the trading price of the Convertible Notes.

In addition, under certain circumstances, convertible debt instruments (such as the Convertible Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the Convertible Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the Convertible Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the Convertible Notes, then our diluted earnings per share would be adversely affected.

To the extent we issue shares of our common stock to satisfy all or a portion of our conversion obligation, conversions of the Convertible Notes may dilute the ownership interest of our existing stockholders.

Upon conversion of the Convertible Notes, we have the option to pay or deliver, as the case may be, either cash, shares of our common stock, or a combination of cash and shares of our common stock. To the extent we issue shares of our common stock to satisfy all or a portion of our conversion obligation, the conversion of some or all of the Convertible Notes will dilute the ownership interests of our existing stockholders. Any sales in the public market of our common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could depress the price of our common stock.

The fundamental change purchase feature of the Convertible Notes may delay or prevent an otherwise beneficial attempt to take over our Company.

The terms of the Convertible Notes require us to offer to purchase the Convertible Notes for cash in the event of a fundamental change. A non-stock takeover of our Company may trigger the requirement that we purchase the Convertible Notes. This feature may have the effect of delaying or preventing a takeover of our Company that would otherwise be beneficial to investors.

The terms of our Loan Agreement place restrictions on our operating flexibility.

The terms of our Loan Agreement contain customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on our ability to transfer currently owned U.S. intellectual property rights related to ZEJULA and VARUBI (the collateral under the Loan Agreement), incur additional indebtedness, incur additional liens and security interests on the collateral granted under the Loan Agreement, pay or make dividends, share repurchases and other distributions, and prepay subordinated indebtedness (other than the Convertible Notes). These terms may restrict our ability to operate our business in the manner we deem most effective or desirable, and may restrict our ability to fund our operations.

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Nonpayment of principal, interest and other amounts, failure to comply with covenants, the occurrence of a material adverse change in our ability to perform our obligations, the rendering of judgments or orders or the acceleration or payment default by us in respect of other indebtedness in excess of \$10 million, or bankruptcy could constitute an event of default that, if continued beyond the cure period, would allow the Collateral Agent, at the request of the lenders holding a majority of the outstanding principal amount under the Loan Agreement, to stop advancing money or extending credit for our benefit under the Loan Agreement and to declare all of our obligations under the Loan Agreement immediately due and payable, either of which would harm our business.

Our ability to comply with the various terms and conditions in the future may be affected by events beyond our control, including prevailing economic, financial and industry conditions.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

As of December 31, 2017, our principal offices were located in a facility in Waltham, Massachusetts, where we leased office space totaling approximately 260,000 square feet, which we use primarily for corporate functions. The terms of the leases under which we lease this space continue through June 30, 2020 for a majority of the space and December 18, 2022 for the remainder of the space. We also lease office space in several locations throughout Europe. We believe our facilities are adequate for our current needs. If we determine that additional or new facilities are needed in the future, we believe that sufficient options would be available to us on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

A putative class action complaint was filed by a putative stockholder on January 17, 2018 in the United States District Court for the District of Massachusetts, entitled Roger Bowers v. TESARO Incorporated (sic), et. al., Case No. 18-10086. The complaint alleges that we and our Chief Executive Officer and our Chief Financial Officer violated certain federal securities laws, specifically under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder, by making false and/or misleading statements about and/or failing to disclose information regarding certain side effects of VARUBI. The plaintiff seeks unspecified damages on behalf of a purported class of purchasers of our common stock between March 14, 2016 and January 12, 2018. The Court has not set a trial date for this matter. We believe that the allegations contained in the complaint are without merit and intend to defend the case vigorously. We have not recorded an estimated liability associated with this legal proceeding as we do not believe that such a liability is probable.

ITEM 4. MINE SAFETY DISCLOSURES

We are not an operator, and have no subsidiary that is an operator, of a coal or other mine.

PART II**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information and Holders**

Our common stock is traded on the NASDAQ Global Select Market under the symbol "TSRO." The following table sets forth, for the periods indicated, the high and low intraday sales prices of our common stock as reported on the NASDAQ Global Select Market.

	HIGH	LOW
Year Ended December 31, 2016:		
First quarter	\$ 51.57	\$ 29.51
Second quarter	\$ 84.91	\$ 36.68
Third quarter	\$ 110.48	\$ 80.35
Fourth quarter	\$ 148.74	\$ 96.52
Year Ended December 31, 2017:		
First quarter	\$ 192.94	\$ 131.60
Second quarter	\$ 168.92	\$ 125.05
Third quarter	\$ 143.45	\$ 106.64
Fourth quarter	\$ 129.10	\$ 76.13

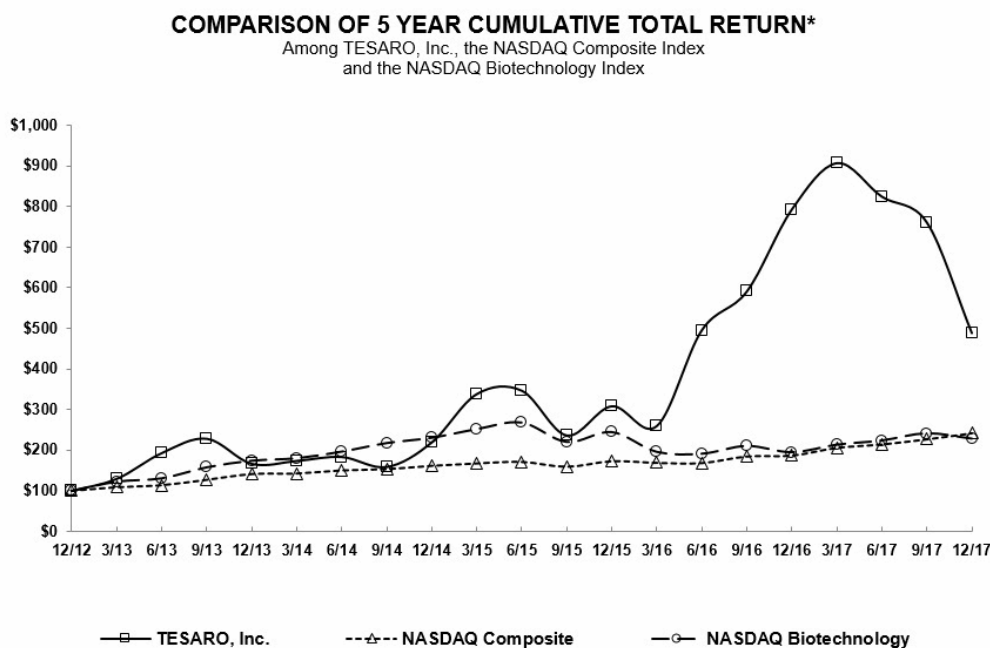
On February 22, 2018, the last reported sale price of our common stock was \$60.89 per share. As of the close of business on February 22, 2018, there were approximately 31 holders of record of our common stock. Because many of the common shares are registered in "nominee" or "street" names, we believe that the total number of beneficial owners is considerably higher.

Dividends

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. We do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, contractual restrictions, business prospects and other factors our board of directors may deem relevant.

Performance Graph (1)

The following graph presents a comparison from December 31, 2012 through December 31, 2017 of cumulative total return on assumed investment of \$100.00 in cash in our common stock, the NASDAQ Composite Index and the NASDAQ Biotechnology Index. Such returns are based on historical results and are not intended to suggest future performance. Data for the NASDAQ Composite Index and the NASDAQ Biotechnology Index assume reinvestment of dividends.



*\$100 invested on 12/31/12 in stock or index, including reinvestment of dividends.
Fiscal year ending December 31.

(1) This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities under that Section, and shall not be deemed incorporated by reference into any filing of TESARO, Inc. under the Securities Act of 1933, as amended.

ITEM 6. SELECTED FINANCIAL DATA

The table below sets forth certain of our selected historical financial data at the dates and for the periods indicated. The selected historical statement of operations data presented below for the years ended December 31, 2015 (as revised), 2016 (as revised), and 2017 and the historical balance sheet data as of December 31, 2016 (as revised) and 2017, have been derived from our audited consolidated financial statements, and should be read in conjunction with our audited consolidated financial statements and related notes that are included elsewhere in this Annual Report on Form 10-K. The historical statement of operations data for the years ended December 31, 2013 and 2014 and the historical balance sheet data as of December 31, 2013, 2014 and 2015 (as revised) have been derived from financial statements not included in this Annual Report on Form 10-K. All financial information presented has been consolidated and reflects the operations of TESARO, Inc. and its wholly-owned subsidiaries. Our historical results are not necessarily indicative of results expected in any future period. The selected historical financial data presented in the table below should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the related notes thereto, which are included elsewhere in this Annual Report on Form 10-K. The selected historical financial information in this section is not intended to replace our consolidated financial statements and the related notes thereto.

	Years Ended December 31,				
	2013	2014	2015 (1)	2016 (1)	2017 (2)
(in thousands, except per share amounts)					
Consolidated Statements of Operations Data:					
Revenues:					
Product revenue, net	\$ —	\$ —	\$ 2,026	\$ 5,174	\$ 120,700
License, collaboration and other revenues	—	—	2,012	52,844	102,626
Total revenues	—	—	4,038	58,018	223,326
Total operating expenses	92,445	167,260	236,421	415,720	702,845
Loss from operations	(92,445)	(167,260)	(232,383)	(357,702)	(479,519)
Net loss	<u>\$ (92,362)</u>	<u>\$ (171,012)</u>	<u>\$ (247,749)</u>	<u>\$ (374,224)</u>	<u>\$ (496,126)</u>
Net loss per share applicable to common stockholders - basic and diluted	<u>\$ (2.93)</u>	<u>\$ (4.79)</u>	<u>\$ (6.29)</u>	<u>\$ (7.85)</u>	<u>\$ (9.17)</u>
Weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted	<u>31,559</u>	<u>35,739</u>	<u>39,387</u>	<u>47,652</u>	<u>54,080</u>

- (1) Statement of operations data for the years ended December 31, 2015 and 2016 have been revised to reflect our adoption of Financial Accounting Standards Board Accounting Standards Update, or ASU, No. 2014-09 effective January 1, 2017, with full retrospective application to January 1, 2015. This ASU creates a new Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers*, replacing previous revenue guidance.
- (2) Total operating expenses for the year ended December 31, 2017 include a \$16.7 million write-down of VARUBI inventories. For additional details, see “Results of Operations – Comparison of the Year Ended December 31, 2017 to the Year Ended December 31, 2016 – Cost of Sales - Product” in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of this Annual Report on Form 10-K.

	As of December 31,				
	2013	2014	2015 (3)	2016 (3)	2017
(in thousands)					
Consolidated Balance Sheet Data:					
Cash and cash equivalents	\$ 130,310	\$ 256,861	\$ 230,146	\$ 785,877	\$ 643,095
Total assets	135,578	260,385	258,676	842,293	862,185
Long-term debt, net	—	111,964	121,325	131,775	437,105
Other long-term obligations	3	—	113	5,391	9,788

- (3) Balance sheet data as of December 31, 2015 and 2016 have been revised to reflect our adoption of ASU No. 2014-09 effective January 1, 2017, with full retrospective application to January 1, 2015.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We are a commercial-stage biopharmaceutical company devoted to providing transformative therapies to people bravely facing cancer. Our primary focus is to develop treatments for solid tumors using various approaches, including small molecules and immuno-oncology antibodies, as monotherapies or in combinations. We have in-licensed and are developing several oncology-related product candidates, and we have entered into several research collaborations with third parties for the discovery of new candidates. We have also entered into arrangements with other companies for the development and commercialization of certain of our product candidates in specific indications and/or geographies. Our two currently marketed products, ZEJULA® (niraparib) and VARUBI®/VARUBY® (rolapitant), are approved in both the U.S. and the European Union, or EU.

The U.S. Food and Drug Administration, or FDA, approved ZEJULA in March 2017 for the maintenance treatment of women with recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in a complete or partial response to platinum-based chemotherapy. The European Commission, or EC, approved ZEJULA in November 2017 as a monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed high grade serous epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in complete or partial response to platinum-based chemotherapy. We have in-licensed exclusive rights to niraparib from Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., or Merck.

VARUBI is approved in the U.S. in oral and intravenous, or IV, formulations for use in combination with other antiemetic agents in adults for the prevention of delayed nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. The EC approved VARUBY (oral formulation), which is the brand name in Europe, in the EU in April 2017 for the prevention of delayed nausea and vomiting associated with highly and moderately emetogenic chemotherapy in adults. We have in-licensed exclusive rights to rolapitant from OPKO Health, Inc., or OPKO.

The FDA approved the IV formulation of VARUBI in October 2017, and we commenced sales of the product in November 2017. In January 2018, we updated the VARUBI IV package insert, including modifications to the contraindications, warnings and precautions, and adverse reactions sections. In February 2018, we determined that we would cease marketing and distribution of VARUBI IV and pursue strategic alternatives for the VARUBI brand, including potentially out-licensing the VARUBI product line.

Research and Development

Our current development programs include:

- *Niraparib* is an orally active and potent poly (ADP-ribose) polymerase, or PARP, inhibitor. Based on research related to PARP inhibitors generally, we believe niraparib may also be active in the treatment of several tumor types. We have several ongoing clinical trials evaluating niraparib for the treatment of various tumor types, as a monotherapy and in combination with other therapeutics, including our own immuno-oncology assets. We expect to initiate additional clinical trials during 2018. We are also collaborating with various other organizations to evaluate niraparib in combination with other therapeutics for the treatment of various cancers. In March 2017, following an interim analysis of data by the independent data monitoring committee, we ceased enrollment in our BRAVO study (assessing niraparib in patients with breast cancer who are germline BRCA mutation carriers) after a determination that it is unlikely to produce data that is interpretable and therefore suitable for registration in this indication.
- *Immuno-Oncology*: Pursuant to our collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, we are developing several antibodies for immuno-oncology targets. TSR-042, which targets PD-1, TSR-022, which targets TIM-3, and TSR-033, which targets LAG-3, are currently in Phase 1 studies. We are conducting pre-clinical research for TSR-075, a bi-specific antibody candidate targeting PD-1/LAG-3. We are also evaluating our immuno-oncology anti-tumor agents in pre-clinical and clinical combination studies with niraparib and other anti-tumor agents.

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We are also engaged in other research and mid- and early-stage development programs, including via third-party collaborations for the discovery, development and commercialization of therapies for various cancers, including the following:

- Janssen Biotech, Inc., or Janssen: Under our global prostate cancer collaboration and license agreement with Janssen, we granted Janssen licenses under certain patent rights and know-how relating to niraparib, for prostate cancer worldwide, except for Japan.
- Millennium Pharmaceuticals, Inc., a wholly-owned subsidiary of Takeda Pharmaceutical Company Limited, or Takeda: This agreement includes the clinical development and commercialization of niraparib for the treatment of all tumor types in Japan, and all tumor types excluding prostate cancer in South Korea, Taiwan, Russia and Australia.
- Zai Lab (Shanghai) Co., Ltd., or Zai Lab: We have granted Zai Lab an exclusive license to develop and commercialize niraparib for the territories of China, Hong Kong and Macao, or the China Territories, except for prostate cancer. This agreement also provides us with the right of first refusal with respect to licenses for two novel, discovery-stage immuno-oncology programs from Zai Lab.
- Merck Sharp & Dohme B.V., a subsidiary of Merck: We have a research agreement with Merck Sharp & Dohme B.V. to perform the TOPACIO trial to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® (pembrolizumab) in patients with triple negative breast cancer and patients with ovarian cancer. Enrollment of the TOPACIO trial is complete in both cohorts, and in June 2017, we announced that initial data from this trial demonstrated a disease control rate of 69% in patients with platinum-resistant ovarian cancer.
- Jiangsu Hengrui Medicine Co., Ltd., or Hengrui: We have granted Hengrui a license of rights to develop, manufacture and commercialize rolapitant in the China Territories.

For further discussion of license and collaboration agreements, see Note 14, “*License and Collaboration Agreements*”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “*Financial Statements and Supplementary Data*”, of this Annual Report on Form 10-K.

License Agreements

Our in-license agreements with Merck, OPKO and AnaptysBio are summarized below.

Rolapitant. In December 2010, we entered into a license agreement with OPKO to obtain exclusive worldwide rights to research, develop, manufacture, market and sell rolapitant. We have made all development milestone payments to OPKO, totaling \$30.0 million, based on achieving specified regulatory milestones in the U.S. and Europe. In addition, for each of the development programs under the OPKO license, we are required to make milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved. We pay OPKO tiered royalties on annual net sales achieved in the U.S. and Europe at percentage rates that range from the low teens to the low twenties, which we expect will result in an effective royalty rate in the low teens. The royalty rate on annual net sales outside of the U.S. and Europe is slightly above the single digits. We will pay royalties on rolapitant until the later of (i) the date that all of the patent rights licensed from OPKO and covering rolapitant expire, are invalidated or are not enforceable, and (ii) 12 years from the first commercial sale of the product, in each case, on a country-by-country and product-by-product basis. Under certain circumstances, we are also required to pay OPKO an annual minimum royalty of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI/VARUBY. If we elect to develop and commercialize rolapitant in Japan through a third-party licensee, we will share equally with OPKO all amounts we receive in connection with such activities under our agreement with such third party, subject to certain exceptions and deductions. We are responsible for all activities necessary to develop and commercialize rolapitant.

Niraparib. In May 2012, we entered into a license agreement with Merck, under which we obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib for all therapeutic and prophylactic uses in humans. We are required to make milestone payments to Merck of up to an aggregate of \$57.0 million in U.S. and European development and regulatory milestones for the first indication, up to an aggregate of \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. We have made \$52.2 million in milestone payments to date. We also pay Merck tiered royalties at percentage rates in the low teens based on

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worldwide annual net sales, until the later of the expiration of the last patent licensed from Merck covering or claiming niraparib, or the tenth anniversary of the first commercial sale of niraparib, in either case, on a country-by-country basis. We are responsible for all activities necessary to develop and commercialize niraparib.

Immuno-Oncology Platform. In March 2014, we entered into a collaboration and exclusive license agreement (later amended) with AnaptysBio, a therapeutic antibody company. Under the terms of this agreement, we possess an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of immunotherapy antibody product candidates targeting PD-1, TIM-3 and LAG-3, and certain bi-specific antibody product candidates. We are responsible for all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs, and we are obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program.

AnaptysBio was responsible for performing initial discovery and development of therapeutic antibodies against immune checkpoint proteins, with the goal of generating immunotherapy antibodies for use in the treatment of cancer. We were required to reimburse AnaptysBio for specified costs incurred by AnaptysBio for these activities, which are now complete. For each of the four development programs, we are required to make milestone payments to AnaptysBio of up to an aggregate of \$18.0 million if certain research and development milestone events are achieved, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. We have made \$21.0 million in development milestone payments to date. We will also be required to pay AnaptysBio tiered single-digit royalties, on a product-by-product basis, on worldwide annual net sales, and additional commercial milestone payments if specified levels of annual net sales of a product are attained.

Financial Operations Overview

We have incurred losses every year since inception in 2010. We expect to incur losses for the foreseeable future, and these losses may increase as we continue to invest in product development and commercialization activities for our products and continue our development of, and seek regulatory approvals for, all of our product candidates, including commercial initiatives for ZEJULA and VARUBI/VARUBY, growing our commercial infrastructure, developing niraparib and our immuno-oncology platform, expanding our international operations, and incur increased interest expenses. Because of the numerous risks and uncertainties associated with product development and regulatory actions, we are unable to predict the timing or amount of increased expenses, or when or if we will be able to achieve or maintain profitability. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels and be forced to reduce our operations.

Revenue

Product revenue is currently derived from sales of our two commercial products, ZEJULA and VARUBI/VARUBY, in the United States and Europe. License, collaboration and other revenues relate to our license agreements with Janssen, Takeda, Zai Lab and Hengrui. For further discussion of our revenue recognition policy, see "*Critical Accounting Policies and Significant Judgments and Estimates*" below. Our ability to generate revenue and become profitable depends upon our ability to successfully commercialize products, including any of our products and product candidates that we have in-licensed (rolapitant, niraparib, and products potentially resulting from our immuno-oncology collaborations) or other products or product candidates that we may in-license or acquire in the future.

We adopted new revenue accounting guidance during 2017 (Accounting Standards Codification Topic 606, *Revenues from Contracts with Customers*, or Topic 606) that impacts the amount and timing of our revenue recognition, and resulted in revisions of revenues previously recognized in our published financial statements. For further discussion, see Note 13, "*Revenue Recognition*", in the Notes to Consolidated Financial Statements included in Part II, Item 8, "*Financial Statements and Supplementary Data*", of this Annual Report on Form 10-K. The references "revised" and "as revised" used herein refer to revisions of data for the years ended December 31, 2015 and 2016, as a result of our adoption of the new revenue guidance with full retrospective application to January 1, 2015.

Research and Development Expenses

Research and development expenses consist primarily of costs incurred for the development of our product candidates, which include:

- employee-related expenses, including salaries, bonuses, benefits, travel and stock-based compensation expense;
- fees and expenses incurred under agreements with contract research organizations, investigative sites, research consortia and other entities in connection with the conduct of clinical trials and preclinical studies and related services, such as administrative, data management, laboratory and biostatistics services;
- the cost of acquiring, developing and manufacturing active pharmaceutical ingredients for product candidates that have not received regulatory approval, clinical trial materials and other research and development materials;
- pre-commercial license fees and milestone payments related to the acquisition of in-licensed product candidates, which are reported on our statements of operations as acquired in-process research and development;
- fees and costs related to regulatory filings and activities;
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent, utilities, maintenance of facilities, insurance and other supplies; and
- other costs associated with clinical, preclinical, discovery and other research activities.

Research and development costs are expensed as incurred. License fees and development milestone payments related to in-licensed products and technology are expensed as acquired in-process research and development if it is determined at that point that they have no established alternative future use. Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations and information provided to us by our vendors.

Research and development activities are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials and manufacturing costs. We expect that our total future research and development costs will continue to increase over current levels, depending on the progress of our clinical development programs. We also anticipate increasing costs associated with our collaborations, manufacturing activities, and potential development milestone payments. Factors we expect to drive such increases include: continuing our currently ongoing clinical trials and initiating new trials for niraparib, immuno-oncology candidates and other potential product candidates; continuing manufacturing development and validation, and initiating additional investigative and collaborative studies related to niraparib; incurring increased discovery, development and manufacturing-related expenses associated with our immuno-oncology platform; conducting regulatory activities; incurring potential milestone obligations; incurring expenses associated with non-clinical research and our research collaborations; leasing additional facility space; and hiring additional personnel.

We cannot determine with certainty the duration and completion costs of the current or future clinical trials of our product candidates or if, when, or to what extent we will generate revenues from the commercialization and sale of any of our product candidates that obtain regulatory approval. We may never succeed in achieving regulatory approval for any of our currently unapproved product candidates. The duration, costs and timing of clinical trials and development of our product candidates will depend on a variety of factors, including the uncertainties of future clinical and preclinical studies, uncertainties in clinical trial enrollment rates, and significant and changing government regulation. In addition, the probability of success for each product candidate will depend on numerous factors, including competition, manufacturing capability and commercial viability. We will determine which programs to pursue and how much to fund each program in response to the scientific and clinical success of each product candidate, as well as based on an assessment of each product candidate's commercial potential. If we experience delays in the completion of, or the termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our future ability to generate product revenues from any of these product candidates will be delayed or jeopardized. These occurrences would harm our business, financial condition and prospects, perhaps significantly, which would require us to alter our current operation plan and potentially delay, scale back, or discontinue the development or commercialization of one or more programs and/or other areas of the business in order to reduce our future expenses and continue to fund our remaining operations.

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The following table presents research and development expenses and acquired in-process research and development expenses on a program-specific basis for our in-licensed products and product candidates for the years ended December 31, 2015, 2016 and 2017, respectively (in thousands).

	Years Ended December 31,		
	2015	2016	2017
<i>Rolapitant Expenses</i>			
Acquired in-process research and development	\$ —	\$ —	\$ —
Research and development	25,799	16,628	9,604
Rolapitant total	25,799	16,628	9,604
<i>Niraparib Expenses</i>			
Acquired in-process research and development	—	9,940	—
Research and development	60,982	104,778	88,346
Niraparib total	60,982	114,718	88,346
<i>Immuno-Oncology Expenses</i>			
Acquired in-process research and development	2,000	9,000	10,000
Research and development:			
TSR-042	8,026	11,285	36,392
TSR-022	5,642	9,242	16,650
TSR-033	1,256	8,003	6,743
Combinations and other	5,460	6,116	16,059
Immuno-Oncology total	22,384	43,646	85,844
<i>Personnel and Other Expenses</i>	48,225	79,092	134,948
Total	\$ 157,390	\$ 254,084	\$ 318,742

For further discussion of the changes in our research and development expenses with respect to the year ended December 31, 2017 and the corresponding period of 2016, see “Results of Operations — Comparison of the Year Ended December 31, 2017 to the Year Ended December 31, 2016 — Research and Development Expenses” below.

Personnel-related costs, depreciation and stock-based compensation are not allocated to any programs, as they are deployed across multiple projects under development and, as such, are separately classified as personnel and other expenses in the table above.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of salaries and related costs, including stock-based compensation, for our commercial personnel, including our field sales force, certain medical education professionals and other commercial support personnel, as well as personnel in executive and other administrative or non-research and development functions. Other selling, general and administrative expenses include certain facility-related costs, information technology costs, pre-commercial and commercial consulting, advertising, market research, and other activities necessary to prepare for and support product launches, and professional fees for legal, patent review, consulting and accounting services.

We anticipate that our selling, general and administrative expenses will continue to increase in the future in support of our commercial and pre-commercial activities related to ZEJULA and VARUBI/VARUBY and potential other products, and continued research and development activities, as well as the continued costs of operating as a public multinational company. These increases will likely include increased costs related to the hiring of additional personnel, executing marketing and promotional programs, hiring consultants, leasing of additional facility space, enhancing information technology systems, and legal and other professional fees, among other expenses.

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Other Income and Expense

Other income and expense consists primarily of interest expense related to our debt instruments and interest income earned on cash and cash equivalents. A portion of the interest expense is non-cash expense relating to accretion of debt discounts and amortization of issuance costs.

Results of Operations

Comparison of the Year Ended December 31, 2017 to the Year Ended December 31, 2016

	Years Ended December 31,		Change	
	2016	2017	Amount	Percentage
(data in thousands)	(as revised)			
Revenues:				
Product revenue, net	\$ 5,174	\$ 120,700	\$ 115,526	2,233%
License, collaboration and other revenues	52,844	102,626	49,782	94%
Total revenues	58,018	223,326	165,308	285%
Expenses:				
Cost of sales – product	1,203	41,137	39,934	3,320%
Cost of sales – intangible asset amortization	1,855	6,158	4,303	232%
Research and development	235,144	308,742	73,598	31%
Selling, general and administrative	158,578	336,808	178,230	112%
Acquired in-process research and development	18,940	10,000	(8,940)	(47)%
Total expenses	415,720	702,845	287,125	69%
Loss from operations	(357,702)	(479,519)	(121,817)	34%
Other income (expense), net	(15,047)	(15,283)	(236)	2%
Loss before income taxes	(372,749)	(494,802)	(122,053)	33%
Provision for income taxes	1,475	1,324	(151)	(10)%
Net loss	\$ (374,224)	\$ (496,126)	\$ (121,902)	33%

Product Revenue. Net product revenue relates to sales of ZEJULA and VARUBI in the U.S., and limited sales of ZEJULA and VARUBY in Europe. We distribute our products principally through a limited number of specialty distributors and through the specialty pharmacy channel. For further discussion regarding our revenue recognition policy, see the “Critical Accounting Policies and Significant Judgments and Estimates” section below and Note 2, “Summary of Significant Accounting Policies”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K. The following table presents net product revenues by product for the years ended December 31, 2016 and 2017, respectively (in thousands).

	Years Ended December 31,		Change	
	2016	2017	Amount	Percentage
(as revised)				
ZEJULA	\$ —	\$ 108,756	\$ 108,756	n/m
VARUBI/VARUBY	5,174	11,944	6,770	131%
Product revenue, net	\$ 5,174	\$ 120,700	\$ 115,526	2,233%

n/m = not meaningful

We began to recognize revenues on sales of ZEJULA in the U.S. in the second quarter of 2017, and in Europe late in the fourth quarter of 2017. For net product revenues for the year ended December 31, 2017, the average net sales price per unit to us (after accounting for fees, rebates, chargebacks, and other discounts or reserves, or, the gross-to-net adjustment) was approximately 89% of the Wholesale Acquisition Cost, or WAC, which is the gross list price at which our direct customers purchase each unit.

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We launched the IV formulation of VARUBI in the U.S. in November 2017. We offered significant launch discounts to our customers, which resulted in large purchases by several of our customers in the first few weeks of the launch. In January 2018, after post-marketing reports of side effects experienced following the commercial introduction of VARUBI IV, we updated the VARUBI IV package insert, including modifications to the contraindications, warnings and precautions, and adverse reactions sections, and issued a “Dear Healthcare Professional Letter” to healthcare providers to highlight the updates. As a result, we expect the vast majority of VARUBI IV units shipped to our customers in 2017 to be returned in 2018. Due to the resulting significant reserve for returns, VARUBI IV net product revenue of \$0.5 million (net of returns reserve of \$24.8 million) was significantly lower than the gross revenue value of units that we shipped to customers during the fourth quarter of 2017. In addition, we have recorded a write-down of VARUBI inventories, as further described below in “Cost of Sales – Product”.

We began to recognize revenues on sales of VARUBI in the U.S. in the fourth quarter of 2015, and on sales of VARUBY in Europe in the second quarter of 2017. The increase in VARUBI net product revenues was due to higher unit sales volumes and price increases, partially offset by higher discounts, rebates and chargebacks. For VARUBI net product revenues for the years ended December 31, 2016 and 2017, the average net sales prices per unit to us were approximately 55% and 25% of WAC, respectively. The percentage for the year ended December 31, 2017 was impacted by the significant returns reserve for VARUBI IV.

License, Collaboration and Other Revenues. License revenue of \$52.8 million for the year ended December 31, 2016 (as revised) relates primarily to our license agreements with Janssen and Zai Lab, and includes up-front license payments and shipments of materials to our collaborators. License revenue of \$102.6 million for the year ended December 31, 2017 relates primarily to the \$100.0 million up-front payment we received under our license agreement with Takeda.

Cost of Sales - Product. Cost of sales of \$1.2 million for the year ended December 31, 2016 (as revised) consists primarily of costs associated with the manufacturing of VARUBI and royalties owed to our licensor for VARUBI sales, as well as costs of product provided under our sampling and other commercial programs and certain period costs. Cost of sales of \$41.1 million for the year ended December 31, 2017 includes ZEJULA manufacturing costs and royalties, and to a lesser extent, VARUBI manufacturing costs and royalties from sales. The amount also includes a \$16.7 million in lower of cost or market write-down for excess and obsolete VARUBI inventories. In addition, a \$1.6 million loss on firm purchase commitments was also recorded as a component of cost of sales within the period. Due to the update to the VARUBI IV package insert described above, we lowered our internal forecasts of future sales of VARUBI IV, and performed an analysis of the recoverability of our VARUBI inventories. As a result of this analysis, we concluded that a significant portion of our VARUBI inventories was unlikely to be utilized in future product sales prior to expiration, and thus recorded the write-down as a component of cost of product sales. We accrued a \$1.8 million royalty obligation as of December 31, 2016 related to the contractual minimum royalty commitment, and this amount was capitalized in the ‘other assets’ caption on the consolidated balance sheet, as we had concluded at the time that the shortfall would likely be recoverable through future years’ sales. Due to the revised forecast of future VARUBI sales described above, we concluded the royalty shortfall amount would no longer be recoverable through future years’ sales, and wrote off \$2.0 million as a component of cost of product sales.

Based on our policy to expense costs associated with the manufacture of our products prior to regulatory approval, certain of the costs of ZEJULA and VARUBI units recognized as revenue during the years ended December 31, 2016 and 2017 were expensed prior to the respective initial regulatory approval dates, and therefore are not included in cost of sales during the respective years. We expect cost of sales for both products to increase in relation to net product revenues as we deplete these inventories.

Cost of Sales - Intangible Asset Amortization. The amounts of \$1.9 million and \$6.2 million for the years ended December 31, 2016 and 2017, respectively, consist of amortization of intangible assets recorded as a result of post-approval milestones paid to licensors. The increase was primarily due to \$49.7 million of new milestone assets recorded in the year ended December 31, 2017 related to ZEJULA and VARUBY regulatory approvals.

Research and Development Expenses. Research and development expenses were \$235.1 million for the year ended December 31, 2016, compared to \$308.7 million for the year ended December 31, 2017, an increase of \$73.6 million. Significant factors resulting in this increase include:

- an increase of \$44.8 million in personnel and other costs (excluding stock-based compensation), primarily related to increased research and development headcount supporting the growth of our development activities;

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- an increase of \$41.2 million in costs associated with our immuno-oncology platform due to increased costs related to the TSR-042 and TSR-022 clinical trials, biologics manufacturing and non-clinical and other immuno-oncology program research activities;
- a decrease of \$16.4 million in costs associated with the niraparib program, primarily related to manufacturing costs, due to our policy of expensing such costs prior to regulatory approval and capitalizing such costs thereafter; and
- a decrease of \$7.0 million in costs associated with rolapitant, primarily due to lower costs relating to rolapitant IV development activities.

In addition, stock-based compensation expense included in research and development expenses increased by \$11.0 million, primarily related to increased awards of restricted stock units, or RSUs, employee stock options and higher grant-date fair values of those awards.

Inventory-related costs of \$18.5 million incurred prior to FDA approval of ZEJULA were recorded as research and development expenses in our consolidated statements of operations and comprehensive loss in prior years. We expect to use the remaining pre-commercialization inventory and materials for future product sales.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$158.6 million for the year ended December 31, 2016, compared to \$336.8 million for the year ended December 31, 2017, an increase of \$178.2 million. This was primarily due to increases of: \$64.0 million in salaries, benefits and other personnel-related costs (excluding stock-based compensation), primarily due to the hiring of sales, marketing, medical affairs and other support personnel associated with the commercialization of ZEJULA and VARUBI/VARUBY, and hiring to support our international operations; \$82.1 million in professional and consulting fees and other expenses to support corporate operational, international and commercialization activities; and \$31.0 million in stock-based compensation expense.

Acquired In-Process Research and Development Expenses. We recorded \$18.9 million in acquired in-process research and development expenses for the year ended December 31, 2016, of which \$9.0 million related to our immuno-oncology platform and \$9.9 million related to the niraparib program. We recorded \$10.0 million in acquired in-process research and development expenses for the year ended December 31, 2017, comprised of three milestones related to our immuno-oncology platform.

Other Income (Expense), Net. Other income (expense) is primarily comprised of interest expense related to our 3.00% convertible senior notes due October 1, 2021, or the Convertible Notes, and our term loan, and our interest income earned on cash and cash equivalents. Interest expense increased by \$3.3 million due to the accretion of the debt discount on the Convertible Notes, which is a component of interest expense, and the use of the effective interest method therefor, and due to interest on the first tranche of the term loan, which we drew in December 2017. Interest income increased by \$2.7 million during the year ended December 31, 2017, primarily due to higher balances of interest-bearing cash equivalents.

Provision for Income Taxes. Provision for income taxes of \$1.5 million for the year ended December 31, 2016 consisted of \$0.2 million of current income tax expense, primarily for subsidiary operations in foreign tax jurisdictions, \$1.4 million of China withholding taxes on the up-front license payment we received from Zai Lab, and \$0.1 million of foreign deferred tax benefit. Provision for income taxes of \$1.3 million for the year ended December 31, 2017 consisted of \$1.2 million of current income tax expense, primarily for subsidiary operations in foreign tax jurisdictions, and \$0.1 million of foreign deferred tax expense.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017, or the Tax Act, was signed into law, resulting in significant changes to the U.S. corporate income tax system. These changes include a reduction of the federal statutory rate from 35% to 21%, reduction of certain tax credits, limitations on deductibility of interest expense and executive compensation, and limitations on the use of net operating loss carryforwards. The Tax Act also transitions U.S. international taxation from a worldwide system to a territorial system and includes provisions to prevent base erosion on foreign earnings, which has the effect of subjecting certain earnings of our foreign subsidiaries to current U.S. taxation. These changes are generally effective beginning in 2018.

For additional details regarding the Tax Act, see Note 10, “Income Taxes”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K.

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Comparison of the Year Ended December 31, 2016 to the Year Ended December 31, 2015

(data in thousands)	Years Ended December 31,		Change	
	2015 (as revised)	2016 (as revised)	Amount	Percentage
Revenues:				
Product revenue, net	\$ 2,026	\$ 5,174	\$ 3,148	155%
License, collaboration and other revenues	2,012	52,844	50,832	2,526%
Total revenues	4,038	58,018	53,980	1,337%
Expenses:				
Cost of sales – product	62	1,203	1,141	1,840%
Cost of sales – intangible asset amortization	268	1,855	1,587	592%
Research and development	155,390	235,144	79,754	51%
Selling, general and administrative	78,701	158,578	79,877	101%
Acquired in-process research and development	2,000	18,940	16,940	847%
Total expenses	236,421	415,720	179,299	76%
Loss from operations	(232,383)	(357,702)	(125,319)	54%
Other income (expense), net	(15,366)	(15,047)	319	(2)%
Loss before income taxes	(247,749)	(372,749)	(125,000)	50%
Provision for income taxes	—	1,475	1,475	n/m
Net loss	\$ (247,749)	\$ (374,224)	\$ (126,475)	51%

n/m = not meaningful

Product Revenue. We recorded \$2.0 million and \$5.2 million in product revenue for the years ended December 31, 2015 and 2016 (both as revised), respectively. These amounts relate to U.S. sales of VARUBI, and the increase was primarily related to the timing of launch, as we began shipping VARUBI in the U.S. in November 2015. For net product revenues for the years ended December 31, 2015 and 2016, the average net sales prices per unit to us were approximately 62% and 55% of WAC, respectively.

License, Collaboration and Other Revenues. License revenue of \$2.0 million for the year ended December 31, 2015 (as revised) relates to our license agreement with Hengrui. License revenue of \$52.8 million for the year ended December 31, 2016 (as revised) relates primarily to our license agreements with Janssen and Zai Lab, and includes up-front license payments and shipments of materials to our collaborators.

Cost of Sales - Product. Cost of sales of \$0.1 million and \$1.2 million for the years ended December 31, 2015 and 2016 (both as revised), respectively, consists primarily of costs associated with the manufacturing of VARUBI and royalties owed to our licensor for VARUBI sales, as well as costs of product provided under our sampling and other commercial programs and certain period costs. Based on our policy to expense costs associated with the manufacture of our products prior to regulatory approval, certain of the costs of VARUBI units recognized as revenue during both years were expensed prior to the September 2015 FDA approval, and therefore are not included in cost of sales during both years. We expect cost of sales to increase in relation to net product revenues as we deplete these inventories.

Cost of Sales - Intangible Asset Amortization. The amounts of \$0.3 million and \$1.9 million for the years ended December 31, 2015 and 2016, respectively, consist of amortization of the intangible asset recorded in 2015 as a result of the \$15.0 million milestone owed upon the first commercial sale of VARUBI.

Research and Development Expenses. Research and development expenses were \$155.4 million for the year ended December 31, 2015 compared to \$235.1 million for the year ended December 31, 2016, an increase of \$79.7 million. Significant factors resulting in this increase include:

- an increase of \$43.8 million in costs associated with the niraparib program, primarily comprised of increased costs related to ongoing or new clinical trials, manufacturing development and regulatory activities;

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- an increase of \$24.8 million in personnel and other costs (excluding stock-based compensation), primarily related to increased research and development headcount supporting the growth of our development activities;
- an increase of \$14.3 million in costs associated with our immuno-oncology platform due to increased costs related to biologics manufacturing and non-clinical research activities; and
- a decrease of \$9.2 million in costs associated with rolapitant, primarily due to lower costs relating to rolapitant IV development activities.

In addition, stock-based compensation expense included in research and development expenses increased by \$8.7 million, primarily related to increased awards of employee stock options and higher grant-date fair values of those awards.

VARUBI-related inventory costs of \$5.1 million incurred prior to FDA approval were recorded as research and development expenses in our consolidated statements of operations and comprehensive loss for the year ended December 31, 2015. We expect to use the remaining pre-commercialization inventory and materials for future sales.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$78.7 million for the year ended December 31, 2015, compared to \$158.6 million for the year ended December 31, 2016, an increase of \$79.9 million. This was primarily due to increases of: \$36.2 million in salaries, benefits and other personnel-related costs (excluding stock-based compensation), primarily due to the hiring of sales, marketing, medical affairs and other support personnel associated with the commercialization of VARUBI and pre-commercial ZEJULA activities, and hiring to support our international operations; \$30.6 million in professional and consulting fees and other expenses to support corporate operational, international and commercialization activities; and \$14.0 million in stock-based compensation expense.

Acquired In-Process Research and Development Expenses. We recorded \$2.0 million in acquired in-process research and development expenses for the year ended December 31, 2015, comprised of two \$1.0 million milestones related to our immuno-oncology platform. We recorded \$18.9 million in acquired in-process research and development expenses for the year ended December 31, 2016, of which \$9.0 million related to our immuno-oncology platform and \$9.9 million related to the niraparib program.

Other Income (Expense), Net. Other income (expense) is primarily comprised of interest expense related to our Convertible Notes, and interest income earned on cash and cash equivalents. Interest income increased by \$1.4 million during the year ended December 31, 2016, primarily due to higher balances of interest-bearing cash equivalents. Interest expense increased by \$1.1 million due to the accretion of the debt discount, which is a component of interest expense, and the use of the effective interest method.

Provision for Income Taxes. Provision for income taxes of \$1.5 million for the year ended December 31, 2016 consisted of \$0.2 million of current income tax expense, which relates primarily to subsidiary operations in foreign tax jurisdictions, \$1.4 million of China withholding taxes on the up-front license payment we received from Zai Lab, and \$0.1 million of foreign deferred tax benefit. We recorded no provision for income taxes for the year ended December 31, 2015.

Liquidity and Capital Resources

As of December 31, 2017, our principal source of liquidity was cash and cash equivalents, which totaled \$643.1 million. Our net losses were \$247.7 million, \$374.2 million, and \$496.1 million for the years ended December 31, 2015 (as revised), 2016 (as revised) and 2017, respectively. We expect to incur significant expenses and operating losses for the foreseeable future.

Sources of Liquidity

Since our inception in 2010, we have funded our operations primarily through public offerings of our common stock, the private placement of our equity securities, the issuance of convertible notes and a term loan financing. From inception through December 31, 2017, we received \$1.4 billion in proceeds, net of underwriting discounts and commissions and offering expenses, from public offerings and private placements of common stock and private placements of convertible preferred stock. In September 2014, we issued \$201.3 million aggregate principal amount of Convertible Notes, with net proceeds of \$194.7

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million, and we used \$20.8 million of the proceeds from this transaction to enter into capped call option transactions associated with the Convertible Notes.

In November 2017, we entered into a loan agreement, or the Loan Agreement, with BioPharma Credit PLC, as collateral agent and a lender, and BioPharma Credit Investments IV Sub LP, as a lender. The Loan Agreement provides for a senior secured term loan facility of up to \$500.0 million to be funded in two tranches: (i) a Tranche A Loan in an aggregate principal amount of \$300.0 million, or the Tranche A Loan, funded in December 2017; and (ii) a Tranche B Loan in an aggregate principal amount of up to \$200.0 million, or the Tranche B Loan, and together with the Tranche A Loan, the Term Loans, to be funded at our option no earlier than June 30, 2018 and no later than December 20, 2018, with no less than 90 days notice. We received \$293.6 million in net proceeds from the Tranche A Loan in December 2017. Additional information regarding the Convertible Notes and the Term Loans is included in Note 7, “Debt”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K.

We have also received up-front license fees totaling \$151.0 million to date from licensees pursuant to our out-license agreements for niraparib and rolapitant.

Cash Flows

The following table presents a summary of the primary sources and uses of cash for the years ended December 31, 2015, 2016 and 2017 (in thousands):

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
Net cash provided by (used in):			
Operating activities	\$ (194,531)	\$ (287,671)	\$ (400,121)
Investing activities	(19,805)	(23,324)	(66,513)
Financing activities	187,621	866,884	323,307
Effect of exchange rate changes on cash and cash equivalents	—	(158)	545
Increase (decrease) in cash and cash equivalents	\$ (26,715)	\$ 555,731	\$ (142,782)

Operating Activities. The use of cash in all periods resulted primarily from our net losses adjusted for non-cash charges and changes in components of working capital. The significant increases in cash used in operating activities for the years ended December 31, 2016 and 2017 were primarily due to increased external research and development expenses as we continued to progress the niraparib development program and the immuno-oncology platform, and increased internal and external expenses related to pre-commercial and other commercial activities related to the approvals and launches of ZEJULA and VARUBI. Higher costs associated with increased employee headcount related to expanded development and commercial activities also contributed to the increase in cash used in operating activities. These factors were partially offset by lower external development costs associated with our rolapitant program, and for the year ended December 31, 2017, lower external development costs related to niraparib. Purchases of ZEJULA and VARUBI inventories also contributed to the increases in cash used in operating activities for the years ended December 31, 2016 and 2017. Non-cash charges for the year ended December 31, 2017 also include a \$16.7 million write-down of VARUBI inventories. There were no inventory write-downs for the years ended December 31, 2015 or 2016.

Amounts recorded in the consolidated statements of operations and comprehensive loss as “Acquired in-process research and development” are included in the consolidated statements of cash flows as adjustments to reconcile net loss to net cash used in operating activities because these amounts are charged to expense as incurred in the respective periods, but the cash payments relating to these expenses are classified as investing activities in the consolidated statements of cash flows, as described below.

Investing Activities. Cash used in investing activities primarily consisted of the following amounts relating to the acquisition of product candidate licenses and milestone payments, which were recorded as acquired in-process research and development expense as incurred, except as noted:

- for the year ended December 31, 2015, a \$15.0 million commercial milestone payment related to VARUBI (recorded as an intangible asset), and \$2.0 million in milestone payments for the immuno-oncology platform;

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- for the year ended December 31, 2016, \$9.0 million in milestone payments for the immuno-oncology platform and \$9.9 million for the niraparib program; and
- for the year ended December 31, 2017, \$49.7 million in commercial milestones related to ZEJULA and VARUBI (recorded as intangible assets), and \$10.0 million in milestone payments for the immuno-oncology platform.

Cash used in investing activities for the years ended December 31, 2015, 2016 and 2017 also included the use of \$2.3 million, \$2.9 million, and \$6.0 million, respectively, for purchases of property and equipment.

Financing Activities. Cash provided by financing activities primarily consisted of the following amounts raised in issuances of equity and debt instruments:

- for the year ended December 31, 2015, net cash proceeds of \$179.8 million from a follow-on offering of common stock;
- for the year ended December 31, 2016, net cash proceeds of \$838.1 million from offerings of our common stock, consisting of: \$155.0 million from a private placement of common stock; \$50.0 million from a private sale of common stock to Johnson & Johnson Innovation – JJDC, Inc.; and \$408.9 million and \$224.2 million, respectively, from follow-on public offerings of common stock in July 2016 and November 2016; and
- for the year ended December 31, 2017, net cash proceeds of \$293.6 million from our draw of \$300.0 million in aggregate principal under our Loan Agreement.

Cash provided by financing activities during the years ended December 31, 2015, 2016 and 2017 also included \$7.9 million, \$28.8 million and \$29.7 million, respectively, in proceeds from exercises of stock options under our 2010 Stock Incentive Plan and 2012 Omnibus Incentive Plan, and issuances of common stock under our 2012 Employee Stock Purchase Plan.

Operating Capital Requirements

We expect to incur significant expenses and operating losses for the foreseeable future. Overall, we expect operating expenses to continue to increase over current levels as we incur increased costs related to: (i) our ongoing U.S. and international commercialization and pre-commercial activities including executing related marketing and promotional programs for the commercialization of ZEJULA; (ii) the advancement of clinical trial and other development and regulatory activities under our current development programs including niraparib, TSR-042, TSR-022 and TSR-033; (iii) activities under our research collaborations; (iv) costs related to expanding our international operations; and (v) other research and development activities and potential future collaborative or in-licensed development programs. If we obtain regulatory approval for any of our product candidates in addition to our current product approvals, or in anticipation of obtaining regulatory approval, we expect that we will incur significant additional commercialization expenses related to product sales, marketing, manufacturing and distribution. We also expect to incur increasing selling, general and administrative costs associated with our anticipated growth and continuing operation as a multinational public company, and we will continue to incur substantial interest expense related to our outstanding debt. The actual amount of many of these expenditures will depend on numerous factors, including the timing of expenses and the timing and progress of our clinical trial activity and commercialization efforts for our products and product candidates.

We may require additional capital for the continuing commercialization of our products, further development and potential commercialization of our product candidates, and cash interest obligations related to our outstanding debt. In addition, future license payments or milestone payments could cause our total operating expenses and cash usage to fluctuate. For example, upon the U.S. and EU approvals of ZEJULA in 2017, we made milestone payments totaling \$39.5 million to Merck. We may also need additional funds to pursue our strategy of in-licensing or acquiring additional product candidates, and to meet our obligations to repay the principal of our Term Loans when due and to repay the Convertible Notes at maturity or, at our election, upon conversion. We are subject to the risks inherent to the development of new biopharmaceutical products, and to global expansion, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business and cause increased uses of cash.

We will need to generate significant revenues to achieve profitability, and we may never do so. Until we can generate a sufficient amount of revenue from our products, if ever, we expect to finance future cash needs through public or private

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equity or debt offerings and facilities, including potentially an additional draw under the Loan Agreement, and we may seek additional capital through arrangements with strategic partners or from other sources. Additional capital may not be available to us on reasonable terms, if at all. If we are unable to raise additional needed capital in sufficient amounts or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our products or product candidates and/or other areas of our business. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. Furthermore, these securities may have rights senior to those of our common stock and could contain covenants that would restrict our operations and potentially impair our competitiveness, 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. Any of these events could significantly harm our business, financial condition and prospects.

We believe our currently available funds and the cash we expect to generate from product sales will be sufficient to fund our existing cash flow requirements and our operations at their currently planned levels through at least the 12 months following the filing of this Annual Report on Form 10-K. Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements, both short and long-term, will depend on many factors, including:

- our ability to generate sufficient revenues from sales of ZEJULA and, if approved, our other product candidates;
- the cost of continuing to expand our development and commercial capabilities for our products and our product candidates, both in the U.S. and in certain foreign markets, including Europe;
- the outcome, timing and cost of regulatory approvals by the FDA and comparable foreign regulatory authorities and the potential that the FDA or comparable foreign regulatory authorities may require that we perform more studies than those that we currently expect;
- the initiation, progress, timing, costs and results of clinical trials for our current product candidates and any future product candidates we may in-license;
- the cost and timing of completion of commercial-scale outsourced manufacturing activities;
- the cost and timing of clinical development activities for niraparib;
- the cost and timing of preclinical and clinical development and manufacturing activities associated with our immuno-oncology antibody product candidates;
- the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights that we own or control;
- the cost of acquiring or in-licensing global rights for additional product candidates;
- the amount and timing of potential conversion requests, if any, and interest expense associated with our Convertible Notes; and
- our need to repay amounts due under the Loan Agreement.

If we lack sufficient capital to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2017 (in thousands):

	Payments due by period				More than 5 years
	Total	Less than 1 year	1 to 3 years	3 to 5 years	
Convertible Notes (a)	\$ 223,891	\$ 6,038	\$ 12,075	\$ 205,778	\$ —
Term loan (a)	458,399	30,949	100,826	115,141	211,483
Purchase commitments and other commitments	83,468	80,247	3,221	—	—
Operating lease obligations	38,842	9,890	19,329	7,332	2,291
Totals	\$ 804,600	\$ 127,124	\$ 135,451	\$ 328,251	\$ 213,774

- (a) See Note 7, “Debt”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K for additional information. Amounts include both principal and interest.

Purchase and Other Commitments

Purchase commitments in the table above relate to agreements with certain vendors for the provision of services, including services related to commercial manufacturing, data management, clinical operation support and diagnostic development for which we are not contractually able to terminate for convenience and avoid any and all future obligations to the vendors. Certain agreements provide for termination rights subject to termination fees. Under such agreements, we are contractually obligated to make certain minimum payments to the vendors, mainly to reimburse the vendor for unrecoverable outlays incurred prior to cancellation. The exact amounts of such obligations are dependent on the timing of termination and the exact terms of the relevant agreement and cannot be estimated with reasonable accuracy. In the table above, we have included our estimated commitments under such agreements as of December 31, 2017, assuming we do not terminate these agreements. These amounts do not represent our entire anticipated purchases in the future, but generally represent only our estimate of those items for which we have a contractual commitment to pay. The actual amounts we pay in the future to the vendors under such agreements may be less than the amounts shown in the table above.

Purchase commitments also include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Such obligations are related principally to inventory purchase orders based on our current manufacturing needs and require significant lead times to be fulfilled by our vendors. Purchase commitments exclude agreements that are cancelable without penalty, including open purchase orders that represent authorizations to purchase rather than legally binding agreements. Other commitments relate principally to milestone payments under certain licensing and collaboration agreements that we are obligated to pay even if we terminate such license agreements. Our license agreement with OPKO requires us to pay OPKO tiered royalties on annual net of rolapitant sales achieved in the United States and Europe at percentage rates that range from the low teens to the low twenties, which we expect will result in an effective royalty rate in the low teens. Under certain circumstances, we are also required to pay OPKO an annual minimum royalty of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI/VARUBY.

As of December 31, 2017, we had several ongoing clinical studies in various clinical trial stages. Our most significant clinical trial expenditures are made to clinical research organizations, or CROs. Due to cancellation rights included in our contractual agreements with our CROs, we have not included any amounts related to our CRO contracts in the contractual obligations table above (other than those described in the preceding paragraphs).

Our collaboration agreement with Myriad Genetics, Inc. allows us to terminate the agreement with proper written notice. However, we are required to pay any remaining unpaid milestones up to \$1.0 million, which are included in the table above in the “Less than 1 year” column.

Operating and Facility Lease Obligations

Operating lease obligations in the table above relate to operating leases for office facilities. We lease approximately 260,000 square feet of office space in Waltham, Massachusetts under a non-cancelable operating lease agreement that

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commenced April 1, 2013 and continues through June 30, 2020 and an indenture of lease that commenced December 18, 2017 and continues through December 18, 2022. We also lease office space in several locations throughout Europe.

Product Licenses

In addition to the amounts set forth in the table above, we have certain obligations under licensing agreements with third parties that are contingent upon achieving various development, regulatory and commercial milestones. Pursuant to our license agreement with OPKO for the development and commercialization of rolapitant, we have made all development milestone payments, totaling \$30.0 million, based on achieving specified regulatory milestones in the U.S. and Europe. We are required to make additional milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved. Pursuant to our license agreement with Merck for the development and commercialization of niraparib, we are required to make milestone payments to Merck of up to an aggregate of \$57.0 million in development and regulatory milestones for the first indication, up to an aggregate of \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. We have made \$52.2 million in milestone payments to Merck to date. Pursuant to our collaboration and exclusive license agreement with AnaptysBio, as amended, our commitments to reimburse AnaptysBio for specified costs incurred in its initial discovery and development activities are now complete. For each of our four development programs, we are required to make milestone payments to AnaptysBio of up to an aggregate of \$18.0 million if certain research and development milestone events are achieved, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. We have made \$21.0 million in development milestone payments to date. We also will be required to make commercial milestone payments if specified levels of annual net sales of a product are attained. Finally, pursuant to the terms of each of these license agreements, upon commencement of commercial sales of a product, if any, we are required to pay royalties to our licensors on net sales of the respective products.

Technology Licenses

In October 2012, we entered into two license agreements with AstraZeneca UK Limited, under which we made aggregate up-front payments of \$0.4 million. These agreements provide us with the exclusive right to certain methods of treating patients with PARP inhibitors solely with respect to niraparib. Under certain circumstances, we may be required to make milestone and royalty payments to AstraZeneca UK Limited based on the achievement of certain development and regulatory milestone events with regard to niraparib, and on net sales of niraparib. We have not included any amounts related to these agreements in the table above. We have made related milestone payments totaling \$1.5 million through December 31, 2017.

Off-Balance Sheet Arrangements

As of December 31, 2017, we did not have any off-balance sheet arrangements as defined in Regulation S-K, Item 303(a)(4)(ii).

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities in our financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to accrued research and development expenses, net product revenue, stock-based compensation expense and intangible assets. We base our estimates on historical experience, known trends and events and various other factors 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 from these estimates under different assumptions or conditions. In making estimates and judgments, management employs critical accounting policies.

While our significant accounting policies are described in more detail in the notes to our financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies to be most critical to the judgments and estimates used in the preparation of our financial statements.

Revenue Recognition

Effective January 1, 2017, we adopted Topic 606 using the full retrospective transition method. Under this method, we revised our consolidated financial statements for the years ended December 31, 2015 and 2016, and applicable interim periods within those years, as if Topic 606 had been effective for those periods. This standard applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under Topic 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration that the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of Topic 606, the entity 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 entity satisfies a performance obligation. We only apply the five-step model to contracts when it is probable that the entity 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 Topic 606, we assess the goods or services promised within each contract and identify, as a performance obligation, and assess whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Product Revenue, Net

We sell our products principally to a limited number of specialty distributors and specialty pharmacy providers in the U.S. and the EU, or collectively, our Customers. These Customers subsequently resell our products to health care providers and patients. In addition to distribution agreements with Customers, we enter into arrangements with health care providers and payors that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of our products.

Revenues from product sales are recognized when the Customer obtains control of our product, which occurs at a point in time, typically upon delivery to the Customer. When we perform shipping and handling activities after the transfer of control to the Customer (e.g., when control transfers prior to delivery), they are considered as fulfillment activities, and accordingly, the costs are accrued when the related revenue is recognized. Taxes collected from Customers relating to product sales and remitted to governmental authorities are excluded from revenues. We expense incremental costs of obtaining a contract as and when incurred if the expected amortization period of the asset that we would have recognized is one year or less.

Reserves for Variable Consideration

Revenues from product sales are recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established and which result from discounts, returns, chargebacks, rebates, co-pay assistance and other allowances that are offered within contracts between us and our Customers, health care providers, payors and other indirect customers relating to our product sales. These reserves are based on the amounts earned or to be claimed on the related sales and are classified as reductions of accounts receivable (if the amount is payable to the Customer) or a current liability (if the amount is payable to a party other than a Customer). Where appropriate, these estimates take into consideration a range of possible outcomes that are probability-weighted for relevant factors such as our historical experience, current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. Overall, these reserves reflect our best estimates of the amount of consideration to which we are entitled based on the terms of the contract. The amount of variable consideration that is included in the transaction price may be constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Trade Discounts and Allowances: We generally provide Customers with discounts that include incentive fees that are explicitly stated in our contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized. In addition, we receive sales order management, data and distribution services from certain Customers. To the extent the services received are distinct from our sale of products to the Customer, these payments are classified in selling, general and administrative expenses in the consolidated statements of operations and comprehensive loss.

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Product Returns: Consistent with industry practice, we generally offer Customers a limited right of return based on the product's expiration date for product that has been purchased from us, which lapses upon shipment to a patient. We estimate the amount of our product sales that may be returned by our Customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. We currently estimate product return liabilities using available industry data and our own historical sales information, including our visibility into the inventory remaining in the distribution channel.

Provider Chargebacks and Discounts: Chargebacks for fees and discounts to providers represent the estimated obligations resulting from contractual commitments to sell products to qualified healthcare providers at prices lower than the list prices charged to Customers who directly purchase the product from us. Customers charge us for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable. Chargeback amounts are generally determined at the time of resale to the qualified healthcare provider by Customers, and we generally issue credits for such amounts within a few weeks of the Customer's notification to us of the resale. Reserves for chargebacks consist of credits that we expect to issue for units that remain in the distribution channel inventories at each reporting period end that we expect will be sold to qualified healthcare providers, and chargebacks that Customers have claimed but for which we have not yet issued a credit.

Government Rebates: We are subject to discount obligations under state Medicaid programs and Medicare. We estimate our Medicaid and Medicare rebates based upon a range of possible outcomes that are probability-weighted for the estimated payor mix. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included in accrued expenses on the consolidated balance sheet. For Medicare, we also estimate the number of patients in the prescription drug coverage gap for whom we will owe an additional liability under the Medicare Part D program. Our liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at period end.

Payor Rebates: We contract with various private payor organizations, primarily insurance companies and pharmacy benefit managers, for the payment of rebates with respect to utilization of our products. We estimate these rebates and record such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability.

Other Incentives: Other incentives that we offer include voluntary patient assistance programs such as co-pay assistance. Co-pay assistance programs are intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payors. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that we expect to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at period end.

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To date, our sources of product revenue have been U.S. sales of ZEJULA and VARUBI, and limited sales of ZEJULA and VARUBI in Europe. The following table summarizes activity in each of the product revenue allowance and reserve categories for the years ended December 31, 2015 (as revised), 2016 (as revised) and 2017 (in thousands):

	Chargebacks, discounts and fees	Government and other rebates	Returns	Total
Balance at December 31, 2014	\$ —	\$ —	\$ —	\$ —
Provision related to current period sales	813	422	8	1,243
Adjustment related to prior period sales	—	—	—	—
Credit or payments made during the period	—	—	—	—
Balance at December 31, 2015	813	422	8	1,243
Provision related to current period sales	2,231	1,941	10	4,182
Adjustment related to prior period sales	—	—	—	—
Credit or payments made during the period	(2,867)	(1,051)	—	(3,918)
Balance at December 31, 2016	177	1,312	18	1,507
Provision related to current period sales	21,732	12,090	16,338	50,160
Adjustment related to prior period sales	—	62	—	62
Credit or payments made during the period	(19,821)	(7,014)	(6)	(26,841)
Balance at December 31, 2017	\$ 2,088	\$ 6,450	\$ 16,350	\$ 24,888

The provision for returns related to sales for the year ended December 31, 2017 was primarily related to VARUBI IV, as further described above, in “Results of Operations — Comparison of the Year Ended December 31, 2017 to the Year Ended December 31, 2016 — Product Revenue”.

License, Collaboration and Other Revenues

We enter into out-licensing agreements that are within the scope of Topic 606, under which we license certain of our product candidates’ rights to third parties. The terms of these arrangements typically include payment of one or more of the following: non-refundable, up-front license fees; development, regulatory and commercial milestone payments; payments for manufacturing supply services that we provide through our contract manufacturers; and royalties on net sales of licensed products. Each of these payments results in license, collaboration and other revenues, except for revenues from royalties on net sales of licensed products, which are classified as royalty revenues.

In determining the appropriate amount of revenue to be recognized as we fulfill our obligations under each of our agreements, we perform the following steps: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) we satisfy each performance obligation. As part of the accounting for these arrangements, we must develop assumptions that require judgment to determine the stand-alone selling price for each performance obligation identified in the contract. We utilize key assumptions to determine the stand-alone selling price, which may include forecasted revenues, development timelines, reimbursement rates for personnel costs, discount rates and probabilities of technical and regulatory success.

Licenses of Intellectual Property: If the license to our intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, we recognize revenue from non-refundable, up-front fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, we utilize judgment 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 and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue from non-refundable, up-front fees. We evaluate the measure of progress each reporting period and, if necessary, adjust the measure of performance and related revenue recognition.

Milestone Payments: At the inception of each arrangement that includes development milestone payments, we evaluate whether the milestones are considered probable of being reached and estimate the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within our control or the

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licensee's control, 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, for which we recognize revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, we re-evaluate the probability of achievement of such development milestones and any related constraint, and if necessary, adjust our estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect license, collaboration and other revenues and earnings in the period of adjustment.

Manufacturing Supply Services: Arrangements that include a promise for future supply of drug substance or drug product for either clinical development or commercial supply at the licensee's discretion are generally considered as options. We assess if these options provide a material right to the licensee and if so, they are accounted for as separate performance obligations. If we are entitled to additional payments when the licensee exercises these options, any payments are recorded in license, collaboration and other revenues when the licensee obtains control of the goods, which is upon delivery.

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, we recognize 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). To date, we have not recognized any royalty revenue resulting from any of our out-license arrangements.

We receive payments from our licensees based on billing schedules established in each contract. Up-front payments and fees are recorded as deferred revenue upon receipt or when due until we perform our obligations under these arrangements. Amounts are recorded as accounts receivable when our right to consideration is unconditional. We do 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 licensees and the transfer of the promised goods or services to the licensees will be one year or less.

Accrued Research and Development Expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost. The majority of our service providers invoice us monthly in arrears for services performed or when contractual milestones are met. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued research and development expenses include fees paid to:

- CROs in connection with clinical studies;
- investigative sites in connection with clinical studies;
- vendors related to product manufacturing, development and distribution of clinical supplies;
- collaborator entities in connection with our collaboration agreements; and
- vendors in connection with preclinical development activities.

We record expenses related to clinical studies and manufacturing development activities based on our estimates of the services received and efforts expended pursuant to contracts with multiple CROs and manufacturing vendors that conduct and manage these activities on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract, and may result in uneven payment flows. There may be instances in which payments made to our vendors will exceed the level of services provided and result in a prepayment of the expense. Payments under some of these contracts depend on factors such as the successful enrollment of subjects and the completion of clinical trial milestones. In accruing service fees, we estimate the time period over which services will be performed, enrollment of subjects, number of sites activated and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrued or prepaid expense balance accordingly. Although we do not expect our estimates to be materially different from amounts actually incurred, if our estimates of the status and timing of services

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performed differ from the actual status and timing of services performed, we may report amounts that are too high or too low in any particular period. To date, there have been no material differences from our estimates to the amounts actually incurred.

Stock-Based Compensation

We recognize compensation costs related to stock options, RSUs, and restricted stock awards granted to employees based on the estimated fair value of the awards on the date of grant. Following the consummation of our initial public offering, stock option, RSUs and restricted stock award fair values are determined utilizing the quoted market price of our common stock. For awards with performance conditions, the related compensation cost is recognized as an expense, starting when the milestone becomes probable of being met, over the remaining performance period. Described below is the methodology we utilize in measuring stock-based compensation expense.

We apply the fair value recognition provisions of Financial Accounting Standards Board, or FASB, Accounting Standards Codification Topic 718, *Compensation - Stock Compensation*. Determining the amount of stock-based compensation to be recorded requires us to estimate the fair value of a stock-based award as of its grant date. Stock-based compensation expense is recognized ratably over the requisite service period, which in most cases is the vesting period of the award. Estimating the fair value of stock-based awards requires us to make subjective assumptions. We use the Black-Scholes option pricing model to value our stock option awards. This valuation methodology requires us to make assumptions regarding the expected volatility of our common stock, the expected term of the stock option, the risk-free interest rate for a period that approximates the expected term of the stock option, and our expected dividend yield. Prior to June 2012, we were a privately-held company with a limited operating history and accordingly we utilized data from representative peer companies to estimate expected stock price volatility from our inception to our initial public offering. We selected peer companies from the biopharmaceutical industry with similar characteristics as us, including stage of product development, market capitalization and therapeutic focus. Since our initial public offering in June 2012, we have continued to use volatility data from a representative peer group, blended with our own actual volatility, to estimate expected stock price volatility, due to the limited public trading history of our common stock. To determine the expected term assumption, we use the simplified method as prescribed by U.S. Securities and Exchange Commission, or SEC, Staff Accounting Bulletin No. 107, *Share-Based Payment*, as we do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term of stock options granted to employees. We utilize a dividend yield of zero based on the fact that we have never paid cash dividends and have no current intention to pay cash dividends. The risk-free interest rate used for each stock option is based on the U.S. Treasury yield curve in effect at the time of grant for instruments with a similar expected term.

The following table presents the assumptions used in estimating the grant-date fair values of stock options granted during the years ended December 31, 2015, 2016 and 2017:

	Years Ended December 31,		
	2015	2016	2017
Dividend yield	—	—	—
Volatility	63% - 65%	57% - 59%	60% - 64%
Risk-free interest rate	1.35% - 1.95%	1.07% - 2.10%	1.79% - 2.30%
Expected term (years)	5.50 - 6.08	5.50 - 6.08	5.50 - 6.08

Stock-based compensation expense totaled \$25.9 million, \$48.5 million, and \$90.4 million, respectively, for the years ended December 31, 2015, 2016 and 2017. We expect stock-based compensation expense to increase in future periods primarily due to recent and expected increases in headcount and related equity award grants.

Inventory

We value our inventories at the lower of cost or net realizable value, on a first-in, first-out, or FIFO, basis. Prior to the regulatory approval of our product candidates, we incur expenses for the manufacture of drug product that could potentially be available to support the commercial launch of our products. Until the first reporting period when regulatory approval has been received or is otherwise considered probable, we record all such costs as research and development expense. Inventory used in clinical trials is also expensed as research and development expense, when selected for such use.

After we begin capitalizing inventories, we perform an assessment of the recoverability of capitalized inventory during each reporting period, and write down any excess and obsolete inventory to its net realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, are recorded as a component of cost of product sales in the consolidated statements of operations and comprehensive loss. The determination of whether inventory

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costs will be realizable requires the use of estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required.

In-Process Research and Development

As part of our business strategy, we may in-license the rights to develop and commercialize product candidates. For each in-license transaction we evaluate whether we have acquired processes or activities along with inputs that would be sufficient to constitute a “business” as defined under GAAP. A “business” as defined under GAAP consists of inputs and processes applied to those inputs that have the ability to create outputs. Although businesses usually have outputs, outputs are not required for an integrated set of activities to qualify as a business. When we determine that we have not acquired sufficient processes or activities to constitute a business, any up-front payments, as well as pre-commercial milestone payments, are immediately expensed as acquired in-process research and development in the period in which they are incurred. Milestone payments made to third parties subsequent to regulatory approval are capitalized as intangible assets and amortized over the estimated remaining useful life of the related product.

Intangible Assets

We maintain definite-lived intangible assets related to certain capitalized milestones. These assets are amortized on a straight-line basis over their remaining useful lives, which are estimated to be the remaining patent life. If our estimate of the product’s useful life is shorter than the remaining patent life, then the shorter period is used. Amortization expense is recorded as a component of cost of sales in the consolidated statements of operations and comprehensive loss.

We assess our intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, may include actions by regulatory authorities with respect to us or our competitors, the receipt of additional clinical or nonclinical data regarding our drug candidate or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, we perform a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, we would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value. Due to the update to the VARUBI IV package insert described above, we lowered our internal forecasts of future sales, and performed an analysis of the recoverability for the capitalized milestone payments (intangible assets) associated with the VARUBI/VARUBY product. As of December 31, 2017, our expected non-discounted future cash flows indicated that the carrying amounts were recoverable.

Recently Issued Accounting Pronouncements

For a discussion of new accounting pronouncements, see Note 2, “*Summary of Significant Accounting Policies*”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “*Financial Statements and Supplementary Data*”, of this Annual Report on Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk related to changes in interest rates. As of December 31, 2016 and 2017, we had cash and cash equivalents of \$785.9 million and \$643.1 million, respectively, consisting primarily of money market funds. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of United States interest rates, particularly because our investments are in short-term securities, and by changes in the London Interbank Offered Rate, or LIBOR, because of the floating rates of interest under the Loan Agreement. Our investment securities are also subject to interest rate risk and may fall in value if market interest rates increase.

As of December 31, 2017, we had outstanding borrowings under the Loan Agreement totaling \$300.0 million. These borrowings bear interest at a rate equal to the LIBOR rate, plus an applicable margin of 8% per annum (with the LIBOR rate subject to a floor of 1% and a cap equal to the LIBOR rate as of the Tranche A closing date under the Loan Agreement plus 1.5%). As such, a hypothetical 1% increase in the LIBOR rate would result in a corresponding change in interest expense over a one-year period of approximately \$3.0 million. See Note 7, “*Debt*”, in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for more information on the Loan Agreement.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

TESARO, Inc.

Consolidated Financial Statements

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of TESARO, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of TESARO, Inc. (the Company) as of December 31, 2016 and 2017, the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2017, and the related notes and the financial statement schedule listed in the Index at item 15(a)(2) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2016 and 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 28, 2018 expressed an unqualified opinion thereon.

Adoption of ASU No. 2014-09

As discussed in Note 2 to the consolidated financial statements, the Company changed its method for accounting for revenue in 2017 due to the adoption of Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers* (Topic 606), and the amendments in ASUs 2015-14, 2016-08, 2016-10, 2016-12, 2016-20 and 2017-14.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2010.
Boston, Massachusetts
February 28, 2018

TESARO, Inc.

Consolidated Balance Sheets

(all amounts in 000's, except share and per share data)

	December 31,	
	2016	2017
	<i>(as revised)</i>	
Assets		
Current assets:		
Cash and cash equivalents	\$ 785,877	\$ 643,095
Accounts receivable	6,195	53,416
Inventories	14,700	57,939
Other current assets	10,515	33,511
Total current assets	817,287	787,961
Intangible assets, net	12,877	56,384
Property and equipment, net	6,640	9,652
Restricted cash	1,694	2,552
Other assets	3,795	5,636
Total assets	<u>\$ 842,293</u>	<u>\$ 862,185</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 5,236	\$ 4,172
Accrued expenses	68,700	154,808
Deferred revenue, current	95	324
Other current liabilities	2,978	6,902
Total current liabilities	77,009	166,206
Convertible notes, net	131,775	143,446
Long-term debt, net	—	293,659
Deferred revenue, non-current	305	211
Other non-current liabilities	5,086	9,577
Total liabilities	<u>214,175</u>	<u>613,099</u>
Commitments and contingencies (Notes 12 and 14)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized at both December 31, 2016 and December 31, 2017; no shares issued or outstanding at both December 31, 2016 and December 31, 2017	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized at both December 31, 2016 and December 31, 2017; 53,621,679 and 54,464,039 shares issued and outstanding at December 31, 2016 and December 31, 2017, respectively	5	5
Additional paid-in capital	1,604,798	1,724,850
Accumulated other comprehensive loss	(2,924)	(5,882)
Accumulated deficit	(973,761)	(1,469,887)
Total stockholders' equity	628,118	249,086
Total liabilities and stockholders' equity	<u>\$ 842,293</u>	<u>\$ 862,185</u>

See accompanying notes to consolidated financial statements.

TESARO, Inc.

Consolidated Statements of Operations and Comprehensive Loss

(all amounts in 000's, except per share data)

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
Revenues:			
Product revenue, net	\$ 2,026	\$ 5,174	\$ 120,700
License, collaboration and other revenues	2,012	52,844	102,626
Total revenues	4,038	58,018	223,326
Expenses:			
Cost of sales – product	62	1,203	41,137
Cost of sales – intangible asset amortization	268	1,855	6,158
Research and development	155,390	235,144	308,742
Selling, general and administrative	78,701	158,578	336,808
Acquired in-process research and development	2,000	18,940	10,000
Total expenses	236,421	415,720	702,845
Loss from operations	(232,383)	(357,702)	(479,519)
Interest expense	(15,414)	(16,487)	(19,758)
Interest income	48	1,440	4,147
Other income	—	—	328
Loss before income taxes	(247,749)	(372,749)	(494,802)
Provision for income taxes	—	1,475	1,324
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Net loss per share applicable to common stockholders - basic and diluted	\$ (6.29)	\$ (7.85)	\$ (9.17)
Weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted	39,387	47,652	54,080
Comprehensive loss:			
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Other comprehensive loss:			
Unrealized loss on pension obligation	—	(2,782)	(3,359)
Foreign currency translation adjustments	—	(142)	401
Other comprehensive loss	—	(2,924)	(2,958)
Comprehensive loss	\$ (247,749)	\$ (377,148)	\$ (499,084)

See accompanying notes to consolidated financial statements.

TESARO, Inc.
Consolidated Statements of Stockholders' Equity
(all amounts in 000's, except share data)

	Common Stock		Additional	Accumulated	Accumulated	Total
	Shares	Amount	Paid-in	Other	Deficit	Stockholders'
			Capital	Comprehensive		Equity
				Loss		
Balance at December 31, 2014	36,110,082	\$ 4	\$ 474,562	\$ —	\$ (350,510)	\$ 124,056
Issuance of common stock, net of issuance costs of \$11,752	3,755,000	—	179,753	—	—	179,753
Issuance of common stock resulting from exercise of stock options	382,580	—	7,930	—	—	7,930
Issuance of common stock resulting from Employee Stock Purchase Plan	20,601	—	830	—	—	830
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	8,091	—	(201)	—	—	(201)
Issuance of common stock as payment of Board of Directors fees in lieu of cash	3,429	—	266	—	—	266
Stock-based compensation expense	—	—	25,648	—	—	25,648
Net loss (as revised)	—	—	—	—	(247,749)	(247,749)
Balance at December 31, 2015 (as revised)	40,279,783	\$ 4	\$ 688,788	\$ —	\$ (598,259)	\$ 90,533
Retroactive adjustment to beginning accumulated deficit and additional paid-in capital resulting from adoption of ASU 2016-09	—	—	1,278	—	(1,278)	—
Issuance of common stock, net of issuance costs of \$36,305	12,632,356	1	838,090	—	—	838,091
Issuance of common stock resulting from exercise of stock options	643,035	—	25,958	—	—	25,958
Issuance of common stock resulting from Employee Stock Purchase Plan	42,478	—	2,229	—	—	2,229
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	18,000	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	6,027	—	345	—	—	345
Stock-based compensation expense	—	—	48,110	—	—	48,110
Other comprehensive loss	—	—	—	(2,924)	—	(2,924)
Net loss (as revised)	—	—	—	—	(374,224)	(374,224)
Balance at December 31, 2016 (as revised)	53,621,679	\$ 5	\$1,604,798	\$ (2,924)	\$ (973,761)	\$ 628,118
Issuance of common stock resulting from exercise of stock options	597,209	—	25,883	—	—	25,883
Issuance of common stock resulting from Employee Stock Purchase Plan	42,386	—	3,743	—	—	3,743
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	199,654	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	3,111	—	464	—	—	464
Stock-based compensation expense	—	—	89,962	—	—	89,962
Other comprehensive loss	—	—	—	(2,958)	—	(2,958)
Net loss	—	—	—	—	(496,126)	(496,126)
Balance at December 31, 2017	54,464,039	\$ 5	\$1,724,850	\$ (5,882)	\$ (1,469,887)	\$ 249,086

See accompanying notes to consolidated financial statements.

TESARO, Inc.
Consolidated Statements of Cash Flows

(all amounts in 000's)

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
Operating activities			
Net loss	\$ (247,749)	\$ (374,224)	\$ (496,126)
Adjustments to reconcile net loss to net cash used in operating activities:			
Acquired in-process research and development	2,000	18,940	10,000
Depreciation and amortization expense	1,037	3,113	9,530
Stock-based compensation expense	25,914	48,455	90,426
Non-cash interest expense	9,360	10,450	11,734
Write-down of inventory to net realizable value	—	—	16,730
Changes in operating assets and liabilities:			
Accounts receivable	(2,562)	(3,634)	(47,134)
Inventories	(1,106)	(13,594)	(59,968)
Other assets	(3,639)	(7,770)	(20,214)
Accounts payable	1,924	(2,835)	(1,036)
Accrued expenses	20,077	31,896	80,837
Deferred revenues	92	309	134
Other liabilities	121	1,223	4,966
Net cash used in operating activities	(194,531)	(287,671)	(400,121)
Investing activities			
Acquisition of product candidates, technology licenses and milestone payments	(17,000)	(18,940)	(59,665)
Purchase of property and equipment	(2,305)	(2,895)	(5,978)
Change in restricted cash	(500)	(1,489)	(870)
Net cash used in investing activities	(19,805)	(23,324)	(66,513)
Financing activities			
Proceeds from sale of common stock, net of issuance costs	179,753	838,099	(8)
Proceeds from term loan, net of issuance costs	—	—	293,596
Proceeds from exercise of stock options and Employee Stock Purchase Plan	7,868	28,785	29,719
Net cash provided by financing activities	187,621	866,884	323,307
Effect of exchange rate changes on cash and cash equivalents	—	(158)	545
Increase (decrease) in cash and cash equivalents	(26,715)	555,731	(142,782)
Cash and cash equivalents at beginning of period	256,861	230,146	785,877
Cash and cash equivalents at end of period	\$ 230,146	\$ 785,877	\$ 643,095
Non-cash investing and financing activities			
Stock option exercise proceeds receivable as of period end	\$ 691	\$ 93	\$ —
Leasehold improvement assets funded by lessor	\$ —	\$ 2,230	\$ 585
Purchase of property and equipment - cash not paid as of period end	\$ 238	\$ 230	\$ 40
Supplemental disclosure of cash flow information			
Cash paid for interest	\$ 6,071	\$ 6,038	\$ 6,038
Income taxes paid	\$ 1	\$ 1,430	\$ 573

See accompanying notes to consolidated financial statements.

TESARO, Inc.

Notes to Consolidated Financial Statements

1. Nature of Business

The Company

TESARO, Inc., or the Company or TESARO, was incorporated in Delaware and commenced operations in 2010. Headquartered in Waltham, Massachusetts, TESARO is a commercial-stage biopharmaceutical company devoted to providing transformative therapies to people bravely facing cancer. The Company's primary focus is to develop treatments for solid tumors using various approaches, including small molecules and immuno-oncology antibodies, as monotherapies or in combinations. The Company has in-licensed and is developing several oncology-related product candidates, and has entered into several research collaborations with third parties for the discovery of new candidates. The Company operates in one segment. The Company is subject to a number of risks, including dependence on key individuals, regulatory and manufacturing risks, the need to develop additional commercially viable products, risks associated with competitors, many of which are larger and better capitalized, risks related to intellectual property, and the need to obtain adequate additional financing to fund the development and potential commercialization of its product candidates and further its in-licensing and acquisition activities.

The Company's two currently marketed products, ZEJULA® and VARUBI®/VARUBY®, are approved in both the U.S. and the European Union, or EU. ZEJULA is approved as a maintenance treatment of adults with recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in a complete or partial response to platinum-based chemotherapy. VARUBI/VARUBY is approved for use in combination with other antiemetic agents in adults for the prevention of delayed nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. As further described in Note 17, "*Subsequent Events*", the Company has determined that it will cease marketing and distribution of the intravenous, or IV, formulation of VARUBI and intends to pursue strategic alternatives for the VARUBI brand.

Liquidity

The Company has incurred significant operating losses since inception and has relied on its ability to fund its operations through private and public equity and debt financings, and to a lesser extent through product sales and license and collaboration arrangements. Management expects operating losses and negative operating cash flows to continue for the foreseeable future. As the Company continues to incur losses, the transition to profitability is dependent upon the successful development, approval, and commercialization of its products and product candidates and the achievement of a level of revenues adequate to support its cost structure. The Company believes that its currently available funds in addition to cash generated from sales of its products will be sufficient to fund the Company's operations through at least the next 12 months from the issuance of this Annual Report on Form 10-K. Management's belief with respect to its ability to fund operations is based on estimates that are subject to risks and uncertainties. If actual results are different from management's estimates, the Company may need to seek additional funding.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company's consolidated financial statements reflect the operations of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States, or GAAP.

See "*New Accounting Pronouncements - Recently Adopted*" below for a discussion of certain revisions to prior period financial statements made in connection with the Company's adoption of new revenue recognition guidance retroactive to January 1, 2015.

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Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment, which is the business of developing and commercializing safer and more effective oncology-focused therapeutics.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, other comprehensive loss and the related disclosures. Significant estimates in these consolidated financial statements include estimates made in connection with accrued research and development expenses, stock-based compensation expense, revenue, valuation of convertible notes, inventory, intangible assets and related amortization. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. Actual results may differ from those estimates or assumptions.

Concentrations of Credit Risk and Off-Balance Sheet Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents. The Company maintains its cash and cash equivalent balances primarily in the form of money market fund accounts with financial institutions that management believes are creditworthy. The Company's investment policy includes guidelines on the quality of the institutions and financial instruments and defines allowable investments that the Company believes minimizes the exposure to concentration of credit risk. The Company has no financial instruments with off-balance-sheet risk of loss.

The Company also is subject to credit risk from its accounts receivable related to its product sales, collaborators and licenses. As part of its credit management policy, the Company performs ongoing credit evaluations of its customers, and the Company has not required collateral from any customer. The Company has not recorded any allowances for doubtful accounts at either December 31, 2016 or 2017.

Foreign Currency

A subsidiary's functional currency is the currency of the primary economic environment in which the subsidiary operates; normally, that is the currency of the environment in which a subsidiary primarily generates and expends cash. In making the determination of the appropriate functional currency for a subsidiary, the Company considers cash flow indicators, local market indicators, financing indicators and the subsidiary's relationship with both the parent company and other subsidiaries. For subsidiaries that are primarily a direct and integral component or extension of the parent entity's operations, the U.S. dollar is the functional currency.

For each foreign subsidiary with a functional currency other than the U.S. dollar, assets and liabilities are translated at current exchange rates at the balance sheet date. Revenue and expense items are translated at average foreign exchange rates for the period. Adjustments resulting from the translation of the financial statements of these subsidiaries into U.S. dollars are excluded from the determination of net loss and are recorded in accumulated other comprehensive loss, a separate component of stockholders' equity. For foreign subsidiaries with the U.S. dollar as the functional currency, monetary assets and liabilities are re-measured into U.S. dollars at the current exchange rate on the balance sheet date. Nonmonetary assets and liabilities are re-measured into U.S. dollars at historical exchange rates. Revenue and expense items are translated at average exchange rates prevailing during each period.

Consolidated realized and unrealized foreign currency transaction gains and losses are recorded in selling, general and administrative expenses in the consolidated statements of operations and comprehensive loss. Consolidated realized and unrealized foreign currency transaction losses were negligible for the year ended December 31, 2015, and were \$0.2 million and \$0.5 million for the years ended December 31, 2016 and 2017, respectively.

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Revenue Recognition

Effective January 1, 2017, the Company adopted Accounting Standards Codification, or ASC, Topic 606, *Revenue from Contracts with Customers*, using the full retrospective transition method. Under this method, the Company has revised its consolidated financial statements for the years ended December 31, 2015 and 2016, and applicable interim periods within those years, as if Topic 606 had been effective for those periods. This standard applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under Topic 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration that the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of Topic 606, the entity 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 entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity 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 Topic 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 when (or as) the performance obligation is satisfied. For a complete discussion of accounting for net product revenue and license, collaboration and other revenues, see Note 13, “*Revenue Recognition*”.

Cash and Cash Equivalents

The Company considers all highly-liquid investments with original or remaining maturity from the date of purchase of three months or less to be cash equivalents. Cash and cash equivalents include bank demand deposits and money market funds that invest primarily in certificates of deposit, commercial paper and U.S. government and U.S. government agency obligations. Cash equivalents are reported at fair value.

Restricted Cash

Restricted cash consists of cash balances held as collateral for the Company’s employee credit card programs.

Fair Value of Financial Instruments

The Company is required to disclose information on all assets and liabilities reported at fair value that enables an assessment of the inputs used in determining the reported fair values. The fair value hierarchy prioritizes valuation inputs based on the observable nature of those inputs. The fair value hierarchy applies only to the valuation inputs used in determining the reported fair value of the investments and is not a measure of investment credit quality. The hierarchy defines three levels of valuation inputs:

Level 1 inputs	Quoted prices in active markets for identical assets or liabilities
Level 2 inputs	Observable inputs other than Level 1 inputs, including quoted prices in active markets for similar assets or liabilities and quoted prices for identical assets or liabilities in markets that are not active
Level 3 inputs	Unobservable inputs that reflect the Company’s own assumptions about the assumptions market participants would use in pricing the asset or liability

The following table presents information about the Company’s financial assets and liabilities that have been measured at fair value at December 31, 2016 and 2017 and indicates the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands):

Description	Balance Sheet Classification	December 31, 2016			
		Total	Level 1	Level 2	Level 3
Assets:					
Money market funds	Cash and cash equivalents	\$ 766,186	\$ 766,186	\$ —	\$ —
Total assets		<u>\$ 766,186</u>	<u>\$ 766,186</u>	<u>\$ —</u>	<u>\$ —</u>

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Description	Balance Sheet Classification	December 31, 2017			
		Total	Level 1	Level 2	Level 3
Assets:					
Money market funds	Cash and cash equivalents	\$ 593,955	\$ 593,955	\$ —	\$ —
Total assets		\$ 593,955	\$ 593,955	\$ —	\$ —

The carrying amounts of accounts payable and accrued expenses approximate their fair values due to their short-term maturities.

In September 2014, the Company issued \$201.3 million aggregate principal amount of 3.00% convertible senior notes due October 1, 2021, or the Convertible Notes. Interest is payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2015. As of December 31, 2017, the carrying value of the Convertible Notes was \$143.4 million, net of unamortized discount and debt issuance costs and the fair value of the principal amount was \$499.1 million. As of December 31, 2017, the carrying value of the Company's borrowing under its term loan agreement approximated its fair value, considering the short period of time since the December 6, 2017 borrowing date. The Convertible Notes and the term loan agreement are discussed in more detail in Note 7, "Debt."

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the economic life of the asset or the remaining lease term, whichever is shorter. Maintenance and repairs are expensed as incurred. The following estimated useful lives were used to depreciate the Company's assets:

	Estimated Useful Life
Furniture and fixtures	5 years
Computer equipment and software	3 years
Manufacturing equipment	7 years
Leasehold improvements	Shorter of the useful life or the remaining lease term

Upon retirement or sale, the cost of the disposed asset and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is recognized in income.

The Company reviews long-lived assets when events or changes in circumstances indicate the carrying value of the assets may not be recoverable. Recoverability is measured by comparison of an asset's book value to the estimated undiscounted future net cash flows that the asset is expected to generate. If the estimated future undiscounted net cash flows are less than the book value, the asset is considered to be impaired, and the impairment loss to be recognized in income is measured as the amount by which the book value of the asset exceeds its fair value, which is measured based on the estimated discounted future net cash flows that the asset is expected to generate.

Research and Development Expenses

Research and development costs are charged to expense as incurred and include:

- employee-related expenses, including salaries, bonuses, benefits, travel and stock-based compensation expense;
- fees and expenses incurred under agreements with contract research organizations, investigative sites, research consortia and other entities in connection with the conduct of clinical trials and preclinical studies and related services, such as administrative, data management, laboratory and biostatistics services;
- the cost of acquiring, developing and manufacturing active pharmaceutical ingredients for product candidates that have not received regulatory approval, clinical trial materials and other research and development materials;

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- fees and costs related to regulatory filings and activities;
- pre-commercial license fees and milestone payments related to the acquisition of in-licensed product candidates, which are reported on the statements of operations as acquired in-process research and development;
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent, utilities, maintenance of facilities, insurance and other supplies; and
- other costs associated with clinical, preclinical, discovery and other research activities.

Costs for certain development activities, such as clinical trials and manufacturing development activities, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, and information provided to the Company by its vendors on their actual costs incurred or level of effort expended. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected on the consolidated balance sheets as prepaid or accrued research and development expenses. Certain clinical development costs incurred by the Company with respect to its niraparib program are reimbursed as part of a collaborative research agreement with Merck Sharp & Dohme B.V., a subsidiary of Merck & Co., Inc., or Merck. Cost-sharing amounts received by the Company are recorded as a reduction to research and development expenses.

Acquired In-Process Research and Development Expense

The Company has acquired the rights to develop and commercialize new product candidates. Up-front payments that relate to the acquisition of a new drug compound, as well as pre-commercial milestone payments, are immediately expensed as acquired in-process research and development in the period in which they are incurred, provided that the new drug compound did not also include processes or activities that would constitute a “business” as defined under GAAP, the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, has no established alternative future use. Milestone payments made to third parties subsequent to regulatory approval are capitalized as intangible assets and amortized over the estimated remaining useful life of the related product. Royalties owed on sales of the products licensed pursuant to the agreements are expensed in the period the related revenues are recognized.

Advertising Expenses

The costs of advertising are expensed as incurred and included in selling, general, and administrative expenses in the consolidated statements of operations and comprehensive loss. For the years ended December 31, 2015, 2016 and 2017, advertising expenses totaled \$3.6 million, \$9.2 million, and \$21.1 million, respectively.

Comprehensive Loss

Comprehensive loss is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive loss consists of net loss and other comprehensive loss. Other comprehensive loss includes foreign currency translation adjustments and unrealized gains and losses on pension obligations. The following table presents changes in the components of accumulated other comprehensive loss (in thousands):

	Foreign currency translation adjustments	Unrealized loss on pension liability	Total
Balance at December 31, 2015	\$ —	\$ —	\$ —
Other comprehensive (loss) income	(142)	(2,782)	(2,924)
Balance at December 31, 2016	(142)	(2,782)	(2,924)
Other comprehensive (loss) income	401	(3,359)	(2,958)
Balance at December 31, 2017	\$ 259	\$ (6,141)	\$ (5,882)

Income Taxes

The Company accounts for income taxes in accordance with ASC Topic 740, *Accounting for Income Taxes*, which provides for deferred taxes using an asset and liability approach. The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. The Company determines its deferred tax assets and liabilities based on differences between financial reporting and tax bases of

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assets and liabilities, which are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Valuation allowances are provided if, based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 was signed into law, resulting in significant changes to the U.S. corporate income tax system. For additional details regarding this act, see Note 10, “Income Taxes”.

Stock-Based Compensation Expense

Stock-based compensation is recognized as expense for each stock-based award based on its estimated fair value. The Company determines the fair value of each stock option award at its grant date using the Black-Scholes option pricing model. The Company determines the fair value of each restricted stock unit, or RSU, at its grant date based on the closing market price of the Company’s common stock on that date. The value of the award is recognized as expense on a straight-line basis over the requisite service period and is adjusted for pre-vesting forfeitures in the period in which the forfeitures occur. For stock awards that have a performance condition, the Company recognizes compensation expense based on its assessment of the probability that the performance condition will be achieved, using an accelerated attribution model, over the explicit or implicit service period.

Inventory

Inventories are stated at the lower of cost or estimated net realizable value, on a first-in, first-out, or FIFO, basis. Prior to the regulatory approval of its product candidates, the Company incurs expenses for the manufacture of drug product that could potentially be available to support the commercial launch of its products. Until the first reporting period when regulatory approval has been received or is otherwise considered probable, the Company records all such costs as research and development expense. Inventory used in clinical trials is also expensed as research and development expense, when selected for such use. The Company performs an assessment of the recoverability of capitalized inventory during each reporting period, and writes down any excess and obsolete inventory to its net realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, are recorded as a component of cost of product sales in the consolidated statements of operations and comprehensive loss. The determination of whether inventory costs will be realizable requires the use of estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required.

Intangible Assets

The Company maintains definite-lived intangible assets related to milestone payments made to third parties subsequent to regulatory approval for acquired and in-licensed product candidates. These assets are amortized over their remaining useful lives, which are generally estimated to be the remaining patent life. If the Company’s estimate of the product’s useful life is shorter than the remaining patent life, then the shorter period is used. Intangible assets are amortized using the economic consumption method if anticipated future revenues can be reasonably estimated. The straight-line method is used when future revenues cannot be reasonably estimated, with a cumulative catch-up of amortization expense for milestone payments that do not result in additional intellectual property rights and/or incremental cash flows. Amortization expense is recorded as a component of cost of sales in the consolidated statements of operations and comprehensive loss.

The Company assesses its intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, include the receipt of additional clinical or nonclinical data regarding one of the Company’s drug candidates or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate, or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, the Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value.

Net Loss Per Share

Basic and diluted net loss per common share is calculated by dividing net loss applicable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock

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equivalents. The Company's potentially dilutive shares, which include outstanding stock options, Employee Stock Purchase Plan awards, unvested RSUs, and shares issuable upon conversion of the Convertible Notes, are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

The following table presents amounts that were excluded from the calculation of diluted net loss per share, due to their anti-dilutive effect (in thousands):

	Years Ended December 31,		
	2015	2016	2017
Outstanding stock options	5,878	6,979	6,908
Unvested restricted stock units	60	760	1,159
Shares issuable upon conversion of Convertible Notes	492	3,765	2,695
	<u>6,430</u>	<u>11,504</u>	<u>10,762</u>

In September 2014, the Company issued Convertible Notes, which provide in certain situations for the conversion of the outstanding principal amount of the Convertible Notes into shares of the Company's common stock at a predefined conversion rate. See Note 7, "Debt", for additional information. In conjunction with the issuance of the Convertible Notes, the Company entered into capped call option transactions, or Capped Calls, with certain counterparties. The Capped Calls are expected generally to reduce the potential dilution, and/or offset, to an extent, the cash payments the Company may choose to make in excess of the principal amount, upon conversion of the Convertible Notes.

As provided by the terms of the indenture underlying the Convertible Notes, the Company has a choice to settle the conversion obligation for the Convertible Notes in cash, shares or any combination of the two. The Company currently intends to settle the par value of the Convertible Notes in cash and any excess conversion premium in shares. Accordingly, the par value of the Convertible Notes will not be included in the calculation of diluted income per share, but the dilutive effect of the conversion premium will be considered in the calculation of diluted net income per share using the treasury stock method. The Convertible Notes were convertible as of December 31, 2015, 2016 and 2017. The share figures in the table above represent the estimated incremental shares that would be issued, after the consideration of the Capped Calls, assuming conversion of all of the outstanding Convertible Notes as of the respective balance sheet date.

New Accounting Pronouncements - Recently Adopted

In May 2014, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, No. 2014-09, which amends the guidance for accounting for revenue from contracts with customers. This ASU supersedes the revenue recognition requirements in ASC Topic 605, *Revenue Recognition*, and creates a new Topic 606, *Revenue from Contracts with Customers*. In 2015 and 2016, the FASB issued additional ASUs related to Topic 606 that delayed the effective date of the guidance and clarified various aspects of the new revenue guidance, including principal versus agent considerations, identifying performance obligations, and licensing, and they include other improvements and practical expedients. The Company adopted this new standard on January 1, 2017 using the full retrospective transition method, and has elected to use the following practical expedients that are permitted under the rules of the adoption, which have been applied consistently to all contracts within all reporting periods presented:

- For completed contracts that had variable consideration, the Company has used the transaction price at the date the contract was completed rather than estimating variable consideration amounts in the comparative reporting periods. Therefore, the Company did not need to estimate its discounts, returns, chargebacks, rebates, co-pay assistance and other allowances on product sales made in the comparative reporting periods.
- For all reporting periods presented before January 1, 2017, the Company has not disclosed the amount of the transaction price allocated to the remaining performance obligations or an explanation of when the Company expects to recognize that amount as revenue.

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Impact of Adoption

The Company, as a result of adopting Topic 606 on January 1, 2017, has revised its comparative financial statements for the prior years as if Topic 606 had been effective for those periods. As a result, the following financial statement line items for the years ended December 31, 2015 and 2016 were affected.

Consolidated Statements of Operations and Comprehensive Loss

Year Ended December 31, 2015 (in thousands, except per share data)			
	As revised under Topic 606	As originally reported under Topic 605	Effect of change
Product revenue, net	\$ 2,026	\$ -	\$ 2,026
License, collaboration and other revenues	2,012	317	1,695
Cost of sales – product	62	-	62
Loss from operations	(232,383)	(236,042)	3,659
Net loss	(247,749)	(251,408)	3,659
Net loss per share applicable to common stockholders - basic and diluted	\$ (6.29)	\$ (6.38)	\$ 0.09

Year Ended December 31, 2016 (in thousands, except per share data)			
	As revised under Topic 606	As originally reported under Topic 605	Effect of change
Product revenue, net	\$ 5,174	\$ 6,877	\$ (1,703)
License, collaboration and other revenues	52,844	37,946	14,898
Cost of sales – product	1,203	1,256	(53)
Loss from operations	(357,702)	(370,950)	13,248
Net loss	(374,224)	(387,472)	13,248
Net loss per share applicable to common stockholders - basic and diluted	\$ (7.85)	\$ (8.13)	\$ 0.28

Consolidated Balance Sheets

December 31, 2016 (in thousands)			
	As revised under Topic 606	As originally reported under Topic 605	Effect of change
Accounts receivable	\$ 6,195	\$ 5,343	\$ 852
Other current assets	10,515	8,919	1,596
Accrued expenses	68,700	68,271	429
Deferred revenue, current	95	288	(193)
Deferred revenue, non-current	305	—	305
Customer deposit	—	15,000	(15,000)
Accumulated deficit	\$ (973,761)	\$ (990,668)	\$ 16,907

Consolidated Statements of Cash Flows

	Year Ended December 31, 2015 (in thousands)		
	As revised	As originally	Effect of change
	under Topic 606	reported under Topic 605	
Net loss	\$ (247,749)	\$ (251,408)	\$ 3,659
Adjustments to reconcile net loss to net cash used in operating activities:			
Accounts receivable	(2,562)	(679)	(1,883)
Other assets	(3,639)	(2,128)	(1,511)
Accrued expenses	20,077	19,646	431
Deferred revenues	92	788	(696)
Cash and cash equivalents at beginning of period	256,861	256,861	—
Cash and cash equivalents at end of period	\$ 230,146	\$ 230,146	\$ —

	Year Ended December 31, 2016 (in thousands)		
	As revised	As originally	Effect of change
	under Topic 606	reported under Topic 605	
Net loss	\$ (374,224)	\$ (387,472)	\$ 13,248
Adjustments to reconcile net loss to net cash used in operating activities:			
Accounts receivable	(3,634)	(4,664)	1,030
Other assets	(7,770)	(7,685)	(85)
Accrued expenses	31,896	31,897	(1)
Deferred revenues	309	14,501	(14,192)
Cash and cash equivalents at beginning of period	230,146	230,146	—
Cash and cash equivalents at end of period	\$ 785,877	\$ 785,877	\$ —

The most significant change above relates to the Company's license, collaboration and other revenues and the impact of the potential payment to Zai Lab (Shanghai) Co., Ltd., or Zai Lab, upon exercise of the option to co-market niraparib in China, Hong Kong and Macao, or the China Territories. Under Topic 605, even though the Company believed the probability was remote that this option would be exercised, the Company had concluded that the contract price was not fixed or determinable under the revenue recognition criteria and accordingly no revenue had been previously recognized. Therefore, the upfront, non-refundable license fee of \$15.0 million received by the Company in the fourth quarter of 2016 was deferred and recorded as a customer deposit as of December 31, 2016. Upon its adoption of Topic 606, the Company determined the probability was remote that it would exercise the option and accordingly, the potential future payments to Zai Lab had no impact on the transaction price. Further, the Company evaluated this option to co-market niraparib under Topic 606 and concluded that this option was not a repurchase right and accordingly recognized revenue in 2016 for the transaction price received as and when the performance obligations under this agreement were satisfied by the Company. In February 2018, the Company and Zai Lab entered into an amendment to the Collaboration, Development and License agreement between the parties, eliminating the Company's co-marketing right. This amendment had no impact on the Company's accounting conclusions under Topic 606. For further discussion of the adoption of this standard, see Note 13, "Revenue Recognition" and Note 14, "License and Collaboration Agreements".

In January 2017, the FASB issued ASU No. 2017-01, which clarifies the definition of a business. To be considered a business (instead of an asset), an acquisition would have to include an input and a substantive process that together significantly contribute to the ability to create outputs. The new guidance provides a framework to evaluate when an input and a substantive process are present (including for early stage companies that have not generated outputs). To be a business without outputs, there will now need to be an organized workforce. The new guidance narrows the definition of the term "outputs" to be consistent with how it is described in Topic 606. Under the final definition, an output is the result of inputs and substantive processes that provide goods or services to customers, other revenue, or investment income, such as dividends and interest. The new guidance is effective on a prospective basis for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. The Company has elected to early adopt this ASU effective January 1, 2017. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements, although this guidance could impact its accounting conclusions for certain future transactions, such as in-licensing agreements.

New Accounting Pronouncements - Recently Issued

In February 2016, the FASB issued ASU No. 2016-02, a comprehensive new lease accounting standard, which provides revised guidance on accounting for lease arrangements by both lessors and lessees and requires lessees to recognize a lease liability and a right-of-use asset for most leases. The new guidance is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years, with early adoption permitted. The new standard must be applied using a modified retrospective transition approach that requires application of the new guidance for all periods presented. The Company is currently in the process of evaluating the impact that the adoption of this guidance will have on its consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASU No. 2016-15, which is intended to simplify and clarify how certain transactions are classified in the statement of cash flows, and to reduce diversity in practice for such transactions. This ASU addresses eight specific issues regarding classification of cash flows. The standard is effective for financial statements issued for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted, provided that all of the amendments are adopted in the same period. The guidance requires application using a retrospective transition method. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU No. 2016-16, which removes the prohibition in ASC Topic 740 against the immediate recognition of the current and deferred income tax effects of intra-entity transfers of assets other than inventory. As a result, the income tax consequences from the intra-entity transfer of an asset, other than inventory, and associated changes to deferred taxes will be recognized when the transfer occurs. This standard is effective for the Company on January 1, 2018. The Company plans to adopt this new standard using the modified retrospective method, through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In November 2016, the FASB issued ASU No. 2016-18, which requires amounts generally described as restricted cash and restricted cash equivalents to be included with cash and cash equivalents when reconciling the total beginning and ending amounts for the periods shown on the statement of cash flows. ASU No. 2016-18 is effective for fiscal years beginning after December 15, 2018 (including interim periods within those periods) using a retrospective transition method to each period presented. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In May 2017, the FASB issued ASU No. 2017-09, which clarifies when a change to the terms or conditions of a share-based payment award must be accounted for as a modification. The new guidance requires modification accounting if the fair value, vesting condition or classification of the award is not the same immediately before and after a change to the terms and conditions of the award. This ASU is effective on a prospective basis beginning on January 1, 2018, with early adoption permitted. The Company does not expect this new guidance to have a material impact on its consolidated financial statements and related disclosures.

3. Inventories

The following table presents inventories (in thousands):

	December 31,	
	2016	2017
Raw materials	\$ 13,263	\$ 17,876
Work in process	584	38,629
Finished goods	853	1,434
Total inventories	\$ 14,700	\$ 57,939

Inventories are related to the Company's approved products, ZEJULA and VARUBI. During the year ended December 31, 2017, the Company recorded a \$16.7 million in lower of cost or market write-downs for excess and obsolete VARUBI inventories. In addition, a \$1.6 million loss on firm purchase commitments was also recorded within the period. These charges resulted from the Company's revision of its forecast of future sales of VARUBI, which in turn was related to the Company's update to the VARUBI IV package insert in January 2018. The aggregate of \$18.3 million in lower of cost or market write-downs and losses on firm purchase commitments affected the Company's net loss per share applicable to

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common stockholders (basic and diluted) by \$(0.34) for the year ended December 31, 2017. If future sales of ZEJULA or VARUBI are lower than expected, the Company may be required to record further write-downs of the value of such inventories. Inventory write-downs and losses on purchase commitments are recorded as components of cost of sales in the consolidated statements of operations and comprehensive loss.

4. Intangible Assets

The following table presents intangible assets (in thousands):

	December 31,		Estimated useful life
	2016	2017	
Acquired and in-licensed rights	\$ 15,000	\$ 64,665	8-13 Years
Less accumulated amortization	(2,123)	(8,281)	
Total intangible assets, net	\$ 12,877	\$ 56,384	

The increase in acquired and in-licensed rights as of December 31, 2017 was due to a milestone of \$25.0 million paid to Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., or Merck, which was incurred upon the FDA approval of ZEJULA on March 27, 2017, a milestone of \$10.0 million paid to OPKO Health, Inc., which was incurred upon the first commercial sale of VARUBY in Europe in May 2017, and a milestone of \$14.7 million paid to Merck, which was incurred upon the approval of ZEJULA in Europe.

The Company recorded \$0.3 million, \$1.9 million and \$6.2 million, respectively, in amortization expense related to intangible assets during the years ended December 31, 2015, 2016 and 2017. Estimated future amortization expense for intangible assets as of December 31, 2017 is as follows (in thousands):

	Total
2018	\$ 6,456
2019	6,456
2020	6,460
2021	6,456
2022	6,456
Thereafter	24,100
	<u>\$ 56,384</u>

5. Property and Equipment

The following table presents property and equipment, at cost, and related accumulated depreciation (in thousands):

	December 31,	
	2016	2017
Furniture and fixtures	\$ 2,481	\$ 4,212
Computer equipment and software	3,459	4,762
Leasehold improvements	3,190	6,314
Manufacturing equipment	124	350
Total property and equipment, at cost	9,254	15,638
Less accumulated depreciation and amortization	(2,614)	(5,986)
Total property and equipment, net	<u>\$ 6,640</u>	<u>\$ 9,652</u>

Total depreciation expense amounted to \$0.8 million, \$1.3 million and \$3.4 million for the years ended December 31, 2015, 2016 and 2017, respectively.

6. Accrued Expenses

The following table presents the components of accrued expenses (in thousands):

	December 31,	
	2016	2017
	(as revised)	
Research and development	\$ 36,759	\$ 55,949
Salaries, bonuses and other compensation	20,654	33,717
Inventory	—	16,469
Product revenue allowances	1,407	22,847
Sales and marketing	3,177	6,701
Professional services	2,743	3,944
Royalties	2,059	6,552
Other	1,901	8,629
Total accrued expenses	\$ 68,700	\$ 154,808

7. Debt

Our outstanding debt obligations consisted of the following (in thousands):

	December 31,	
	2016	2017
Convertible notes, net	\$ 131,775	\$ 143,446
Term Loan (Tranche A)	—	293,659
Total long-term debt	\$ 131,775	\$ 437,105

Convertible Notes

On September 29, 2014, in a registered underwritten public offering, the Company completed the issuance of \$201.3 million aggregate principal amount of Convertible Notes. The Company received net proceeds of \$194.7 million from the sale of the Convertible Notes, after deducting discounts, commissions and other expenses of \$6.6 million. In conjunction with the sale of the Convertible Notes, the Company used \$20.8 million of the net proceeds to enter into separate Capped Calls, as described below.

The Convertible Notes are governed by the terms of a Senior Debt Securities Indenture, as supplemented by the First Supplemental Indenture relating to the Convertible Notes, collectively the Indenture, between the Company and U.S. Bank National Association, as trustee. The Convertible Notes bear interest at a rate of 3.00% per annum, payable semi-annually on April 1 and October 1, beginning from April 1, 2015, and will be convertible into cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. The Convertible Notes will mature on October 1, 2021, unless earlier converted or repurchased in accordance with their terms. Prior to the close of business on the business day immediately preceding April 1, 2021, the Convertible Notes will be convertible only upon the occurrence of certain events and during certain periods as discussed below, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The initial conversion price of the Convertible Notes is approximately \$35.13 per share of common stock at an initial conversion rate of 28.4627 shares of the Company's common stock per \$1,000 principal amount of Convertible Notes, which represents a premium of approximately 35% over the last reported sale price of the Company's common stock on September 23, 2014.

The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends. At any time prior to the close of business on the business day immediately preceding April 1, 2021, holders may convert their Convertible Notes at their option only under the following circumstances:

- (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the closing sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day

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of the immediately preceding calendar quarter in which the conversion occurs is greater than 130% of the conversion price on each applicable trading day;

- (2) during the five business day period after any ten consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the closing sale price of the Company's common stock and the conversion rate on each such trading day; or
- (3) upon the occurrence of specified corporate events.

On or after April 1, 2021 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Convertible Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

If a make-whole adjustment event, as described in the Indenture, occurs and a holder elects to convert its Convertible Notes in connection with such make-whole adjustment event, such holder may be entitled to an increase in the conversion rate as described in the Indenture.

The Company may not redeem the Convertible Notes prior to the maturity date and no "sinking fund" is provided for the Convertible Notes, which means that the Company is not required to periodically redeem or retire the Convertible Notes. Upon the occurrence of certain fundamental changes involving the Company, holders of the Convertible Notes may require the Company to repurchase for cash all or part of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest.

The Indenture does not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by the Company or any of its subsidiaries.

The terms of the Indenture provide the Company with the option to settle the Convertible Notes in cash, common stock, or a combination of cash and common stock. As a result, in accordance with ASC Subtopic 470-20, *Debt with Conversion and Other Options*, the Company separately accounts for the liability and equity components of the Convertible Notes by allocating the principal between the liability component and the embedded conversion option, or equity component. Based on market data available for publicly traded, senior, unsecured corporate bonds issued by companies in the same industry and with similar maturity, the Company estimated the implied interest rate, assuming no conversion option. Assumptions used in the estimate represent what market participants would use in pricing the liability component, including market interest rates, credit standing, and yield curves, all of which are defined as Level 2 observable inputs. The estimated implied interest rate was applied to the Convertible Notes, which resulted in a fair value of the liability component of \$113.4 million upon issuance, calculated as the present value of implied future payments based on the \$201.3 million aggregate principal amount. The equity component of the Convertible Notes was recognized as a debt discount, recorded in additional paid-in capital, and represents the difference between the aggregate principal of the Convertible Notes and the fair value of the Convertible Notes without conversion option on their issuance date. The debt discount is amortized to interest expense using the effective interest method over seven years, or the life of the Convertible Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

The Company's outstanding convertible note balances at December 31, 2017 consisted of the following (in thousands):

	December 31, 2017
Liability component	
Principal	\$ 201,250
Less: debt discount and issuance costs, net	(57,804)
Net carrying amount	\$ 143,446
Equity component	\$ 87,843

In connection with the issuance of the Convertible Notes, the Company incurred issuance costs, primarily consisting of underwriting, legal and other professional fees, which the Company allocated to the liability and equity components in a manner consistent with the allocation of the principal, as described above. Of the total \$6.6 million of debt issuance costs, \$2.9 million were allocated to the equity component and recorded as a reduction to additional paid-in capital and \$3.7 million were

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allocated to the liability component and recorded as a reduction in the carrying amount of the convertible note. The portion allocated to the liability component is amortized to interest expense over the expected life of the Convertible Notes using the effective interest method.

The Company determined the expected life of the debt was equal to the seven year contractual term of the Convertible Notes. As of December 31, 2017, the carrying value of the Convertible Notes was \$143.4 million and the fair value of the Convertible Notes approximated \$499.1 million. The effective interest rate on the liability component is 12.9%. The following table sets forth total interest expense recognized related to the Convertible Notes during the years ended December 31, 2016 and 2017 (in thousands):

	Years Ended December 31,	
	2016	2017
Contractual interest expense	\$ 6,037	\$ 6,038
Amortization of debt discount	9,851	11,126
Amortization of debt issuance costs	599	545
Total interest expense	\$ 16,487	\$ 17,709

The Company has evaluated the Indenture for derivatives pursuant to ASC Topic 815, *Derivatives and Hedging*, and identified an embedded derivative that requires bifurcation as the feature is not clearly and closely related to the host instrument. The embedded derivative is a default provision, which could require additional interest payments. The Company has determined that the fair value of this embedded derivative was nominal as of December 31, 2017.

In conjunction with the offering of the Convertible Notes, the Company entered into privately-negotiated Capped Calls with certain counterparties. Each Capped Call is an integrated instrument consisting of a call option on the Company's common stock purchased by the Company from the counterparties with an exercise price equal to the conversion price of \$35.13 per share for the underlying number of shares and a cap component that incorporates a cap price of \$45.54 per share. The cap component is economically equivalent to a call option sold by the Company to the counterparties for the underlying number of shares with an exercise price of \$45.54 per share. As an integrated instrument, the settlement of the Capped Calls coincides with the maturity date of the Convertible Notes. The aggregate cost of the Capped Calls was \$20.8 million and was recorded in stockholders' equity and will not be remeasured.

2017 Term Loan Agreement

In November 2017, the Company entered into a loan agreement, or the Loan Agreement, with BioPharma Credit PLC and affiliates, or the Lenders. The Lenders agreed to provide up to an aggregate principal amount of \$500.0 million in two tranches, with the first tranche equal to \$300.0 million, or Tranche A, and the second in an amount between \$50.0 million and \$200.0 million at the Company's discretion, or Tranche B. The Company drew Tranche A on December 6, 2017 with a maturity date of December 6, 2024. Tranche B is available for draw at the Company's option, on 90 days' notice, from June 30, 2018 until December 20, 2018 and if drawn by the Company, will also have a maturity date of December 6, 2024. Borrowings under the Tranche A and Tranche B loans bear interest at a rate equal to the London Interbank Offered Rate, or LIBOR, plus an applicable margin of 8% per annum and 7.5% per annum, respectively (with the LIBOR rate subject to a floor of 1% and cap equal to the LIBOR rate as of the Tranche A closing date plus 1.5%). The loans have an up-front fee of 2% on the funded amount of each tranche, payable at the applicable closing date.

The obligations of the Company under the Loan Agreement are guaranteed by the Company's wholly-owned U.S. subsidiary, TESARO Securities Corporation, and are secured by security interests in (i) all of the Company's owned or exclusively licensed U.S. registered patents and trademarks relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of VARUBI (rolapitant) or ZEJULA (niraparib) in the U.S., (ii) rights under any U.S. new drug application relating to VARUBI and ZEJULA, (iii) 100% of the equity interests in wholly owned domestic subsidiaries and 65% of the equity interests in directly owned foreign subsidiaries, in each case of the Company and any guarantor, and (iv) cash held in all deposit accounts of the Company and any guarantor.

The Company has the option to prepay, in whole or in part, Tranche A or Tranche B, subject to a prepayment premium and a make-whole amount, if applicable. If any prepayment occurs prior to the 24-month anniversary of the respective closing date, a make-whole amount equal to the sum of all interest accruing from the prepayment date through the 24-month anniversary of the respective closing date, and a 3% premium would also apply to such repayment. If the

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prepayment occurs prior to the 36-month anniversary, a 2% premium would apply to such repayment, and a 1% premium if the prepayment occurs prior to the 48-month anniversary. The Company is obligated to make quarterly repayments of principal in an amount equal to 3%, starting December 31, 2019 for the Tranche A loan amount with any remaining balance payable on the final maturity date. Interest on the outstanding Tranche A loan amount is payable quarterly in arrears.

There are no financial covenants associated with the Loan Agreement; however, there are customary representations and warranties and customary affirmative and negative covenants, including among other things, restrictions (subject to various exceptions) on transfer of intellectual property related to the collateral, indebtedness, liens, prepayment of other indebtedness and payment of dividends and stock repurchases by the Company.

The Loan Agreement also includes events of default, the occurrence and continuation of any of which provides the Lenders the right to exercise remedies against the Company and the collateral securing the loans under the Loan Agreement, including cash. These events of default include, among other things, failure to pay any amounts due under the Loan Agreement, insolvency, the occurrence of a material adverse change in the ability of the Company to perform its obligations under the Loan Agreement, the occurrence of any default under certain other indebtedness and a final judgment against the Company in an uninsured amount greater than \$10.0 million.

The Tranche A loan was recorded on the consolidated balance sheets, net of a debt discount of \$6.0 million in upfront fees assessed by the Lenders at the time of borrowing. The debt discount and deferred financing costs of \$0.4 million are being amortized to interest expense using the effective interest method over the same term. The effective annual interest rate of the outstanding debt under Tranche A loan is approximately 10.0%. During the year ended December 31, 2017, the Company recognized \$2.0 million of interest expense related to the Tranche A Loan, including \$0.1 million related to the accretion of debt discount and amortization of deferred financing costs.

Future annual principal payments on the Company's long-term debt as of December 31, 2017 were as follows (in thousands):

	Total
2018	\$ —
2019	9,000
2020	36,000
2021	237,250
2022	36,000
Thereafter	183,000
Total	\$ 501,250

8. Stockholders' Equity

As of December 31, 2017, the authorized capital stock of the Company consisted of 10,000,000 shares of preferred stock and 100,000,000 shares of common stock, both with a par value of \$0.0001, of which no shares of preferred stock were issued or outstanding and 54,464,039 shares of common stock were issued and outstanding.

Preferred Stock

The Company's certificate of incorporation authorizes its board of directors to issue preferred stock from time to time in one or more series. The rights, preferences, restrictions, qualifications and limitations of such stock are determined by the board of directors.

Common Stock

In March 2015, the Company sold 3,755,000 shares of common stock, in an underwritten public offering at a price to the public of \$51.00 per share, resulting in gross proceeds of approximately \$191.5 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$179.8 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

In March 2016, the Company sold 4,404,658 shares of common stock in a private placement offering at a price of \$35.19 per share, to certain accredited investors, including funds affiliated with three of its directors and current investors,

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resulting in gross proceeds of approximately \$155.0 million. The price per share was equal to the volume weighted average price for the ten-day period ending on March 17, 2016. There were no placement agents used for this financing. The sale and issuance of the shares of common stock in the private placement was made in reliance on the exemption afforded by Section 4(a)(2) under the Securities Act of 1933 and Regulation D promulgated under the Securities Act.

In April 2016, the Company sold 1,130,198 shares of common stock to Johnson & Johnson Innovation – JJDC, Inc., or JJDC, at a price of \$44.24 per share, for an aggregate purchase price of approximately \$50.0 million. The price per share was equal to the volume weighted average price for the five-day period ending on April 4, 2016. There were no placement agents used, or any underwriting discounts or commissions paid in connection with the transaction. The sale and issuance of the shares of common stock was made in reliance on the exemption afforded by Section 4(a)(2) under the Securities Act of 1933 and Regulation D promulgated under the Securities Act.

In July 2016, the Company sold 5,347,500 shares of common stock, in an underwritten public offering at a price to the public of \$81.00 per share, resulting in gross proceeds of approximately \$433.1 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$408.9 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

In November 2016, the Company sold 1,750,000 shares of common stock, in an underwritten public offering at a price to the public of \$135.00 per share, resulting in gross proceeds of approximately \$236.3 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$224.2 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

The holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders of the Company. Subject to the preferences that may be applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Company's board of directors.

9. Stock-Based Compensation

The following table presents stock-based compensation expense as reflected in the Company's consolidated statements of operations and comprehensive loss (in thousands):

	Years Ended December 31,		
	2015	2016	2017
Research and development	\$ 11,082	\$ 19,783	\$ 30,810
Selling, general and administrative	14,832	28,672	59,616
Total stock-based compensation expense	\$ 25,914	\$ 48,455	\$ 90,426

The Company maintains several equity compensation plans, including the TESARO, Inc. 2012 Omnibus Incentive Plan, or the 2012 Incentive Plan, the TESARO, Inc. 2010 Stock Incentive Plan, or the 2010 Incentive Plan, the TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan, or the 2015 Director Plan, and the TESARO, Inc. 2012 Employee Stock Purchase Plan, or the 2012 ESPP. Terms of stock award agreements, including vesting requirements, are determined by the board of directors, subject to the provisions of the individual plans. To date, stock option awards granted to employees by the Company generally vest either monthly over four years, or 25% one year from the vesting start date and 75% in equal installments over the subsequent thirty-six (36) months, and are exercisable from the date of grant for a period of ten years. RSUs granted to employees by the Company generally vest annually over four years in equal annual installments of 25% each.

2010 Stock Incentive Plan

In connection with the Company's formation, the Company adopted the 2010 Incentive Plan, under which it was authorized to grant stock-based awards of up to 1,981,130 shares of common stock as of January 1, 2012. As of April 27, 2012, the Company ceased making awards under the 2010 Incentive Plan and the remaining 6,857 shares available for future grants were added to the total number of shares reserved for issuance under the 2012 Incentive Plan. For options granted under the 2010 Incentive Plan, the exercise price equaled the estimated fair value of the common stock as determined by the board of directors on the date of grant. As of December 31, 2017, there are no shares available for grant under the 2010 Incentive Plan.

2012 Omnibus Incentive Plan

On April 27, 2012, the stockholders of the Company approved the 2012 Incentive Plan, which had been previously adopted by the board of directors. Upon effectiveness of the 2012 Incentive Plan, the Company ceased making awards under the 2010 Incentive Plan. The 2012 Incentive Plan allows the Company to grant awards for up to 1,428,571 shares of common stock plus the number of shares of common stock available for grant under the 2010 Incentive Plan as of the effectiveness of the 2012 Incentive Plan (which is an additional 6,857 shares) plus that number of shares of common stock related to awards outstanding under the 2010 Incentive Plan that terminate by expiration, forfeiture, cancellation, cash settlement or otherwise. The number of shares available for grants of awards under the 2012 Incentive Plan is increased automatically on January 1 by a number of shares of common stock equal to the lesser of 4% of the shares of common stock outstanding at such time or the number of shares determined by the Company's board of directors. Accordingly, effective January 1, 2017 and 2018, the number of shares authorized for issuance under the 2012 Incentive Plan was increased by 2,144,867 shares and 2,178,561 shares, respectively. Awards under the 2012 Incentive Plan may include the following award types: stock options, which may be either incentive stock options or nonqualified stock options; stock appreciation rights; restricted stock; RSUs; dividend equivalent rights; performance shares; performance units; cash-based awards; other stock-based awards, including unrestricted shares; or any combination of the foregoing. The exercise price of stock options granted under the 2012 Incentive Plan is equal to the closing price of a share of the Company's common stock on the grant date. As of December 31, 2017, there were 1,810,240 shares available for grant under the 2012 Incentive Plan, prior to taking into account the additional shares authorized for issuance as of January 1, 2018, as described above.

2015 Director Plan

On May 14, 2015, the stockholders of the Company approved the 2015 Director Plan, which had been previously adopted by the board of directors in order to have a plan in addition to the 2012 Incentive Plan for purposes of granting awards to non-employee directors. On May 11, 2016, the Company's stockholders approved certain amendments to the 2015 Director Plan to limit the number of shares of the Company's common stock subject to awards granted in a calendar year to any non-employee director to 50,000 shares, and to affirm the number of shares reserved for issuance under the plan. The 2015 Director Plan allows the Company to grant awards for up to 500,000 shares of common stock. Awards under the 2015 Director Plan may include the following award types: stock options; stock appreciation rights; restricted stock; RSUs; unrestricted stock; or any combination of the foregoing. The exercise price of stock options granted under the 2015 Director Plan is equal to the closing price of a share of the Company's common stock on the grant date. As of December 31, 2017, there were 198,433 shares available for grant under the 2015 Director Plan.

Stock Options

The following table presents a summary of the Company's stock option activity and related information:

	Shares	Weighted-average exercise price per share	Weighted-average remaining contractual term (years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2016	6,978,621	\$ 40.65	7.6	\$ 655,099
Granted	693,112	160.53		
Exercised	(597,209)	43.34		
Cancelled	(166,211)	59.31		
Outstanding at December 31, 2017	6,908,313	\$ 52.00	6.8	\$ 276,640
Vested at December 31, 2017	4,297,650	\$ 33.47	6.0	\$ 219,374

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The fair value of each stock option was estimated at the date of grant using a Black-Scholes option-pricing model with the following assumptions:

	Years Ended December 31,		
	2015	2016	2017
Dividend yield	—	—	—
Volatility	63% - 65%	57% - 59%	60% - 64%
Risk-free interest rate	1.35% - 1.95%	1.07% - 2.10%	1.79% - 2.30%
Expected term (years)	5.50 - 6.08	5.50 - 6.08	5.50 - 6.08

The Company uses the simplified method as prescribed by U.S. Securities and Exchange Commission Staff Accounting Bulletin No. 107, *Share-Based Payment*, to calculate the expected term, as it does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term for options granted. The expected term is applied to all stock option grants as a whole, as the Company does not expect substantially different exercise or post-vesting termination behavior among its population. The computation of expected volatility is based on a blend of the historical volatility of the company and the volatility of a representative group of public biopharmaceutical companies with similar characteristics to the Company, including stage of product development, market capitalization and therapeutic focus. The risk-free interest rate is based on a U.S. Treasury instrument whose term is consistent with the expected term of the stock options. The value of the award is recognized as expense on a straight-line basis over the requisite service period and is adjusted for pre-vesting forfeitures in the period in which the forfeitures occur. For stock awards that have a performance condition, the Company recognizes compensation expense based on its assessment of the probability that the performance condition will be achieved, using an accelerated attribution model, over the explicit or implicit service period.

The weighted-average grant date fair values of options granted in the years ended December 31, 2015, 2016 and 2017 were \$32.05, \$32.13 and \$94.50 per share, respectively. The aggregate intrinsic value of options exercised during the years ended December 31, 2015, 2016 and 2017 was \$11.8 million, \$37.4 million and \$57.1 million, respectively. The intrinsic value of a stock option is the amount by which the fair market value of the underlying stock on the exercise date exceeds the exercise price of the stock option.

In June 2015, June 2016, and June 2017 as provided for under the 2012 Incentive Plan and the 2015 Director Plan, the Company issued 3,429, 6,027 and 3,111 shares of common stock, respectively, to certain non-employee board members who elected to receive shares of common stock in lieu of cash, as payment of fees owed them for services as members of the Company's board of directors.

At December 31, 2017, there was \$110.3 million of total unrecognized compensation cost related to unvested stock options, which the Company expects to recognize over a remaining weighted-average period of 2.1 years.

Restricted Stock Units

The following table presents a summary of the Company's RSU activity and related information:

	Shares	Weighted-average grant date fair value per share
Unvested restricted stock units at December 31, 2016	760,123	\$ 58.55
Granted	656,751	162.79
Vested	(199,654)	59.48
Forfeited	(58,102)	107.34
Unvested restricted stock units at December 31, 2017	1,159,118	\$ 115.01

In July 2016, the Company issued 15,000 RSUs with service and performance conditions to certain employees, of which 11,512 vested during the year ended December 31, 2017. Vesting of these awards is contingent on the occurrence of certain milestone events and fulfillment of any remaining service condition. As a result, the related compensation cost is recognized as an expense when achievement of the milestone is considered probable. The expense recognized for these awards is based on the grant date fair value of the Company's common stock multiplied by the number of units granted. The Company recognized \$0.4 million and \$0.9 million of related expense during the years ended December 31, 2016 and 2017, respectively.

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The weighted-average grant date fair values of RSUs granted during the years ended December 31, 2015, 2016 and 2017 were \$56.00, \$58.47, and \$162.79 per share, respectively. The total grant date fair value of RSUs that vested during the years ended December 31, 2015, 2016 and 2017 was \$0.5 million, \$1.1 million and \$11.9 million, respectively, based upon the number of RSUs vested multiplied by the closing stock price of the Company's common stock on the grant date. As of December 31, 2017, there was approximately \$107.3 million of unrecognized compensation cost related to unvested RSUs that the Company expects to recognize over a remaining weighted-average period of approximately 2.8 years.

Employee Stock Purchase Plan

On June 6, 2012, the board of directors adopted the 2012 ESPP, and the stockholders approved it on June 18, 2012, to be effective in connection with the closing of the Company's initial public offering. A total of 275,000 shares of common stock were originally approved for future issuance under the 2012 ESPP pursuant to purchase rights granted to the Company's employees or to employees of the Company's designated subsidiaries. As of December 31, 2017, 151,859 shares remained available for issuance. The 2012 ESPP provides for consecutive six-month offering periods, during which participating employees may elect to have a portion of their compensation withheld and used for the purchase of common stock at the end of each offering period. The purchase price is equal to 85% of the lower of the fair market value of a share of common stock on the first trading date of each offering period or the fair market value of a share of common stock on the last trading day of the offering period, and is limited by participant to \$25,000 in fair value of common stock per year. The 2012 ESPP will terminate on June 6, 2022, the tenth anniversary of the date of initial adoption of the plan. For the years ended December 31, 2015, 2016 and 2017, the Company issued a total of 20,601, 42,478 and 42,386 shares of common stock, respectively, under the 2012 ESPP.

The following table presents stock-based compensation expense by type of award (in thousands):

	Years Ended December 31,		
	2015	2016	2017
Stock options	\$ 24,862	\$ 40,030	\$ 57,500
Restricted stock units (including performance-based RSUs)	742	7,502	31,498
Employee stock purchase plan	310	923	1,428
Total	<u>\$ 25,914</u>	<u>\$ 48,455</u>	<u>\$ 90,426</u>

10. Income Taxes

The following table presents the components of income (loss) before the provision for (benefit from) income taxes during the years ended December 31, 2015, 2016, and 2017 (in thousands):

	Years Ended December 31,		
	2015 (as revised)	2016 (as revised)	2017
United States	\$ (210,744)	\$ (298,969)	\$ (399,265)
Foreign	(37,005)	(73,780)	(95,537)
(Loss) income before provision for (benefit from) income taxes	<u>\$ (247,749)</u>	<u>\$ (372,749)</u>	<u>\$ (494,802)</u>

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Provisions for income taxes for the years ended December 31, 2015, 2016 and 2017 are as follows (in thousands):

	Years Ended December 31,		
	2015	2016	2017
Current:			
Federal	\$ —	\$ —	\$ —
State	—	3	29
Foreign	—	1,597	1,157
	—	1,600	1,186
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	—	(125)	138
	—	(125)	138
Provision for income taxes	\$ —	\$ 1,475	\$ 1,324

The following table presents a reconciliation of income tax expense (benefit) at the statutory federal income tax rate to the effective income tax rate as reflected in the consolidated financial statements:

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
Federal income tax (benefit) expense at statutory rate	(34.0)%	(35.0)%	(35.0)%
State income tax (benefit) expense	(2.3)	(0.4)	(1.6)
Permanent items	0.2	(0.1)	(0.7)
Foreign rate differential	5.0	6.0	4.2
Federal research and development credit	(1.7)	(11.1)	(11.8)
Tax rate change	—	—	31.5
Change in valuation allowance	32.8	40.6	12.5
Other	0.0	0.4	1.2
Effective income tax rate	0.0 %	0.4 %	0.3 %

The Company's effective rate for the year ended December 31, 2017 compared to the year ended December 31, 2016 decreased primarily as a result of China withholding taxes on the up-front license payment received from Zai Lab during the year ended December 31, 2016, offset by increases as a result of subsidiary operations in foreign tax jurisdictions during the year ended December 31, 2017.

The Company accounts for income taxes in accordance with ASC Topic 740. Deferred income tax assets and liabilities are determined based upon temporary differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to

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reverse. The following table presents the principal components of the Company's deferred tax assets and liabilities (in thousands):

	December 31,	
	2016	2017
	(as revised)	
Deferred tax assets:		
Federal net operating loss carryforwards	\$ 231,663	\$ 204,495
State net operating loss carryforwards	18,027	26,225
Depreciation and amortization	18,840	16,435
Stock-based compensation	21,393	24,017
Tax credit carryforwards	54,950	107,944
Other	7,374	14,769
Total deferred tax assets	352,247	393,885
Less: valuation allowance	(334,468)	(384,453)
Net deferred tax assets	17,779	9,432
Deferred tax liability:		
Debt discount on convertible notes	(17,654)	(9,432)
Net deferred taxes	\$ 125	\$ —

Effective January 1, 2017, the Company adopted ASC Topic 606, using the full retrospective transition method. Under this method, the Company has revised its consolidated financial statements for the years ended December 31, 2015 and 2016, and applicable interim periods within those years, as if Topic 606 had been effective for those periods. The adoption of this guidance did not have a significant impact on the Company's related tax disclosures.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017, or the Tax Act, was signed into law, resulting in significant changes to the U.S. corporate income tax system. These changes include a reduction of the federal statutory rate from 35% to 21%, reduction of certain tax credits, limitations on deductibility of interest expense and executive compensation, and limitations on the use of net operating loss, or NOL, carryforwards. The Tax Act also transitions U.S. international taxation from a worldwide system to a territorial system and includes provisions to prevent base erosion on foreign earnings, which has the effect of subjecting certain earnings of the Company's foreign subsidiaries to current U.S. taxation. These changes are generally effective beginning in 2018.

The Tax Act also includes a one-time mandatory deemed repatriation tax on accumulated foreign subsidiaries' previously untaxed foreign earnings, or the Transition Toll Tax. The Transition Toll Tax can be paid over an eight-year period, starting in 2018 and will not be subject to interest.

The Company has recognized the provisional tax impacts related to the Transition Toll Tax and the revaluation of deferred tax assets and liabilities in its consolidated financial statements for the year ended December 31, 2017. The Tax Act did not have a significant impact on the Company's consolidated financial statements for the year ended December 31, 2017 because the Company maintains a full valuation allowance on its net operating losses and other deferred tax assets. In addition, the Company has an accumulated deficit from its foreign operations and does not have an associated liability from the Transition Toll Tax.

The Tax Act subjects a U.S. stockholder to tax on global intangible low-taxed income, or GILTI, earned by certain foreign subsidiaries. Companies can make an accounting policy election to either recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years, or provide for the tax expense related to GILTI in the year the tax is incurred. Given the complexity of the GILTI provisions, the Company is still evaluating the effects of GILTI provisions and has not yet determined its accounting policy.

In accordance with SEC Staff Accounting Bulletin No. 118, the Company's preliminary estimate of the impact of the Tax Act is subject to the finalization of management's analysis related to certain matters, such as developing interpretations of the provisions of the Tax Act, changes to certain estimates and amounts related to the earnings and profits of certain subsidiaries and the filing of the Company's tax returns. U.S. Treasury regulations, administrative interpretations or court decisions interpreting the Tax Act may require further adjustments and changes in the Company's estimates, which could have a material adverse effect on the Company's business, results of operations or financial condition. The Company's final

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determination of the impact of the Tax Act will be completed as additional information becomes available, but no later than one year from its enactment.

ASC Topic 740 requires a valuation allowance to reduce the deferred tax assets reported if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, the Company has recorded full valuation allowances against its domestic and foreign deferred tax assets at December 31, 2017, because management has determined that it is more likely than not that these assets will not be realized. The valuation allowance increased by \$50.0 million from December 31, 2016 to December 31, 2017, primarily due to increases in operating losses and tax credits, partially offset by decreases reflecting the change in the U.S. corporate income tax rate from 35% to 21% resulting from the Tax Act.

As of December 31, 2017, the Company had cumulative federal, state and foreign NOL carryforwards of \$963.9 million and \$449.5 million and \$14.2, million respectively. The federal, state and foreign NOL carryforwards will expire at various dates through 2037, if not utilized, and are fully offset by a valuation allowance.

As of December 31, 2017, the Company had federal general business and state research and development tax credit carryforwards of approximately \$102.1 million and \$7.4 million, respectively, available to reduce future tax liabilities. The federal general business and state research and development tax credits will expire at various dates through 2037. The federal and state tax credit carryforwards are fully offset by a valuation allowance.

Under the provisions of the Internal Revenue Code, the NOL and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. NOL and tax credit carryforwards may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant stockholders over a three-year period in excess of 50 percent, as defined under Sections 382 and 383 of the Internal Revenue Code, respectively, as well as similar state provisions. This could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. The Company has completed several financings since its inception that it believes may have resulted in a change in control as defined by Sections 382 and 383 of the Internal Revenue Code.

The Company and its subsidiaries file income tax returns in the United States, as well as various state and foreign jurisdictions. Generally, the tax years 2014 through 2016 remain open to examination by the major taxing jurisdictions to which the Company is subject. To the extent the Company has tax attribute carryforwards, the tax years in which the attribute was generated may still be adjusted upon examination by the Internal Revenue Service, or state or foreign tax authorities, to the extent utilized in a future period.

A reconciliation of the beginning and ending balances of unrecognized tax benefits is as follows (in thousands):

	2016	2017
Balance at January 1	\$ —	\$ 7,744
Increases related to prior year tax positions	4,304	4,010
Increases related to current year tax positions	3,440	9,926
Reductions for tax positions of prior periods	—	—
Decreases related to lapse of applicable statute of limitations	—	—
Decreases related to settlements with tax authorities	—	—
Balance at December 31	\$ 7,744	\$ 21,680

During the year ended December 31, 2017, the Company established gross reserves of \$4.0 million and \$9.9 million related to research and development tax credits and the allocation of taxable income to the various jurisdictions where the Company is subject to tax, respectively.

The Company's policy is to record estimated interest and penalties related to the underpayment of income taxes as a component of its income tax provision. As of December 31, 2016 and 2017, the Company had no accrued interest or penalties related to uncertain tax positions and no amounts have been recognized in the Company's consolidated statement of operations.

11. Employee Benefit Plans

In 2010, the Company adopted a retirement plan, which is qualified under Section 401(k) of the Internal Revenue Code, for its U.S. employees. The plan allows eligible employees to defer, at the employee's discretion, pre-tax or post-tax compensation up to the IRS annual limits. Company contributions may be made at the discretion of the board of directors.

Effective as of January 1, 2012, the Company amended its 401(k) plan to provide for employer matching contributions equal to (1) 100% of employee deferral contributions up to a deferral rate of 3% of compensation, plus (2) 50% of employee deferral contributions up to a deferral rate of an additional 2% of compensation. During the years ended December 31, 2015, 2016 and 2017, the Company made aggregate matching contributions of \$1.0 million, \$2.2 million and \$4.2 million, respectively.

The Company maintains a pension plan covering employees of its wholly owned subsidiary in Switzerland. This plan is considered a defined benefit plan and is a government-mandated retirement fund that provides benefits to employees upon retirement, death, or disability. Employer and employee contributions are made based on various percentages of salaries and wages that vary based on employee age and other factors. As of December 31, 2017, the plan had an unfunded net pension obligation of approximately \$6.5 million and plan assets of approximately \$9.9 million. In 2017, the Company recognized expense of \$1.3 million related to this plan.

12. Commitments and Contingencies

The Company leases office space for its corporate headquarters in Waltham, Massachusetts under a non-cancelable operating lease agreement and an indenture of lease. Since the lease term of the non-cancelable operating lease agreement commenced on April 1, 2013, the Company has executed seven amendments to increase its leased space under that lease to a total of approximately 180,000 square feet as of December 31, 2017. The lease term, as amended, continues through June 30, 2020. The lease agreement, as amended, provides for varying periods of free rent with respect to portions of the leased premises and tenant improvement allowances of \$3.0 million. On December 18, 2017, the Company entered into an indenture of lease for approximately 83,000 additional square feet of leased office space. The indenture of lease continues through December 18, 2022 and provides for tenant improvement allowances of \$2.9 million. The Company also leases office space in several locations throughout Europe.

The Company recognizes rent expense on a straight-line basis over the respective lease term including any free rent periods and tenant allowances. The following table presents future minimum rental commitments, by fiscal year and in the aggregate, as of December 31, 2017 (in thousands):

	Operating Leases
2018	\$ 9,890
2019	11,616
2020	7,713
2021	3,766
2022	3,566
Thereafter	2,291
Total minimum lease payments	\$ 38,842

The Company recorded \$2.1 million, \$3.4 million and \$5.4 million in rent expense for the years ended December 31, 2015, 2016 and 2017, respectively.

The Company has entered into agreements with certain vendors for the provision of services, including services related to data management clinical operation support services, that the Company is not contractually able to terminate for convenience and avoid any and all future obligations to the vendors. Under such agreements, the Company is contractually obligated to make certain minimum payments to the vendors, with the exact amounts in the event of termination to be based on the timing of the termination and the exact terms of the agreement.

Litigation and Other Proceedings

The Company may periodically become subject to legal proceedings and claims arising in connection with ongoing business activities, including claims or disputes related to patents that have been issued or that are pending in the field of research on which the Company is focused.

A putative class action complaint was filed on January 17, 2018 in the United States District Court for the District of Massachusetts, entitled *Roger Bowers v. TESARO Incorporated (sic), et. al.*, Case No. 18-10086. The complaint alleges that the Company and its Chief Executive Officer and its Chief Financial Officer violated certain federal securities laws, specifically under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder. The plaintiff seeks unspecified damages on behalf of a purported class of purchasers of the Company's common stock between March 14, 2016 and January 12, 2018. The Court has not set a trial date for this matter. The Company believes that the allegations contained in the complaint are without merit and intends to defend the case vigorously. The Company has not recorded an estimated liability associated with this legal proceeding as it does not believe that such a liability is probable.

13. Revenue Recognition

Product Revenue, Net

The Company sells its products principally to a limited number of specialty distributors and specialty pharmacy providers in the U.S. and the EU, or collectively, its Customers. These Customers subsequently resell the Company's products to health care providers and patients. In addition to distribution agreements with Customers, the Company enters into arrangements with health care providers and payors that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of the Company's products.

Revenues from product sales are recognized when the Customer obtains control of the Company's product, which occurs at a point in time, typically upon delivery to the Customer. When the Company performs shipping and handling activities after the transfer of control to the Customer (e.g., when control transfers prior to delivery), they are considered as fulfillment activities, and accordingly, the costs are accrued for when the related revenue is recognized. Taxes collected from Customers relating to product sales and remitted to governmental authorities are excluded from revenues. The Company expenses incremental costs of obtaining a contract as and when incurred if the expected amortization period of the asset that the Company would have recognized is one year or less.

Reserves for Variable Consideration

Revenues from product sales are recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established and which result from discounts, returns, chargebacks, rebates, co-pay assistance and other allowances that are offered within contracts between the Company and its Customers, health care providers, payors and other indirect customers relating to the Company's sales of its products. These reserves are based on the amounts earned or to be claimed on the related sales and are classified as reductions of accounts receivable (if the amount is payable to the Customer) or a current liability (if the amount is payable to a party other than a Customer). Where appropriate, these estimates take into consideration a range of possible outcomes that are probability-weighted for relevant factors such as the Company's historical experience, current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the contract. The amount of variable consideration that is included in the transaction price may be constrained, and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Trade Discounts and Allowances: The Company generally provides Customers with discounts that include incentive fees that are explicitly stated in the Company's contracts and are recorded as a reduction of revenue in the period the related product revenue is recognized. In addition, the Company receives sales order management, data and distribution services from certain Customers. To the extent the services received are distinct from the Company's sale of products to the Customer, these payments are classified in selling, general and administrative expenses in the consolidated statements of operations and comprehensive loss of the Company.

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Product Returns: Consistent with industry practice, the Company generally offers Customers a limited right of return based on the product's expiration date for product that has been purchased from the Company, which lapses upon shipment to a patient. The Company estimates the amount of its product sales that may be returned by its Customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return liabilities using available industry data and its own historical sales information, including its visibility into the inventory remaining in the distribution channel.

Provider Chargebacks and Discounts: Chargebacks for fees and discounts to providers represent the estimated obligations resulting from contractual commitments to sell products to qualified healthcare providers at prices lower than the list prices charged to Customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable. Chargeback amounts are generally determined at the time of resale to the qualified healthcare provider by Customers, and the Company generally issues credits for such amounts within a few weeks of the Customer's notification to the Company of the resale. Reserves for chargebacks consist of credits that the Company expects to issue for units that remain in the distribution channel inventories at each reporting period end that the Company expects will be sold to qualified healthcare providers, and chargebacks that Customers have claimed but for which the Company has not yet issued a credit.

Government Rebates: The Company is subject to discount obligations under state Medicaid programs and Medicare. The Company estimates its Medicaid and Medicare rebates based upon a range of possible outcomes that are probability-weighted for the estimated payor mix. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included in accrued expenses on the consolidated balance sheet. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period.

Payor Rebates: The Company contracts with various private payor organizations, primarily insurance companies and pharmacy benefit managers, for the payment of rebates with respect to utilization of its products. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability.

Other Incentives: Other incentives that the Company offers include voluntary patient assistance programs, such as co-pay assistance programs, which are intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payors. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period.

To date, the Company's sources of product revenue have been U.S. sales of ZEJULA and VARUBI, and limited sales of ZEJULA and VARUBY in Europe. For the years ended December 31, 2015 and 2016, product revenues consisted solely of VARUBI in the U.S. Total net product revenue was \$5.2 million and \$120.7 million for the years ended December 31, 2016 and 2017, respectively. These totals included \$5.2 million and \$11.9 million from sales of VARUBI/VARUBY, respectively, and zero and \$108.8 million from sales of ZEJULA, respectively. The following table summarizes balances and activity in

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each of the product revenue allowance and reserve categories for the years ended December 31, 2015 (as revised), 2016 (as revised) and 2017 (in thousands):

	Chargebacks, discounts and fees	Government and other rebates	Returns	Total
Balance at December 31, 2014	\$ —	\$ —	\$ —	\$ —
Provision related to current period sales	813	422	8	1,243
Adjustment related to prior period sales	—	—	—	—
Credit or payments made during the period	—	—	—	—
Balance at December 31, 2015	813	422	8	1,243
Provision related to current period sales	2,231	1,941	10	4,182
Adjustment related to prior period sales	—	—	—	—
Credit or payments made during the period	(2,867)	(1,051)	—	(3,918)
Balance at December 31, 2016	177	1,312	18	1,507
Provision related to current period sales	21,732	12,090	16,338	50,160
Adjustment related to prior period sales	—	62	—	62
Credit or payments made during the period	(19,821)	(7,014)	(6)	(26,841)
Balance at December 31, 2017	\$ 2,088	\$ 6,450	\$ 16,350	\$ 24,888

The provision for returns related to sales for the year ended December 31, 2017 was primarily related to VARUBI IV, due to the Company's update to the VARUBI IV package insert in January 2018.

License, Collaboration and Other Revenues

The Company enters into out-licensing agreements that are within the scope of Topic 606, under which it licenses certain rights to its product candidates to third parties. The terms of these arrangements typically include payment to the Company of one or more of the following: non-refundable, up-front license fees; development, regulatory and commercial milestone payments; payments for manufacturing supply services the Company provides through its contract manufacturers; and royalties on net sales of licensed products. Each of these payments results in license, collaboration and other revenues, except for revenues from royalties on net sales of licensed products, which are classified as royalty revenues.

In determining the appropriate amount of revenue to be recognized as it fulfills its obligations under each of its agreements, the Company performs the following steps: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation. As part of the accounting for these arrangements, the Company must develop assumptions that require judgment to determine the stand-alone selling price for each performance obligation identified in the contract. The Company uses key assumptions to determine the stand-alone selling price, which may include forecasted revenues, development timelines, reimbursement rates for personnel costs, discount rates and probabilities of technical and regulatory success.

Licenses of Intellectual Property: If the license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from non-refundable, up-front fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, the Company utilizes judgment 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 and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue from non-refundable, up-front fees. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

Milestone Payments: At the inception of each arrangement that includes development 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 using the most likely amount method. If it is probable that a significant 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

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are received. The transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis, for which 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 of achievement of such development milestones and any related constraint, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect license, collaboration and other revenues and earnings in the period of adjustment.

Manufacturing Supply Services: Arrangements that include a promise for future supply of drug substance or drug product for either clinical development or commercial supply at the licensee's discretion are generally considered as options. The Company assesses if these options provide a material right to the licensee and if so, they are accounted for as separate performance obligations. If the Company is entitled to additional payments when the licensee exercises these options, any additional payments are recorded in license, collaboration and other revenues when the licensee obtains control of the goods, which is upon delivery.

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). To date, the Company has not recognized any royalty revenue resulting from any of its out-licensing arrangements.

The Company receives payments from its licensees based on billing schedules established in each contract. Up-front 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 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 licensees and the transfer of the promised goods or services to the licensees will be one year or less.

The following table presents changes in the Company's contract assets and liabilities during the years ended December 31, 2016 (as revised) and 2017 (in thousands):

	Balance at Beginning of Period	Additions	Deductions	Balance at End of Period
Year ended December 31, 2016				
Contract assets	\$ 1,000	\$ —	\$ —	\$ 1,000
Contract liabilities:				
Deferred revenue	\$ 92	\$ 653	\$ (345)	\$ 400
Year ended December 31, 2017				
Contract assets	\$ 1,000	\$ —	\$ —	\$ 1,000
Contract liabilities:				
Deferred revenue	\$ 400	\$ —	\$ (94)	\$ 306

During the years ended December 31, 2015, 2016 and 2017, the Company recognized the following revenues as a result of changes in the contract asset and the contract liability balances in the respective periods (in thousands):

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
Revenue recognized in the period from:			
Amounts included in the contract liability at the beginning of the period	\$ —	93	\$ 94
Performance obligations satisfied in previous periods	\$ —	—	\$ —

14. License and Collaboration Agreements

Rolapitant In-License

In December 2010, the Company entered into a license agreement with OPKO Health, Inc., or OPKO, to obtain an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell rolapitant. Under the OPKO license the Company is obligated to use commercially reasonable efforts to conduct all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant. Under the terms of the OPKO license, the Company paid OPKO \$6.0 million upon signing the agreement and issued to OPKO shares of its convertible preferred stock, then valued at \$0.6 million, which shares have since been converted into common stock. The Company has also made all development milestone payments to OPKO, totaling \$30.0 million, based on achieving specified regulatory milestones in the U.S. and Europe. In addition, the Company is required to make additional milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved.

The Company is required to pay OPKO tiered royalties on annual net sales of rolapitant achieved in the United States and Europe at percentage rates that range from the low teens to the low twenties, which the Company expects will result in an effective royalty rate in the low teens. The royalty rate on annual net sales outside of the United States and Europe is slightly above the single digits. Under certain circumstances, the Company is required to pay OPKO an annual minimum royalty of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI/VARUBY. In any year during this period, in certain circumstances, if royalty payments amount to less than \$2.5 million, the difference may be deemed a royalty shortfall and will be payable within 45 days of each calendar year end. Any such royalty shortfalls may be offset dollar for dollar against royalties due in future periods, for the first five calendar years of VARUBI sales. As of December 31, 2016, the Company had incurred \$0.7 million of royalties based on its 2016 VARUBI net product revenues. As this amount was less than the \$2.5 million annual minimum, the Company accrued an additional \$1.8 million royalty obligation owed to OPKO as of December 31, 2016, which is capitalized in the 'other assets' caption on the consolidated balance sheet. The Company has concluded the royalty shortfall amount for the year ended December 31, 2016 will no longer be recoverable through future years' sales, and wrote off \$2.0 million as a component of cost of product sales in the year ended December 31, 2017.

If the Company elects to develop and commercialize rolapitant in Japan through a third-party licensee the Company will share equally with OPKO all amounts received by it in connection with such activities under the Company's agreement with such third party, subject to certain exceptions and deductions. The Company is responsible for all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant. There were no ongoing clinical trials for rolapitant at the time of its acquisition. As of the date of acquisition, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As no processes or activities that would constitute a "business" were acquired along with the license, the transaction was accounted for as an asset acquisition by recording the entire purchase price of \$6.6 million as acquired in-process research and development expense. As of December 31, 2017, the Company has made milestone payments to date totaling \$30.0 million under this license agreement, \$25.0 million of which has been capitalized as intangible assets on the consolidated balance sheet.

Niraparib In-License

In May 2012, the Company entered into a license agreement with Merck Sharp & Dohme Corp., a subsidiary of Merck, under which the Company obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib for all therapeutic and prophylactic uses in humans. Under the Merck license, the Company is obligated to use diligent efforts to develop and commercialize a licensed product. Under the terms of the license agreement, the Company made an up-front payment to Merck of \$7.0 million in June 2012. The Company is also required to make milestone payments to Merck of up to an aggregate of \$57.0 million in development and regulatory milestones for the first indication, up to an aggregate of \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. The Company pays Merck tiered royalties at a percentage rate in the low teens based on worldwide annual net sales. As of the date of acquisition, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As no processes or activities that would constitute a "business" were acquired along with the license, the transaction has been accounted for as an asset acquisition and the entire purchase price of \$7.0 million has been recorded as acquired in-process research and development expense. The Company has made milestone payments to date totaling \$52.2 million, \$40.0 million of which has been capitalized as intangible assets on the consolidated balance sheet. The Company paid \$39.5 million of milestones during the year ended December 31, 2017.

Immuno-Oncology Platform License

In March 2014, the Company entered into a collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, a therapeutic antibody company. Under the terms of this agreement, the Company obtained an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of certain specified immunotherapy antibodies. Specifically, the Company received exclusive rights to monospecific antibody product candidates targeting PD-1, TIM-3 and LAG-3, and certain bi-specific antibody product candidates. The Company and AnaptysBio entered into an amendment in November 2014 to add an additional bi-specific antibody product candidate to the agreement. Under the agreement, AnaptysBio was responsible for performing initial discovery and development of therapeutic antibodies against immune checkpoint proteins, with the goal of generating immunotherapy antibodies for use in the treatment of cancer. The Company is responsible for the performance and costs of all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs and is obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program. The Company and AnaptysBio entered into another amendment in February 2016 to extend the term of the initial discovery period and the Company's and AnaptysBio's associated activities under the agreement.

Under the terms of the agreement, the Company made up-front, non-creditable and non-refundable cash payments of \$19.0 million to AnaptysBio in 2014. The Company was also required to reimburse AnaptysBio for specified costs incurred by AnaptysBio in its initial discovery and development activities covered by the agreement. These activities are now complete. Programs may be extended by mutual agreement of the parties, and the Company can terminate on a program-by-program basis by providing 90 days prior written notice, subject to a wind-down period during which the Company's obligation to reimburse AnaptysBio for specified costs would continue. For each of the four development programs, the Company will be required to make milestone payments to AnaptysBio of up to an aggregate of \$18.0 million if certain research and development milestone events are achieved, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. The Company will be required to pay AnaptysBio tiered single-digit royalties, on a product-by-product basis, on worldwide annual net sales, and additional commercial milestone payments if specified levels of annual net sales of a product are attained. The Company has made milestone payments to date totaling \$21.0 million, including \$10.0 million during the year ended December 31, 2017.

As of the date of the license transaction, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As the processes or activities that were acquired along with the license do not constitute a "business," the transaction has been accounted for as an asset acquisition. In addition, the Company has concluded that its reimbursements to AnaptysBio for the research services called for under the agreement are at fair value. As a result of these factors, the up-front payments totaling \$19.0 million have been recorded as acquired in-process research and development expense, and no portion of the payments has been ascribed to the future services to be provided to the Company by AnaptysBio. For the year ended December 31, 2016, the Company recorded approximately \$3.3 million of research and development expense and no amounts for the year ended December 31, 2017 associated with amounts due to AnaptysBio under the collaboration.

Technology Licenses

In October 2012, the Company entered into two license agreements with AstraZeneca UK Limited, having aggregate up-front payments of \$0.4 million. These agreements provide the Company with the exclusive right to certain methods of treating patients with PARP inhibitors solely with respect to niraparib. Under certain circumstances, the Company may be required to make milestone and royalty payments to AstraZeneca UK Limited based on the achievement of certain development and regulatory milestone events with regard to niraparib, and on net sales of niraparib. The Company has made milestone payments to AstraZeneca totaling \$1.5 million to date.

Merck Collaboration

In May 2015, the Company entered into a research agreement with Merck Sharp & Dohme B.V., a subsidiary of Merck, to perform a trial to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® (pembrolizumab) in patients with triple negative breast cancer and patients with ovarian cancer. Under the terms of this agreement, the Company is responsible for providing niraparib study materials and for carrying out clinical research activities. The Company and Merck share in the external costs of the study equally, with certain exceptions. The Company records cost-sharing payments received from Merck as reductions of research and development expense. During the year ended December 31, 2017, the Company

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incurred \$8.4 million in external costs related to this study, of which \$4.1 million is reimbursable by Merck. At December 31, 2017, \$1.3 million of cost-sharing receivable from Merck has been recorded in other current assets on the consolidated balance sheet.

Out-Licenses

Takeda Pharmaceutical Co., Ltd.

On July 27, 2017, the Company entered into an exclusive license agreement, or the Takeda Agreement, with Millennium Pharmaceuticals, Inc., a wholly-owned subsidiary of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the Takeda Agreement, the Company granted Takeda licenses under certain patent rights and know-how relating to niraparib to develop and commercialize niraparib for the treatment of all tumor types in Japan, and all tumor types excluding prostate cancer in South Korea, Taiwan, Russia and Australia.

In connection with the Takeda Agreement, the Company received a \$100.0 million up-front payment and is eligible to receive additional payments of up to \$140.0 million related to the achievement of certain clinical development and regulatory milestones as well as up to \$100.0 million related to the achievement of additional sales milestones. The Company will also be eligible to receive tiered royalties from Takeda based on percentages of net product sales ranging from the high teens to low thirties. Takeda is responsible for conducting and funding all development and commercialization of niraparib in the licensed territories, including research, development, regulatory and commercialization activities. Unless earlier terminated, the Takeda Agreement will continue in effect until the date on which the royalty term and all payment obligations with respect to all products in all countries have expired.

The Company identified the following performance obligations at the inception of the Takeda Agreement: (1) exclusive license with rights to develop and commercialize niraparib to Takeda in the licensed territories for the associated tumor types, and (2) initial supply to Takeda of certain materials for the manufacture of niraparib. In addition, the Company may also become responsible for manufacturing certain niraparib products for clinical and commercial supply and providing technical assistance related to the transfer of know-how, at Takeda's option, for the manufacture of niraparib for which the Company will receive reimbursement that approximates stand-alone selling prices.

The Company evaluated the Takeda Agreement under Topic 606. Based on that evaluation, the up-front, non-refundable fees and the reimbursement received for the initial supply of materials constituted the amount of the consideration to be included in the transaction price and have been allocated to the performance obligations identified based on the Company's best estimate of the relative stand-alone selling price. None of the clinical or regulatory milestones has been included in the transaction price, as all milestone amounts were fully constrained. As part of its evaluation of the constraint, the Company considered numerous factors, including that receipt of the milestones is outside the control of the Company and contingent upon success in future clinical trials and the licensee's efforts. Any consideration related to sales-based milestones (including royalties) will be recognized when the related sales occur as these amounts have been determined to relate predominantly to the license granted to Takeda and therefore are recognized at the later of when the performance obligation is satisfied or the related sales occur. The Company considered Takeda's right to sublicense and manufacture certain niraparib products, and the fact that the manufacturing services are not proprietary and can be provided by other vendors, to conclude that the license has stand-alone functionality and is distinct. The Company believes that a change in the assumptions used to determine its stand-alone selling price for the license most likely would not have a significant effect on the allocation of consideration received (or receivable) to the performance obligations. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

During the year ended December 31, 2017, the Company allocated \$100.0 million of the transaction price to the license and recognized this amount as revenue concurrent with the transfer of the license. Revenue associated with the initial supply of niraparib materials will be recognized when delivered to Takeda. Under the Takeda Agreement, for the year ended December 31, 2017, the Company recognized \$100.0 million within license, collaboration and other revenues in its consolidated statements of operations and comprehensive loss.

Janssen Biotech, Inc.

On April 5, 2016, the Company entered into separate transactions with Janssen Biotech, Inc., or Janssen, and its affiliate, Johnson & Johnson Innovation – JJDC, Inc., or JJDC, consisting of a collaboration and license agreement with Janssen, or the Collaboration Agreement, and a stock purchase agreement and investor agreement, each with JJDC (the "Stock

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Purchase Agreement” and the “Investor Agreement,” respectively, and collectively with the Collaboration Agreement, the “Agreements”).

Under the terms of the Collaboration Agreement, the Company granted Janssen licenses under certain patent rights and know-how relating to niraparib for prostate cancer worldwide, except for Japan. Janssen will conduct all development and commercialization of niraparib in the field of prostate cancer worldwide (excluding Japan).

Pursuant to the Collaboration Agreement, within 30 days after the date of the Collaboration Agreement, the Company provided Janssen with electronic copies of certain know-how relating to development of niraparib. In addition, at Janssen’s request and in return for certain reimbursement, the Company is also responsible for manufacturing and supplying to Janssen all of Janssen’s requirements of active pharmaceutical ingredient, or API, for niraparib and niraparib products to be used by Janssen for its development activities in prostate cancer indications. Also at Janssen’s request, the Company is responsible for manufacturing of certain niraparib products and API for commercial sale in the field of prostate cancer. In both cases, if Janssen exercises its right to receive the manufacturing services, the Company will receive reimbursement that will at least cover its cost of providing such services.

The Company received a \$35.0 million up-front, non-refundable license fee from Janssen. Assuming successful development and commercialization of niraparib products for prostate cancer, the Company could receive up to an additional \$43.0 million in clinical milestones and \$372.0 million in regulatory and sales milestones as well as tiered, double-digit royalties on aggregate net sales of products in the field of prostate cancer. Janssen is responsible for funding all development and commercialization of niraparib in prostate cancer worldwide (excluding Japan), including research, development, manufacturing, regulatory and commercialization activities. Janssen may terminate the Collaboration Agreement at any time after April 5, 2017 upon 90 days’ written notice, upon termination of the Company’s license agreement with Merck or in the event of certain safety concerns. Either party may terminate the Collaboration Agreement for uncured material breach or bankruptcy. Unless earlier terminated, the Collaboration Agreement will continue in effect until the date on which the royalty term and all payment obligations with respect to all products in all countries have expired.

The Company assessed this arrangement in accordance with Topic 606 and concluded that the contract counterparty, Janssen, is a customer. The Company identified the following material promises under the contract: (1) the licenses under certain patent rights relating to niraparib for prostate cancer worldwide, except for Japan, and transfer of certain development and regulatory information; and (2) the obligation to participate in Joint Committees. In addition, the Company identified the following customer options that will create manufacturing obligations for the Company upon exercise by Janssen: (1) the supply of API and niraparib products for Janssen’s development and commercial needs; and (2) the supply of niraparib for Janssen’s clinical trial needs. The Company considered the manufacturing capabilities of Janssen, Janssen’s right to sublicense and manufacture API, and the fact that the manufacturing services are not proprietary and can be provided by other vendors, to conclude that the license has stand-alone functionality and is distinct. The Company’s obligation to participate in the Joint Committees and provide development, regulatory and commercialization information to Janssen does not significantly impact or modify the licenses’ granted functionality. Further, the customer options for manufacturing services were evaluated as a material right, but were concluded to be immaterial to the Company’s financial statements. Based on these assessments, the Company identified the license and the participation in Joint Committees as the only performance obligations at the inception the arrangement, which were both deemed to be distinct.

Under the Collaboration Agreement, in order to evaluate the appropriate transaction price, the Company determined that the up-front amount constituted the entirety of the consideration to be included in the transaction price and to be allocated to the performance obligations based on the Company’s best estimate of their relative stand-alone selling prices. For the license, the stand-alone selling price was calculated using an income approach model and included the following key assumptions: the development timeline, revenue forecast, discount rate and probabilities of technical and regulatory success. The relative selling price of the Company’s Joint Committee participation was based on a full-time equivalent rate for the level of effort required, which can be reasonably estimated to be incurred over the performance period, which is the development period. The Company believes that a change in the assumptions used to determine its stand-alone selling price for the license most likely would not have a significant effect on the allocation of consideration received (or receivable) to the performance obligations.

At execution, the transaction price included only the \$35.0 million up-front consideration received. None of the clinical or regulatory milestones has been included in the transaction price, as all milestone amounts were fully constrained. As part of its evaluation of the constraint, the Company considered numerous factors, including that receipt of the milestones is outside the control of the Company and contingent upon success in future clinical trials and the licensee’s efforts. Any

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consideration related to sales-based milestones (including 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. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

During the second quarter of 2016, the Company allocated \$34.5 million (as revised) of the transaction price to the license and recognized this amount as revenue concurrent with the transfer of the license and certain development and regulatory know-how that occurred within 30 days of entering into the Collaboration Agreement. Revenue allocated to the Joint Committees performance obligation, \$0.5 million, is being recognized on a straight-line basis over a period of five years, which, in management's judgment, is the best measure of progress toward satisfying the performance obligation and represents the Company's best estimate of the period of the obligation to participate in the Joint Committees. Through December 31, 2017, the Company had recognized \$34.7 million as license and collaboration revenue under the Collaboration Agreement. The remaining transaction price of \$0.3 million is recorded in deferred revenue as of December 31, 2017 on the consolidated balance sheets and will be recognized as revenue over the remaining period of 39 months.

Revenue associated with the manufacturing supply services is recognized when the material is delivered to Janssen. For the years ended December 31, 2016 and 2017, the Company recognized \$1.8 million (as revised) and \$2.5 million, respectively, as other revenues within license, collaboration and other revenues in the Company's consolidated statements of operations and comprehensive loss under the Collaboration Agreement.

Additionally, the Company considered whether the Stock Purchase Agreement and the Investor Agreement with JJDC would be subject to combination with the Collaboration Agreement. The Company determined that they should not be combined because the deliverables and terms in these arrangements are not closely interrelated or interdependent in terms of payment or functionality, the arrangements were negotiated separately, and the common stock was sold at approximately its fair value.

Zai Lab (Shanghai) Co., Ltd.

On September 28, 2016, the Company entered into a Collaboration, Development and License Agreement, or the Zai Agreement, with Zai Lab. Under the terms of the Zai Agreement, the Company exclusively licensed the rights to develop and commercialize niraparib to Zai Lab for the China Territories. Zai Lab will conduct all development and commercialization of niraparib in the China Territories, except for prostate cancer.

Under the terms of the Zai Agreement, the Company received a \$15.0 million up-front, non-refundable license fee from Zai Lab in the fourth quarter of 2016. Assuming successful development and commercialization of niraparib products in the China Territories, the Company could receive additional regulatory and sales milestones as well as tiered, double-digit royalties on aggregate net sales of products in the China Territories. Zai Lab is responsible for funding all development and commercialization of niraparib in the China Territories, including research, development, manufacturing, regulatory and commercialization activities. The term of the Zai Agreement continues, on a country-by-country basis, until the later of expiration of the last patent in the China Territories covering the niraparib product, or ten years from the first commercial sale in such country. The Zai Agreement may also be terminated by Zai Lab at any time upon prior written notice, or by either party for material breach or insolvency.

The Company identified the following performance obligations under the contract: (1) exclusive license with rights to develop and commercialize niraparib to Zai Lab for the China Territories; (2) provision of technical assistance related to the know-how transfer for the development of niraparib; and (3) initial supply to Zai Lab of certain materials for the manufacture of niraparib. In addition, the Company may also become responsible for manufacturing of certain niraparib products and materials for commercial sale in certain instances based on regulatory requirements in the China Territories for which the Company will receive reimbursement that approximates stand-alone selling price. The Zai Agreement also provided the Company with an option to co-market niraparib in the China Territories with Zai Lab, in return for certain consideration. In February 2018, the Company and Zai Lab entered into an amendment to the Zai Agreement, eliminating the Company's co-marketing right. In addition, the Zai Agreement provides the Company with a right of first refusal with respect to licenses for two novel, discovery-stage immuno-oncology programs from Zai Lab.

The Company evaluated the Zai Agreement under Topic 606. Based on that evaluation, the up-front, non-refundable fees and the reimbursement received for the initial supply of materials constituted the amount of the consideration to be included in the transaction price and have been allocated to the performance obligations identified based on the Company's

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best estimate of the relative stand-alone selling price. None of the clinical or regulatory development milestones have been included in the transaction price, as all such milestone amounts are not within the control of the Company or the licensee and are not considered probable to occur until those approvals are received. Any consideration related to sales-based milestones (including royalties) will be recognized when the related sales occur as these amounts have been determined to relate predominantly to the license granted to Zai Lab and therefore are recognized at the later of when the performance obligation is satisfied or the related sales occur. The Company concluded the option to co-market niraparib was not a repurchase right as Zai Lab would continue to control its rights to commercialize niraparib in its licensed territories if the Company exercised its right. The Company further assessed and concluded that the probability of exercise of this right is remote, and the transaction price received and described above was properly allocated to the performance obligations under this agreement and recognized to revenue as those performance obligations were satisfied by the Company. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur. The amendment described above, eliminating the co-marketing right, had no impact on the Company's accounting conclusions under Topic 606.

During the third quarter of 2016, the Company allocated \$14.8 million (as revised) of the transaction price to the license and recognized this amount as revenue concurrent with the transfer of the license. Revenue allocated to the technical assistance performance obligation, \$0.2 million (as revised), was recognized on a straight-line basis through the service period which was substantially completed during the fourth quarter of 2016. In addition, \$0.7 million (as revised) of revenue associated with the initial manufacturing supply services was recognized upon delivery of the materials during the fourth quarter of 2016. No revenues were recognized under the Zai Agreement during the year ended December 31, 2017.

Jiangsu Hengrui Medicine Co., Ltd.

In July 2015, the Company entered into a license agreement with Jiangsu Hengrui Medicine Co., Ltd., or Hengrui, pursuant to which Hengrui has licensed the rights to develop, manufacture and commercialize rolapitant in the China Territories. The Company received a \$1.0 million up-front, non-refundable license fee from Hengrui in the fourth quarter of 2015. The Company has evaluated the terms of this arrangement under Topic 606 and has determined that there are two performance obligations: (1) exclusive license with rights to develop, manufacture and commercialize rolapitant in the China Territories; and (2) provision of technical assistance related to the know-how transfer for the development of the rolapitant formulations. The Company further determined that the transaction price for this arrangement includes the \$1.0 million up-front consideration received and a future regulatory development milestone of \$1.0 million. This future milestone payment relates to the submission of the clinical trial application with the China Food and Drug Administration, or the China FDA. The Company is also entitled to an additional payment of \$1.0 million contingent on the achievement of regulatory approval from the China FDA. However, as this milestone is not within the control of the Company or Hengrui, the amount has not been included in the transaction price by the Company. Any consideration related to sales-based milestones (including royalties at percentage rates in the low teens) will be recognized when the related sales occur as these amounts have been determined to relate predominantly to the license granted to Hengrui. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

During the third quarter of 2015, the Company allocated \$1.9 million (as revised) of the transaction price to the license and recognized this amount as revenue concurrent with the transfer of the license. Revenue allocated to the technical assistance performance obligation, \$0.1 million (as revised), was recognized on a straight-line basis through the service period and was substantially completed during the fourth quarter of 2016. No revenues were recognized under this agreement during the year ended December 31, 2017.

15. Segment Information

Revenues by Product

Product revenues, net consisted of the following (in thousands):

	Years Ended December 31,		
	2015	2016	2017
	(as revised)	(as revised)	
ZEJULA	\$ —	\$ —	\$ 108,756
VARUBI/VARUBY	2,026	5,174	11,944
Total product revenues, net	\$ 2,026	\$ 5,174	\$ 120,700

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Revenues by Geographic Location

Net product revenues are attributed to countries based on the location of the customer. License, collaboration and other revenues are attributed to the operations of the Company in the United States. Royalty revenues are attributed to countries based on the location of the collaborator.

The following table presents total revenues by geography (in thousands):

	Years Ended December 31,		
	2015 (as revised)	2016 (as revised)	2017
United States	\$ 4,038	\$ 58,018	\$ 221,955
Europe	—	—	1,371
Total revenues	\$ 4,038	\$ 58,018	\$ 223,326

Significant Customers

Revenues and accounts receivable from each of the Company's customers who individually accounted for 10% or more of total revenues and/or 10% or more of accounts receivable consisted of the following (* indicates less than 10%):

	Percent of Total Revenues				Percent of Accounts Receivable			
	Years Ended December 31,				December 31,			
	2016		2017		2016		2017	
	(as revised)				(as revised)			
Janssen Biotech, Inc.	63	%	*	%	26	%	*	%
Zai Lab (Shanghai) Co., Ltd.	27	%	*	%	11	%	*	%
Takeda Pharmaceutical Co., Ltd.	*	%	45	%	*	%	*	%
Jiangsu Hengrui Medicine Co., Ltd.	*	%	*	%	10	%	*	%
Distributor "A"	*	%	32	%	42	%	31	%
Distributor "B"	*	%	11	%	*	%	49	%

Property and Equipment, Net by Location

Property and equipment, net by location consisted of the following (in thousands):

	December 31,	
	2016	2017
United States	\$ 6,194	\$ 8,583
Switzerland	446	669
Germany	—	119
Spain	—	281
Total property and equipment, net	\$ 6,640	\$ 9,652

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16. Consolidated Quarterly Financial Data - Unaudited

The following table presents unaudited consolidated quarterly financial data for the years ended December 31, 2016 and 2017 (in thousands, except per share data):

	Three Months Ended							
	March 31, 2016 (a)(b)	June 30, 2016 (b)	September 30, 2016 (b)	December 31, 2016 (b)	March 31, 2017	June 30, 2017	September 30, 2017	December 31, 2017
Revenues:								
Product revenue, net	\$ 276	\$ 1,242	\$ 1,326	\$ 2,330	\$ 2,139	\$ 28,829	\$ 41,755	\$ 47,977
License, collaboration and other revenues	24	34,568 (d)	15,661 (e)	2,591	934	635	101,011 (f)	46
Total revenues	300	35,810	16,987	4,921	3,073	29,464	142,766	48,023
Expenses:								
Cost of sales - product	79	234	378	512	444	3,620	6,216	30,857 (g)
Cost of sales - intangible asset amortization	464	463	464	464	490	2,979	1,254	1,435
Research and development	52,709	50,138	60,783	71,514	66,122	71,400	73,388	97,832
Selling, general and administrative	30,149	36,218	37,685	54,526	69,262	92,979	83,998	90,569
Acquired in-process research and development (c)	4,000	4,000	1,940	9,000	—	7,000	—	3,000
Total expenses	87,401	91,053	101,250	136,016	136,318	177,978	164,856	223,693
Loss from operations	(87,101)	(55,243)	(84,263)	(131,095)	(133,245)	(148,514)	(22,090)	(175,670)
Interest expense	(3,981)	(4,120)	(4,119)	(4,267)	(4,267)	(4,426)	(4,424)	(6,641)
Interest income	102	209	532	597	841	959	1,133	1,214
Other income	—	—	—	—	—	—	243	85
Loss before income taxes	(90,980)	(59,154)	(87,850)	(134,765)	(136,671)	(151,981)	(25,138)	(181,012)
Provision for income taxes	—	—	—	1,475	54	78	139	1,053
Net loss	\$ (90,980)	\$ (59,154)	\$ (87,850)	\$ (136,240)	\$ (136,725)	\$ (152,059)	\$ (25,277)	\$ (182,065)
Net loss per share - basic and diluted	\$ (2.22)	\$ (1.29)	\$ (1.72)	\$ (2.59)	\$ (2.55)	\$ (2.82)	\$ (0.47)	\$ (3.35)
Weighted-average shares - basic and diluted	40,966	45,808	51,151	52,589	53,685	53,982	54,241	54,403

- (a) Amounts for the quarter ended March 31, 2016 have been retroactively adjusted to reflect an increase in research and development costs and selling, general and administrative costs in the amount of \$0.1 million and \$0.1 million, respectively, as a result of the adoption of ASU 2016-09.
- (b) Amounts for each of the quarterly periods for the year ended December 31, 2016 have been revised to reflect the Company's adoption of ASU No. 2014-09 effective January 1, 2017, with full retrospective application. This ASU amends the guidance for accounting for revenue from contracts with customers.
- (c) Acquired in-process research and development expenses relate to licensing agreement milestone expenses for the following periods: (i) \$4.0 million to AnaptysBio for the quarter ended March 31, 2016; (ii) \$4.0 million to AnaptysBio for the quarter ended June 30, 2016; (iii) \$1.0 million to AnaptysBio and \$0.9 million to Merck for the quarter ended September 30, 2016; (iv) \$9.0 million to Merck for the quarter ended December 31, 2016; (v) \$7.0 million to AnaptysBio for the quarter ended June 30, 2017; and (vi) \$3.0 million to AnaptysBio for the quarter ended December 31, 2017.
- (d) In the quarter ended June 30, 2016, the Company received \$35.0 million and transferred the license and related know-how required under its collaboration agreement with Janssen. \$34.6 million of related license revenue was recognized during the quarter.
- (e) In the quarter ended September 30, 2016, the Company received \$15.0 million and transferred the license and related know-how required under its collaboration agreement with Zai Lab. \$14.8 million of related license revenue was recognized during the quarter.
- (f) In the quarter ended September 30, 2017, the Company received \$100.0 million and transferred certain patent rights and know-how relating to niraparib to Takeda. The entire amount of related license revenue was recognized during the quarter.
- (g) Product cost of sales for the quarter ended December 31, 2017 includes a \$16.7 million lower of cost or market write-down of VARUBI inventories and a \$1.6 million loss on firm purchase commitments.

17. Subsequent Events

In January 2018, after post-marketing reports of side effects experienced following the commercial introduction of VARUBI IV, the Company updated the VARUBI IV package insert, including modifications to the contraindications, warnings and precautions, and adverse reactions sections. In February 2018, the Company determined that it would cease marketing and distribution of VARUBI IV and pursue strategic alternatives for the VARUBI brand, including potentially out-licensing the VARUBI product line.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

As of December 31, 2017, management, with the participation of our Principal Executive Officer and Principal Financial Officer, performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including the Principal Executive Officer and the Principal Financial Officer, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objective. Based on this evaluation, our Principal Executive Officer and Principal Financial Officer concluded that, as of December 31, 2017, the design and operation of our disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) under the Exchange Act as a process designed by, or under the supervision of, our principal executive officer and principal financial officer and effected by our board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external reporting purposes in conformity with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision of and with the participation of our principal executive officer and principal financial officer, our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2017 based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013)*. Based on this assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2017.

Ernst & Young LLP, independent registered public accounting firm, who audited and reported on the TESARO, Inc. Consolidated Financial Statements included in this Annual Report on Form 10-K, has also audited the effectiveness of our internal control over financial reporting as of December 31, 2017, as stated in its report appearing in this Item 9A.

Changes in Internal Control Over Financial Reporting

There were no reportable changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2017 that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of TESARO, Inc.

Opinion on Internal Control over Financial Reporting

We have audited TESARO, Inc.'s internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, TESARO, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2017, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2016 and 2017, the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2017 and the related notes and financial statement schedule listed in the Index at item 15(a)(2) and our report dated February 28, 2018 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Boston, Massachusetts
February 28, 2018

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ITEM 9B. OTHER INFORMATION

Not applicable.

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PART III

Certain information required by Part III is omitted from this Annual Report on Form 10-K and is incorporated herein by reference from our definitive proxy statement relating to our 2018 annual meeting of stockholders, pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, also referred to in this Annual Report on Form 10-K as our 2018 Proxy Statement, which we expect to file with the SEC no later than April 30, 2018.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item will be set forth in our 2018 Proxy Statement to be filed with the SEC within 120 days of December 31, 2017, and is incorporated into this Annual Report on Form 10-K by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item will be set forth in our 2018 Proxy Statement to be filed with the SEC within 120 days of December 31, 2017, and is incorporated into this Annual Report on Form 10-K by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Other than the information set forth below, the information required by this Item will be set forth in our 2018 Proxy Statement to be filed with the SEC within 120 days of December 31, 2017, and is incorporated into this Annual Report on Form 10-K by reference.

Securities Authorized for Issuance Under Equity Compensation Plans

Equity Compensation Plan Information as of December 31, 2017

Plan Category	Number of securities to be issued upon exercise of outstanding options and rights (a)	Weighted-average exercise price of outstanding options and rights (b)	Number of securities remaining available for issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders (1) (2) (3)	7,992,431	\$ 51.93	2,160,532
Equity compensation plans not approved by security holders (4)	75,000	57.66	—
Total	8,067,431	\$ 52.00	2,160,532

- (1) As of December 31, 2017, 1,810,240 shares remained available for issuance under our 2012 Omnibus Incentive Plan, or the 2012 Incentive Plan, which became effective in April 2012, including 6,857 remaining shares that were then available for future issuance under the 2010 Stock Incentive Plan, or the 2010 Incentive Plan, which were transferred to the 2012 Incentive Plan. The number of shares of our common stock reserved for issuance under the 2012 Incentive Plan is increased (i) from time to time by the number of shares of our common stock forfeited upon the expiration, cancellation, forfeiture, cash settlement or other termination of awards under the 2010 Incentive Plan and (ii) on January 1 of each year, by a number of shares of common stock equal to the lesser of (x) 4% of the shares of common stock outstanding at such time or (y) the number of shares determined by our board of directors. As of December 31, 2017, 151,075 shares of our common stock had been cancelled under the 2010 Incentive Plan and transferred to the 2012 Incentive Plan. Effective January 1, 2018, the number of shares authorized for issuance under the 2012 Incentive Plan was increased by 2,178,561 shares.
- (2) As of December 31, 2017, 151,859 shares were reserved for issuance under our 2012 Employee Stock Purchase Plan, or ESPP, which became effective in June 2012.
- (3) As of December 31, 2017, 198,433 shares were reserved for issuance under our 2015 Non-Employee Director Stock Incentive Plan, or the 2015 Director Plan, which became effective in May 2015.

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- (4) On March 30, 2015, 75,000 shares were granted as part of an inducement award outside of the 2012 Omnibus Incentive Plan.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item will be set forth in our 2018 Proxy Statement to be filed with the SEC within 120 days of December 31, 2017, and is incorporated into this Annual Report on Form 10-K by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item will be set forth in our 2018 Proxy Statement to be filed with the SEC within 120 days of December 31, 2017, and is incorporated into this Annual Report on Form 10-K by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

- (a) (1) See Item 8 for the Financial Statements required to be included in this Annual Report on Form 10-K.
- (2) Schedule II — Valuation and Qualifying Accounts and Reserves is included on page 138 of this Annual Report on Form 10-K.
- (3) See the accompanying Index to Exhibits filed as a part of this Annual Report on Form 10-K, which list is incorporated by reference in this Item.
- (b) See the accompanying Index to Exhibits filed as a part of this Annual Report on Form 10-K.
- (c) Other schedules are not applicable.

ITEM 16. FORM 10-K SUMMARY

None.

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description
3.1	<u>Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 3, 2012 (File No. 001-35587)).</u>
3.2	<u>Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on July 3, 2012 (File No. 001-35587)).</u>
4.1	<u>Form of Certificate of Common Stock (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A filed on June 19, 2012 (File No. 333-180309)).</u>
4.2	<u>Second Amended and Restated Investors' Rights Agreement, dated June 6, 2011, by and between the Company and certain investors named therein (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1/A filed on May 17, 2012 (File No. 333-180309)).</u>
4.3	<u>Amendment No. 1 to the Second Amended and Restated Investors' Rights Agreement, dated July 7, 2011 (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1/A filed on May 17, 2012 (File No. 333-180309)).</u>
4.4	<u>Amendment No. 2 to the Second Amended and Restated Investors' Rights Agreement, dated March 18, 2016 (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2016 (File No. 001-35587)).</u>
4.5	<u>Senior Debt Securities Indenture, dated September 29, 2014, by and between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on September 29, 2014 (File No. 001-35587)).</u>
4.6	<u>First Supplemental Indenture, dated September 29, 2014, by and between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on September 29, 2014 (File No. 001-35587)).</u>
4.7	<u>Investor Agreement, dated March 18, 2016, by and among the Company, the investors named therein and Future Fund Investment Company No.4 Pty Ltd. (incorporated by reference to Exhibit 4.2 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2016 (File No. 001-35587)).</u>
4.8	<u>Investor Agreement, dated April 5, 2016, by and between the Company and Johnson & Johnson Innovation-JJDC Inc. (incorporated by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q filed on August 5, 2016 (File No. 001-35587)).</u>
10.1+	<u>TESARO, Inc. 2010 Stock Incentive Plan, as amended, and forms of agreement thereunder (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1 filed on March 23, 2012 (File No. 333-180309)).</u>
10.2+	<u>TESARO, Inc. 2012 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-1/A filed on June 19, 2012 (File No. 333-180309)).</u>
10.3+	<u>Amendment to the TESARO, Inc. 2012 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 14, 2015 (File No. 001-35587)).</u>
10.4+	<u>Amendment #2 to the TESARO, Inc. 2012 Omnibus Incentive Plan.</u>
10.5+	<u>Form of Incentive Stock Option Agreement under 2012 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1/A filed on June 27, 2012 (File No. 333-180309)).</u>

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- 10.6+ [Form of Nonstatutory Stock Option Agreement under 2012 Omnibus Incentive Plan \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 1, 2015 \(File No. 001-35587\)\).](#)
- 10.7+ [Form of Restricted Stock Unit Agreement under 2012 Omnibus Incentive Plan \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on August 7, 2015 \(File No. 001-35587\)\).](#)
- 10.8+ [TESARO, Inc. 2012 Employee Stock Purchase Plan \(incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-1/A filed on June 19, 2012 \(File No. 333-180309\)\).](#)
- 10.9+ [TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan, as amended \(incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.10+ [Form of Nonstatutory Stock Option Agreement under 2015 Non-Employee Director Stock Incentive Plan \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 7, 2015 \(File No. 001-35587\)\).](#)
- 10.11+ [Non-Qualified Stock Option Inducement Award Agreement, dated March 30, 2015, by and between the Company and Joseph L. Farmer \(incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on August 7, 2015 \(File No. 001-35587\)\).](#)
- 10.12+ [Form of Indemnification Agreement by and between the Company and each of its directors and executive officers \(incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 filed on March 23, 2012 \(File No. 333-180309\)\).](#)
- 10.13+ [Indemnification Agreement by and between the Company and David M. Mott \(incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-1 filed on March 23, 2012 \(File No. 333-180309\)\).](#)
- 10.14+ [Indemnification Agreement by and between the Company and Arnold L. Oronsky \(incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-1 filed on March 23, 2012 \(File No. 333-180309\)\).](#)
- 10.15+ [Indemnification Agreement by and between the Company and Beth Seidenberg, M.D. \(incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-1 filed on March 23, 2012 \(File No. 333-180309\)\).](#)
- 10.16+ [Amended and Restated Employment Letter Agreement, dated February 23, 2017, by and between the Company and Leon O. Moulder, Jr. \(incorporated by reference to Exhibit 10.15 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.17+ [Amended and Restated Employment Letter Agreement, dated February 23, 2017, by and between the Company and Mary Lynne Hedley, Ph.D. \(incorporated by reference to Exhibit 10.16 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.18+ [Form of Amended and Restated Employment Letter Agreement for executive vice presidents and senior vice presidents. \(incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.19* [Exclusive License Agreement, dated December 10, 2010, by and between the Company and OPKO Health, Inc. \(incorporated by reference to Exhibit 10.17 to the Company's Registration Statement on Form S-1/A filed on June 22, 2012 \(File No. 333-180309\)\).](#)

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- 10.20* [License Agreement, dated May 22, 2012, by and between the Company and Merck Sharp & Dohme Corp. \(incorporated by reference to Exhibit 10.20 to the Company's Registration Statement on Form S-1/A filed on June 22, 2012 \(File No. 333-180309\)\).](#)
- 10.21* [Amendment No. 1 to License Agreement, dated April 5, 2016, by and between the Company and Merck Sharp & Dohme Corp. \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on August 5, 2016 \(File No. 001-35587\)\).](#)
- 10.22* [Collaboration and Exclusive License Agreement, dated March 10, 2014, by and among the Company, TESARO Development, Ltd. and AnaptysBio, Inc. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 2, 2014 \(File No. 001-35587\)\).](#)
- 10.23* [Amendment No. 1 to Collaboration and Exclusive License Agreement, dated November 28, 2014, by and among the Company, TESARO Development, Ltd. and AnaptysBio, Inc. \(incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K filed on February 25, 2015 \(File No. 001-35587\)\).](#)
- 10.24 [Amendment No. 2 to Collaboration and Exclusive License Agreement, dated February 29, 2016, by and among the Company, TESARO Development, Ltd. and AnaptysBio, Inc. \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2016 \(File No. 001-35587\)\).](#)
- 10.25* [Collaboration and License Agreement, dated April 5, 2016, by and between the Company and Janssen Biotech, Inc. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 5, 2016 \(File No. 001-35587\)\).](#)
- 10.26* [Amendment No. 1 to Collaboration and License Agreement, dated October 10, 2016, by and between the Company and Janssen Biotech, Inc. \(incorporated by reference to Exhibit 10.25 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.27* [Collaboration, Development and License Agreement, dated September 28, 2016, by and between the Company and Zai Lab \(Shanghai\) Co., Ltd. \(incorporated by reference to Exhibit 10.26 to the Company's Annual Report on Form 10-K filed on February 28, 2017 \(File No. 001-35587\)\).](#)
- 10.28 [Amendment No. 1 to Collaboration, Development and License Agreement, dated February 26, 2018, by and between the Company and Zai Lab \(Shanghai\) Co., Ltd.](#)
- 10.29* [Exclusive License Agreement, dated July 27, 2017, by and between the Company and Millennium Pharmaceuticals, Inc. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on November 7, 2017 \(File No. 001-35587\)\).](#)
- 10.30* [Master Supply Agreement, dated July 18, 2016, by and between the Company and STA Pharmaceutical Hong Kong Limited \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2017 \(File No. 001-35587\)\).](#)
- 10.31* [Commercial Supply Agreement, dated December 15, 2016, by and between the Company and Corden Pharma Colorado, Inc. \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2017 \(File No. 001-35587\)\).](#)
- 10.32* [Drug Product Supply Agreement, dated January 10, 2017, by and between the Company and Charles River Laboratories Contract Manufacturing PA, LLC \(incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2017 \(File No. 001-35587\)\).](#)
- 10.33 [Base Capped Call Confirmation, dated September 25, 2014, by and between the Company and Citibank, N.A. \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 29, 2014 \(File No. 001-35587\)\).](#)

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10.34	<u>Base Capped Call Confirmation, dated September 25, 2014, by and among the Company, Deutsche Bank AG, London Branch, and Deutsche Bank Securities Inc., acting solely as agent (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on September 29, 2014 (File No. 001-35587)).</u>
10.35	<u>Additional Capped Call Confirmation, dated September 25, 2014, by and between the Company and Citibank, N.A. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on September 29, 2014 (File No. 001-35587)).</u>
10.36	<u>Additional Capped Call Confirmation, dated September 25, 2014, by and among the Company, Deutsche Bank AG, London Branch, and Deutsche Bank Securities Inc., acting solely as agent (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on September 29, 2014 (File No. 001-35587)).</u>
10.37	<u>Loan Agreement, dated November 21, 2017, by and between the Company, BioPharma Credit PLC and BioPharma Credit Investments IV Sub LP.</u>
10.38	<u>First Amendment to Loan Agreement, dated February 7, 2018, by and between the Company, BioPharma Credit PLC and BioPharma Credit Investments IV Sub LP.</u>
10.39*	<u>Lease Agreement, dated October 15, 2012, by and between the Company and BP Bay Colony LLC, the "1000 Winter Street Lease Agreement" (incorporated by reference to Exhibit 10.36 to the Company's Annual Report on Form 10-K filed on February 28, 2017 (File No. 001-35587)).</u>
10.40*	<u>First Amendment to 1000 Winter Street Lease Agreement, dated January 6, 2014, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.37 to the Company's Annual Report on Form 10-K filed on February 28, 2017 (File No. 001-35587)).</u>
10.41*	<u>Second Amendment to 1000 Winter Street Lease Agreement, dated January 6, 2014, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K filed on February 28, 2017 (File No. 001-35587)).</u>
10.42*	<u>Third Amendment to 1000 Winter Street Lease Agreement, dated August 2, 2016, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.39 to the Company's Annual Report on Form 10-K filed on February 28, 2017 (File No. 001-35587)).</u>
10.43*	<u>Fourth Amendment to 1000 Winter Street Lease Agreement, dated October 6, 2016, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.40 to the Company's Annual Report on Form 10-K filed on February 28, 2017 (File No. 001-35587)).</u>
10.44	<u>Fifth Amendment to 1000 Winter Street Lease Agreement, dated February 9, 2017, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2017 (File No. 001-35587)).</u>
10.45*	<u>Sixth Amendment to 1000 Winter Street Lease Agreement, dated June 16, 2017, by and between the Company and BP Bay Colony LLC (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 8, 2017 (File No. 001-35587)).</u>
10.46*	<u>Seventh Amendment to 1000 Winter Street Lease Agreement, dated October 10, 2017, by and between the Company and BP Bay Colony LLC.</u>
10.47*	<u>Indenture of Lease, dated December 18, 2017, by and between the Company and BP Bay Colony LLC, the "1100 Winter Street Lease Agreement".</u>
12.1	<u>Computation of Ratio of Earnings to Fixed Charges.</u>
21.1	<u>Subsidiaries of the Company.</u>

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23.1	Consent of Ernst & Young LLP.
31.1	Certification of principal executive officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.2	Certification of principal financial officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended.
32.1	Certification of principal executive officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of principal financial officer pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
EX-101.INS	XBRL Instance Document
EX-101.SCH	XBRL Taxonomy Extension Schema Document
EX-101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
EX-101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
EX-101.LAB	XBRL Taxonomy Extension Label Linkbase Document
EX-101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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- + Indicates management contract or compensatory plan.
* Confidential treatment has been requested or granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

TESARO, Inc.
Schedule II — Valuation and Qualifying Accounts and Reserves
Years Ended December 31, 2015, 2016 and 2017
(in thousands)

	<u>Balance at Beginning of Year</u>	<u>Charges to Net Product Revenues</u>	<u>Credits or Payments Made</u>	<u>Balance at End of Year</u>
Product Sales Allowances				
Year ended December 31, 2015 (as revised)	\$ —	\$ 1,235	\$ —	\$ 1,235
Year ended December 31, 2016 (as revised)	\$ 1,235	\$ 4,172	\$ (3,918)	\$ 1,489
Year ended December 31, 2017	\$ 1,489	\$ 33,884	\$ (26,835)	\$ 8,538
Allowance for Product Returns				
Year ended December 31, 2015 (as revised)	\$ —	\$ 8	\$ —	\$ 8
Year ended December 31, 2016 (as revised)	\$ 8	\$ 10	\$ —	\$ 18
Year ended December 31, 2017	\$ 18	\$ 16,338	\$ (6)	\$ 16,350

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

TESARO, Inc.

Date: February 28, 2018

By: /s/ Leon O. Moulder, Jr.
 Leon O. Moulder, Jr.
 Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Leon O. Moulder, Jr.</u> Leon O. Moulder, Jr.	Chief Executive Officer, Director (Principal Executive Officer)	February 28, 2018
<u>/s/ Mary Lynne Hedley, Ph.D.</u> Mary Lynne Hedley, Ph.D.	President, Chief Operating Officer and Director	February 28, 2018
<u>/s/ Timothy R. Pearson</u> Timothy R. Pearson	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 28, 2018
<u>/s/ David M. Mott</u> David M. Mott	Chairman of the Board of Directors	February 28, 2018
<u>/s/ Lawrence M. Alleva</u> Lawrence M. Alleva	Director	February 28, 2018
<u>/s/ James O. Armitage, M.D.</u> James O. Armitage, M.D.	Director	February 28, 2018
<u>/s/ Earl M. (Duke) Collier, Jr.</u> Earl M. (Duke) Collier, Jr.	Director	February 28, 2018
<u>/s/ Garry A. Nicholson</u> Garry A. Nicholson	Director	February 28, 2018
<u>/s/ Arnold L. Oronsky, Ph.D.</u> Arnold L. Oronsky, Ph.D.	Director	February 28, 2018
<u>/s/ Kavita Patel, M.D.</u> Kavita Patel, M.D.	Director	February 28, 2018
<u>/s/ Beth Seidenberg, M.D.</u> Beth Seidenberg, M.D.	Director	February 28, 2018

**AMENDMENT TO
COLLABORATION, DEVELOPMENT AND LICENSE AGREEMENT**

THIS AMENDMENT TO COLLABORATION, DEVELOPMENT AND LICENSE AGREEMENT (the “**Amendment**”) is made and entered into as of February 26, 2018 by and among TESARO, Inc., a Delaware corporation (“**TESARO Inc.**”), TESARO Development Ltd., a Bermuda corporation (“**TSRO Ltd.**” and together with TESARO Inc., “**TESARO**”), and Zai Lab (Shanghai) Co., Ltd., a limited liability company organized under the laws of the People’s Republic of China (“**Zai**” and together with TESARO, the “**Parties**”).

WHEREAS, the Parties have previously entered into that certain Collaboration, Development and License Agreement dated as of September 28, 2016 (the “**Existing Agreement**”); and

WHEREAS, the Parties desire to amend certain provisions of the Existing Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the Parties agree as follows:

1. Co-Marketing Right. Section 2.8 of the Existing Agreement is hereby amended by replacing such section with the following section:

“2.8 *Reserved.*”

2. Effect of Amendment. This Amendment shall be effective as of the Effective Date (as defined in the Existing Agreement). Except as specifically amended by this Amendment, the Existing Agreement shall remain in full force and effect in accordance with its terms.

3. Governing Law. This Amendment shall be governed by and construed exclusively in accordance with the laws of the State of New York, United States of America, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of the State of New York to the rights and duties of the parties hereto.

4. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Amendment, or the interpretation, breach, termination, validity or invalidity thereof, shall be resolved in accordance with the procedures set forth in Section 14 of the Existing Agreement.

5. Counterparts. This Amendment may be executed by means of electronic signature (by PDF or facsimile) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

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IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their respective duly authorized officers.

ZAI LAB (SHANGHAI) CO., LTD.

By: /s/ Ying (Samantha) Du
Ying (Samantha) Du
Chairperson and CEO

TESARO, INC.

By: /s/ Leon O. Moulder, Jr.
Leon O. Moulder, Jr.
CEO

TESARO DEVELOPMENT LTD.

By: /s/ Joseph Farmer
Joseph Farmer
Director

LOAN AGREEMENT

Dated as of November 21, 2017

between

TESARO, INC.

(as *Borrower*),

TESARO SECURITIES CORPORATION

(as an additional Credit Party),

BIOPHARMA CREDIT PLC

(as *Collateral Agent* and a *Lender*)

and

BIOPHARMA CREDIT INVESTMENTS IV SUB LP

(as a *Lender*)

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”), dated as of November 21, 2017 (the “**Effective Date**”) by and among TESARO, INC., a Delaware corporation (as “**Borrower**”), TESARO SECURITIES CORPORATION, a Massachusetts corporation (as an additional Credit Party), BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as “**Collateral Agent**” and a “**Lender**”) and BIOPHARMA CREDIT INVESTMENTS IV SUB LP, a Cayman Islands limited partnership (as a “**Lender**”), provides the terms on which each Lender shall make, and Borrower shall repay, the Credit Extensions (as hereinafter defined). The parties hereto agree as follows:

1. ACCOUNTING AND OTHER TERMS

Except as otherwise expressly provided herein, all accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in conformity with Applicable Accounting Standards. Calculations and determinations must be made following Applicable Accounting Standards. If at any time any change in Applicable Accounting Standards would affect the computation of any financial requirement set forth in any Loan Document, and either Borrower or the Collateral Agent shall so request, the Collateral Agent, the Required Lenders and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in Applicable Accounting Standards; provided, that, until so amended, such requirement shall continue to be computed in accordance with Applicable Accounting Standards prior to such change therein. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the audited consolidated financial statements of Borrower for the fiscal year ended December 31, 2016 for all purposes of this Agreement, notwithstanding any change in Applicable Accounting Standards relating thereto or the application thereof, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “Dollars” or “\$” are United States Dollars, unless otherwise noted.

For purposes of determining compliance with Section 6 with respect to the amount of any Indebtedness in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness is incurred, made or acquired (so long as such Indebtedness, at the time incurred, made or acquired, was permitted hereunder).

2. LOANS AND TERMS OF PAYMENT

2.1. Promise to Pay.

Borrower hereby unconditionally promises to pay Lenders the outstanding principal amount of the Term Loans advanced to Borrower by Lenders and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2. Term Loans.

(a) Availability. Subject to the terms and conditions of this Agreement (including Sections 3.1, 3.2, 3.3 and 3.5):

(i) Tranche A Loan. Each Lender severally agrees to make a term loan to Borrower on the Tranche A Closing Date in a principal amount equal to such Lender’s Tranche A Commitment (collectively, the “**Tranche A Loan**”); and

(ii) Tranche B Loan. At Borrower’s option, each Lender severally agrees to make a term loan to Borrower on the Tranche B Closing Date in a principal amount equal to such Lender’s Tranche B Commitment (collectively, the “**Tranche B Loan**”).

After repayment, no Term Loan may be re-borrowed.

(b) Repayment.

(i) Borrower shall make equal quarterly payments of principal in an amount equal to three percent (3.00%) of the Tranche A Loan Amount commencing on the first Payment Date following the 24th-month anniversary of the Tranche A Closing Date. All unpaid principal with respect to the Tranche A Loan is due and payable in full on the Term Loan Maturity Date. The Tranche A Loan may be prepaid only in accordance with Section 2.2(c), except as provided in Section 8.1.

(ii) Borrower shall make equal quarterly payments of principal in an amount equal to three percent (3.00%) of the Tranche B Loan Amount commencing on the first Payment Date following the 24th-month anniversary of the Tranche B Closing Date. All unpaid principal with respect to the Tranche B Loan is due and payable in full on the Term Loan Maturity Date. The Tranche B Loan may be prepaid only in accordance with Section 2.2(c), except as provided in Section 8.1.

(c) Prepayment of Term Loans.

(i) Borrower shall have the option, at any time after the Tranche A Closing Date, to prepay, in whole or in part (in multiples of not less than \$5,000,000 or such lesser amount as may then be outstanding), the Tranche A Loan or the Tranche B Loan advanced by Lenders under this Agreement; provided that (A) Borrower provide written notice to the Collateral Agent of its election (which shall be irrevocable unless the Collateral Agent otherwise consents in writing, provided, that such notice of proposed prepayment may be revoked or modified in connection with a prepayment of Term Loans at any time on or prior to the date of prepayment if such prepayment is contingent, and notice of such contingency has been provided pursuant to this sentence, on the consummation of a refinancing or other specified transaction that does not close on the originally anticipated closing date) to prepay all or the applicable portion of the Term Loans, which such notice shall include the amount of the Tranche A Loan or the amount of the Tranche B Loan to be prepaid, at least five (5) Business Days prior to such prepayment, and (B) such prepayment shall be accompanied by any and all accrued and unpaid interest on the principal amount to be prepaid to the date of prepayment and any amounts payable pursuant to Section 2.2(e) or Section 2.2(f) (as applicable), and, in the case of a prepayment in whole of the Term Loans, all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents; provided, further, that any prepayment pursuant to this Section 2.2(c)(i) shall be applied first to the Tranche B Loan and then to the Tranche A Loan as described in Section 2.2(d) below. The Collateral Agent will promptly notify each Lender of its receipt of each such notice, and the amount of such Lender's Applicable Percentage of such prepayment.

(ii) Upon a Change in Control, Borrower shall promptly, and in any event no later than ten (10) days after the consummation of such Change in Control, notify the Collateral Agent in writing of the occurrence of a Change in Control, which notice shall include reasonable detail as to the nature, timing and other circumstances of such Change in Control (such notice, a "**Change in Control Notice**"). Borrower shall prepay the Term Loans in full, no later than ten (10) Business Days after delivery to the Collateral Agent of the Change in Control Notice, in an amount equal to the sum of (A) all unpaid principal and any and all accrued and unpaid interest with respect to the Term Loans, and (B) any applicable amounts payable pursuant to Section 2.2(e) and Section 2.2(f) and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents. The Collateral Agent will promptly notify each Lender of its receipt of the Change in Control Notice, and the amount of such Lender's Applicable Percentage of such prepayment.

(d) Prepayment Application. Any prepayment of the Term Loans pursuant to Section 2.2(c) (together with the accompanying Makewhole Amount or Prepayment Premium that is payable pursuant to Section 2.2(e) or Section 2.2(f), as applicable) shall be paid to Lenders in accordance with their respective Applicable Percentages for application to the Obligations in the following order: (i) first, to due and unpaid Lender Expenses, (ii) second, to accrued and unpaid interest at the Default Rate, if any, (iii) third, without duplication of amounts paid pursuant to clause (ii) above, to accrued and unpaid interest at the non-Default Rate, (iv) fourth, to the Prepayment Premium, if applicable, (v) fifth, to the Makewhole Amount, if applicable, (vi) sixth, to the outstanding principal amount of the Tranche A Loan or Tranche B Loan being prepaid (which, in the case of any partial prepayment pursuant to Section 2.2(c)(i), shall be applied first to reduce the quarterly payments of principal on the Tranche B Loan (if any)

in direct order and then to reduce the quarterly payments of principal on the Tranche A Loan in direct order) and (vii) seventh, in the case of a prepayment of the Term Loans in whole, to any remaining amounts then due and payable under this Agreement and the other Loan Documents.

(e) Makewhole Amount.

(i) Any prepayment of the Tranche A Loan by Borrower (x) pursuant to Section 2.2(c) or (y) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) occurring prior to the 24th-month anniversary of the Tranche A Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Makewhole Amount.

(ii) Any prepayment of the Tranche B Loan by Borrower (x) pursuant to Section 2.2(c) or (y) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) occurring prior to the 24th-month anniversary of the Tranche B Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Makewhole Amount.

(f) Prepayment Premium.

(i) *Any prepayment of the Tranche A Loan by Borrower (x) pursuant to Section 2.2(c) or (y) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Prepayment Premium.*

(ii) Any prepayment of the Tranche B Loan by Borrower (x) pursuant to Section 2.2(c) or (y) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Prepayment Premium.

2.3. Payment of Interest on the Credit Extensions.

(a) Interest Rate.

(i) Subject to Section 2.3(b), the principal amount outstanding under the Tranche A Loan shall accrue interest at a per annum rate equal to the LIBOR Rate plus eight percent (8.00%) per annum (the “**Tranche A Rate**”), which interest shall be payable quarterly in arrears in accordance with this Section 2.3.

(ii) Subject to Section 2.3(b), the principal amount outstanding under the Tranche B Loan shall accrue interest at a per annum rate equal to the LIBOR Rate plus seven and one-half percent (7.50%) per annum (the “**Tranche B Rate**”), which interest shall be payable quarterly in arrears in accordance with this Section 2.3.

(iii) Interest shall accrue on each Term Loan commencing on, and including, the day on which such Term Loan is made, and shall accrue on such Term Loan, or any portion thereof, for the day on which such Term Loan or such portion is paid.

(b) Default Rate. In the event Borrower fails to pay any of the Obligations when due, immediately (and without notice to Borrower or demand by the Collateral Agent or any Lender for payment thereof), such past due Obligations shall bear interest at a rate per annum which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”), and such interest shall be payable entirely in cash on demand of the Collateral Agent. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Lender.

(c) 360-Day Year. Interest shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, all loan payments (and any other payments hereunder) by Borrower hereunder shall be made to such bank account of each Lender as such Lender (or the Collateral Agent on its behalf) shall have designated in a written notice to Borrower delivered on or before the Tranche A Closing Date (which such notice may be updated by such Lender from time to time after the Tranche A Closing Date) on the date specified herein. Interest is payable quarterly on the Payment Date of each calendar quarter. Payments of principal or interest received after 2:00 p.m. on such date are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

(e) If at any time the Collateral Agent determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for determining the rate described in clause (a) of the definition of "LIBOR Rate" and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in the immediately preceding clause (i) have not arisen but the supervisor for the administrator of the three-month LIBOR Rate or a Governmental Authority having jurisdiction over the Collateral Agent has made a public statement identifying a specific date after which the three-month LIBOR Rate shall no longer be used for determining interest rates for loans, then the Collateral Agent and Borrower shall endeavor to establish an alternate rate of interest to the three-month LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 11.5, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Collateral Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment.

2.4. Expenses. Borrower shall pay to each of the Lenders and the Collateral Agent, its Lender Expenses incurred through and after the Effective Date, within thirty (30) days after receipt of a written demand therefor by such Lender (with a copy of such demand to the Collateral Agent) or the Collateral Agent, as applicable, setting forth in reasonable detail such Lender Expenses; provided, that the aggregate amount to be reimbursed by Borrower pursuant to this Section 2.4 for Lender Expenses of the Lenders and the Collateral Agent incurred through the Tranche A Closing Date shall not exceed \$250,000.

2.5. Requirements of Law; Increased Costs. In the event that any applicable Change in Law:

(a) Does or shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or the Term Loans made hereunder (except, in each case, Indemnified Taxes, Taxes described in clause (b) through (c) of the definition of Excluded Taxes, and Connection Income Taxes);

(b) Does or shall impose, modify or hold applicable any reserve, capital requirement, special deposit, compulsory loan or similar requirements against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any Lender; or

(c) Does or shall impose on any Lender any other condition (other than Taxes); and the result of any of the foregoing is to increase the cost to such Lender (as determined by such Lender in good faith using calculation methods customary in the industry) of making, renewing or maintaining the Term Loans or to reduce any amount receivable in respect thereof or to reduce the rate of return on the capital of such Lender or any Person controlling such Lender,

then, in any such case, Borrower shall promptly pay to such Lender, within thirty (30) days of its receipt of the certificate described below, any additional amounts necessary to compensate such Lender for such additional cost or reduced amounts receivable or rate of return as reasonably determined by such Lender with respect to this Agreement or the Term Loans made hereunder; provided, that amounts shall only be payable by Borrower to such Lender under this Section 2.5 so long as it is such Lender's general policy or practice to demand compensation of its

other borrowers in similar circumstances under comparable provisions of other financing agreements and, upon the request of Borrower, such Lender provides a certificate to such effect (with a copy of such certificate to the Collateral Agent). If any Lender becomes entitled to claim any additional amounts pursuant to this Section 2.5, it shall promptly notify Borrower in writing (with a copy of such notice to the Collateral Agent) of the event by reason of which it has become so entitled, and a certificate (with a copy of such certificate to the Collateral Agent) as to any additional amounts payable pursuant to the foregoing sentence containing the calculation thereof in reasonable detail submitted by such Lender to Borrower shall be conclusive in the absence of manifest error. Failure or delay on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital under this Section 2.5 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be under any obligation to compensate such Lender under this Section 2.5 with respect to increased costs or reductions with respect to any period prior to the date that is 180 days prior to the date of the delivery of the notice required pursuant to the foregoing provisions of this paragraph; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.6. Taxes; Withholding, etc.

(a) All sums payable by any Credit Party hereunder and under the other Loan Documents shall (except to the extent required by Requirements of Law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by any Governmental Authority. In addition, Borrower agrees to pay, and shall indemnify and hold each Lender harmless from, Other Taxes, and within thirty (30) days after the date of paying such sum, Borrower shall furnish to each Lender (with a copy to the Collateral Agent) the original or a certified copy of a receipt evidencing payment thereof.

(b) If any Credit Party or any other Person is required by Requirements of Law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Credit Party to any Lender under any of the Loan Documents: (i) Borrower shall notify such Lender in writing (with a copy of such notice to the Collateral Agent) of any such requirement or any change in any such requirement promptly after Borrower becomes aware of it; (ii) Borrower shall make any such withholding or deduction; (iii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on such Lender, as the case may be) on behalf of and in the name of such Lender in accordance with Requirements of Law; (iv) if the Tax is an Indemnified Tax, the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment of Indemnified Tax is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any deductions for Indemnified Taxes applicable to additional sums payable under this Section 2.6(b)), such Lender receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment of Indemnified Tax been required or made; and (v) within thirty (30) days after paying any sum from which it is required by Requirements of Law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) or (iii) above to pay, Borrower shall deliver to such Lender (with a copy to the Collateral Agent) evidence reasonably satisfactory to such Lender of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other Governmental Authority. Borrower shall indemnify each Lender for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.6(b)) paid by such Lender and any liability (including penalties, interest and reasonable expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any indemnification payment pursuant to this Section 2.6 shall be made to the applicable Lender within thirty (30) days from written demand therefor.

(c) If any Lender is organized under the laws of the United States of America or any state thereof, such Lender shall deliver to Borrower two (2) copies of Internal Revenue Service Form W-9. If any Lender is not a "United States person" (as such term is defined in Section 7701(a)(30) of the IRC) for U.S. federal income Tax purposes, such Lender shall deliver, and shall cause each applicable assignee thereof to deliver, to Borrower, on or prior to, the Tranche A Closing Date and, the date on which a Lender Transfer involving such Lender occurs, as applicable, and at such other times as may be necessary in the determination of Borrower (in the reasonable exercise of its discretion), two (2) properly completed and duly executed original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (along with Form W-9, W-8BEN-E or W-8BEN for each beneficial owner

that will receive, directly or indirectly, a payment of principal, interest, fees or other amounts payable under any of the Loan Documents), or any successor forms, and such other documentation required under the IRC and reasonably requested by Borrower to establish the appropriate amount of any deduction or withholding of United States federal Tax, if any, with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents, including any such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA. If any Lender is required to deliver any forms, statements, certificates or other evidence with respect to United States federal Tax or backup withholding matters pursuant to this Section 2.6(c), such Lender hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time, change in circumstances or law, or additional guidance by a Governmental Authority renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, to promptly deliver to Borrowers two (2) new original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E W-8ECI, W-9 or W-9IMY (along with Internal Revenue Service Forms W-9, W-8BEN-E or W-8BEN for each beneficial owner for whom it expects to receive a payment), or any successor form, as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the IRC and reasonably requested by Borrower to confirm or establish the extent to which such Lender is or is not subject to deduction, backup withholding or withholding of United States federal Tax with respect to payments to such Lender under the Loan Documents, or notify Borrower in writing of its inability under Requirements of Law to deliver any such forms, certificates or other evidence. If any Lender is claiming an exemption from United States withholding Tax pursuant to the "portfolio interest exemption", it shall provide Borrower with the applicable Internal Revenue Service Form W-8 and a certificate as reasonably requested by Borrower certifying such Lender's entitlement thereto. Borrower shall not be required to pay any additional amount to any Lender under Section 2.6(b)(iii) if such Lender shall have failed (1) to timely deliver to Borrower the forms, certificates or other evidence referred to in this Section 2.6(c) (each of which shall be complete, accurate and duly executed), or (2) to notify Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided that, if any Lender shall have satisfied the requirements of the first sentence of this Section 2.6(c) on the Tranche A Closing Date (or on the date such Lender initially acquires an interest in a Term Loan), nothing in this last sentence of this Section 2.6(c) shall relieve Borrower of its obligations to pay any additional amounts pursuant to this Section 2.6 in the event that, solely as a result of any change in any Requirements of Law or any change in the interpretation, administration or application thereof by any applicable Governmental Authority, such Lender is no longer legally entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein and in the forms, certificates or other evidence initially provided by such Lender.

(d) If any party hereto determines that it has received a refund of any Taxes or a credit or offset for any Taxes as to which it has been indemnified pursuant to this Section 2.6 (including by the payment of additional amounts pursuant to this Section 2.6), it shall pay to the indemnifying party an amount equal to such refund, credit or offset (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 2.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (d) in the event that such indemnified party is required to repay, credit or offset such refund to such Governmental Authority and the requirement to repay such refund to such Governmental Authority is not due to the indemnified party's failure to timely provide complete and accurate Internal Revenue Service forms and other documentation required pursuant to Section 2.6(c) or Section 2.8. Notwithstanding anything to the contrary in this clause (d), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (d) if the payment of such amount would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This clause (d) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

2.7. Additional Consideration. As additional consideration for the obligation to make the Term Loans and the making of one or both of the Term Loans, (i) on the Tranche A Closing Date, Borrower shall pay to each Lender an amount equal such Lender's Applicable Percentage of the Tranche A Loan Amount of the product of (a) Three Hundred Million Dollars (\$300,000,000.00), multiplied by (b) two percent (2.00%) and (ii) on the Tranche B Closing Date, Borrower shall pay to each Lender an amount equal to such Lender's Applicable Percentage of the Tranche B Loan Amount of the product of (a) the Tranche B Loan Amount, multiplied by (b) two percent (2.00%)

(each such product, the “**Additional Consideration**”). The Additional Consideration shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.8. Evidence of Debt; Register; Lender’s Books and Records; Term Loan Note.

(a) Lenders’ Evidence of Debt; Register. Notwithstanding anything herein to the contrary, Borrower hereby designates the Collateral Agent to serve as Borrower’s agent solely for purposes of maintaining at all times at the Collateral Agent’s principal office a “book entry system” as described in IRC Treasury Regulation Section 5f.103-1(c)(1)(ii) that identifies each beneficial owner that is entitled to a payment of principal and stated interest on the Term Loans (the “**Register**”) so that each Term Loan is at all times in “registered form” as described in IRC Treasury Regulations Section 5f.103-1(c). The Collateral Agent is hereby authorized by Borrower to record in the manual or data processing records of the Collateral Agent, the date and amount of each advance and the amount of the outstanding Obligations and the date and amount of each repayment of principal and each payment of interest or otherwise on account of the Obligations. Absent manifest error, such Collateral Agent records shall be conclusive as to the outstanding principal amount of the total outstanding Obligations, and the payment of interest, principal and other sums due hereunder; provided, however, that the failure of the Collateral Agent to make any such record entry with respect to any payment shall not limit or otherwise affect the obligations of Borrower under the Loan Documents. Each Term Loan: (i) shall, pursuant to this clause (a), be also registered as to both principal and any stated interest with Borrower or its agent, and (ii) may be transferred by a Lender only by (1) surrender of the old instrument and either (x) the reissuance by Borrower of the old instrument to the new Lender or (y) the issuance by Borrower of a new instrument to the new Lender, or (2) confirmation with Borrower that the right to the principal and stated interest on such Term Loan is maintained through the book entry system kept by the Collateral Agent. Each Lender, severally and not jointly, represents that any interest that may become due and owing under this Agreement qualifies for the portfolio interest exception from withholding on interest payments pursuant to IRC Sections 871(h) and 881(c).

(b) Term Loan Notes. Borrower shall execute and deliver to each Lender (or, if applicable, to any Person who is an assignee of a Lender pursuant to Section 11.1 hereof) to evidence such Lender’s Term Loan(s) (i) on the Tranche A Closing Date, a Tranche A Note, and (ii) on the Tranche B Closing Date (if any), a Tranche B Note.

3. CONDITIONS OF TERM LOANS

3.1. Conditions Precedent to Tranche A Loan. Each Lender’s obligation to advance its Applicable Percentage of the Tranche A Loan is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent’s receipt of copies of the Loan Documents (including the Tranche A Notes, executed by Borrower, and the Collateral Documents but excluding any Control Agreements described in Schedule 5.14 of the Disclosure Letter) executed and delivered by each applicable Credit Party, the Disclosure Letter, if and to the extent any update thereto is necessary between the Effective Date and the Tranche A Closing Date (provided, that in no event may the Disclosure Letter be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)) and each other schedule to such Loan Documents (the Disclosure Letter and such other schedules to be in form and substance reasonably satisfactory to the Collateral Agent);

(b) the Collateral Agent’s receipt of (i) true, correct and complete copies of the Operating Documents of each of the Credit Parties, and (ii) a Secretary’s Certificate, dated the Tranche A Closing Date, certifying that the foregoing copies are true, correct and complete (such Secretary’s Certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) the Collateral Agent’s receipt of the Perfection Certificate(s) for Borrower and its Subsidiaries, in form and substance reasonably satisfactory to the Collateral Agent;

(d) the Collateral Agent’s receipt of a good standing certificate for each Credit Party, certified by the Secretary of State (or the equivalent thereof) of the State of incorporation or formation of such Credit Party as of a date no earlier than thirty (30) days prior to the Tranche A Closing Date;

(e) the Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Loan Documents and the Term Loans for each Credit Party, in form and substance reasonably satisfactory to the Collateral Agent;

(f) each Credit Party shall have obtained all Governmental Approvals and all consents of other Persons, if any, in each case that are necessary in connection with the transactions contemplated by the Loan Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Collateral Agent;

(g) the Collateral Agent's receipt of an opinion of Hogan Lovells US LLP, counsel to the Credit Parties, in form and substance reasonably satisfactory to the Collateral Agent;

(h) the Collateral Agent's receipt of evidence that the products liability and general liability insurance policies maintained in the United States regarding Collateral are in full force and effect, together with appropriate evidence showing loss payable or additional insured clauses or endorsements in favor of the Collateral Agent (such evidence to be in form and substance reasonably satisfactory to the Collateral Agent);

(i) the Collateral Agent's receipt of all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**");

(j) payment of Lender Expenses and other fees then due as specified in Section 2.4 hereof;

(k) the Collateral Agent's receipt of a certificate, dated the Tranche A Closing Date and signed by a Responsible Officer of Borrower, confirming there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent); and

(l) the Collateral Agent's receipt of a certificate, dated the Tranche A Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in this Section 3.1 and in Section 3.3 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.2. Conditions Precedent to Tranche B Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche B Loan is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent's receipt of the Tranche B Notes, executed by Borrower;

(b) [reserved];

(c) the Collateral Agent's receipt of a certificate, dated the Tranche B Closing Date and signed by a Responsible Officer of Borrower, confirming that there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter dated as of the Tranche A Closing Date (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(d) [reserved]; and

(e) there shall not have been any prepayment of the Tranche A Loan, in whole or in part, pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of such Term Loan pursuant to Section 8.1(a).

3.3. Additional Conditions Precedent to Term Loans. The obligation of each Lender to advance its Applicable Percentage of each Term Loan is subject to the following additional conditions precedent:

(a) the representations and warranties made by the Credit Parties in Section 4 of this Agreement and in the other Loan Documents are true and correct in all material respects, unless any such representation or warranty is stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any representation or warranty that is qualified as to “materiality,” “Material Adverse Change,” or similar language shall be true and correct in all respects, in each case, on the date on which each Term Loan is made (both with and without giving effect to such Term Loan) or as of such earlier date, as applicable); and

(b) there shall not have occurred (i) any Material Adverse Change or (ii) any Default or Event of Default.

3.4. Covenant to Deliver. The Credit Parties agree to deliver to the Collateral Agent each item required to be delivered to the Collateral Agent under this Agreement as a condition precedent to any Credit Extension; provided, however, that any such items set forth on Schedule 5.14 of the Disclosure Letter shall be delivered to the Collateral Agent within the time period prescribed therefor on such schedule. The Credit Parties expressly agree that a Credit Extension made prior to the receipt by the Collateral Agent of any such item shall not constitute a waiver by the Collateral Agent or any Lender of the Credit Parties’ obligation to deliver such item, and the making of any Credit Extension in the absence of any such item required to have been delivered by the date of such Credit Extension shall be in the Collateral Agent’s sole discretion.

3.5. Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of each Term Loan set forth in this Agreement, to obtain any Term Loan, Borrower shall deliver to the Collateral Agent by electronic mail or facsimile a completed Payment/Advance Form in the form of Exhibit A hereto for such Term Loan executed by a Responsible Officer of Borrower. In addition to the foregoing, if Borrower intends to obtain the Tranche B Loan, Borrower shall notify the Collateral Agent (which notice shall be irrevocable on and after the date on which such notice is given and Borrower shall be bound to make a borrowing in accordance therewith) by electronic mail or facsimile on such date that is at least ninety (90) days prior to the Tranche B Closing Date set forth in such notice, in which case each Lender severally agrees to make its Applicable Percentage of the Tranche B Loan available to Borrower on the Tranche B Closing Date by wire transfer of same day funds in Dollars, to such account(s) in the United States as may be designated in writing to the Collateral Agent by Borrower.

4. REPRESENTATIONS AND WARRANTIES

In order to induce each Lender and the Collateral Agent to enter into this Agreement and for Lenders to make the Credit Extensions to be made on the Tranche A Closing Date and, if applicable, the Tranche B Closing Date, each Credit Party, jointly and severally, represents and warrants to each Lender and the Collateral Agent that the following statements are true and correct as of the Effective Date and on the date on which each Term Loan is made (both with and without giving effect to the Term Loan):

4.1. Due Organization, Power and Authority. Each of Borrower and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the laws of its jurisdiction of incorporation, organization or formation, (b) has all requisite power and authority to (i) own, lease, license and operate its assets and properties and to carry on its business as currently conducted and (ii) execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder and otherwise carry out the transactions contemplated thereby, (c) is duly qualified and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease, license or operation of assets or properties or the conduct of its business requires such qualification, and (d) has all requisite Governmental Approvals to operate its business as currently conducted; except in each case referred to clauses (a) (other than with respect to Borrower and any other Credit Party), (b)(i) or (c) or (d) above, to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

4.2. Equity Interests. All of the outstanding Equity Interests in each Subsidiary of the Borrower, the Equity Interests of which are required to be pledged pursuant to the Collateral Documents, have been duly authorized and validly issued, are fully paid and, in the case of Equity Interests representing corporate interests, are non-assessable and, on the Tranche A Closing Date, all such Equity Interests owned directly by Borrower or any other Credit Party are owned free and clear of all Liens except for Permitted Liens. As of the Tranche A Closing Date, Schedule 4.2 of

the Disclosure Letter identifies each Person, the Equity Interests of which are required to be pledged on the Tranche A Closing Date pursuant to the Collateral Documents.

4.3. Authorization; No Conflict. Except as set forth on Schedule 4.3 of the Disclosure Letter, the execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, (a) have been duly authorized by all necessary corporate or other organizational action and (b) do not and will not (i) contravene the terms of any of such Credit Party's Operating Documents, (ii) conflict with or result in any breach or contravention of, or require any payment to be made under (A) any provision of any security issued by such Credit Party or of any agreement, instrument or other undertaking to which such Credit Party is a party or affecting such Credit Party or the assets or properties of such Credit Party or any of its Subsidiaries or (B) any material order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its properties or assets are subject, (iii) result in the creation of any Lien (other than under the Loan Documents) or (iv) violate any material Requirements of Law, except, in the cases of clauses (b)(ii) and (b)(iv) above, to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

4.4. Government Consents; Third Party Consents. Except as set forth on Schedule 4.4 of the Disclosure Letter, no Governmental Approval or other approval, consent, exemption or authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person (including any counterparty to any Current Company IP Agreement) is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby or thereby, (b) the grant by any Credit Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings necessary to perfect the Liens on the Collateral granted by the Credit Parties to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, (iii) filings under state or federal securities laws and (iv) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

4.5. Binding Obligation. Each Loan Document has been duly executed and delivered by each Credit Party that is a party thereto and constitutes a legal, valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general principles of equity.

4.6. Collateral. In connection with this Agreement, each Credit Party has delivered to the Collateral Agent a completed certificate signed by such Credit Party (each, a "**Perfection Certificate**", and collectively, the "**Perfection Certificates**"). Each Credit Party, jointly and severally, represents and warrants to the Collateral Agent and each Lender that:

(a) (i) its exact legal name is that indicated on its Perfection Certificate and on the signature page hereof; (ii) it is an organization of the type and is organized in the jurisdiction set forth in its Perfection Certificate; (iii) its Perfection Certificate accurately sets forth its organizational identification number or accurately states that it has none; (iv) its Perfection Certificate accurately sets forth as of the Effective Date its place of business, or, if more than one, its chief executive office as well as its mailing address (if different than its chief executive office); (v) it (and each of its predecessors) has not, in the five (5) years prior to the Effective Date, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (vi) all other information set forth on its Perfection Certificate pertaining to it and each of its Subsidiaries is accurate and complete in all material respects as of the Effective Date. If any Credit Party is not now a Registered Organization but later becomes one, it shall promptly notify the Collateral Agent of such occurrence and provide the Collateral Agent with such Credit Party's organizational identification number. The Collateral Agent hereby agrees that the Perfection Certificate(s) shall be updated or deemed to be updated to reflect information provided in any notice delivered by any Credit Party to the Collateral Agent pursuant to Section 6.2; provided that any update to the Perfection Certificate(s)

by any Credit Party pursuant to Section 6.2 shall not relieve any Credit Party of any other Obligation under this Agreement.

(b) (i) it has good title to, has rights in, and subject to Permitted Domestic Subsidiary Restricted Distributions, the power to transfer each item of the Collateral upon which it purports to grant a Lien under any Collateral Document, free and clear of any and all Liens except Permitted Liens, except for such minor irregularities or defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change and (ii) as of the Effective Date, it has no deposit accounts maintained at a bank or other depository or financial institution located in the United States other than the deposit accounts described in the Perfection Certificates delivered to the Collateral Agent in connection herewith.

(c) A true, correct and complete list of all U.S. pending, registered or issued Patents and Trademarks material to the business of Borrower and its Subsidiaries, taken as a whole, relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, which as of the Effective Date are owned by or exclusively licensed to Borrower (collectively, the “**Current Company IP**”), including the name/title, current owner, registration or application number, and registration or application date is set forth on Schedule 4.6(c) of the Disclosure Letter. Except as set forth on Schedule 4.6(c) of the Disclosure Letter, (i) to the Knowledge of Borrower, each item of Current Company IP which is owned by Borrower is valid and subsisting and no such item of Current Company IP has lapsed, expired, been cancelled or invalidated or become abandoned, except, in each case, with respect to any Current Company IP that Borrower reasonably determines is immaterial after the Tranche A Closing Date, and (ii) to the Knowledge of Borrower, each such item of Current Company IP which is licensed by Borrower from another Person is valid and subsisting and no such item of Current Company IP has lapsed, expired, been cancelled or invalidated, or become abandoned, except, in each case, with respect to any Current Company IP that such other Person (if applicable) and Borrower reasonably determine is immaterial after the Tranche A Closing Date. To the Knowledge of Borrower, there are no published patents, patent applications, articles or prior art references that would reasonably be expected to materially adversely affect any Product. Except as set forth on Schedule 4.6(c) of the Disclosure Letter, (i) each Person who has or has had any rights in or to owned Current Company IP or any trade secrets owned by any Credit Party or any of its Subsidiaries, including each inventor named on the Patents within such owned Current Company IP filed by any Credit Party or any of its Subsidiaries, and has executed an agreement assigning his, her or its entire right, title and interest in and to such owned Current Company IP and such trade secrets, and the inventions, improvements, ideas, discoveries, writings, works of authorship, information and other intellectual property embodied, described or claimed therein, to the stated owner thereof and, (ii) to the Knowledge of Borrower, no such Person has any contractual or other obligation that would preclude or conflict with such assignment or the exploitation of any Product in the Territory or entitle such Person to ongoing payments.

(d) Except for the Permitted Licenses: (i) Borrower possesses valid title to the Current Company IP for which it is listed as the owner or co-owner, as applicable, on Schedule 4.6(c) of the Disclosure Letter; and (ii) there are no Liens on any Current Company IP, other than Permitted Liens.

(e) There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is owned by or exclusively licensed to Borrower, except, in each case, that could not reasonably be expected to have a materially adverse impact on Borrower's rights to such Current Company IP, nor have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired, except, in each case, with respect to any Current Company IP that Borrower and the licensor thereof (if applicable) reasonably determine is immaterial after the Tranche A Closing Date. There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is not owned by or exclusively licensed to Borrower, except, in each case, that could not reasonably be expected to have a materially adverse impact on Borrower's rights to such Current Company IP, nor to the Knowledge of Borrower, have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired, except, in each case, with respect to any Current Company IP that Borrower and the licensor thereof (if applicable) reasonably determine is immaterial after the Tranche A Closing Date.

(f) There are no unpaid fees or royalties under any Current Company IP Agreement that have become due, or are expected to become overdue. Each Current Company IP Agreement is in full force and effect and, to the Knowledge of Borrower, is legal, valid, binding, and enforceable in accordance with its respective terms, except

as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Neither Borrower nor any of its Subsidiaries, as applicable, is in breach of or default under any Current Company IP Agreement to which it is a party or may otherwise be bound, and to the Knowledge of Borrower, no circumstances or grounds exist that would give rise to a claim of breach or right of rescission, termination, non-renewal, revision, or amendment of any of the Current Company IP Agreements, including the execution, delivery and performance of this Agreement and the other Loan Documents.

(g) No payments by Borrower are due to any other Person in respect of the Current Company IP, other than pursuant to the Current Company IP Agreements and those fees payable to patent offices in connection with the prosecution and maintenance of the Current Company IP and associated attorney fees.

(h) Borrower has not undertaken or omitted to undertake any acts, and, to the Knowledge of Borrower, no circumstance or grounds exist that would invalidate or reduce, in whole or in part, the enforceability or scope of (i) any issued Patents in the Current Company IP in any manner that could reasonably be expected to materially adversely affect any Product, or (ii) in the case of Current Company IP solely owned or exclusively licensed by Borrower, other than with respect to Permitted Licenses and except as set forth on Schedule 4.6(h) of the Disclosure Letter, Borrower's entitlement to solely own or license and exploit the Current Company IP.

(i) Except as set forth on Schedule 4.7 of the Disclosure Letter or advised pursuant to Section 5.2(b), there is no pending, decided or settled opposition, interference proceeding, reissue proceeding, reexamination proceeding, inter-partes review proceeding, post-grant review proceeding, cancellation proceeding, injunction, lawsuit, hearing, investigation, complaint, arbitration, mediation, demand, International Trade Commission investigation, decree, or any other dispute, disagreement, or claim, in each case alleged in writing to Borrower or any of its Subsidiaries (collectively referred to hereinafter as "**Specified Disputes**"), nor to the Knowledge of Borrower, has any such Specified Dispute been threatened in writing, in each case challenging the legality, validity, enforceability or ownership of any Current Company IP. Except as noted on Schedule 4.6(i) of the Disclosure Letter, to the Knowledge of Borrower, there is no patent or patent application of any third party that could reasonably be expected to infringe a Patent within the Current Company IP.

(j) As of the Effective Date, except as noted on Schedule 4.6(j) of the Disclosure Letter, no Credit Party is a party to, nor is it bound by, any Restricted License.

(k) In each case where an issued Patent within the Current Company IP is owned by any Credit Party or its Subsidiaries by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office.

(l) There are no pending (in a court of law) or, to the Knowledge of Borrower, threatened (in writing) claims against Borrower or any of its Subsidiaries alleging (i) that any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory infringes or violates (or in the past infringed or violated) the rights of any third parties in or to any Intellectual Property ("**Third Party IP**") or constitutes a misappropriation of (or in the past constituted a misappropriation of) any Third Party IP, or (ii) that any Current Company IP is invalid or unenforceable.

(m) The manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory does not, to the Knowledge of Borrower, infringe or violate (or in the past infringed or violated) any issued or registered Third Party IP (including any issued Patent within the Third Party IP) or, to the Knowledge of Borrower, constitutes a misappropriation of (or in the past constituted a misappropriation of) any Third Party IP.

(n) To the Knowledge of Borrower, there are no settlements, covenants not to sue, consents, judgments, orders or similar obligations imposed by a court of law that: (i) restrict the rights of any Credit Party or any of its Subsidiaries to use any U.S. Intellectual Property relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory (in order to accommodate any Third Party IP or otherwise), or (ii) permit any third parties to use any Company IP.

(o) To the Knowledge of Borrower, (i) there is no, nor has there been any, infringement or violation by any Person of any of the Company IP or the rights therein, and (ii) there is no, nor has there been any, misappropriation by any Person of any of the Company IP or the subject matter thereof.

(p) Each Credit Party and each of its Subsidiaries have used commercially reasonable measures customary in the pharmaceutical industry to protect the confidentiality and value of all U.S. trade secrets owned by such Credit Party or any of its Subsidiaries or used or held for use by such Credit Party or any of its Subsidiaries, in each case relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory.

4.7. Adverse Proceedings, Compliance with Laws. Except as set forth on Schedule 4.7 of the Disclosure Letter or advised pursuant to Section 5.2(b), there are no Adverse Proceedings pending or, to the Knowledge of Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries or against any of their respective assets or properties or revenues that, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. Neither Borrower nor any of its Subsidiaries (a) is in violation of any Requirements of Law (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, or (b) is subject to or in default with respect to any final judgments, orders, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.8. Exchange Act Documents; Financial Statements; Financial Condition; No Material Adverse Change; Books and Records.

(a) The documents filed by Borrower with the SEC pursuant to the Exchange Act since January 1, 2017 (the “**Exchange Act Documents**”), when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act, and as of the time they were filed with the SEC, none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature), in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein);

(b) The financial statements (including the related notes thereto) of Borrower and its Subsidiaries included in the Exchange Act Documents present fairly in all material respects the consolidated financial condition of Borrower and such Subsidiaries and their consolidated results of operations as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified. Such financial statements have been prepared in conformity with Applicable Accounting Standards applied on a consistent basis throughout the periods covered thereby, except as otherwise disclosed therein and, in the case of unaudited, interim financial statements, subject to normal year-end audit adjustments and the exclusion of certain footnotes, and any supporting schedules included in the Exchange Act Documents present fairly in all material respects the information required to be stated therein;

(c) Since December 31, 2016, there shall not have occurred or failed to occur any change or event that has had or could reasonably be expected to have, either alone or in conjunction with any other change(s), event(s) or failure(s), a Material Adverse Change, except as otherwise disclosed in the Exchange Act Documents; and

(d) [Reserved].

4.9. Solvency. Borrower and its Subsidiaries, on a consolidated basis, are Solvent. Without limiting the generality of the foregoing, there has been no proposal made or resolution adopted by any competent corporate body for the dissolution or liquidation of Borrower, nor do any circumstances exist which may result in the dissolution or liquidation of Borrower.

4.10. Payment of Taxes. All United States federal income and other material Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them have been timely filed and are correct in all material respects, and all material Taxes which are due and payable by any Credit Party or any of its Subsidiaries and all material assessments, fees and other governmental charges upon any Credit Party or any of its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except where the validity or amount thereof is being contested in good faith by appropriate proceedings; provided that (a) the applicable Credit Party has set aside on its books adequate reserves therefor in conformity with Applicable Accounting Standards and (b) the failure to pay such Taxes, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

4.11. Environmental Matters. Neither Borrower nor any of its Domestic Subsidiaries nor any of their respective Facilities or operations is subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There are and, to the Knowledge of Borrower, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Domestic Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, no predecessor of Borrower or any of its Domestic Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, which could reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Domestic Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and neither Borrower's nor any of its Domestic Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260 270 or any state equivalent, which could reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Domestic Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No event or condition has occurred or is occurring with respect to any Credit Party relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Change.

4.12. Material Contracts. After giving effect to the consummation of the transactions contemplated by this Agreement, except as described on Schedule 4.12 of the Disclosure Letter, each Material Contract is a valid and binding obligation of the applicable Credit Party and, to the Knowledge of Borrower, each other party thereto, and is in full force and effect, and neither the applicable Credit Party nor, to the Knowledge of Borrower, any other party thereto is in material breach thereof or default thereunder, except where such breach or default (which default has not been cured or waived) could not reasonably be expected to give rise to any cancellation, termination or acceleration right of the applicable counterparty thereto. No Credit Party or any of its Subsidiaries has received any written notice from any party thereto asserting or, to the Knowledge of Borrower threatening to assert, circumstances that could reasonably be expected to result in the cancellation, termination or invalidation of any Material Contract.

4.13. Regulatory Compliance. No Credit Party is or is required to be an "investment company" under the Investment Company Act of 1940, as amended. No Credit Party is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board). Each Credit Party has complied in all material respects with the Federal Fair Labor Standards Act. Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Plan is in compliance with the applicable provisions of ERISA, the IRC and other U.S. federal or state Requirements of Law, respectively. (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 *et seq.* or 4243 of ERISA with respect to a Multiemployer Plan; and (iii) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA, except, with respect to each of clauses (i).

(ii) and (iii) above, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

4.14. Margin Stock. No Credit Party is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as “**Margin Stock**”). No Credit Party owns any Margin Stock, and none of the proceeds of the Credit Extensions or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause the Term Loans or other extensions of credit under this Agreement to be considered a “purpose credit” within the meaning of Regulation T, U or X of the Federal Reserve Board. No Credit Party or any of its Subsidiaries has taken or permitted to be taken any action that might cause any Loan Document to violate Regulation T, U or X of the Federal Reserve Board.

4.15. Subsidiaries. As of the Tranche A Closing Date, Schedule 4.15 of the Disclosure Letter (a) sets forth the name and jurisdiction of incorporation, organization or formation of each Subsidiary of Borrower or any other Credit Party and (b) sets forth the ownership interest of Borrower and any other Credit Party in each of their respective Subsidiaries, including the percentage of such ownership.

4.16. Employee Matters. Neither Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to result in a Material Adverse Change. There is (a) no unfair labor practice complaint pending against Borrower or any of its Domestic Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending against Borrower or any of its Domestic Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them, (b) no strike or work stoppage in existence or, to the Knowledge of Borrower, threatened in writing involving Borrower or any of its Domestic Subsidiaries, and (c) to the Knowledge of Borrower, no union representation question existing with respect to the employees of Borrower or any of its Domestic Subsidiaries and, to the Knowledge of Borrower, no union organization activity that is taking place that in each case specified in any of clauses (a), (b) and (c), individually or together with any other matter specified in clause (a), (b) or (c), could reasonably be expected to result in a Material Adverse Change.

4.17. Full Disclosure. None of the documents, certificates or written statements (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature) furnished or otherwise made available to the Collateral Agent or Lenders by or on behalf of any Credit Party for use in connection with the transactions contemplated hereby (in each case, taken as a whole and as modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, as of the time when made or delivered, not misleading in light of the circumstances in which the same were made; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein). To the Knowledge of Borrower, there are no facts (other than matters of a general economic or industry nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change and that have not been disclosed herein or in such other documents, certificates and written statements furnished or made available to the Collateral Agent or Lenders for use in connection with the transactions contemplated hereby.

4.18. FCPA; Patriot Act; OFAC.

(a) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower has (i) used any corporate funds of Borrower or any of

its Subsidiaries for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds of Borrower or any of its Subsidiaries, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, and no part of the proceeds of any Credit Extension will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of the FCPA;

(b) (i) The operations of Borrower and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Bank Secrecy Act of 1970, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 and the anti-money laundering laws, rules and regulations of each jurisdiction (foreign or domestic) in which Borrower or any of its Subsidiaries is subject to such jurisdiction’s Requirements of Law (collectively, the “**Anti-Money Laundering Laws**”) and (ii) no action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or to the knowledge of Borrower, threatened in writing; and

(c) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower is currently to the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) or imposed by the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. Borrower will not, directly or, to the Knowledge of Borrower, indirectly through an agent, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the target of any U.S. sanctions administered by OFAC.

4.19. Health Care Matters.

(a) *Compliance with Health Care Laws.* Each Credit Party and each of its Subsidiaries, and each officer, Affiliate, and employee acting on behalf of each Credit Party and each of its Subsidiaries is in compliance in all material respects with all Health Care Laws applicable to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory.

(b) *Compliance with FDA Laws.* Each Credit Party and each of its Subsidiaries are in compliance in all material respects with all applicable FDA Laws, including those related to the adulteration or misbranding of products within the meaning of Sections 501 and 502 of the Food Drug and Cosmetics Act (“FDCA”), relating to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory. (i) None of the Products are articles which may not be introduced into interstate commerce pursuant to the requirements of the FDCA, (ii) each Product distributed or sold in the Territory has been manufactured in all material respects in accordance with current FDA Good Manufacturing Practices, and (iii) each Product required to be approved or cleared by the FDA pursuant to the FDCA has been so approved or cleared.

(c) *Material Statements.* None of (i) the Credit Parties, (ii) any officer, Affiliate or employee of the Credit Parties or their Subsidiaries in their capacity as an officer, Affiliate or employee of a Credit Party or Subsidiary, and, (iii) to the Knowledge of Borrower, any agent of any Credit Party or its Subsidiaries, has made an untrue statement of a material fact or fraudulent statement to any U.S. Governmental Authority, failed to disclose a material fact to any U.S. Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, could reasonably be expected to constitute a material violation of any Health Care Law.

(d) *Proceedings; Audits.* To the Knowledge of Borrower, there are no material investigations, suits, claims, audits, actions (legal or regulatory) or proceedings (legal or regulatory) by a U.S. Governmental

Authority pending or threatened in writing against any Credit Party or any of its Subsidiaries relating to any of the Health Care Laws or FDA Laws.

(e) *Prohibited Transactions.* None of the Credit Parties or their Subsidiaries, or any of their respective officers, Affiliates or employees, or, to the Knowledge of Borrower, any other Person acting on behalf of any Credit Party or any of its Subsidiaries, directly or indirectly: (i) offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential patient, supplier, physician, or contractor, in order to illegally obtain business or payments from such Person in material violation of any Health Care Law; (ii) has given or agreed to give, made, or is party to any illegal agreement to make, any illegal gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential patient, supplier, physician, contractor, or any other Person in material violation of any Health Care Law; (iii) made or agreed to make, or is party to any agreement to make on behalf of any Credit Party or any of its Subsidiaries, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was a material violation of the laws of any U.S. Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset for any purpose or made any materially misleading, false or artificial entries on any of its books or records for any reason; or (v) made, or agreed to make, or is party to any agreement to make, any payment to any Person with the intention or understanding that any part of such payment would be in material violation of any Health Care Law or that was used or given for any purpose other than that described in the documents supporting such payment. To the Knowledge of Borrower, there are no actions pending or threatened (in writing) against any Credit Party or any of its Subsidiaries or any of their respective Affiliates under any U.S. federal or state whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(f) *Exclusion.* None of the Credit Parties or their Subsidiaries, nor any officer, Affiliate, or employee having authority to act on behalf of any Credit Party or any of its Subsidiaries has been, or, to the Knowledge of Borrower, has been threatened in writing to be, (i) excluded from any Governmental Payor Program pursuant to 42 U.S.C. § 1320a-7b and related regulations, (ii) “suspended” or “debarred” from selling any products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other U.S. Requirements of Law, (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other health care program or is listed on the General Services Administration list of excluded parties, nor, to the Knowledge of Borrower, is any such debarment, disqualification, suspension or exclusion threatened or pending, or (iv) made a part to any other action by any U.S. Governmental Authority that may prohibit the applicable Credit Party or Subsidiary from distributing or selling any Products in the Territory or providing any services to any U.S. governmental or other purchaser pursuant to any Health Care Laws.

(g) *HIPAA.* Each Credit Party and each of its Subsidiaries, to the extent applicable, is in material compliance with all applicable U.S. federal, state and local laws and regulations regarding the privacy and security of health information and electronic transactions, including HIPAA, and the provisions of all business associate agreements (as such term is defined by HIPAA) to which it is a party and has implemented policies, procedures and training customary in the pharmaceutical industry or otherwise adequate to assure continued compliance and to detect non-compliance. Each Credit Party neither is a “covered entity” as defined in 45 C.F.R. § 160.103 nor sponsors any “group health plans” as defined in 45 C.F.R. § 160.103.

(h) *Corporate Integrity Agreement.* No Credit Party or any of its Subsidiaries or any of their respective Affiliates, nor any officer, director, managing employee or, to the Knowledge of Borrower, agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, is a party to, or bound by, any order, individual integrity agreement, or corporate integrity agreement with any U.S. Governmental Authority concerning compliance with any laws, rules, or regulations, issued under or in connection with a Governmental Payor Program.

4.20. Regulatory Approvals.

(a) Each Credit Party and any of its Subsidiaries involved in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory has all U.S. Regulatory Approvals material to its business and operations.

(b) Each Credit Party and its Subsidiaries, as applicable, and, to the Knowledge of Borrower, each licensee of a Credit Party or any of its Subsidiaries of any U.S. Intellectual Property, are in compliance with, and have complied with, all applicable U.S. federal, state and local laws, rules, and regulations, governing the research, development, manufacture, production, use, commercialization, marketing, importing, distribution or sale of any Product in the Territory, including all such regulations promulgated by each applicable U.S. Regulatory Agency, the failure of compliance with which could reasonably be expected to result in a Material Adverse Change. No Credit Party or its Subsidiaries has received any written notice from any U.S. Regulatory Agency citing action or inaction by any Credit Party or any of its Subsidiaries that would constitute a violation of any applicable U.S. federal, state or local laws, rules, or regulations, which could reasonably be expected to result in a Material Adverse Change.

5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than inchoate indemnity obligations), each Credit Party shall, and shall cause each of its Subsidiaries to:

5.1. Maintenance of Existence. (a) Preserve, renew and maintain in full force and effect its and all its Subsidiaries' legal existence under the Requirements of Law in their respective jurisdictions of organization, incorporation or formation; (b) take all commercially reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable for it and all of its Subsidiaries in the ordinary course of its business, except in the case of clause (a) (other than with respect to Borrower) and clause (b) above, (i) to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Change or (ii) pursuant to a transaction permitted by this Agreement; and (c) comply with all Requirements of Law of any Governmental Authority to which it is subject, except where the failure to do so could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change.

5.2. Financial Statements, Notices. Deliver to the Collateral Agent:

(a) Financial Statements.

(i) Annual Financial Statements. As soon as available, but in any event within one hundred and twenty (120) days (or such earlier date on which Borrower is required to file a Form 10-K under the Exchange Act, if applicable) after the end of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2017, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all prepared in accordance with Applicable Accounting Standards, with such consolidated financial statements to be audited and accompanied by (x) a report and opinion of Borrower's independent certified public accounting firm of recognized national standing (which report and opinion shall be prepared in accordance with Applicable Accounting Standards and shall not be subject to any qualification as to "going concern" or scope of audit), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards, and (y) if and only if Borrower is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm, an attestation report of such independent certified public accounting firm as to Borrower's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting to management's assessment that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(ii) Quarterly Financial Statements. As soon as available, but in any event within sixty (60) days (or such earlier date on which Borrower is required to file a Form 10-Q under the Exchange Act, if applicable) after the end of each of the first three (3) fiscal quarters of each fiscal year of Borrower, beginning with the fiscal quarter ending March 31, 2018, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income and cash

flows and for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of Borrower's fiscal year, setting forth in each case in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with Applicable Accounting Standards, subject to normal year-end audit adjustments and the absence of disclosures normally made in footnotes; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC). Such consolidated financial statements shall be certified by a Responsible Officer of Borrower as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 5.2(a)(i), subject to normal year-end audit adjustments and the absence of footnotes;

(b) **Notice of Defaults or Events of Default.** Written notice in accordance with Section 9 hereof as promptly as practicable (and in any event within five (5) Business Days) after a Responsible Officer of Borrower shall have obtained knowledge thereof, of the occurrence of any Default or Event of Default.

5.3. Taxes. Timely file all federal and state income and other material required Tax returns and reports or extensions therefor and timely pay all material foreign, federal, state and local Taxes, assessments, deposits and contributions imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrue thereon; provided, however, that no such Tax or any claim for Taxes that have become due and payable and have or may become a Lien on any Collateral shall be required to be paid if (a) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserves with respect thereto have been maintained in accordance with Applicable Accounting Standards and (b) solely in the case of a Tax or claim that has or may become a Lien against any Collateral, such contest proceedings conclusively operate to stay the sale of any portion of any Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income Tax return with any Person (other than Borrower or any of its Subsidiaries).

5.4. Insurance. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons of comparable size engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons of comparable size engaged in the same or similar businesses as Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Any products liability or general liability insurance maintained in the United States regarding Collateral shall name the Collateral Agent as additional insured or loss payee, as applicable. So long as no Event of Default shall have occurred and be continuing, the Borrower and its Subsidiaries may retain all or any portion of the proceeds of any insurance of the Borrower and its Subsidiaries (and the Collateral Agent shall promptly remit to the Borrower any proceeds with respect to any insurance received by it).

5.5. Operating Accounts. In the case of any Credit Party, contemporaneously with the establishment of any new Collateral Account at or with any bank or other depository or financial institution, subject such account to a Control Agreement that is reasonably acceptable to the Collateral Agent. For each Collateral Account that each Credit Party at any time maintains, such Credit Party shall cause the applicable bank or other depository or financial institution at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Collateral Agent's Lien in favor and for the benefit of Lenders and the other Secured Parties in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of the Collateral Agent. The provisions of the previous two (2) sentences shall not apply to deposit accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's employees, zero balance accounts, accounts (including trust accounts) used exclusively for escrow, customs, insurance or fiduciary purposes, merchant accounts, accounts used exclusively for compliance with any U.S. Requirements of Law to the extent such Requirements of Law prohibit the granting of a Lien thereon, accounts which constitute cash collateral in respect of a Permitted Lien and accounts the cash balances of which do not exceed \$150,000 in the aggregate in all such accounts at any time (all such accounts, collectively, the "**Excluded Accounts**"). Notwithstanding the foregoing,

the Credit Parties shall have until the date that is ninety (90) days (or such longer period as the Collateral Agent may agree in its sole discretion) following (i) the Tranche A Closing Date to comply with the provisions of this Section 5.5 with regard to Collateral Accounts of the Credit Parties in existence on the Tranche A Closing Date (or opened during such 90-day period (or such longer period as the Collateral Agent may agree in its sole discretion)) and (ii) the closing date of any Acquisition or other Investment to comply with the provisions of this Section 5.5 with regard to Collateral Accounts of the Credit Parties acquired in connection with such Acquisition or other Investment.

5.6. Compliance with Laws. Comply in all respects with the Requirements of Law and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or its assets or properties (including Environmental Laws, ERISA, Anti-Money Laundering Laws, OFAC, FCPA, Health Care Laws and the Federal Fair Labor Standards Act), except if the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

5.7. Protection of Intellectual Property Rights.

(a) Except as could not reasonably be expected to result in a Material Adverse Change, (i) protect, defend and maintain the validity and enforceability of the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory; (ii) maintain the confidential nature of any material U.S. trade secrets and trade secret rights used in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory; and (iii) not allow any Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory to be abandoned, forfeited or dedicated to the public or any Current Company IP Agreement to be terminated by Borrower or any of its Subsidiaries, as applicable, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld or delayed); provided, however, that with respect to any such Company IP that is not owned by Borrower or any of its Subsidiaries, the obligations in clauses (i) and (iii) above shall apply only to the extent Borrower or any of its Subsidiaries have the right to take such actions or to cause any licensee or other third party to take such actions pursuant to applicable agreements or contractual rights.

(b) [Reserved].

(c) (i) Except as Borrower may otherwise determine in its reasonable business judgment, use commercially reasonable efforts, at its (or its Subsidiaries', as applicable) sole expense, either directly or indirectly, with respect to any licensee or licensor under the terms of any Credit Party's (or its Subsidiaries') agreement with the respective licensee or licensor, as applicable, to take any and all actions (including taking legal action to specifically enforce the applicable terms of any license agreement) and prepare, execute, deliver and file agreements, documents or instruments which are necessary or desirable to (A) prosecute and maintain the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory and (B) diligently defend or assert the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory against material infringement, misappropriation, violation or interference by any other Persons and, in the case of Copyrights, Trademarks and Patents within the Company IP, against any claims of invalidity or unenforceability (including by bringing any legal action for infringement, dilution, violation or defending any counterclaim of invalidity or action of a non-Affiliate third party for declaratory judgment of non-infringement or non-interference); and (ii) not, and shall use commercially reasonable efforts to cause any licensee or licensor of any Company IP not to, disclaim or abandon, or fail to take any action necessary or desirable to prevent the disclaimer or abandonment of Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, in each case only if such disclaimer or abandonment could reasonably be expected to have a Material Adverse Change.

5.8. Books and Records. Maintain proper Books, in which entries that are full, true and correct in all material respects and are in conformity with Applicable Accounting Standards consistently applied shall be made of all material financial transactions and matters involving the assets, properties and business of such Credit Party (or such Subsidiary), as the case may be.

5.9. Access to Collateral; Audits. Allow the Collateral Agent, or its agents or representatives, at any time during the occurrence and continuance of an Event of Default during normal business hours and upon reasonable advance notice, to visit and inspect the Collateral and inspect, copy and audit any Credit Party's Books. The foregoing inspections and audits shall be at the relevant Credit Party's expense.

5.10. Use of Proceeds. (a) Use the proceeds of the Term Loan solely to fund its general business requirements and (b) not use the proceeds of the Term Loan to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any margin stock. If requested by the Collateral Agent, Borrower shall complete and sign Part I of a copy of Federal Reserve Form G-3 referred to in Regulation U and deliver such copy to the Collateral Agent.

5.11. Further Assurances. Promptly upon the reasonable written request of the Collateral Agent, execute, acknowledge and deliver such further documents and do such other acts and things in order to effectuate or carry out more effectively the purposes of this Agreement and the other Loan Documents at its expense, including after the Tranche A Closing Date taking such steps as are reasonably deemed necessary or desirable by the Collateral Agent to maintain, protect and enforce the Collateral Agent's Lien in favor and for the benefit of Lenders and the other Secured Parties on Collateral securing the Obligations created under the Security Agreement and the other Loan Documents in accordance with the terms of the Security Agreement and the other Loan Documents, subject to Permitted Liens; provided, however, that Credit Parties and their Subsidiaries shall not be required to take any action under laws outside the United States to attach, maintain, perfect, protect or enforce any Lien of the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties on Collateral.

5.12. Additional Collateral; Guarantors. From and after the Tranche A Closing Date, without limiting the generality of Section 5.11 and except as otherwise approved in writing by the Collateral Agent, each Credit Party shall cause each of its Domestic Subsidiaries (other than Excluded Subsidiaries) to guarantee the Obligations and to cause each such Domestic Subsidiary to grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties a first priority security interest in and Lien upon, and pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, subject to Permitted Liens, all of such Subsidiary's properties and assets constituting Collateral, whether now existing or hereafter acquired or existing, to secure such guaranty; provided, that such Credit Party's obligations to cause such Domestic Subsidiaries formed or acquired after the Tranche A Closing Date to take the foregoing actions shall be subject to the timing requirements of Section 5.13. Furthermore, and without limiting the generality of Section 5.11 and except as otherwise approved in writing by the Collateral Agent, each Credit Party, following the Tranche A Closing Date, shall (a) grant the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties a first priority security interest in and Lien upon, and pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents, all of the Equity Interests (other than Excluded Equity Interests) of each of its Domestic Subsidiaries that is directly owned by such Credit Party and (b) grant the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties a first priority security interest in and Lien upon, and pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents, all of the Equity Interests (other than Excluded Equity Interests) in each Foreign Subsidiary that is directly owned by a Domestic Subsidiary. In connection with each pledge of certificated Equity Interests required under the Loan Documents, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent, such certificate(s) together with stock powers or assignments, as applicable, properly endorsed for transfer to the Collateral Agent or duly executed in blank, in each case reasonably satisfactory to the Collateral Agent. In connection with each pledge of uncertificated Equity Interests constituting a security (as defined under Section 8-102(a)(15) of the Code) required under the Loan Documents and subject to the proviso in Section 5.11, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent substantially in the form attached as an Annex to the Security Agreement.

5.13. Formation or Acquisition of Domestic Subsidiaries. If Borrower or any of its Subsidiaries at any time after the Tranche A Closing Date forms or acquires a Domestic Subsidiary (other than an Excluded Subsidiary), as promptly as practicable but in no event later than thirty (30) days (or such longer period as the Collateral Agent may agree in its sole discretion) after such formation or acquisition: (a) Borrower will cause such Domestic Subsidiary

to execute and deliver to the Collateral Agent a joinder to the Security Agreement in the form attached thereto; (b) Borrower will deliver to the Collateral Agent (i) true, correct and complete copies of the Operating Documents of such Domestic Subsidiary, (ii) a Secretary's Certificate, certifying that the copies of such Operating Documents are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent) and (iii) a good standing certificate for such Domestic Subsidiary certified by the Secretary of State (or the equivalent thereof) of its jurisdiction of organization, incorporation or formation; and (c) Borrower will deliver to the Collateral Agent a Perfection Certificate, updated to reflect the formation or acquisition of such Domestic Subsidiary. Borrower, the Collateral Agent and Lenders hereby agree that any such Domestic Subsidiary shall constitute a Credit Party for all purposes hereunder as of the date of the execution and delivery of the joinder contemplated by clause (a) above. Any document, agreement or instrument executed or issued pursuant to this Section 5.13 shall be a Loan Document.

5.14. Post-Closing Requirements. Borrower will, and will cause each of its Subsidiaries to, take each of the actions set forth on Schedule 5.14 of the Disclosure Letter within the time period prescribed therefor on such schedule (or such longer period as the Collateral Agent may agree in its sole discretion), which shall include, among other things, that notwithstanding anything to the contrary in Section 5.5, the Credit Parties shall have until the date that is ninety (90) days following the Tranche A Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.5 with regard to Collateral Accounts of the Credit Parties in existence on the Tranche A Closing Date or opened during such 90-day period (or such longer period as the Collateral Agent may agree in its sole discretion). All representations and warranties and covenants contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to take the actions set forth on Schedule 5.14 of the Disclosure Letter within the time periods set forth therein, rather than elsewhere provided in the Loan Documents, such that to the extent any such action set forth in Schedule 5.14 of the Disclosure Letter is not overdue, the applicable Credit Party shall not be in breach of any representation or warranty or covenant contained in this Agreement or any other Loan Document applicable to such action for the period from the Tranche A Closing Date until the date on which such action is required to be fulfilled as set forth on Schedule 5.14 of the Disclosure Letter.

6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than inchoate indemnity obligations), such Credit Party shall not, and shall cause each of its Subsidiaries not to:

6.1. Dispositions. Convey, sell, lease, transfer, assign, covenant not to sue, enter into a coexistence agreement, exclusively or non-exclusively license out, or otherwise dispose of (including any sale-leaseback), directly or indirectly and whether in one or a series of transactions (collectively, "**Transfer**"), all or any part of the Current Company IP; except in each case of this Section 6.1 (i) Transfers that are under Permitted Licenses or made in connection with Permitted Liens, (ii) intercompany licenses or grants of rights of distribution, co-promotion or similar commercial rights between or among the Credit Parties or their Subsidiaries relating to a Product, (iii) other Transfers made in the ordinary course of business on commercially reasonable arm's length terms, and (iv) any license or similar grant of rights so long as such license or grant does not result in the following: (i) one hundred percent (100%) of the Net Sales of a Product in the Territory not being reported in the financial statements of Borrower and its Subsidiaries and (ii) such Credit Party or Subsidiary is prohibited or otherwise restricted from determining in its sole discretion the pricing of such Product in the Territory (but not including pricing of such Product under any Governmental Payor Programs).

6.2. Fundamental Changes. Without at least ten (10) days prior written notice to the Collateral Agent in accordance with Section 9 hereof, solely in the case of a Credit Party: (i) change its jurisdiction of organization, incorporation or formation, (ii) change its organizational structure or type, (iii) change its legal name, or (iv) change any organizational number (if any) assigned by its jurisdiction of organization, incorporation or formation.

6.3. [Reserved].

6.4. Indebtedness. Directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (including any Indebtedness consisting of obligations evidenced by a bond, debenture, note or other similar instrument) that is not Permitted Indebtedness;

provided, however, that the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.4.

6.5. Encumbrances. Except for Permitted Liens, (i) create, incur, allow, or suffer to exist any Lien on any Collateral, or (ii) permit (other than pursuant to the terms of the Loan Documents) any material portion of the Collateral not to be subject to the first priority security interest granted in the Loan Documents or otherwise pursuant to the Collateral Documents, in each case of this clause (ii), other than as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation of the Collateral Agent or Lenders under the Loan Documents.

6.6. No Further Negative Pledges; Negative Pledge.

(a) No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of such Credit Party or Subsidiary to create, incur, assume or suffer to exist any Lien upon any Collateral, whether now owned or hereafter acquired, in favor and for the benefit of Lenders and the other Secured Parties with respect to the Obligations or under the Loan Documents, in each case of this Section 6.6(a), other than Permitted Negative Pledges.

(b) [Reserved].

6.7. [Reserved].

6.8. Distributions. Pay any dividends or make any distribution or payment on or redeem, retire or purchase any Equity Interests, except, in each case of this Section 6.8, for Permitted Distributions.

6.9. No Restrictions on Domestic Subsidiary Distributions. No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of any Domestic Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Domestic Subsidiary's Equity Interests owned by Borrower or any other Domestic Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Domestic Subsidiary to Borrower or any other Domestic Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Domestic Subsidiary of Borrower, or (d) transfer, lease or license any Collateral to Borrower or any other Domestic Subsidiary of Borrower, except, in each case of this Section 6.9, for Permitted Domestic Subsidiary Distribution Restrictions.

6.10. Subordinated Debt Make or permit any voluntary or optional prepayment of any Subordinated Debt or Permitted Convertible Bond Indebtedness, except (i) the conversion by Borrower of any Permitted Convertible Bond Indebtedness issued and outstanding as of the Effective Date into or in exchange for other securities, the redemption of any such Permitted Convertible Bond Indebtedness by cash, or cash payments to induce or to settle the conversion of any such Permitted Convertible Bond Indebtedness by the holders thereof, in each case pursuant to the terms of such Permitted Convertible Bond Indebtedness, (ii) under the terms of any subordination, intercreditor, or other similar agreement to which any Subordinated Debt is subject, (iii) replacements, refinancings or exchanges of any Subordinated Debt or Permitted Convertible Bond Indebtedness with any Indebtedness permitted to be incurred under Section 6.4, (iv) any prepayment or conversion of any Permitted Convertible Bond Indebtedness that is made or settled in Equity Interests of Borrower or, in respect of any fractional shares to be issued, in cash; (v) with the proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; and (vi) any prepayment or redemption of any Subordinated Debt or Permitted Convertible Bond Indebtedness so long as the trailing four-fiscal quarter Net Sales of Borrower and its Subsidiaries on a consolidated basis for the most recent four-fiscal quarter period ending prior to the date of such prepayment or redemption, as indicated in the statements of Borrower delivered or otherwise made available to the Collateral Agent pursuant to Section 5.2(a), are greater than or equal to \$750,000,000.

6.11. Amendments or Waivers of Organizational Documents. Amend, restate, supplement or otherwise modify, or waive, any provision of its Operating Documents in a manner that could reasonably be expected to result in a Material Adverse Change.

6.12. Compliance.

(a) Become an “investment company” under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose;

(b) No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien on any assets or properties of any Credit Party or a Subsidiary of a Credit Party with respect to any Plan or Multiemployer Plan or (ii) any other ERISA Event that, in the case of clauses (i) and (ii), could reasonably be expected to, in the aggregate, result in a Material Adverse Change; or

(c) Permit the occurrence of any other event with respect to any present pension, profit sharing or deferred compensation plan which could reasonably be expected to result in a Material Adverse Change.

6.13. Compliance with Anti-Terrorism Laws. The Collateral Agent and each Lender hereby notifies each Credit Party that pursuant to the requirements of Anti-Terrorism Laws, and such Person’s policies and practices, the Collateral Agent and each Lender is required to obtain, verify and record certain information and documentation that identifies each Credit Party and its principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow the Collateral Agent and each Lender to identify such party in accordance with Anti-Terrorism Laws. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or Affiliates to, directly or indirectly, knowingly enter into any documents or contracts with any Person listed on the OFAC Lists. Each Credit Party shall promptly (but in any event within three (3) Business Days) notify the Collateral Agent in writing upon any Responsible Officer of Borrower having knowledge that any Credit Party or any Subsidiary or Affiliate of any Credit Party is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or Affiliates to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids or violates, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

6.14. Amendments or Waivers of Current Company IP Agreements. Waive, amend, cancel or terminate, exercise or fail to exercise, any material rights constituting or relating to any of the Current Company IP Agreements or (b) breach, default under, or take any action or fail to take any action that, with the passage of time or the giving of notice or both, would constitute a default or event of default under any of the Current Company IP Agreements, in each case of this Section 6.14, which could reasonably be expected to result in a Material Adverse Change.

7. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

7.1. Payment Default. Any Credit Party fails to (a) make any payment of any principal of any Term Loan when and as the same shall become due and payable, whether at the due date thereof (including pursuant to Section 2.2(c)) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise, or (b) within five (5) Business Days after the same becomes due, any payment of interest or premium pursuant to Section 2.2, including any applicable Makewhole Amount or Prepayment Premium, or any other Obligations (which five (5) Business Day cure period shall not apply to any payments due on the Term Loan Maturity Date or the date of acceleration pursuant to Section 8.1(a) hereof). A failure to pay any such interest, premium or Obligations pursuant to the foregoing clause (b) prior to the end of such five (5) Business Day-period shall not constitute an Event of Default (unless such payment is due on the Term Loan Maturity Date or the date of acceleration pursuant to Section 8.1(a) hereof).

7.2. Covenant Default.

(a) The Credit Parties: (i) fail or neglect to perform any obligation in Sections 5.4, 5.5 or 5.10 or (ii) violate any covenant in Section 6; or

(b) The Credit Parties fail or neglect to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents on its part to be performed, kept or observed and such failure continues for thirty (30) days (or for ninety (90) days in the case of Section 5.2(a)(i)(y), and provided further that the failure to perform, keep, or observe Section 5.2(a)(i)(y) shall be deemed cured and such resulting Default shall be deemed to no longer exist, when the underlying cause that led to such failure and resulting Default has been cured or remediated) after the earlier of the date on which (i) a Responsible Officer of any Credit Party becomes aware of such failure and (ii) written notice thereof shall have been given to the Borrower by the Collateral Agent or the Required Lenders (it being acknowledged and agreed that no Credit Extensions shall be made during any such 30-day (or 90-day) period). Cure periods provided under this Section 7.2(b) shall not apply, among other things, to any of the covenants referenced in clause (a) above.

7.3. Material Adverse Change. A Material Adverse Change of the type described in clause (ii) or clause (iii) of the definition thereof occurs.

7.4. Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of any Credit Party or of any entity under the control of any Credit Party (including a Subsidiary) in excess of \$10,000,000 on deposit or otherwise maintained with the Collateral Agent, or (ii) a notice of lien or levy is filed against any of material portion of Collateral by any Governmental Authority, and the same under sub-clauses (i) and (ii) hereof are not, within thirty (30) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, that no Credit Extensions shall be made during any thirty (30) day cure period; or

(b) (i) Any material portion of Collateral is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower and its Subsidiaries from conducting any material part of their business, taken as a whole.

7.5. Insolvency.

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking: (i) relief in respect of any Credit Party, or of a substantial part of the property of any Credit Party, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; or (iii) the winding-up or liquidation of any Credit Party, and such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) Any Credit Party shall: (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (a) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate (except as otherwise expressly permitted hereunder).

7.6. Other Agreements. Any Credit Party fails to pay any Indebtedness (other than the Indebtedness represented by this Agreement and the other Loan Documents) within any applicable grace period after such payment

is due and payable (including at final maturity) or after the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid or accelerated exceeds \$10,000,000.

7.7. Judgments. One or more final, non-appealable judgments, orders, or decrees for the payment of money in an amount in excess of \$10,000,000 (but excluding any final judgments, orders, or decrees for the payment of money that are covered by independent third-party insurance as to which liability has not been denied by such insurance carrier or by an indemnification claim against a solvent and unaffiliated Person that is not a Credit Party as to which such Person has not denied liability for such claim), shall be rendered against one or more Credit Parties and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.

7.8. Misrepresentations. Any Credit Party or any Person acting for any Credit Party makes or is deemed to make any representation, warranty, or other statement now or later in this Agreement, any other Loan Document or in any writing delivered to the Collateral Agent or any Lender or to induce the Collateral Agent or any Lender to enter this Agreement or any other Loan Document, and such representation, warranty, or other statement is incorrect in any material respect (or, to the extent any such representation, warranty or other statement is qualified by materiality or Material Adverse Change, in any respect) when made or deemed to be made.

7.9. Loan Documents; Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party, or any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in any material portion of the Collateral purported to be covered thereby or such security interest shall for any reason (other than pursuant to the terms of the Loan Documents) cease to be a perfected and first priority security interest in any material portion of the Collateral subject thereto, subject only to Permitted Liens, in each case, other than as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation of the Collateral Agent or Lenders under the Loan Documents.

7.10. Subordinated Debt. Any document, instrument, or agreement evidencing the subordination of any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Credit Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement, other than with respect to Permitted Liens.

7.11. ERISA Event. An ERISA Event occurs that, individually or together with any other ERISA Events, results or could reasonably be expected to result in a Material Adverse Change or the imposition of a Lien on any Collateral.

8. RIGHTS AND REMEDIES UPON AN EVENT OF DEFAULT

8.1. Rights and Remedies. While an Event of Default occurs and continues, the Collateral Agent may, and at the request of the Required Lenders, will, without notice or demand:

(a) declare all Obligations (including, for the avoidance of doubt, the Makewhole Amount or Prepayment Premium, as applicable, that is payable pursuant to Section 2.2(e) or Section 2.2(f), as the case may be) immediately due and payable (but if an Event of Default described in Section 7.5 occurs all Obligations, including the Makewhole Amount or Prepayment Premium, as applicable, that is payable pursuant to Section 2.2(e) or Section 2.2(f), as the case may be, are automatically and immediately due and payable without any action by the Collateral Agent or any Lender), whereupon all Obligations for principal, interest, premium or otherwise (including, for the avoidance of doubt, the Makewhole Amount or Prepayment Premium, as applicable, that is payable pursuant to Section 2.2(e) or Section 2.2(f), as the case may be) shall become due and payable by Borrower without presentment, demand, protest or other notice of any kind, which are all expressly waived by the Credit Parties hereby;

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement;

(c) verify the amount of the Collateral Accounts;

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral or the Collateral Agent's security interest in favor and for the benefit of Lenders and the other Secured Parties in the Collateral. Borrower shall assemble the Collateral if the Collateral Agent or the Required Lenders requests and make it available as the Collateral Agent or the Required Lenders designates. The Collateral Agent or its agents or representatives may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest in favor and for the benefit of Lenders and the other Secured Parties and pay all expenses incurred. Borrower grants the Collateral Agent a license to enter and occupy (and for its agents or representatives to enter and occupy) any of its premises, without charge, to exercise any of the Collateral Agent's or Lenders' rights or remedies;

(e) apply to the Obligations (i) any balances and deposits of Borrower it holds, or (ii) any amount held by the Collateral Agent owing to or for the credit or the account of Borrower;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. With respect to any and all Intellectual Property owned by any Credit Party and included in Collateral, each Credit Party hereby grants to the Collateral Agent, for the benefit of all Secured Parties, as of the Tranche A Closing Date, a non-exclusive, royalty-free license or other right to use, without charge, such Intellectual Property in advertising for sale and selling any Collateral and, in connection with the Collateral Agent's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise Contracts inure to the benefit of all Secured Parties. Each Credit Party shall retain the right to control the Collateral Agent's use of its trade names and Trademarks and such trade names and Trademarks, together with the goodwill associated therewith, are and remain the exclusive property of the Credit Parties, and any and all use of the same by the Collateral Agent shall inure to the benefit of the Credit Parties;

(g) place a "hold" on any account maintained with the Collateral Agent or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(h) demand and receive possession of Borrower's Books regarding Collateral; and

(i) exercise all rights and remedies available to the Collateral Agent or Lenders under the Collateral Documents or any other Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

The Collateral Agent and Lenders agree that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to the Intellectual Property, the rights of the licensees under the Permitted Licenses will not be terminated, limited or otherwise adversely affected so long as no default exists under the Permitted License in a way that would permit the licensor to terminate such Permitted License (commonly termed a non-disturbance).

8.2. Power of Attorney. Borrower hereby irrevocably appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) settle and adjust disputes and claims about the Collateral Accounts directly with depository banks where the Collateral Accounts are maintained, for amounts and on terms the Collateral Agent or the Required Lenders determines reasonable; (b) make, settle, and adjust all claims under Borrower's products liability or general liability insurance policies maintained in the United States regarding Collateral; (c) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (d) transfer the Collateral into the name of the Collateral Agent, Lenders or a third party as the Code permits. Borrower hereby appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact to file or record any documents necessary to perfect or continue the perfection of the Collateral Agent's security interest in favor and for the benefit of Lenders and the other Secured Parties in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are not under any further obligation to make Credit Extensions hereunder. The foregoing appointment of the Collateral Agent and any Related Party thereof as Borrower's attorney in fact, and all of the Collateral Agent's (or such Related Party's) rights and powers, coupled with an interest, are

irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and each Lender's obligation to provide Credit Extensions terminates.

8.3. Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, the Collateral Agent shall apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Collateral Accounts or disposition of any other Collateral, or otherwise, to the Obligations in such order as the Collateral agent or Required Lenders shall determine in its or their sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Lenders for any deficiency. If the Collateral Agent or Lenders directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, the Collateral Agent or Lenders shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Lenders of cash therefor.

8.4. Collateral Agent's Liability for Collateral. So long as the Collateral Agent complies with Requirements of Law regarding the safekeeping of the Collateral in the possession or under the control of the Collateral Agent, the Collateral Agent shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; or (c) any act or default of any other Person. In no event shall the Collateral agent or any Lender have any liability for any diminution in the value of the Collateral for any reason. Borrower bears all risk of loss, damage or destruction of the Collateral.

8.5. No Waiver; Remedies Cumulative. The Collateral Agent's or Lenders' failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of the Collateral Agent or Lenders thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. The Collateral Agent's and Lenders' rights and remedies under this Agreement and the other Loan Documents are cumulative. Each of the Collateral Agent and Lenders has all rights and remedies provided under the Code, by law, or in equity. The exercise by the Collateral agent or Lenders of one right or remedy is not an election and shall not preclude the Collateral Agent or Lenders from exercising any other remedy under this Agreement or other remedy available at law or in equity, and the waiver by the Collateral Agent or Lenders of any Event of Default is not a continuing waiver. The Collateral Agent's or Lenders' delay in exercising any remedy is not a waiver, election, or acquiescence.

8.6. Demand Waiver; Makewhole Amount; Prepayment Premium. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by the Collateral Agent or Lenders on which Borrower is liable. Borrower acknowledges and agrees that if the maturity of all Obligations shall be accelerated pursuant to Section 8.1(a) by reason of the occurrence of an Event of Default, the Makewhole Amount or Prepayment Premium, as applicable, that is payable pursuant to Section 2.2(e) or Section 2.2(f), as the case may be, shall become due and payable by Borrower upon such acceleration, whether such acceleration is automatic or is effected by the Collateral Agent's or Lenders' declaration thereof, as provided in Section 8.1(a), and Borrower shall pay the Makewhole Amount or Prepayment Premium, as applicable, that is payable pursuant to Section 2.2(e) or Section 2.2(f), as the case may be, as compensation to Lenders for the loss of its investment opportunity and not as a penalty, and Borrower waives any right to object thereto in any voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise.

9. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address (if any) indicated below. Any party to this Agreement may change its mailing or electronic mail address or facsimile number by giving all other parties hereto written notice thereof in accordance with the terms of this Section 9.

If to Borrower or any other Credit Party:

TESARO, Inc.

1000 Winter Street
Waltham, MA 02451

Attention: General Counsel

Telephone: +1 (781) 786-7065

Facsimile: +1 (339) 309-5013

Email: jfarmer@tesarobio.com

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

Hogan Lovells US LLP

100 International Drive

Suite 2000

Baltimore, MD 21202

Attn: Asher Rubin

Telephone: +1 (410) 659-2700

Facsimile: +1 (410) 659-2701

Email: asher.rubin@hoganlovells.com

If to the Collateral Agent: BioPharma Credit PLC

c/o Beaufort House

51 New North Road

Exeter EX4 4EP

United Kingdom

Attn: Company Secretary

Tel: +44 01 392 477 500

Fax: +44 01 392 253 282

with copies (which shall not constitute notice) to:

Pharmakon Advisors LP

110 East 59th Street, #3300

New York, NY 10022

Attn: Pedro Gonzalez de Cosio

Phone: +1 (212) 883-2296

Fax: +1 (917) 210-4048

Email: pg@PharmakonAdvisors.com

and

Akin Gump Strauss Hauer & Feld LLP

One Bryant Park

New York, NY 10036-6745

Attn: Geoffrey E. Secol

Phone: (212) 872-8081

Fax: (212) 872-1002

Email: gsecol@akingump.com

If to any Lender: To the address set forth on Exhibit D attached hereto for such Lender

10. CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

Each party hereto submits to the exclusive jurisdiction of the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Requirements of Law, in such Federal court; provided, however, that nothing in this Agreement shall be deemed to operate to preclude the Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of the Collateral Party or such Lender. Each Credit Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Credit Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Credit Party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to such party at the address set forth in (or otherwise provided in accordance with the terms of) Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of such party's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

11. GENERAL PROVISIONS

11.1. Successors and Assigns.

(a) This Agreement binds and is for the benefit of the parties hereto and their respective successors and permitted assigns.

(b) No Credit Party may transfer, pledge or assign this Agreement or any other Loan Document or any rights or obligations under hereunder or thereunder without the prior written consent of each Lender. No Lender may sell, transfer, assign or pledge this Agreement or any other Loan Document or any of its rights or obligations hereunder or thereunder to any third party without Borrower's prior written consent (not to be unreasonably withheld, delayed or conditioned), including to grant a participation in all or any part of, or any interest in, such Lender's obligations, rights or benefits under this Agreement and the other Loan Documents (any such sale, transfer, assignment, pledge or grant of a participation, a "**Lender Transfer**").

(c) Notwithstanding clause (b) above, Borrower's consent shall not be required for any Lender Transfer by a Pharmakon Lender to another Pharmakon Lender;

(i) by a Pharmakon Lender to any third party, so long as after giving effect to such Lender Transfer, one or more of the Pharmakon Lenders continue to hold in the aggregate at least fifty-one percent (51.0%) of each of (x) the outstanding aggregate principal amount of the Term Loans, (y) prior to the Tranche A Closing Date, the Tranche A Commitments and (z) prior to the Tranche B Closing Date, the Tranche B Commitments;

(ii) to a Controlled Investment Affiliate of any Lender;

(iii) if any Event of Default described in Section 7.1.7.2(a), 7.3, 7.4, 7.5, 7.6, 7.9, or 7.10 has occurred and is continuing.

(d) In the case of a Lender Transfer in the form of a participation granted by a Lender to any third party, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of its obligations hereunder, (iii) Borrower, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) any agreement or instrument pursuant to which such Lender sells such participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification, or other modification hereto, in each case subject to the terms and conditions of this Agreement (including Section 12).

(e) No Lender shall make a Lender Transfer to a Competitor of Borrower.

(f) The Collateral Agent shall record any Lender Transfer in the "book entry system" maintained pursuant to Section 2.8. Each Lender shall provide Borrower, the Collateral Agent and each other Lender written notice of a Lender Transfer delivered no later than five (5) Business Days prior to the date on which such Lender Transfer is consummated.

(g) Any attempted Lender Transfer, transfer, pledge or assignment of this Agreement or any other Loan Document or any rights or obligations under hereunder or thereunder in violation of this Section 11.1 shall be null and void.

11.2. Indemnification.

(a) Borrower agrees to indemnify and hold harmless each of the Collateral Agent and its Related Parties and each of the Lenders and their respective Affiliates (and its or their successors and assigns) and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof (each such Person, an "**Indemnified Person**") from and against any and all Indemnified Liabilities; provided, however, that (i) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the bad faith, gross negligence or willful misconduct of that Indemnified Person (or its Affiliates or controlling Persons or their respective directors, officers, managers, partners, members, agents, sub-agents or advisors), in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction, (ii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from a material breach of any obligation of such Indemnified Person hereunder, and (iii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from any claim by one Indemnified Person against another Indemnified Person that does not relate to any act or omission of any Credit Party, and (iv) no Credit Party shall be liable for any settlement of any claim or proceeding effected by any Indemnified Person without the prior written consent of such Credit Party (which consent shall not be unreasonably withheld or delayed), but if settled with such consent or if there shall be a final judgment against an Indemnified Person, each of the Credit Parties shall, jointly and severally, indemnify and hold harmless such Indemnified Person from and against any loss or liability by reason of such settlement or judgment in the manner set forth in this Agreement. This Section 11.2(a) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any third party claim or other non-Tax claim, and yield protection matters, which shall be governed exclusively by Section 2.5.

(b) To the extent permitted by Requirements of Law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any other party hereto (and its or their successors and assigns), and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Term Loan or the use of the proceeds thereof

or any act or omission or event occurring in connection therewith, and each party to this Agreement hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

11.3. Severability of Provisions. In case any provision in or obligation hereunder or under any other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

11.4. Correction of Loan Documents. The Collateral Agent or Required Lenders may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties hereto so long as the Collateral Agent or Required Lenders, as applicable, provides the Credit Parties with written notice of such correction and allows the Credit Parties at least ten (10) days to object to such correction in writing delivered to the Collateral Agent. In the event of such objection, such correction shall not be made except by an amendment to this Agreement in accordance with Section 11.5.

11.5. Amendments in Writing; Integration.

(a) No amendment or modification of any provision of this Agreement or any other Loan Document, or waiver, discharge or termination of any obligation hereunder or thereunder, no approval or consent hereunder or thereunder (including any consent to any departure by Borrower or any other Credit Party herefrom or therefrom), shall in any event be effective unless the same shall be in writing and signed by Borrower (on its own behalf and on behalf of each other Credit Party) and the Required Lenders; provided, however, that that no such amendment, modification, waiver, discharge, termination, approval or consent shall, unless in writing and signed by the Collateral Agent and the Required Lenders, affect the rights or duties of, or any amounts payable to, the Collateral Agent under this Agreement or any other Loan Document. Any such waiver, approval or consent granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver, approval or consent.

(b) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations among the parties hereto about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

11.6. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

11.7. Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. The obligation of Borrower or any other the Credit Parties in Section 11.2 to indemnify Indemnified Persons shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

11.8. Confidentiality. Any information regarding the Credit Parties and their Subsidiaries and their businesses provided to Lenders or the Collateral Agent by or on behalf of any Credit Party pursuant to the Loan Documents shall be deemed "Confidential Information"; provided, however, that Confidential Information does not include information that is either: (i) in the public domain or in the possession of any Lender or the Collateral Agent or any of their respective Affiliates or when disclosed to any Lender or the Collateral Agent or any of their respective Affiliates, or becomes part of the public domain after disclosure to any Lender or the Collateral Agent or any of their respective Affiliates, in each case, other than as a result of a breach by any Lender or the Collateral agent or any of their respective Affiliates of the obligations under this Section 11.8; or (ii) disclosed to any Lender or the Collateral Agent or any of their respective Affiliates by a third party if any Lender or the Collateral Agent or any of their respective Affiliates do not know that the third party is prohibited from disclosing the information. No Lender or the Collateral Agent shall disclose any Confidential Information to a third party or use Confidential Information for any purpose other than the exercise of its rights and the performance of its duties or obligations under the Loan Documents.

The foregoing in this Section 11.8 notwithstanding, the Collateral Agent and each Lender may disclose Confidential Information: (a) to any of such Lender's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions; (c) as required by law, regulation, subpoena, or other order, provided, that (x) prior to any disclosure under this clause (c), the Collateral Agent or such Lender agrees to endeavor to provide Borrower with prior written notice thereof and with respect to any law, regulation, subpoena or other order, to the extent that the Collateral Agent or such Lender is permitted to provide such prior notice to Borrower pursuant to the terms hereof, and (y) any disclosure under this clause (c) shall be limited solely to that portion of the Confidential Information as may be specifically compelled by such law, regulation, subpoena or other order; (d) to the extent requested by regulators having jurisdiction over the Collateral Agent or such Lender or as otherwise required in connection with the Collateral Agent's or such Lender's examination or audit by such regulators; (e) as the Collateral Agent or such Lender considers reasonably necessary in exercising remedies under the Loan Documents; (f) to third-party service providers of the Collateral Agent or such Lender; and (g) to any of the Collateral Agent's Related Parties; provided, however, that the third parties to which Confidential Information is disclosed pursuant to clauses (a), (b), (f) and (g) are bound by obligations of confidentiality and non-use that are no less restrictive than those contained herein.

The provisions of this Section 11.8 shall survive the termination of this Agreement.

11.9. Attorneys' Fees, Costs and Expenses. In any action or proceeding between any Credit Party and the Collateral Agent or any Lender arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

11.10. Right of Set-Off. In addition to any rights now or hereafter granted under Requirements of Law and not by way of limitation of any such rights, upon the occurrence of an Event of Default and at any time thereafter during the continuance of any Event of Default, each Lender is hereby authorized by each Credit Party at any time or from time to time, without prior notice to any Credit Party, any such notice being hereby expressly waived by Borrower (on its own behalf and on behalf of each other Credit Party), to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder and under the other Loan Documents, including all claims of any nature or description arising out of or connected hereto or with any other Loan Document, irrespective of whether or not (a) the Collateral Agent or such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Term Loan or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. Each Lender agrees promptly to notify Borrower and the Collateral Agent after any such set off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such set off and application.

11.11. Marshalling; Payments Set Aside. Neither the Collateral Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to any Lender, or the Collateral Agent or any Lender enforces any Liens or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

11.12. Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any Requirements of Law, including any state law based on the Uniform Electronic Transactions Act.

11.13. Captions. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

11.14. Construction of Agreement. The parties hereto mutually acknowledge that they and their respective attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty, this Agreement shall be construed without regard to which of the parties hereto caused the uncertainty to exist.

11.15. Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) except as expressly provided in Section 11.2(a), confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective successors and permitted assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

11.16. No Advisory or Fiduciary Duty. The Collateral Agent and each Lender may have economic interests that conflict with those of the Credit Parties. Each Credit Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender or the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries, and any of their respective stockholders or affiliates, on the other hand. Each Credit Party acknowledges and agrees that (i) the transactions contemplated by the Loan Documents are arm's-length commercial transactions between each Lender and the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries and their respective affiliates, on the other hand, (ii) in connection therewith and with the process leading to such transaction, the Collateral Agent and each Lender is acting solely as a principal and not the advisor, agent or fiduciary of such Credit Party, its Subsidiaries or their respective affiliates, management, stockholders, creditors or any other Person, (iii) Neither the Collateral Agent nor any Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its Subsidiaries or their respective affiliates with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Collateral Agent or any Lender or any of its affiliates has advised or is currently advising such Credit Party, its Subsidiaries or their respective affiliates on other matters) or any other obligation to such Credit Party, its Subsidiaries or their respective affiliates except the obligations expressly set forth in the Loan Documents and (iv) each Credit Party, its Subsidiaries and their respective affiliates have consulted their own legal and financial advisors to the extent each deemed appropriate. Each Credit Party further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that the Collateral Agent or any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, its Subsidiaries or their respective affiliates in connection with such transaction or the process leading thereto.

12. COLLATERAL AGENT

12.1. Appointment and Authority. Each of the Lenders hereby irrevocably appoints BioPharma Credit PLC to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except for Section 12.6 and Section 12.8, the provisions of this Section 12 are solely for the benefit of the Collateral Agent and the Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. Subject to Section 12.8 and Section 11.5, any action required or permitted to be taken by the Collateral Agent hereunder shall be taken with the prior approval of the Required Lenders, except for such actions as are expressly permitted in the Loan Documents to be taken by the Collateral Agent.

12.2. Rights as a Lender. The Person serving as the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Collateral Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

12.3. Exculpatory Provisions.

(a) the Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, the Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents to which it is a party that the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in such other Loan Documents), provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Loan Document or Requirements of Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents to which it is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Collateral Agent or any of its Affiliates in any capacity.

(b) The Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.5) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by Borrower or a Lender.

(c) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

12.4. Reliance by Collateral Agent. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

12.5. Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

12.6. Resignation of Collateral Agent. The Collateral Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon the receipt of any such notice of resignation, the Required Lenders shall have the right, with Borrower's prior written consent so long as no Event of Default has occurred and is continuing, to appoint a successor; provided, however, that Borrower's consent shall not be required in the case of any such appointment of a Pharmakon Lender or any Related Party of a Pharmakon Lender (and such Pharmakon Lender shall consult with Borrower regarding such appointment prior to the effectiveness thereof). If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Lenders, with Borrower's prior written consent so long as no Event of Default has occurred and is continuing, appoint a successor Collateral Agent; provided that, whether or not a successor has been appointed or has accepted such appointment, such resignation shall become effective upon delivery of the notice thereof. Upon the acceptance of a successor's appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Collateral Agent, and the retiring Collateral Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this Section 12.6). After the retiring Collateral Agent's resignation, the provisions of this Section 12 and Section 10 shall continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Collateral Agent was acting as Collateral Agent. Upon any resignation by the Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Collateral Agent shall instead be made by, to or through each Lender (in the case of such payments and communications) or the Required Lenders (in the case of such determinations) directly, until such time as a Person accepts an appointment as Collateral Agent in accordance with this Section 12.6.

12.7. Non-Reliance on Collateral Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and make Credit Extensions hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

12.8. Collateral and Guaranty Matters. Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize the Collateral Agent, and the Collateral Agent agrees, upon the request of Borrower:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Collateral Document (A) upon payment in full of the Obligations (other than contingent indemnification obligations for which no claim has been asserted), (B) that is sold, transferred, disposed or to be sold, transferred, disposed as part of or in connection with any sale, transfer or other disposition (other than any sale to a Credit Party) permitted hereunder, (C) subject to Section 11.5, if approved, authorized or ratified in writing by the Required Lenders or (D) to the extent such property is owned by a Guarantor upon the release of such Guarantor from its obligations under the Loan Documents pursuant to clause (c) below;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (d), (e), (j), (n), (o), (q) and (r) (solely with respect to modifications, replacements, extensions or renewals of Liens permitted under clause (d), (e), (j), (n), (o) and (q) of the definition of "Permitted Liens") of the definition of "Permitted Liens";

(c) to release any Guarantor from its obligations under the Loan Documents (i) if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder or (ii) upon payment in full of the Obligations (other than contingent indemnification obligations for which no claim has been asserted);

(d) to enter into non-disturbance and similar agreements in connection with the licensing of Intellectual Property permitted pursuant to the terms of this Agreement; and

(e) to enter into a subordination, intercreditor, or other similar agreement as contemplated by clause (c) of the definition of "Permitted Indebtedness" or the definition of "Subordinated Debt" with respect to Subordinated Debt permitted under the definition of "Permitted Indebtedness".

Upon request by the Collateral Agent at any time the Required Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Security Agreement pursuant to this Section 12.8.

In each case as specified in this Section 12.8, the Collateral Agent will (and each Lender irrevocably authorizes the Collateral Agent to), at Borrower's expense, (A) deliver to Borrower any Collateral in the Collateral Agent's possession in connection with the release of the Collateral Agent's Lien thereon and (B) execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request (i) to evidence the release or subordination of such item of Collateral from the Liens and security interests granted under the Collateral Documents, (ii) to enter into non-disturbance or similar agreements in connection with the licensing of Intellectual Property, (iii) to enter into a subordination, intercreditor, or other similar agreement as contemplated by clause (c) of the definition of "Permitted Indebtedness" or the definition of "Subordinated Debt" with respect to Subordinated Debt permitted under the definition of "Permitted Indebtedness" or (iv) to evidence the release of any Guarantor from its obligations under the Loan Documents, in each case in accordance with the terms of the Loan Documents and this Section 12.8 and in form and substance reasonably acceptable to the Collateral Agent.

Without limiting the generality of Section 12.10 below, the Collateral Agent shall deliver to the Lenders notice of any action taken by it under this Section 12.8 promptly after the taking thereof; provided, that delivery of or failure to deliver any such notice shall not affect the Collateral Agent's rights, powers, privileges and protections under this Section 12.

12.9. Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under Section 2.4 to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (based upon the percentages as used in determining the Required Lenders as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, damage, liability or related expense, as the case may be, was incurred by or asserted against the Collateral Agent (or any such sub-agent) in its capacity as such or against any Related Party of any of the foregoing acting for the Collateral Agent (or any sub-agent) in connection with such capacity.

12.10. Notices and Items to Lenders. The Collateral Agent shall deliver to the Lenders each notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or other item received by it pursuant to this Agreement or any other Loan Document (including any item received by it pursuant to Section 3 or set forth on Schedule 5.14 of the Disclosure Letter); provided, that any delivery of or failure to deliver any such notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or item shall not otherwise alter or effect the rights of the Lenders or the Collateral Agent under this Agreement or any other Loan Document. In addition, to the extent the Collateral Agent or the Required Lenders deliver any notices, approvals, authorizations, directions, consents or waivers to Borrower pursuant to this Agreement or any other Loan Document, the Collateral Agent or the Required Lenders, as applicable, will also deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders on or about the same time such notice, approval, authorization, direction, consent or waiver is provided to Borrower; provided, that the delivery of or failure to deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders shall not in any way effect the obligations of Borrower, or the rights of the Collateral Agent or the Required Lenders, in respect of such notice, approval, authorization, direction, consent or waiver.

13. DEFINITIONS

13.1. Definitions. For the purposes of and as used in the Loan Documents: (a) references to any Person include its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; (b) except as the context otherwise requires (including to the extent otherwise expressly provided in any Loan Document), (i) references to any law, statute, treaty, order, policy, rule or regulation include any amendments, supplements and successors thereto and (ii) references to any contract, agreement, instrument or other document include any amendments, restatements, supplements or modifications thereto from time to time to the extent permitted by the provisions thereof; (c) the word “shall” is mandatory; (d) the word “may” is permissive; (e) the word “or” has the inclusive meaning represented by the phrase “or”; (f) the words “include”, “includes” and “including” are not limiting; (g) the singular includes the plural and the plural includes the singular; (h) numbers denoting amounts that are set off in parentheses are negative unless the context dictates otherwise; (i) each authorization herein shall be deemed irrevocable and coupled with an interest; (j) all accounting terms shall be interpreted, and all determinations relating thereto shall be made, in accordance with Applicable Accounting Standards; (k) references to any time of day shall be to New York time; (l) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole; and (m) references to specific sections, articles, annexes and exhibits are to this Agreement and references to specific schedules are to the Disclosure Letter. As used in this Agreement, the following capitalized terms have the following meanings:

“**Acquisition**” means (a) any Stock Acquisition, or (b) any Asset Acquisition.

“**Additional Consideration**” is defined in Section 2.7.

“**Adverse Proceeding**” means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the Knowledge of Borrower, threatened against or adversely affecting any Credit Party or any of its Subsidiaries or any property of any Credit Party or any of its Subsidiaries.

“**Affiliate**” means, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company or limited liability partnership, that Person’s managers and members. As used in this definition, “control” means (a) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in a Person or (b) the power to direct or cause the direction of the management of such Person by contract or otherwise. In no event shall the Collateral Agent or any Lender be deemed to be an Affiliate of Borrower or any of its Subsidiaries.

“**Agreement**” is defined in the preamble hereof.

“**Anti-Money Laundering Laws**” is defined in Section 4.18(b).

“**Anti-Terrorism Laws**” means any Anti-Money Laundering Laws or other laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the Patriot Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Applicable Accounting Standards**” means with respect to Borrower and its Subsidiaries, generally accepted accounting principles in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination, consistently applied.

“**Applicable Percentage**” means, at any time, (a) with respect to the Tranche A Loan or the Tranche A Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche A Closing Date, the amount of such Lender’s Tranche A Commitment and the denominator of which is the Tranche A Loan Amount

or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche A Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche A Term Loan at such time, and (b) with respect to the Tranche B Loan or the Tranche B Loan Amount, (i) on or prior to the Tranche B Closing Date, such Lender's Tranche B Commitment or (ii) thereafter, the percentage equal to a fraction, the numerator of which is the outstanding principal amount of such Lender's portion of the Tranche B Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche B Term Loan at such time.

"Asset Acquisition" means, with respect to Borrower or any of its Subsidiaries: (a) any purchase, inbound license or other acquisition of all or substantially all of the assets of any other Person (or of any business unit, line of business or division of such Person); or (b) any other purchase, inbound license or other acquisition of any properties or assets or businesses of any other Person for any purpose other than for administrative expenses and other ordinary course expenses related to day-to-day operations.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Blocked Person" means (a) any Person listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person fifty percent (50%) or more owned by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which the Collateral Agent or any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"Board of Directors" means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, or if there is none, the Board of Directors of the managing member of such Person, (iii) in the case of any partnership, the Board of Directors of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing.

"Board of Governors" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"Books" means all books and records including ledgers, records regarding a Credit Party's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrower" is defined in the preamble hereof.

"Borrowing Resolutions" means, with respect to any Person, those resolutions adopted by such Person's Board of Directors and delivered by such Person to the Collateral Agent pursuant to Section 3.1 approving the Loan Documents to which such Person is a party and the transactions contemplated thereby (including the Term Loans), together with a certificate executed by its Secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) and title(s) of the officers of such Person authorized to execute the Loan Documents to which such Person is a party on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that the Collateral Agent and Lenders may conclusively rely on such certificate with respect to the authority of such officers unless and until such Person shall have delivered to the Collateral Agent a further certificate canceling or amending such prior certificate.

"Business Day" means any day that is not a Saturday or a Sunday or a day on which banks are authorized or required to be closed in New York, New York, London or the Cayman Islands.

“**Capital Lease**” means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with Applicable Accounting Standards, is required to be accounted for as a capital lease on the balance sheet of that Person.

“**Change in Control**” means: (a) a transaction or series of transactions (including any merger or consolidation with Borrower) in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a majority of shares of the then outstanding capital stock of Borrower ordinarily entitled to vote in the election of directors; (b) a sale of all or substantially all of the consolidated assets of Borrower and its Subsidiaries in one transaction or a series of transactions (whether by way of merger, stock purchase, asset purchase or otherwise); or (c) a merger or consolidation involving Borrower in which Borrower is not the surviving Person.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued. Notwithstanding the foregoing, neither a “Change in Law” nor a “change in any Requirements of Law” shall include any amendment made to FATCA after the Effective Date.

“**Code**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, the Collateral Agent’s Lien in favor and for the benefit of Lenders and the other Secured Parties on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” means, collectively, “Collateral” (as such term is defined in the Security Agreement) and all other property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateral Document.

“**Collateral Account**” means any Deposit Account (other than an Excluded Account) of a Credit Party maintained with a bank or other depository or financial institution located in the United States.

“**Collateral Agent**” means BioPharma Credit PLC, in its capacity as Collateral Agent appointed under Section 12.1, and its successors and permitted assigns in such capacity.

“**Collateral Documents**” means the Security Agreement, the Control Agreements, the IP Agreements and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Loan Documents, in each case, in order to grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties or perfect a Lien on any Collateral as security for the Obligations, and all amendments, restatements, modifications or supplements thereof or thereto.

“**Company IP**” means any and all of the following, as they exist in the United States: (a) Current Company IP; (b) improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications, any patent issued with respect to any of the Current Company IP, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation

patent or registration patent or patent of addition based on any such patent; (c) trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, confidential or proprietary information, research in progress, algorithms, data, databases, data collections, designs, processes, procedures, methods, protocols, materials, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, and the results of experimentation and testing, including samples, in each case, as specifically related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory; (d) any and all IP Ancillary Rights specifically relating to any of the foregoing; and (e) regulatory filings, submissions and approvals related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory and all data provided in any of the foregoing.

“Competitor” means, at any time of determination, any Person that is an operating company directly and primarily engaged in the same or substantially the same line of business as the Borrower and its Subsidiaries, including without limitation those Persons identified in the Disclosure Letter, which Borrower may update from time to time.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control Agreement” means, with respect to any Credit Party, any control agreement entered into among the bank or other depository or financial institution located in the United States at which such Credit Party maintains a Collateral Account, such Credit Party and the Collateral Agent, pursuant to which the Collateral Agent obtains control (within the meaning of the Code) over such Collateral Account.

“Controlled Investment Affiliate” means, with respect to any Lender, any fund, investment vehicle or other Person (other than a natural person) that (a) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and (b) controls, is controlled by, or under common control with, such Lender. For purposes of this definition “control” means (i) direct or indirect beneficial ownership of more than fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in a Person or (b) the power to direct or cause the direction of the management of such Person, by contract or otherwise.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret (and all related IP Ancillary Rights).

“Credit Extension” means any Term Loan or any other extension of credit by Lenders for Borrower’s benefit pursuant to this Agreement.

“Credit Party” means each Borrower and each Guarantor.

“Current Company IP” is defined in [Section 4.6\(c\)](#).

“Current Company IP Agreement” means each of (a) the Exclusive License Agreement, dated December 10, 2010, by and between Borrower and OPKO Health, Inc., and (b) the License Agreement, dated May 22, 2012, by and between Borrower and Merck Sharpe & Dohme Corp., as amended by that certain Amendment No. 1 to License Agreement dated April 5, 2016.

“Default” means any breach of or default under any term, provision, condition, covenant or agreement contained in this Agreement or any other Loan document or any other event, in each case that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Deposit Account” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“Disclosure Letter” means the disclosure letter, dated as of the Effective Date, delivered by the Credit Parties to the Collateral Agent, as updated on the Tranche A Closing Date (if required).

“Dollars,” “dollars” or use of the sign **“\$”** means only lawful money of the United States and not any other currency, regardless of whether that currency uses the **“\$”** sign to denote its currency or may be readily converted into lawful money of the United States.

“Domestic CFC Holdco” means, with respect to any Credit Party, a Subsidiary of such Credit Party that (i) is organized, incorporated or formed under the laws of the United States or any state thereof and (ii) has no material assets other than equity in one or more Foreign Subsidiaries or Indebtedness of one or more Foreign Subsidiaries and any other assets incidental thereto.

“Domestic Subsidiary” means, with respect to any Credit Party, a Subsidiary of such Credit Party that is organized, incorporated or formed under the laws of the United States or any state thereof (other than a Domestic CFC Holdco).

“Effective Date” is defined in the preamble hereof.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any U.S. Governmental Authority or any other U.S. Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any and all current or future U.S. federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of U.S. Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in each case, in any manner applicable to Borrower or any of its Domestic Subsidiaries or any Facility.

“Equity Interests” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in such Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire (by purchase, conversion, dividend, distribution or otherwise) any of the foregoing (and all other rights, powers, privileges, interests, claims and other property in any manner arising therefrom or relating thereto); provided that Equity Interests shall not include any Permitted Convertible Bond Indebtedness.

“ERISA” means the Employee Retirement Income Security Act of 1974, and its regulations.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) that, together with such Person, is treated as a single employer under Section 414 of the IRC.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure to satisfy the minimum funding standard of Section 412 of the IRC and Section 302 of ERISA, whether or not waived; (c) the failure to make by its due date a required installment under Section 430(j) of the IRC (or Section 430(j) of the IRC, as amended by the Pension Protection Act of 2006) with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the IRC or Section 303(d) of ERISA (or after the effective date of the Pension Protection Act of 2006, Section 412(c) of the IRC and Section 302(c) of ERISA) of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates from the Pension Benefit Guaranty Corporation (referred to and defined in

ERISA) or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the incurrence by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (h) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (i) the “substantial cessation of operations” within the meaning of Section 4062(e) of ERISA with respect to a Plan; (j) the making of any amendment to any Plan which could result in the imposition of a lien or the posting of a bond or other security; and (k) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the IRC or Section 406 of ERISA) which could reasonably be expected to result in material liability to Borrower or its Subsidiaries.

“**Event of Default**” is defined in Section 7.

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Excluded Accounts**” is defined in Section 5.5.

“**Excluded Equity Interests**” means, collectively, (i) any voting Equity Interests in excess of sixty-five percent (65.0%) of the issued and outstanding voting Equity Interests of any Foreign Subsidiary directly owned by any Credit Party; (ii) any Equity Interests of any Subsidiary with respect to which the grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien upon, and the pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (iii) any Equity Interests of any Subsidiary with respect to which the grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien upon, and the pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of, such Equity Interests, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party and such consent, approval or waiver has not been obtained by Borrower following Borrower’s commercially reasonable efforts to obtain the same; (iv) any Equity Interests of any Subsidiary that is a non-Wholly-Owned Subsidiary that the grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien upon, and the pledge to the Collateral Agent of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents of the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to such non-Wholly-Owned Subsidiary, including any contract evidencing Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirement of Law), but only, in each case, to the extent, and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract is in effect; and (v) any Equity Interests of any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost of granting the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties a security interest, in and Lien upon, and pledging to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, such Equity Interests, to secure the Obligations (and any guaranty thereof) are excessive, relative to the value to be afforded to the Secured Parties thereby. For purposes of this Agreement, “**voting Equity Interests**” means, with respect to any issuer, the issued and outstanding shares of each class of Equity Interests of such issuer entitled to vote in the election of directors or similar governing body of such issuer.

“**Excluded License**” means an exclusive license or sublicense of any U.S. Intellectual Property within the Territory covering any Product that is tantamount to a sale of substantially all rights to the Intellectual Property covering such Product because it conveys to the licensee or sublicensee exclusive rights to practice such Intellectual Property in the Territory for consideration that is not based upon future development or commercialization of any Products in the Territory (other than pursuant to so-called earn-out payments) or services by the licensee or sublicensee (other than transition services), such as, for example, consideration of only upfront advances or initial license fees or similar payments in consideration of such rights, with no anticipated subsequent payments or only *de minimis*

payments to Borrower or any of its Subsidiaries (other than pursuant to so-called earn-out payments or transition services).

“Excluded Subsidiaries” means, collectively, (i) any Subsidiary with respect to which the grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien upon, and the pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of, such Subsidiary’s properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests of such Subsidiary to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Subsidiary with respect to which the grant to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien upon, and the pledge to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties of, such Subsidiary’s properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests of such Subsidiary to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by Borrower or such Subsidiary following Borrower’s and such Subsidiary’s commercially reasonable efforts to obtain the same; (iii) any Subsidiary that is a non-Wholly-Owned Subsidiary; (iv) any Subsidiary that owns property and assets with an aggregate fair market value of less than \$500,000; and (v) any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost of granting the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties a security interest in and Lien upon, and pledging to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, such Subsidiary’s properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests of such Subsidiary to secure the Obligations (and any guaranty thereof) are excessive relative to the value to be afforded to the Secured Parties thereby.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed by the United States or as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are otherwise Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to any Obligation pursuant to a law in effect on the date on which (i) such Lender acquires an interest in any Obligation or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to [Section 2.6](#), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Lender’s failure to comply with [Section 2.6\(c\)](#), and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) located in the United States now, hereafter or heretofore owned, leased, operated or used by any Credit Party or any of its Domestic Subsidiaries or any of their respective predecessors or Affiliates.

“FATCA” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (including, for the avoidance of doubt, any agreements between the governments of the United States and the jurisdiction in which the applicable Lender is resident implementing such provisions), or any amended or successor version that is substantively comparable and not materially more onerous to comply with, and any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(i) of the IRC and any law implementing an intergovernmental agreement that is included in this definition.

“FCPA” is defined in [Section 4.18\(a\)](#).

“FDA” means the United States Food and Drug Administration.

“FDA Good Manufacturing Practices” means the standards set forth in 21 C.F.R. Parts 210, 211 and 600.

“FDA Laws” means all applicable statutes, rules, regulations and orders administered or issued by FDA.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

“Foreign Subsidiary” means, with respect to any Credit Party, a Subsidiary of such Credit Party that is not a Domestic Subsidiary.

“Governmental Approval” means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, government department, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Governmental Payor Programs” means all governmental third party payor programs in which any Credit Party or its Subsidiaries participates, including Medicare, Medicaid, TRICARE or any other federal or state health care programs.

“Guarantor” means (i) as of the Effective Date, TESARO Securities Corp., a Massachusetts corporation, and (ii) thereafter, any Domestic Subsidiary (other than an Excluded Subsidiary) that is required to become a guarantor of the Obligations pursuant to [Section 5.13](#).

“Hazardous Materials” means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any U.S. Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence in the United States involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Health Care Laws” means, collectively: (a) any and all federal, state or local laws, rules, regulations, orders, ordinances, statutes and requirements issued under or in connection with Medicare, Medicaid or any other Government Payor Program; (b) federal and state laws and regulations governing the confidentiality of patient information, including HIPAA; (c) accreditation standards and requirements of all applicable state laws or regulatory bodies; (d) any and all federal, state and local fraud and abuse laws of any Governmental Authority, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (e) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (f) the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h); (g) all reporting and disclosure requirements under the Medicaid Drug Rebate Program (e.g., Monthly and Quarterly Average Manufacturer Price, Baseline Average Manufacturer Price, and Rebate Per Unit, as applicable), Medicare Part B (Quarterly Average Sales Price), Section 602 of the Veteran’s Health Care Act (Public Health Service 340B Quarterly Ceiling Price), Section 603 of the Veteran’s Health Care Act (Quarterly and Annual Non-Federal Average Manufacturer Price and Federal Ceiling Price), Best Price, Federal Supply Schedule Contract Prices and Tricare Retail Pharmacy Refunds, and Medicare Part D; (h) all other applicable health care laws, rules, codes, statutes, regulations, manuals, orders, ordinances, policies, administrative guidance and requirements pertaining to Medicare or Medicaid; in each case, in any manner applicable to any Credit Party or any of its Subsidiaries; and (i) any and all federal, state or local laws, rules, regulations, ordinances, statutes and requirements relating to (A) the regulation of managed care, third party payors and Persons bearing the financial risk for the provision or arrangement of health care services, (B) billings to insurance companies, health maintenance organizations and other Managed Care Plans or otherwise relating to insurance fraud, and (C) any insurance, health maintenance organization or managed care Requirements of Law.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, any and all rules or regulations promulgated from time to time thereunder, and any comparable U.S. state laws.

“Indebtedness” means, with respect to any Person, without duplication: (a) all indebtedness for borrowed money of such Person; (b) all obligations of such Person evidenced by notes, bonds, debentures or other debt securities or similar instruments (including debt securities convertible into Equity Interests), including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; and (c) all indebtedness referred to in clauses (a) and (b) above of other Persons secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness. For the avoidance of doubt, “Indebtedness” shall not include Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

“Indemnified Liabilities” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, reasonable and documented out-of-pocket expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of one counsel for Indemnified Persons plus, if required, one local legal counsel in each relevant material jurisdiction, and in the case of an actual or perceived conflict of interest, one additional counsel for such affected Indemnified Persons, in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened in writing by any Person, whether or not any such Indemnified Person shall have commenced such proceeding or hearing or be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnified Persons in enforcing the indemnity hereunder), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnified Person, in any manner relating to or arising out of this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any Lender’s agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty of the Obligations)).

“Indemnified Person” is defined in Section 11.2.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

“Insolvency Proceeding” means, with respect to any Person, any proceeding by or against such Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means all:

- (a) Copyrights, Trademarks, and Patents;
- (b) trade secrets and trade secret rights, including any rights to unpatented inventions, know-how, operating manuals;
- (c) (i) all computer programs, including source code and object code versions, (ii) all data, databases and compilations of data, whether machine readable or otherwise, and (iii) all documentation, training materials and configurations related to any of the foregoing (collectively, **“Software”**);
- (d) all right, title and interest arising under any contract or Requirements of Law in or relating to Internet domain names;
- (e) design rights; and
- (f) IP Ancillary Rights (including all IP Ancillary Rights related to any of the foregoing);

in each case of clause (a) through (f) above, existing in the United States.

“Interest Period” means, with respect to any Term Loan, (a) the period commencing on (and including) the applicable borrowing date of such Term Loan and ending on (and including) the first Payment Date following such Borrowing; provided, that, if such Payment Date is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such Payment Date, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the next Payment Date, provided, that if any such last day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such Payment Date, and (y) the Term Loan Maturity Date.

“Interest Rate Determination Date” means (a) initially, (i) in the case of the Tranche A Loan, the Tranche A Closing Date and (ii) in the case of the Tranche B Loan, the Tranche B Closing Date and (b) thereafter, each Payment Date (or, if any such Payment Date is not a Business Day, the first Business Day immediately preceding such Payment Date).

“Inventory” means all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including such inventory as is temporarily out of a Credit Party’s or Subsidiary’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” means (a) any beneficial ownership interest in any Person (including Equity Interests), (b) any Acquisition or (c) the making of any advance, loan, extension of credit or capital contribution in or to, any Person.

“IP Agreements” means those certain Intellectual Property Security Agreements entered into by and between Borrower and the Collateral Agent, each dated as of the Tranche A Closing Date.

“IP Ancillary Rights” means, with respect to any Copyright, Trademark, Patent, Software, trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect thereto, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other intellectual property right ancillary to any Copyright, Trademark, Patent, Software, trade secrets or trade secret rights.

“IRC” means the Internal Revenue Code of 1986 and any regulations promulgated thereunder.

“Knowledge” or to the **“knowledge”** of Borrower and similar qualifications or phrases means the actual knowledge, after reasonable investigation, of the Responsible Officers of Borrower.

“Lender” means each Person signatory hereto as a “Lender” and their respective successors and assigns.

“Lender Expenses” means (i) all reasonable and documented out-of-pocket fees and expenses of the Collateral Agent and its Related Parties for developing, preparing, amending, modifying, negotiating, executing and delivering, and administering the Loan Documents or any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein or otherwise incurred with respect to the Credit Parties in connection with the Loan Documents, including any filing or recording fees and expenses (but limited to the reasonable and documented out-of-pocket fees and expenses of one legal counsel to the Collateral Agent and its Related Parties (taken as a whole) (plus, if required, one local legal counsel to the Collateral Agent and its Related Parties (taken as a whole) in each relevant material jurisdiction)), and (ii) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent, the Lenders and their respective Related Parties (but limited, in the case of legal counsel, to the reasonable and documented out-of-pocket fees and expenses of one primary counsel for the Collateral Agent, the Lenders and their respective Related Parties (taken as a whole), and, of a single local counsel to the Collateral Agent, the Lenders and their respective Related Parties (taken as a whole) in each relevant material jurisdiction (and, in the case of an actual or perceived conflict of interest where the party affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of one additional primary firm

of counsel for all such affected parties (taken as a whole) and one additional firm of local counsel for all such affected parties (taken as a whole) in each relevant material jurisdiction)), in connection with (A) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (B) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (C) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any Insolvency Proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document or Obligation (or the response to and preparation for any subpoena or request for document production relating thereto).

“**Lender Transfer**” is defined in Section 11.1.

“**LIBOR Rate**” means, as of any Interest Rate Determination Date and for any Interest Period, the rate per annum equal to (a) the rate of interest appearing on Reuters Screen LIBOR01 Page (or any successor page) for three-month Dollar deposits or (b) if no such rate is available, the rate of interest determined by the Collateral Agent to be the rate or the arithmetic mean of rates at which Dollar deposits in immediately available funds are offered to first-tier banks in the London interbank Eurodollar market, in each case under clause (a) or (b) above at approximately 11:00 a.m., London time, on such Interest Rate Determination Date for a period of three months; provided, however, that, for purposes of calculating the Tranche A Rate or the Tranche B Rate, the LIBOR Rate shall at all times have a floor of one percent (1.00%); provided, further, that, for purposes of calculating the Tranche A Rate or the Tranche B Rate, the LIBOR Rate shall at all times be subject to a cap equal to the LIBOR Rate on the Tranche A Funding Date.

“**Lien**” means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind or assignment for security purposes, whether voluntarily incurred or arising by operation of law or otherwise against any property or assets.

“**Loan Documents**” means, collectively, this Agreement, the Disclosure Letter, the Term Loan Note, the Security Agreement, the IP Agreements, the Perfection Certificates, any Control Agreement, any other Collateral Document, any guaranties executed by a Guarantor in favor of the Collateral Agent or Lenders in connection with this Agreement, and any other present or future agreement between or among a Credit Party and the Collateral Agent or Lenders in connection with this Agreement, including in each case, for the avoidance of doubt, any annexes, exhibits or schedules thereto.

“**Makewhole Amount**” means the Tranche A Makewhole Amount or the Tranche B Makewhole Amount or both of the Tranche A Makewhole Amount and the Tranche B Makewhole Amount, as the context dictates.

“**Managed Care Plans**” means all U.S. health maintenance organizations, preferred provider organizations, individual practice associations, competitive medical plans and similar arrangements.

“**Margin Stock**” is defined in Section 4.14.

“**Material Adverse Change**” means any material adverse change in or effect on: (i) the business, financial condition, properties or assets (including all or any portion of Collateral) or liabilities (actual or contingent) of the Credit Parties, taken as a whole, since December 31, 2016; (ii) the ability of the Credit Parties, taken as a whole, to fulfill the payment or material performance obligations under this Agreement or any other Loan Document; or (iii) the binding nature or validity of, or the ability of the Collateral Agent or any Lender to enforce, the Loan Documents, taken as a whole, or any of its rights or remedies under the Loan Documents, taken as a whole.

“**Material Contract**” means any contract or other arrangement to which a Credit Party is a party (other than the Loan Documents) or by which any of its assets or properties are bound, in each case, relating to research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, for which the breach of, default or nonperformance under, cancellation or termination of or the failure to renew could reasonably be expected to result in a Material Adverse Change.

“**Medicaid**” means, collectively, the health care assistance program established by Title XIX of the SSA (42 U.S.C. 1396 et seq.) and all laws, rules, regulations, manuals, orders, or requirements pertaining to such program,

including (a) all federal statutes affecting such program; (b) all state statutes and plans for medical assistance enacted in connection with such program and federal rules and regulations promulgated in connection with such program; and (c) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement, and requirements of all Government Authorities promulgated in connection with such program (whether or not having the force of law).

“**Medicare**” means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the SSA (42 U.S.C. 1395 et seq.) and all laws, rules, regulations, manuals, or orders pertaining to such program including (a) all federal statutes (whether set forth in Title XVIII of the SSA or elsewhere) affecting such program; and (b) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement and requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law).

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or its Subsidiaries or their respective ERISA Affiliates is then making or accruing an obligation to make contributions; (b) to which Borrower or its Subsidiaries or their respective ERISA Affiliates has within the preceding five (5) plan years made contributions; or (c) with respect to which Borrower or its Subsidiaries could incur material liability.

“**Net Sales**” means, as of any date of determination and solely with respect to sales of the Products, the line item “product revenue, net” (which includes a reduction for product sales allowances) of Borrower and its Subsidiaries for the twelve (12) months prior to such date, determined on a consolidated basis in accordance with Applicable Accounting Standards.

“**Obligations**” means, collectively, the Credit Parties’ obligations to pay when due any and all debts, principal, interest, Lender Expenses, the Additional Consideration, the Makewhole Amount, the Prepayment Premium and any other fees, expenses, indemnities and amounts any Credit Party owes any Lender or the Collateral Agent now or later, under this Agreement or any other Loan Document, including interest accruing after Insolvency Proceedings begin (whether or not allowed), and to perform Borrower’s duties under the Loan Documents.

“**OFAC**” is defined in [Section 4.18\(c\)](#).

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” means, collectively with respect to any Person such Person’s formation documents as certified with the Secretary of State or other applicable Governmental Authority of such Person’s jurisdiction of formation on a date that is no earlier than thirty (30) days prior to the date on which such documents are due to be delivered under this Agreement and, (a) if such Person is a corporation, its bylaws (or similar organizational regulations) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), in each case, with all current amendments, restatements, supplements or modifications thereto.

“**ordinary course of business**” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business, undertaken by such Person in good faith and not for purposes of evading any covenant, prepayment obligation or restriction in any Loan Document.

“**Other Connection Taxes**” means, with respect to a Lender, Taxes imposed as a result of a present or former connection (including present or former connection of its agents) between such Lender and the jurisdiction imposing such Tax (other than connections arising solely from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, sales, transfer, excise, mortgage or property Taxes, charges or similar levies or similar Taxes that arise from any payment made hereunder, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Patents” means all patents and patent applications (including any improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications), any patent issued with respect to any of the foregoing patent applications, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all foreign counterparts of any of the foregoing.

“Patriot Act” is defined in Section 3.1(i).

“Payment/Advance Form” means that certain form attached hereto as Exhibit A.

“Payment Date” means the last day of each calendar quarter.

“Perfection Certificate” is defined in Section 4.6.

“Permitted Bond Hedge Transaction” means any call, call spread or capped call option (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a fundamental change of the Borrower or other change of, or adjustment with respect to, the common stock of the Borrower) purchased or otherwise entered into by the Borrower in connection with the issuance of any Permitted Convertible Bond Indebtedness; provided, that, the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction (or in the case of capped calls, where such proceeds are not received but are reflected in a reduction of the premium), does not result in the incurrence of additional Indebtedness by the Borrower (other than Indebtedness from the issuance of Permitted Convertible Bond Indebtedness in connection with such Permitted Bond Hedge Transaction).

“Permitted Convertible Bond Indebtedness” means any of the following: (a) Indebtedness having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Equity Interests of Borrower; provided, that (i) such Permitted Convertible Bond Indebtedness shall be unsecured, (ii) no Subsidiary of Borrower shall guarantee Permitted Convertible Bond Indebtedness if such Subsidiary does not also provide a guarantee of the Obligations, (iii) Permitted Convertible Bond Indebtedness shall not include covenants and defaults (other than covenants and defaults customary for convertible indebtedness but not customary for loans, as determined by Borrower in its good faith judgment) that are, taken as a whole, more restrictive on the Credit Parties than the provisions of this Agreement (as determined by Borrower in its good faith judgment), (iv) no Default or Event of Default shall have occurred and be continuing at the time of incurrence of such Permitted Convertible Bond Indebtedness or could result therefrom, and (v) Borrower shall have delivered to the Collateral Agent a certificate of a Responsible Officer of Borrower certifying as to the foregoing; and (b) Borrower’s 3.00% convertible senior notes due October 1, 2021.

“Permitted Distributions” means, in each case subject to Section 6.8 if applicable:

- (a) Dividends, distributions or other payments on or redeem, retire or purchase its Equity Interests by any Wholly-Owned Subsidiary to or from Borrower or any other Wholly-Owned Subsidiary;
- (b) Dividends, distributions or other payments on or redeem, retire or purchase its Equity Interests by any non-Wholly-Owned Subsidiary to or from Borrower or any other Subsidiary and to or from each other owner of Equity Interests of such non-Wholly-Owned Subsidiary based on their relative ownership interests of the relevant class of Equity Interests;
- (c) Redemptions by Borrower in whole or in part any of its Equity Interests for another class of its Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests;

- (d) Any such payments arising from an Acquisition or other Investment by Borrower or any of its Subsidiaries;
- (e) The conversion by Borrower of any of its convertible securities issued and outstanding as of the Effective Date into or in exchange for other securities, the redemption of any such convertible securities for cash, or cash payments to induce or settle the conversion of any such securities by the holders thereof, in each case pursuant to the terms of such convertible securities;
- (f) The payment of dividends by Borrower solely in non-cash pay and non-redeemable capital stock (including, for the avoidance of doubt, dividends and distributions payable solely in Equity Interests);
- (g) The redemption or repurchase of Equity Interests of Borrower, so long as an Event of Default does not exist at the time of such redemption or repurchase and would not exist after giving effect to such redemption or repurchase; provided, that such redemptions or repurchases, do not exceed \$30,000,000 in the aggregate in any fiscal year; provided, further that the portion of such basket that is not used by Borrower in any fiscal year shall be carried-forward and shall increase such basket for succeeding fiscal years;
- (h) Cash payments in lieu of the issuance of fractional shares arising out of stock dividends, splits or combinations or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests;
- (i) In connection with any Acquisition or other Investment by Borrower or any of its Subsidiaries, (i) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of Equity Interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a purchase price adjustment (including earn-outs or similar obligations) and (ii) payments or distributions to equity holders pursuant to appraisal rights required under Requirements of Law;
- (j) The distribution of rights pursuant to any shareholder rights plan or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan;
- (k) Dividends, distributions or payments on its Equity Interests by any Subsidiary to any Credit Party;
- (l) Dividends, distributions or payments on its Equity Interests by any Subsidiary that is not a Credit Party to any other Subsidiary that is not a Credit Party;
- (m) the conversion of convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof;
- (n) purchases of Equity Interests of Borrower or its Subsidiaries in connection with the exercise of stock options by way of cashless exercise, or in connection with the satisfaction of withholding tax obligations;
- (o) Issuance to directors, officers, employees or contractors of Borrower of common stock of Borrower upon the vesting of restricted stock, restricted stock units, or other rights to acquire common stock of Borrower pursuant to plans or agreements approved by Borrower's Board of Directors or stockholders;
- (p) any payment of premium to a counterparty under a Permitted Bond Hedge Transaction in accordance with the definition thereof; and
- (q) any payment or delivery in connection with a Permitted Warrant Transaction by (i) delivery of shares of the Borrower's common stock upon net share settlement thereof, (ii) set-off or payment of an early termination payment or similar payment thereunder, in each case, in the Borrower's common stock upon any early termination thereof or (iii) in the event of cash settlement upon settlement, any payment of a cash settlement or equivalent amount.

“**Permitted Domestic Subsidiary Distribution Restrictions**” means, in each case notwithstanding Section 6.8:

- (a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;
- (b) prohibitions or limitations set forth in any lease, license or other agreement entered into relating to unsecured Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement or any other Loan Document, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);
- (c) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;
- (d) prohibitions or limitations on the transfer or assignment of any properties, assets or Equity Interests set forth in any agreement entered into in the ordinary course of business that is not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to such properties, assets or Equity Interests;
- (e) prohibitions or limitations imposed by Requirements of Law;
- (f) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;
- (g) customary prohibitions or limitations arising in connection with any Transfer permitted by Section 6.1 or contained in any agreement relating to the sale of any property permitted under the Loan Documents pending the consummation of such sale;
- (h) customary provisions in shareholders agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;
- (i) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);
- (j) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);
- (k) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;
- (l) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in

contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(m) prohibitions or limitations imposed by any Loan Document;

(n) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(o) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(p) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clauses (c), (d) and (f) of the definition thereof; and

(q) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (p) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

“Permitted Indebtedness” means:

(a) Indebtedness of the Credit Parties to Secured Parties under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on Schedule 12.1 of the Disclosure Letter;

(c) Indebtedness of the Credit Parties in the form of a working capital or revolving loan facility; provided, that such Indebtedness may be secured on a first-priority basis by Liens on Inventory, accounts receivable, cash, Collateral Accounts, supporting obligations and all proceeds of the foregoing and other assets (other than the Collateral) over which an asset-based revolving lender would customarily have a first priority Lien to secure the obligations under such facility and such Liens may be senior in rank, order of priority and enforcement to the security interests and Liens of the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties (if any) in any of such assets to secure the Obligations at all times until all of the obligations under such facility have been paid, performed or discharged in full and Borrower has no further right to obtain any extension of credit thereunder, pursuant to a subordination, intercreditor, or other similar agreement among the Collateral Agent, Borrower and the lender or representative under such facility, in form and substance reasonably satisfactory to the Collateral Agent and the lender or representative under such facility;

(d) (A)(i) Permitted Convertible Bond Indebtedness incurred after the Effective Date, (ii) Subordinated Debt and (iii) Indebtedness of any Foreign Subsidiary, provided that the aggregate principal amount of Indebtedness incurred pursuant to this clause (d)(A) shall not exceed \$700,000,000 at any time outstanding; and (B) Permitted Convertible Bond Indebtedness incurred after the Effective Date that is subordinated to the Obligations on customary terms and conditions for subordinated convertible debt securities (as determined by Borrower in its good faith judgment); provided, that in each case any such Indebtedness described in this clause (d) is not secured by any Collateral;

(e) unsecured Subordinated Debt;

(f) any and all other Indebtedness of any kind or nature that, in each case, is not in the form of or otherwise constitutes term debt, and purchase money Indebtedness to finance the purchase of fixed assets; provided, that, in each case such Indebtedness is not secured by any Collateral;

- (g) Indebtedness in connection with corporate credit cards, purchasing cards or bank card products;
- (h) guarantees of Permitted Indebtedness;
- (i) Indebtedness assumed in connection with an Acquisition or other Investment, so long as such Indebtedness was not incurred in connection with, or in anticipation of, such Acquisition or other Investment; and
- (j) subject to the proviso immediately below, extensions, refinancings, modifications, amendments, restatements and, in the case of any items of Permitted Indebtedness in clauses (b), (d)(A)(i) and (d)(B) or Permitted Indebtedness constituting notes governed by an indenture, exchanges, of any items of Permitted Indebtedness in clauses (a) through (i) above, provided, that in the case of clauses (b), (d) and (i) above, the principal amount thereof is not increased (other than by any reasonable amount of premium (if any), interest (including post-petition interest), fees, expenses, charges or additional or contingent interest reasonably incurred in connection with the same and the terms thereof) or in the case of clause (e) are not modified to shorten the maturity thereof.

“Permitted Licenses” means: (a) a non-exclusive or an exclusive license (or covenant not to sue with respect to) as to a geography other than the Territory to Intellectual Property or a grant of rights for development, manufacture, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights to third parties in the ordinary course of business ; (b) subject to satisfaction of the requirements set forth in the following sentence, a non-exclusive or an exclusive license as to geography within the Territory of Intellectual Property or grant of rights for development, manufacture, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights to third parties in the ordinary course of business; (c) non-exclusive licensing of (or granting of a covenant not to sue with respect to) technology or Intellectual Property, granting rights for development, manufacture, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights, the development of technology or the providing of technical support; (d) a non-exclusive or an exclusive grant of manufacturing licenses to third parties in the ordinary course of business, and (e) intercompany licenses or other similar arrangements among Credit Parties. Notwithstanding the foregoing, any exclusive license or grant of rights described in clause (b) above to a geography within the Territory shall not constitute a Permitted License hereunder if, as a result of such license or grant, one hundred percent (100%) of the Net Sales of any Product in the Territory would not be reported in the financial statements of Borrower and its Subsidiaries and such license or grant of rights prohibits or otherwise restricts the applicable Credit Party or Subsidiary from determining in its sole discretion the pricing of any Product in the Territory. Notwithstanding the foregoing, “Permitted Licenses” shall include any Excluded Licenses entered into before the Effective Date and Excluded Licenses entered into after the Effective Date that are consented to by the Collateral Agent or the Required Lenders, in writing.

“Permitted Liens” means:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Effective Date and set forth on Schedule 12.3 of the Disclosure Letter;
- (c) Liens for Taxes, assessments or governmental charges (i) which are not yet delinquent or (ii) which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with Applicable Accounting Standards;
- (d) Liens securing Indebtedness permitted under clause (c) or (j) (solely with respect to extensions, refinancings, modifications, amendments and restatements of Indebtedness permitted under clause (c) of the definition of “Permitted Indebtedness”) of the definition of “Permitted Indebtedness”;;
- (e) pledges, deposits or Liens arising as a matter of law in the ordinary course of business (other than Liens imposed by ERISA) in connection with workers’ compensation, payroll taxes, unemployment insurance and other social security legislation, (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Borrower or any of its Subsidiaries, (iii) pledges and deposits in the ordinary course of business securing liability to landlords (including

obligations in respect of letters of credit or bank guarantees for the benefit of landlords) or other contractual obligations and (iv) pledges or deposits to secure performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety and appeal bonds or performance bonds;

(f) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under either Section 7.4 or 7.7;

(g) Liens (including the right of set-off) in favor of banks or other financial institutions arising in connection with deposit or securities accounts held at such institutions; provided that such Liens are not given in connection with the incurrence of Indebtedness and relate solely to obligations for administrative and other banking fees and expenses incurred in the ordinary course of business in connection with the establishment or maintenance of such accounts; provided, further, that such Liens are within the general parameters customary in the banking industry;

(h) Liens that are contractual rights of set-off (i) relating to pooled deposit or sweep accounts of Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or (ii) relating to purchase orders and other agreements entered into with customers of Borrower or any of its Subsidiaries in the ordinary course of business;

(i) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any Acquisition, Investment or other acquisition of assets or property not otherwise prohibited under this Agreement;

(j) Liens existing on assets or properties at the time of its acquisition or existing on the assets or properties of any Person at the time such Person becomes a Subsidiary of Borrower, in each case after the date hereof; provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary of Borrower, (ii) such Lien does not extend to or cover any other assets or properties (other than the proceeds or products thereof and other than after-acquired assets or properties subjected to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired assets or properties, it being understood that such requirement shall not be permitted to apply to any assets or properties to which such requirement would not have applied but for such acquisition), and (iii) the Indebtedness secured thereby is permitted under Section 6.4 hereof;

(k) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(l) Liens securing Indebtedness permitted under clause (f) and (j) (solely with respect to extensions, refinancings, modifications, amendments and restatements of Indebtedness permitted under clause (f) of the definition of "Permitted Indebtedness") of the definition of "Permitted Indebtedness";

(m) rights of first refusal, voting, redemption, transfer or other restrictions (including call provisions and buy-sell provisions) with respect to the Equity Interests of any joint venture or other Persons that are not Subsidiaries;

(n) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with an Acquisition or any other Investment;

(o) licenses, sublicenses, leases or subleases (other than relating to Intellectual Property) granted to others in the ordinary course of business not interfering in any material respect with the business of any Credit Party or any of its Subsidiaries;

(p) Permitted Licenses;

(q) Liens on cash collateral pledged to secure: (i) Indebtedness in respect of corporate credit cards, purchasing cards or bank card products, (ii) letters of credit or bank guarantees or (iii) hedging transactions entered into in the ordinary course of business and not for speculative purposes; and

(r) the modification, replacement, extension or renewal of the Liens described in clauses (a) through (q) above, but any such modification, replacement, extension or renewal must be limited to the assets or properties encumbered by the existing Lien (and any additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) and the principal amount of any Indebtedness secured by such modification, replacement, extension or renewal may not increase other than by any reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred in connection with the same; provided, however, that to the extent any of the foregoing Liens secure Indebtedness of a Credit Party, such Liens shall constitute Permitted Liens if and only to the extent that such Indebtedness is permitted under Section 6.4 hereof.

“Permitted Negative Pledges” means:

(a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other agreement entered into in the ordinary course of business relating to unsecured Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement or any other Loan Document, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(c) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;

(d) prohibitions or limitations on the transfer or assignment of any properties, assets or Equity Interests set forth in any agreement entered into in the ordinary course of business that is not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to such properties, assets or Equity Interests;

(e) prohibitions or limitations imposed by Requirements of Law;

(f) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;

(g) customary prohibitions or limitations arising in connection with any Transfer permitted by Section 6.1 or contained in any agreement relating to the sale of any property permitted under the Loan Documents pending the consummation of such sale;

(h) customary provisions in shareholders agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(i) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(j) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;

(l) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(m) prohibitions or limitations imposed by any Loan Document;

(n) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(o) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement; and

(p) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (o) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event or other change of the common stock of the Borrower) sold by the Borrower substantially contemporaneously with any purchase by the Borrower of a related Permitted Bond Hedge Transaction, with a strike price higher than the strike price of the Permitted Bond Hedge Transaction.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“Pharmakon Lender” means BioPharma Credit PLC, BioPharma Credit Investments IV Sub PLC and any of their respective Controlled Investment Affiliates.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA which is maintained or contributed to by Borrower or its Subsidiaries or their respective ERISA Affiliates or with respect to which Borrower or its Subsidiaries are subject to liability (including under Section 4069 of ERISA).

“Prepayment Premium” means the Tranche A Prepayment Premium or the Tranche B Prepayment Premium or both of the Tranche A Prepayment Premium and the Tranche B Prepayment Premium, as the context dictates.

“Private Third Party Payor Programs” means all U.S. third party payor programs in which any Credit Party or its Subsidiaries participates, including Managed Care Plans, or any other private insurance programs, but excluding all Governmental Payor Programs.

“Products” means, collectively, VARUBI® (Rolapitant) and ZEJULA® (Niraparib) (or any successor product that comprises Rolapitant or Niraparib).

“**Register**” is defined in Section 2.8(a).

“**Registered Organization**” means any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Regulatory Agency**” means a U.S. Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals.

“**Regulatory Approval**” means all approvals (including where applicable, pricing and reimbursement approval and schedule classifications), product or establishment licenses, registrations or authorizations of any Regulatory Agency necessary for the manufacture, use, storage, import, export, transport, offer for sale, or sale of any Product.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates; provided, however, that with respect to BioPharma Credit PLC in its capacity as the Collateral Agent, BioPharma Credit Investments IV Sub LP shall be deemed not to be a Related Party.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater, in each case, in the United States.

“**Required Lenders**” means, prior to the Tranche A Closing Date, Lenders obligated with respect to greater than fifty percent (50%) of the Tranche A Commitments and, thereafter, Lenders holding greater than fifty percent (50%) of the outstanding principal amount of the Term Loans.

“**Requirements of Law**” means, as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, order, policy, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including Health Care Laws, FDA Laws and all applicable statutes, rules, regulations, standards, guidelines, policies and orders administered or issued by any foreign Governmental Authority), in each case, applicable to or binding upon such Person or any of its assets or properties or to which such Person or any of its assets or properties are subject.

“**Responsible Officers**” means, with respect to Borrower, collectively, the Chief Executive Officer, Chief Operating Officer, Chief Commercial Officer, General Counsel, Chief Medical Officer and Chief Financial Officer of Borrower.

“**Restricted License**” means any material license or other agreement of the kind or nature subject or purported to be subject from time to time to a Lien under any Collateral Document, with respect to which a Credit Party is the licensee, (a) that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party’s interest in such license or agreement in a manner enforceable under Requirements of Law, or (b) for which a breach of or default under could interfere with the Collateral Agent or any Lender’s right to sell any Collateral.

“**SEC**” shall mean the Securities and Exchange Commission and any analogous Governmental Authority.

“**Secured Parties**” means each Lender, each other Indemnified Person and each other holder of any Obligation of a Credit Party.

“**Securities Act**” means the Securities Act of 1933.

“**Security Agreement**” means the Guaranty and Security Agreement, dated as of the Tranche A Closing Date, by and among the Credit Parties and the Collateral Agent, in form and substance substantially similar to Exhibit C attached hereto or in such form or substance as the Credit Parties and the Collateral Agent may otherwise agree.

“**Solvent**” means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets (including goodwill minus disposition costs) of such Person (both at fair value and present fair saleable value), on a going concern basis, is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to generally pay all liabilities (including trade debt) of such Person as such liabilities become absolute and mature in the ordinary course of business and (c) such Person does not have unreasonably small capital after giving due consideration to the prevailing practice in the industry in which it is engaged or will be engaged. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Specified Disputes**” is defined in Section 4.6(j).

“**SSA**” means the Social Security Act of 1935, codified at Title 42, Chapter 7, of the United States Code.

“**Stock Acquisition**” means the purchase or other acquisition by Borrower or any of its Subsidiaries of all of the Equity Interests (by merger, stock purchase or otherwise) of any other Person.

“**Subordinated Debt**” means any Indebtedness in the form of or otherwise constituting term debt incurred by any Credit Party or any Subsidiary thereof (including any Indebtedness incurred in connection with any Acquisition or other Investment) that: (a) is subordinated in right of payment to the Obligations at all times until all of the Obligations have been paid, performed or discharged in full and Borrower has no further right to obtain any Credit Extension hereunder pursuant to a subordination or other similar agreement that is in form and substance reasonably satisfactory to the Collateral Agent (which agreement shall include turnover provisions that are reasonably satisfactory to the Collateral Agent); (b) except as permitted by clause (d) below or otherwise permitted by Section 6.10, is not subject to scheduled amortization, redemption (mandatory), sinking fund or similar payment and does not have a final maturity, in each case, before the date that is ninety (90) days after the Term Loan Maturity Date; provided, however, that in the case of Subordinated Debt permitted under the definition of “Permitted Indebtedness”, the forgoing limitation on amortization, redemption, payment and maturity shall not be required from and after such date as the trailing twelve-month Net Sales of Borrower and its Subsidiaries on a consolidated basis, as indicated in the statements of Borrower delivered or otherwise made available to the Collateral Agent pursuant to Section 5.2(a), are greater than or equal to \$750,000,000; (c) does not include covenants and agreements (other than with respect to maturity, amortization, pricing and other economic terms) that, taken as a whole, are more restrictive or onerous on the Credit Parties in any material respect than the comparable covenants and agreements in the Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith); (d) is not subject to repayment or prepayment, including pursuant to a put option exercisable by the holder of any such Indebtedness, prior to the final maturity thereof except in the case of an event of default or change of control (or the equivalent thereof, however described); and (e) does not provide or otherwise include provisions having the effect of providing that a default or event of default (or the equivalent thereof, however described) under or in respect of such Indebtedness shall exist, or such Indebtedness shall otherwise become due prior to its scheduled maturity or the holder or holders thereof or any trustee or agent on its or their behalf shall be permitted (with or without the giving of notice, the lapse of time or both) to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in any such case upon the occurrence of a Default or Event of Default hereunder unless and until the Obligations have been declared, or have otherwise automatically become, immediately due and payable pursuant to Section 8.1(a).

“**Subsidiary**” means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which more than 50% of whose shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors (or similar body) of such corporation, partnership or other entity are at the time owned, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of a Credit Party.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld

or assessed, including any tax of any kind whatsoever (whether disputed or not) imposed by any Governmental Authority).

“**Term Loan**” means each of the Tranche A Loan and the Tranche B Loan, as applicable, and “**Term Loans**” means, collectively, the Tranche A Loan and the Tranche B Loan; provided, however, that in the event the Tranche B Loan is not made on the Tranche B Closing Date, “Term Loans” shall mean only the Tranche A Loan.

“**Term Loan Maturity Date**” means the seven-year anniversary of the Tranche A Closing Date.

“**Territory**” means the United States.

“**Third Party IP**” is defined in Section 4.6(l).

“**Trademark License**” means any agreement, whether written or oral, providing for the grant by or to a Person of any right to use any Trademark.

“**Trademarks**” means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with the goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith, in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof and (b) all renewals thereof.

“**Tranche A Closing Date**” means the date on which the Tranche A Loan is advanced by Lenders, which, subject to the satisfaction of the conditions precedent to the Tranche A Loan set forth in Section 3.1, Section 3.3 and Section 3.5, shall be ten (10) Business Days following the Effective Date (unless otherwise mutually agreed in writing by Borrower and the Required Lenders).

“**Tranche A Commitment**” means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche A Loan on the Tranche A Closing Date in an aggregate principal amount equal to the amount set forth opposite such Lender’s name on Exhibit D attached hereto.

“**Tranche A Loan**” is defined in Section 2.2(a)(i).

“**Tranche A Loan Amount**” means an aggregate principal amount equal to Three Hundred Million Dollars (\$300,000,000.00).

“**Tranche A Makewhole Amount**” means, as of any date of determination occurring prior to the 24th-month anniversary of the Tranche A Closing Date, an amount equal to the sum of all interest accruing from such date through the 24th-month anniversary of the Tranche A Closing Date.

“**Tranche A Note**” means a promissory note in substantially the form attached hereto as Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Tranche A Prepayment Premium**” means, with respect to any prepayment of the Tranche A Loan by Borrower pursuant to Section 2.2(c), an amount equal to the product of the amount of such prepayment, multiplied by:

- (a) if such prepayment occurs prior to the 24th-month anniversary of the Tranche A Closing Date, 0.03;
 - (b) if such prepayment occurs prior to the 36th-month anniversary of the Tranche A Closing Date, 0.02;
- and
- (c) if such prepayment occurs prior to the 48th-month anniversary of the Tranche A Closing Date, 0.01.

“**Tranche A Rate**” is defined in Section 2.3(a)(i).

“Tranche B Closing Date” means the date on which the Tranche B Loan is advanced by Lenders, which, at Borrower’s option and as indicated in the Payment/Advance Form for the Tranche B Loan and subject to the satisfaction of the conditions precedent to the Tranche B Loan set forth in Section 3.2, Section 3.3 and Section 3.5, shall be no earlier than June 30, 2018 and no later than December 20, 2018.

“Tranche B Commitment” means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche B Loan on the Tranche B Closing Date in an aggregate principal amount equal to the percentage of the Tranche B Loan Amount set forth opposite such Lender’s name on Exhibit D attached hereto.

“Tranche B Loan” is defined in Section 2.2(a)(ii).

“Tranche B Loan Amount” means, at Borrower’s option and as indicated in the Payment/Advance Form for the Tranche B Loan delivered by Borrower pursuant to Section 3.5, an aggregate principal amount of not less than Fifty Million Dollars (\$50,000,000.00) and not more than Two Hundred Million Dollars (\$200,000,000.00).

“Tranche B Makewhole Amount” means, as of any date of determination occurring prior to the 24th-month anniversary of the Tranche B Closing Date, an amount equal to the sum of all interest accruing from such date through the 24th-month anniversary of the Tranche B Closing Date.

“Tranche B Note” means a promissory note in substantially the form attached hereto as Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Tranche B Prepayment Premium” means, with respect to any prepayment of the Tranche B Loan by Borrower pursuant to Section 2.2(c), an amount equal to the product of the amount of such prepayment, multiplied by:

- (a) if such prepayment occurs prior to the 24th-month anniversary of the Tranche B Closing Date, 0.03;
 - (b) if such prepayment occurs prior to the 36th-month anniversary of the Tranche B Closing Date, 0.02;
- and
- (c) if such prepayment occurs prior to the 48th-month anniversary of the Tranche B Closing Date, 0.01.

“Tranche B Rate” is defined in Section 2.3(a)(ii).

“Transfer” is defined in Section 6.1.

“TRICARE” means, collectively, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation, and all laws applicable to such programs.

“United States” or **“U.S.”** means the United States of America, its fifty (50) states and the District of Columbia.

“Wholly-Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to Requirements of Law) are owned by such Person or another Wholly-Owned Subsidiary of such Person. Unless the context otherwise requires, each reference to a Wholly-Owned Subsidiary herein shall be a reference to a Wholly-Owned Subsidiary of a Credit Party.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**TESARO, INC.,
as Borrower**

By /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: Executive Vice President and Chief Financial Officer

Signature Page to Loan Agreement

**TESARO, SECURITIES CORPORATION,
as an additional Credit Party**

By /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: President

Signature Page to Loan Agreement

**BIOPHARMA CREDIT PLC,
as Collateral Agent and a Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

Signature Page to Loan Agreement

**BIOPHARMA CREDIT INVESTMENTS IV SUB LP,
as a Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

Signature Page to Loan Agreement

EXHIBIT A – PAYMENT/ADVANCE FORM

The undersigned, being the duly elected and acting _____ of TESARO, INC., a Delaware corporation (“**Borrower**”), does hereby certify, solely in his/her capacity as an authorized officer of Borrower and not in his/her personal capacity, to BIOPHARMA CREDIT PLC, in its capacity as the **Collateral Agent**, in connection with that certain Loan Agreement dated as of November 21, 2017 by and among Borrower, the Collateral Agent, Lenders and the other parties thereto (the “**Loan Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that, subject to the satisfaction (or waiver by the Collateral Agent or the Required Lenders) of the conditions precedent to the Tranche [A][B] Loan set forth in Section 3 of the Loan Agreement, on the [Tranche A Closing Date] [_____, 2018 (the “**Tranche B Closing Date**”)]:

1. the representations and warranties made by the Credit Parties in Section 4 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects, unless any such representation or warranty is stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any representation or warranty that is qualified as to “materiality,” “Material Adverse Change,” or similar language shall be true and correct in all respects on the Tranche [A][B] Closing Date or as of such earlier date, as applicable);

2. no Default or Event of Default has occurred since the [Effective Date] [Tranche A Closing Date] or is occurring as of the date hereof;

3. each of the Credit Parties is in compliance with the covenants and requirements contained in Sections 5 and 6 of the Loan Agreement;

4. all conditions referred to in Section 3 of the Loan Agreement to the making of the Tranche [A][B] Loan to be made on the Tranche [A][B] Closing Date have been satisfied (or waived in writing by the Collateral Agent or the Required Lenders);

5. no Material Adverse Change has occurred since the [Effective Date] [Tranche A Closing Date];

6. the undersigned is a Responsible Officer of Borrower;

7. [the Tranche B Loan Amount is \$_____.00]; and

8. the proceeds of the [Tranche A Loan] [Tranche B Loan] shall be disbursed as set forth on Attachment A hereto.

Dated: _____, 201__

[signature page follows]

**TESARO, INC.,
as Borrower**

By _____

Name: _____

Title: _____

EXHIBIT B-1

TRANCHE A NOTE

\$_____.00 Dated: _____, 2017

FOR VALUE RECEIVED, the undersigned, TESARO, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to the order of [INSERT NAME OF LENDER] ("**Lender**") the principal amount of [INSERT SUCH LENDER'S APPLICABLE PERCENTAGE OF THE TRANCHE A LOAN AMOUNT] (\$_____.00), plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to the LIBOR Rate plus eight percent (8.00%) per annum, and in accordance with the terms of the Loan Agreement dated as of November 21, 2017 by and among Borrower, the Collateral Agent, Lenders and the other parties thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall make equal quarterly payments of principal in an amount equal to three percent (3.00%) of the original principal amount of the Tranche A Loan commencing on the first Payment Date following the 24th-month anniversary of the Tranche A Closing Date, and continuing on the Payment Date of each successive quarter thereafter, and on the Term Loan Maturity Date Borrower shall pay any and all outstanding principal amounts of the Tranche A Loan. Interest shall accrue on this Tranche A Note commencing on, and including, the date of this Tranche A Note, and shall accrue on this Tranche A Note, or any portion thereof, for the day on which this Tranche A Note or such portion is paid. Interest on this Tranche A Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche A Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche A Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche A Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement.

This Tranche A Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche A Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche A Note are hereby waived.

THIS TRANCHE A NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

Note Register; Ownership of Note. The ownership of an interest in this Tranche A Note shall be registered on a record of ownership maintained by the Collateral Agent. Notwithstanding anything else in this Tranche A Note to the contrary, the right to the principal of, and stated interest on, this Tranche A Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche A Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche A Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche A Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

**TESARO, INC.,
as Borrower**

By _____

Name: _____

Title: _____

EXHIBIT B-2

TRANCHE B NOTE

\$ _____, 00 Dated: _____, 2018

FOR VALUE RECEIVED, the undersigned, TESARO, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to the order of [INSERT NAME OF LENDER] ("**Lender**") the principal amount of [INSERT SUCH LENDER'S APPLICABLE PERCENTAGE OF THE TRANCHE B LOAN AMOUNT] (\$____,____,____.00), plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to the LIBOR Rate plus seven and one-half percent (7.50%) per annum, and in accordance with the terms of the Loan Agreement dated as of November 21, 2017 by and among Borrower, the Collateral Agent, Lenders and the other parties thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall make equal quarterly payments of principal in an amount equal to three percent (3.00%) of the original principal amount of the Tranche B Loan commencing on the first Payment Date following the 24th-month anniversary of the Tranche B Closing Date, and continuing on the Payment Date of each successive quarter thereafter, and on the Term Loan Maturity Date Borrower shall pay any and all outstanding principal amounts of the Tranche B Loan. Interest shall accrue on this Tranche B Note commencing on, and including, the date of this Tranche B Note, and shall accrue on this Tranche B Note, or any portion thereof, for the day on which this Tranche B Note or such portion is paid. Interest on this Tranche B Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche B Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche B Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche B Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement.

This Tranche B Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche B Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche B Note are hereby waived.

THIS TRANCHE B NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

Note Register; Ownership of Note. The ownership of an interest in this Tranche B Note shall be registered on a record of ownership maintained by Lender. Notwithstanding anything else in this Tranche A Note to the contrary, the right to the principal of, and stated interest on, this Tranche B Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche B Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche B Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche B Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

**TESARO, INC.,
as Borrower**

By _____

Name: _____

Title: _____

EXHIBIT C

FORM OF SECURITY AGREEMENT

GUARANTY AND SECURITY AGREEMENT, dated as of [_____], 2017, by TESARO, INC., a Delaware corporation (“Borrower”), TESARO SECURITIES CORPORATION, a Massachusetts corporation (“TSC”) and each other Person that becomes a party hereto pursuant to Section 8.6 (together with Borrower and TSC, “Grantors”), in favor of BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales as the collateral agent (the “Collateral Agent”) on behalf of itself, Lenders and each other Secured Party.

WITNESSETH:

WHEREAS, pursuant to the Loan Agreement dated as of November 21, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”) by and among Borrower, TSC (as an additional Credit Party), BioPharma Credit Investments IV Sub L.P. a Cayman Islands exempted limited partner (as a Lender thereunder), and BioPharma Credit PLC, a public limited company incorporated under the laws of England and Wales (as Collateral Agent and a Lender thereunder), Lenders agreed to make extensions of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, each Grantor other than Borrower has agreed to guaranty the Obligations (as defined in the Loan Agreement) of Borrower;

WHEREAS, each Grantor will derive substantial direct and indirect benefits from the making of the extensions of credit under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligation of each Lender to make its extensions of credit to Borrower under the Loan Agreement that the Grantors shall have executed and delivered this Agreement to the Collateral Agent for the benefit of Lenders and the other Secured Parties.

NOW, THEREFORE, in consideration of the premises and to induce Lenders and the Credit Parties to enter into the Loan Agreement and to induce each Lender to make its extensions of credit to Borrower thereunder, each Grantor hereby agrees with the Collateral Agent as follows:

ARTICLE I

DEFINED TERMS

Section 1.1 **Definitions.** Capitalized terms used herein without definition are used as defined in the Loan Agreement.

(a) The following terms have the meanings given to them in the Code and terms used herein without definition that are defined in the Code have the meanings given to them in the Code (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “account”, “account debtor”, “documents”, “deposit account”, “general intangible”, “goods”, “instruments”, “right”, “money”, “proceeds”, “record”, and “security”.

(b) The following terms shall have the following meanings:

“Agreement” means this Guaranty and Security Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Applicable IP Office” means the United States Patent and Trademark Office or the United States Copyright Office.

“Collateral” has the meaning specified in Section 3.1.

“Excluded Property” means, collectively: (i) any “intent to use” United States Trademark applications for which a statement of use or an amendment to allege use has not been filed (but only until such statement is filed) solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent to use Trademark applications under applicable federal law; (ii) any permit, lease, license, contract, instrument or other agreement held by any Grantor with respect to which, the grant to the Collateral Agent in favor of and for the benefit of Lenders and the other Secured Parties of a security interest therein and Lien thereupon, and the pledge to the Collateral Agent thereof, to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the Code (including Sections 9-406(d), 9-407(a), 9-408(a) and 9-409 of the Code) or any other applicable Requirements of Law; (iii) any permit, lease, license, contract, instrument or other agreement held by any Grantor with respect to which, the grant to the Collateral Agent in favor of and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien thereupon, and the pledge to the Collateral Agent thereof, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by such Grantor or Borrower following their respective commercially reasonable efforts to obtain the same; (iv) any other asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the grant to the Collateral Agent in favor of and for the benefit of Lenders and the other Secured Parties of a security interest in and Lien thereupon, and the pledge to the Collateral Agent thereof, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by such Grantor or Borrower following their respective commercially reasonable efforts to obtain the same; (v) any other property or asset subject or purported to be subject to a Lien under any Collateral Document held by any Grantor that is a non-Wholly-Owned Subsidiary with respect to which, the grant to the Collateral Agent in favor of and for the benefit of Lenders and the other Secured Parties of a security interest therein and Lien thereupon, and the pledge to the Collateral Agent thereof, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents of, the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Documents, joint venture agreement, shareholder agreement or other contract is in effect, and neither such Grantor nor Borrower has obtained the consent, approval or waiver of such third party following their respective commercially reasonable efforts to obtain the same; (vi) any other asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the cost, difficulty, burden or consequences (including adverse Tax consequences) of granting the Collateral Agent a security interest therein and Lien thereupon, and pledging to the Collateral Agent thereof, to secure the Obligations (and any guaranty thereof) are excessive relative to the value to be afforded to the Collateral Agent thereby; (vii) any rights under any Federal or state governmental license, permit, franchise or authorization to the extent that the granting of a security interest therein is specifically prohibited or restricted by any Requirements of Law; and (viii) Excluded Equity Interests; provided, however, that “Excluded Property” shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

“FDCA” means the U.S. Food, Drug and Cosmetic Act (or any successor thereto) and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

“Guaranteed Obligations” has the meaning set forth in Section 2.1.

“Guarantor” means each Grantor other than Borrower.

“Guaranty” means the guaranty of the Guaranteed Obligations made by the Guarantors as set forth in this Agreement.

“IP License” means all express and implied grants or rights to make, have made, use, sell, reproduce, distribute, modify, or otherwise exploit any Intellectual Property, as well as all covenants not to sue and co-existence agreements (and all related IP Ancillary Rights), whether written or oral, relating to any Intellectual Property.

“NDA” means a new drug application filed with the FDA pursuant to Section 505(b) of the FDCA, along with all supplements and amendments thereto.

“Pledged Certificated Stock” means all of the Equity Interests (other than Excluded Equity Interests) of any Domestic Subsidiary (other than an Excluded Subsidiary) and all Equity Interests (other than Excluded Equity Interests) of any Foreign Subsidiary (other than an Excluded Subsidiary) that is directly owned by a Domestic Subsidiary evidenced by a certificate, instrument or other similar document (as defined in the Code), in each case owned by any Grantor, including all right, title and interest of any Grantor as a limited or general partner in any partnership that has issued Pledged Certificated Stock or as a member of any limited liability company that has issued Pledged Certificated Stock, and all right, title and interest of any Grantor in, to and under any Operating Document or shareholder agreement of any corporation, partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Equity Interests listed on Schedule 1 of the Security Disclosure Letter. “Pledged Certificated Stock” includes, for the avoidance of doubt, any Pledged Uncertificated Stock that subsequently becomes certificated.

“Pledged Stock” means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

“Pledged Uncertificated Stock” means all of the Equity Interests (other than Excluded Equity Interests) of any Domestic Subsidiary (other than an Excluded Subsidiary) and all Equity Interests (other than Excluded Equity Interests) of any Foreign Subsidiary (other than an Excluded Subsidiary) that is directly owned by a Domestic Subsidiary that is not Pledged Certificated Stock, including all right, title and interest of any Grantor as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company not constituting Pledged Certificated Stock, all right, title and interest of any Grantor in, to and under any Operating Document or shareholder agreement of any partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including in each case those interests set forth on Schedule 1 of the Security Disclosure Letter, to the extent such interests are not certificated.

“Secured Obligations” has the meaning set forth in Section 3.2.

“Security Disclosure Letter” means the security agreement disclosure letter, dated as of the date hereof, delivered by the Grantors to the Collateral Agent.

“Software” means, (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

Section 1.2 **Certain Other Terms.**

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. References herein to an Annex, Article, Section or clause refer to the appropriate Annex, Article, Section or clause in this Agreement and references hereto to a Schedule are to the Security Disclosure Letter. Where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor's Collateral or any relevant part thereof.

(b) Other Interpretive Provisions.

(i) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto.

(ii) The Agreement. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) Certain Common Terms. The term “including” is not limiting and means “including without limitation.” The word “or” has the inclusive meaning represented by the phrase “and/or”. The word “shall” is mandatory. The word “may” is permissive. The singular includes the plural and the plural includes the singular.

(iv) Performance; Time. Whenever any performance obligation hereunder (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(v) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(vi) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

ARTICLE II

GUARANTY

Section 2.1 **Guaranty**. To induce Lenders to make the Term Loans to Borrower on the Tranche A Closing Date and, if applicable, the Tranche B Closing Date, each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Loan Document, of all the Obligations of Borrower existing on the date hereof or hereinafter incurred or created (the “Guaranteed Obligations”). This Guaranty by each Guarantor hereunder constitutes a guaranty of payment and not of collection. Each Guarantor hereby acknowledges and agrees that the Guaranteed Obligations, at any time and from time to time, may exceed the Maximum Guaranteed Amount of such Guarantor and may exceed the aggregate of the Maximum Guaranteed Amounts of all Guarantors, in each case without discharging, limiting or otherwise affecting the obligations of any Guarantor hereunder or the rights, powers and remedies of any Secured Party hereunder or under any other Loan Document.

Section 2.2 **Limitation of Guaranty**. Any term or provision of this Guaranty or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder (the “Maximum Guaranteed Amount”) shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Guaranty or any other Loan Document, as it relates to such Guarantor, subject to avoidance under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, “Fraudulent Transfer Laws”). Any analysis of the provisions of this Guaranty for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.7 and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Guaranty.

Section 2.3 **Authorization; Other Agreements.** The Collateral Agent on behalf of Lenders and the other Secured Parties are hereby authorized, without notice to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following but subject in all cases to the terms and conditions of the other Loan Documents:

- (a) (i) modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Loan Document;
- (b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Loan Documents;
- (c) refund at any time any payment received by any Secured Party in respect of any Guaranteed Obligation;
- (d) (i) sell, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorser of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with a Borrower or any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and
- (e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

Section 2.4 **Guaranty Absolute and Unconditional.** Each Guarantor hereby waives and agrees not to assert any defense (other than the indefeasible payment in full of the Guaranteed Obligations), whether arising in connection with or in respect of any of the following or otherwise, and hereby agrees that its obligations under this Guaranty are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guaranty, in each case except as otherwise agreed in writing by the Collateral Agent):

- (a) the invalidity or unenforceability of any obligation of Borrower or any other Guarantor under any Loan Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guaranty of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;
 - (b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof from Borrower or any other Guarantor or other action to enforce the same or (ii) any action to enforce any Loan Document or any Lien thereunder;
 - (c) the failure by any Person to take any steps to perfect and maintain any Lien on, or to preserve any rights with respect to, any Collateral;
 - (d) any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against Borrower, any other Guarantor or any of Borrower's other Subsidiaries or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or any interest thereon) in or as a result of any such proceeding;
 - (e) any foreclosure, whether or not through judicial sale, and any other sale or other disposition of any Collateral or any election following the occurrence of an Event of Default by the Collateral Agent on behalf of Lenders and any other Secured Party to proceed separately against any Collateral in accordance with the Collateral Agent's, Lenders' and any other Secured Party's rights under any applicable Requirements of Law; or
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(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of Borrower, any other Guarantor or any other Subsidiary of Borrower, in each case other than the indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations).

Section 2.5 Waivers. To the fullest extent permitted by Requirements of Law, each Guarantor hereby unconditionally and irrevocably waives and agrees not to assert any claim, defense, setoff or counterclaim based on diligence, promptness, presentment, requirements for any demand or notice hereunder, including any of the following: (a) any demand for payment or performance and protest and notice of protest; (b) any notice of acceptance; (c) any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable; and (d) any other notice in respect of any Guaranteed Obligation or any part thereof, and any defense arising by reason of any disability or other defense of Borrower or any other Guarantor. Until the indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations), each Guarantor further unconditionally and irrevocably agrees not to (x) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against Borrower or any other Guarantor by reason of any Loan Document or any payment made thereunder or (y) assert any claim, defense, setoff or counterclaim it may have against any other Credit Party or set off any of its obligations to such other Credit Party against obligations of such Credit Party to such Guarantor. No obligation of any Guarantor hereunder shall be discharged other than by complete performance.

Section 2.6 Reliance. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of Borrower, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof that diligent inquiry would reveal, and each Guarantor hereby agrees that neither the Collateral Agent, nor Lenders or any other Secured Party shall have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event the Collateral Agent, any Lender or any other Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, such Person shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that the Collateral Agent, any Lender or any Secured Party, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

ARTICLE III

GRANT OF SECURITY INTEREST

Section 3.1 Collateral. For the purposes of this Agreement, the following tangible and intangible assets and property now owned or at any time hereafter acquired, developed or created by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interest, in each case, wherever located, is collectively referred to as the “Collateral”:

(a) the rights of such Grantor relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory under any Current Company IP Agreement;

(b) all of such Grantor’s right, title and interest in, to and under any NDA relating to the sale and marketing of the Products in the Territory;

(c) any and all United States Trademarks and other Company IP owned by such Grantor specifically relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory;

(d) all Pledged Stock;

(e) any and all Collateral Accounts;

(f) all books, records, ledger cards, files, correspondence, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time pertain to or evidence or contain information specifically relating to any of the other property described in the foregoing clauses (a) – (f) of this Section 3.1; and

(g) all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 3.2 Grant of Security Interest in Collateral. Without limiting any other security interest granted to the Collateral Agent in favor of and for the benefit of Lenders and the other Secured Parties, each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Grantor (the “Secured Obligations”), hereby pledges, hypothecates and grants to the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties, to secure the payment and performance in full of all of the Obligations for the benefit of the Collateral Agent, Lenders and the other Secured Parties, a first priority Lien (subject only to Permitted Liens) on and continuing security interest in, all of its right, title and interest in, to and under the Collateral of such Grantor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof; provided, however, notwithstanding the foregoing, no Lien or security interest is hereby granted on, and “Collateral” shall not include, any Excluded Property; provided, further, that if and when any property or asset shall cease to be Excluded Property, a first priority Lien (subject only to Permitted Liens) on and security in such property or asset shall be deemed granted therein and, therefore, “Collateral” shall then include any such property or asset.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and each Lender to enter into the Loan Documents, each Grantor hereby represents and warrants each of the following to the Collateral Agent, Lenders and the other Secured Parties:

Section 4.1 Title; No Other Liens. Except for the Lien granted to the Collateral Agent for the benefit of Lenders and the other Secured Parties pursuant to this Agreement and any other Permitted Liens under any Loan Document (including Section 4.2 hereof), such Grantor owns or otherwise has the rights it purports to have in each item of the Collateral, free and clear of any and all Liens or claims of others. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien other than any Permitted Liens. Other than Control Agreements executed and delivered to Lenders in accordance with the provisions of the Loan Documents or as specified on Schedule 4.1 of the Security Disclosure Letter, to the Knowledge of Borrower or any of its Subsidiaries, no other Control Agreements exist or have been authorized for any of the Collateral Accounts. Other than any financing statements filed in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties or as specified on Schedule 4.1 of the Security Disclosure Letter, to the Knowledge of Borrower, no effective financing statement, or other instrument similar in effect under any Requirements of Law covering all or any part of the Collateral is on file in any filing or recording office or has been authorized except for financing statements filed in connection with Permitted Liens.

Section 4.2 Perfection and Priority. Other than in respect of money and other Collateral subject to Section 9-311(a)(1) of the Code, the security interest granted pursuant to this Agreement constitutes a valid and continuing first priority perfected security interest (subject, in the case of priority only, to Permitted Liens that are permitted by the terms of the Loan Agreement or this Agreement to have superior priority to the Lien in favor of the Collateral Agent) in favor of the Collateral Agent in all Collateral, subject, for the following Collateral, to the occurrence of the following: (a) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the Code, the completion of the filings and other actions specified on Schedule 2 of the Security Disclosure Letter (which, in the case of all filings and other documents referred to on such schedule, have been duly authorized by the applicable Guarantor); (b) with respect to any deposit account over which a Control Agreement is required pursuant to Section 5.5 of the Loan Agreement, the execution of Control Agreements; and (c) in the case of all United States Trademarks and Patents for which Code filings are insufficient to effectuate

perfection, all appropriate filings having been made with the Applicable IP Office, as applicable. Such security interest in Pledged Stock and all other instruments shall be prior to all other Liens on such Collateral except for Permitted Liens having priority over the Collateral Agent's Lien by operation of law or as and to the extent permitted by any Loan Document or (i) in the case of all Pledged Certificated Stock, the delivery thereof to the Collateral Agent of such Pledged Certificated Stock consisting of instruments and certificates, in each case, properly endorsed for transfer to the Collateral Agent or in blank, and (ii) in the case of Pledged Uncertificated Stock constituting a security (as defined under Section 8-102(a)(15) of the Code), the execution of a control agreement among the issuer, the registered owner and the Collateral Agent in the form attached hereto as Annex 4. Except as set forth in this Section 4.2, all actions by each Grantor necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

Section 4.3 Pledged Stock. The Pledged Stock issued by any Subsidiary of any Grantor pledged by such Grantor hereunder (i) consist of the number and types of Equity Interests listed on Schedule 1 of the Security Disclosure Letter and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on Schedule 1 of the Security Disclosure Letter, (ii) has been duly authorized, validly issued and is fully paid and nonassessable (other than Pledged Stock in limited liability companies and partnerships), and (ii) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms.

(a) As of the Tranche A Closing Date, (i) all Pledged Certificated Stock has been delivered to the Collateral Agent in accordance with Section 5.2(a), and (ii) with respect to Pledged Uncertificated Stock, control agreements have been delivered to the Collateral Agent in accordance with Section 5.2(a).

(b) All of the Pledged Stock issued by issuers formed under the laws of the United States or a State thereof that constitutes limited liability company interests or partnership interests are or represent interests that by their terms provide that they are securities governed by the uniform commercial code of any applicable jurisdiction.

(c) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent for the benefit of Lenders and other the other Secured Parties shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Stock, and a transferee or assignee of such Pledged Stock shall become a holder of such Pledged Stock to the same extent as such Grantor and, upon the transfer of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Stock.

ARTICLE V

COVENANTS

Each Grantor agrees with the Collateral Agent to the following, as long as any Obligation remains outstanding (other than inchoate indemnity obligations) and unless the Collateral Agent on behalf of Lenders and the other Secured Parties otherwise consents in writing:

Section 5.1 Maintenance of Perfected Security Interest; Further Documentation and Consents. Subject to the occurrence of the actions described in Section 4.2, which each Grantor shall promptly undertake, and except to the extent perfection is either (i) mutually agreed between Borrower and the Collateral Agent not to be required under this Agreement or the other Loan Documents or (ii) mutually agreed between Borrower and the Collateral Agent to be effected by filings of financing statements or amendments thereto to be made by the Collateral Agent or its Related Party pursuant to Section 7.2, such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall warrant and defend the Collateral covered by such security interest and such priority against the claims and demands of all Persons (other than Secured Parties).

(a) Such Grantor shall furnish to the Collateral Agent at any time and from time to time statements and schedules further identifying and describing the Collateral and such other documents in connection with the Collateral as the Collateral Agent may reasonably request in writing, all in reasonable detail and in form and substance reasonably satisfactory to the Collateral Agent.

(b) At any time and from time to time, upon the written request of the Collateral Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement, each IP Agreement and the Loan Agreement and of the rights and powers herein and therein granted, (i) promptly and duly execute and deliver, and have recorded, such further documents, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the Code (or other filings under similar Requirements of Law) in effect in any jurisdiction with respect to the security interest created hereby and (ii) take such further action as the Collateral Agent may reasonably request in writing, including executing and delivering any Control Agreements required by Section 5.5 of the Loan Agreement with respect to the Collateral Accounts.

Section 5.2 **Pledged Stock.** Delivery of Pledged Stock. Such Grantor shall (i) deliver to the Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, all Pledged Certificated Stock, and (ii) use commercially reasonable efforts to cause the issuer of any Pledged Uncertificated Stock to either register the Collateral Agent as the registered owner thereof on the books and records of such issuer or, alternatively, execute a control agreement in the form attached hereto as Annex 4, pursuant to which, *inter alia*, such issuer agrees to comply with the Collateral Agent's instructions with respect to such Pledged Uncertificated Stock without further consent by such Grantor, and, for the avoidance of doubt, if any such Pledged Uncertificated Stock becomes certificated, to deliver to the Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, all such certificates, instruments or other similar documents (as defined in the Code).

(a) **Event of Default.** During the continuance of any Event of Default and in connection with the exercise of rights or remedies hereunder or under any other Loan Document, the Collateral Agent shall have the right, at any time in its discretion and without notice to Grantor, to (i) transfer to or to register in its name or in the name of its nominees any Pledged Stock and (ii) exchange any certificate or instrument representing or evidencing any Pledged Stock for certificates or instruments of smaller or larger denominations.

(b) **Cash Distributions with respect to Pledged Stock.** Except as provided in Article VI and subject to the limitations set forth in the Loan Agreement, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Stock.

(c) **Voting Rights.** Except as provided in Article VI, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Stock; provided, however, that no vote shall be cast, consent, waiver or ratification given or right exercised (or failed to be exercised) or other action taken (or failed to be taken) by such Grantor in any manner that could reasonably be expected to, violate or be inconsistent with any of the terms of this Agreement or any other Loan Document, or have the effect of materially impairing such Collateral or the position or interests of Secured Parties.

Section 5.3 **Reserved.**

Section 5.4 **Intellectual Property.**

(a) Such Grantor shall execute and deliver to the Collateral Agents in form and substance reasonably acceptable to the Collateral Agents and suitable for filing in the Applicable IP Office the short-form intellectual property security agreements in the form attached hereto as Annex 3 for all Collateral consisting of Trademarks, and Patents of such Grantor.

ARTICLE VI

REMEDIAL PROVISIONS

Section 6.1 **Code and Other Remedies.** Code Remedies. During the continuance of an Event of Default, the Collateral Agent on behalf of itself, Lenders and the other Secured Parties, may exercise, in addition to all other rights and remedies granted to it in this Agreement, any IP Agreement, any other Loan Document or in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights, powers and remedies of a secured party under the Code or any other Requirements of Law or in equity.

(a) Disposition of Collateral. During the continuance of an Event of Default, without limiting the generality of the foregoing, the Collateral Agent may (personally or through its agents or attorneys), without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by Requirements of Law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived): (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving Grantor or any other Person notice or opportunity for a hearing on the Collateral Agent's claim or action; (ii) collect, receive, appropriate and realize upon any Collateral; (iii) store, process, repair or recondition the Collateral or otherwise prepare any Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and (iv) sell, assign, license out, convey, transfer, grant option or options to purchase or license and deliver any Collateral (or enter into contractual obligations to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent, any Lender or any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent on behalf of itself, Lenders and the other Secured Parties, shall have the right, upon any such public sale or sales and, to the extent permitted by the Code and other Requirements of Law, upon any such private sale, to purchase or license the whole or any part of the Collateral so sold or licensed, free of any right or equity of redemption of any Grantor, which right or equity is hereby waived and released. The Collateral Agent, as representative of Lenders and all other Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the Code, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent on behalf of itself, Lenders and the other Secured Parties, at such sale. If the Collateral Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by the Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale. The Collateral Agent shall have no obligation to marshal any of the Collateral.

(b) Management of the Collateral. Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at the Collateral Agent's request, it shall assemble the Collateral and make it available to the Collateral Agent at places that the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, the Collateral Agent also has the right to require that such Grantor store and keep any Collateral pending further action by the Collateral Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until the Collateral Agent is able to sell, assign, license out, convey or transfer any Collateral, the Collateral Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent and (iv) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Collateral Agent's remedies, with respect to such appointment without prior notice or hearing as to such appointment. The Collateral Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against other Persons with respect to any Collateral while such Collateral is in the possession of the Collateral Agent.

(c) Application of Proceeds. The Collateral Agent shall apply the cash proceeds received by it in respect of any sale of, any collection from, or other realization upon all or any part of the Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of the Collateral Agent, Lenders and the other Secured Parties, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, as set forth in the Loan Agreement, and only after such application and after the payment by the Collateral Agent of any other amount required by any Requirements of Law, need the Collateral Agent account for the surplus, if any, to any Grantor.

(d) Direct Obligation. Neither the Collateral Agent nor Lenders or any other Secured Party shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of the Collateral

Agent, any Lender and any other Secured Party shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any Requirements of Law. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any other Secured Party, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by any of them of any rights or remedies hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by Requirements of Law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

(e) Commercially Reasonable. To the extent that applicable Requirements of Law impose duties on the Collateral Agent, any Lender or any other Secured Party to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent to do any of the following:

(i) fail to incur significant costs, expenses or other liabilities reasonably deemed as such by the Collateral Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain permits, licenses or other consents for access to any Collateral to sell or license or for the collection or sale or licensing of any Collateral, or, if not required by other Requirements of Law, fail to obtain permits, licenses or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature, or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature, or, to the extent deemed appropriate by the Collateral Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any Collateral, or utilize Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in wholesale rather than retail markets;

(vii) disclaim warranties, such as title, merchantability, possession, non-infringement or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure the Collateral Agent, any Lender and any other Secured Party against risks of loss, collection or disposition of any Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of any Collateral.

Each Grantor acknowledges that the purpose of this Section 6.1 is to provide a non-exhaustive list of actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by the Collateral Agent, any Lender or any other Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 6.1. Without limitation upon the foregoing, nothing contained in this Section 6.1 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent, any Lender or any other Secured Party that would not have been granted or imposed by this Agreement or by applicable Requirements of Law in the absence of this Section 6.1.

(f) **IP Licenses.** For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 6.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral) at such time as the Collateral Agent on behalf of Lenders and the Secured Parties shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, for the benefit of Lenders and all other Secured Parties, an irrevocable, nonexclusive, assignable, license (exercisable without payment of royalty or other compensation to such Grantor), including the right to sublicense, use and practice any and all United State Trademarks and other Company IP now owned or held or hereafter acquired or held by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof.

Section 6.2 Accounts and Payments in Respect of General Intangibles. In addition to, and not in substitution for, any similar requirement in the Loan Agreement, if required by the Collateral Agent at any time during the continuance of an Event of Default, any payment of accounts or payment in respect of general intangibles relating to the Collateral, when collected by any Grantor, shall be promptly (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent, in a Collateral Account, subject to withdrawal by the Collateral Agent as provided in Section 6.4. Until so turned over, such payment shall be held by such Grantor in trust for the Collateral Agent for the benefit of Lenders and the other Secured Parties, segregated from other funds of such Grantor. Each such deposit of proceeds of accounts and payments in respect of general intangibles relating to the Collateral shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(a) At any time during the continuance of an Event of Default:

(i) each Grantor shall, upon the Collateral Agent's request, deliver to the Collateral Agent all original and other documents evidencing, and relating to, the contractual obligations and transactions that gave rise to any account or any payment in respect of general intangibles relating to the Collateral, including all IP Licenses, original orders, invoices and shipping receipts and notify account debtors that the accounts or general intangibles have been collaterally assigned to the Collateral Agent for the benefit of Lenders and the other Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent for the benefit of Lenders and the other Secured Parties; and

(ii) the Collateral Agent may, without notice, at any time during the continuance of an Event of Default, limit or terminate the authority of a Grantor to collect its accounts or amounts due under general intangibles relating to the Collateral or any thereof and, in its own name or in the name of others, communicate with account debtors to verify with them, to the Collateral Agent's satisfaction, the existence, amount and terms of any account or amounts due under any such general intangible. In addition, the Collateral Agent may at any time enforce such Grantor's rights against such account debtors and obligors of general intangibles

(b) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles included in the Collateral to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Collateral Agent, nor Lender or any Secured Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral by reason of or arising out of any Loan Document or the receipt by the Collateral Agent, any Lender or any Secured Party of any payment relating thereto, nor shall the Collateral Agent, any Lender or any Secured Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 6.3 Pledged Stock. Voting Rights. During the continuance of an Event of Default, upon written notice by the Collateral Agent to the relevant Grantor or Grantors, all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant

hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent or nominee on behalf of Lenders or the other Secured Parties, who shall thereupon have the sole right to exercise such voting and other consensual rights, including the right to exercise (i) any voting, consent, corporate and other right pertaining to the Pledged Stock at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Stock or otherwise, and (ii) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Stock as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Stock upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Stock, the right to deposit and deliver any Pledged Stock with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent on behalf of Lenders or the other Secured Parties may determine), all without liability except to account for property actually received by it; provided, however, that the Collateral Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(a) **Proxies.** During the continuance of an Event of Default, in order to permit the Collateral Agent on behalf of Lenders or the other Secured Parties to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (ii) without limiting the effect of clause (i) above, such Grantor hereby grants to the Collateral Agent for the benefit of Lenders and the other Secured Parties an irrevocable proxy to vote all or any part of the Pledged Stock and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Stock would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Stock on the record books of the issuer thereof) by any other Person (including the issuer of such Pledged Stock or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon the payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

(b) **Authorization of Issuers.** Each Grantor hereby expressly and irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Stock pledged hereunder by such Grantor to, and each Grantor that is an issuer of Pledged Stock so pledged hereunder hereby agrees to (i) comply with any instruction received by it from the Collateral Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from liabilities to such Grantor in so complying, and (ii) unless otherwise expressly permitted hereby or by the Loan Agreement, pay any dividend or make any other payment with respect to the Pledged Stock directly to the Collateral Agent for the benefit of Lenders and the other Secured Parties.

Section 6.4 Proceeds to be Turned over to and Held by the Collateral Agent. Unless otherwise expressly provided in the Loan Agreement or this Agreement, during the continuance of an Event of Default, all proceeds of any Collateral received by any Grantor hereunder in cash or Cash Equivalents shall be held by such Grantor in trust for the Collateral Agent, Lenders and the other Secured Parties, segregated from other funds of such Grantor, and shall, promptly upon receipt by any Grantor, be turned over to the Collateral Agent for the benefit of Lenders and the other Secured Parties in the exact form received (with any necessary endorsement). All such proceeds of Collateral and any other proceeds of any Collateral received by the Collateral Agent in cash or Cash Equivalents shall be held by the Collateral Agent for the benefit of Lenders and the other Secured Parties in a Collateral Account. All proceeds being held by the Collateral Agent in a Collateral Account (or by such Grantor in trust for the Collateral Agent, Lenders and the other Secured Parties) shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in the Loan Agreement.

Section 6.5 Sale of Pledged Stock. Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any Pledged Stock by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a

restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any Pledged Stock for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(a) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Pledged Stock pursuant to Section 6.1 and this Section 6.5 valid and binding and in compliance with all applicable Requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to the Collateral Agent, Lenders and the other Secured Parties, that the Collateral Agent, Lenders and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Loan Agreement. Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Pledged Collateral by the Collateral Agent on behalf of itself, Lenders and the other Secured Parties.

Section 6.6 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the reasonable and documented fees and disbursements of any attorney employed by the Collateral Agent to collect such deficiency.

Section 6.7 Collateral Accounts. If any Event of Default shall have occurred and be continuing, the Collateral Agent shall apply the balance from any Collateral Account of a Grantor or instruct the bank at which any Collateral Account is maintained to pay the balance of any Collateral Account to or for the benefit of the Collateral Agent on behalf of itself, Lenders and the other Secured Parties, to be applied to the Secured Obligations in accordance with the terms hereof.

Section 6.8 Directions, Notices or Instructions. The Collateral Agent shall not take any action under or issue any directions, notice or instructions pursuant to any Control Agreement or similar agreement unless an Event of Default has occurred and is continuing.

ARTICLE VII

ADDITIONAL RIGHTS OF LENDER

Section 7.1 Collateral Agent's Appointment as Attorney-in-Fact. Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any Related Party thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Loan Documents, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of the Loan Documents during the continuance of an Event of Default, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent and its Related Party the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following when an Event of Default shall be continuing:

(i) in the name of such Grantor, in its own name or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any account or general intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any such moneys due under any account or general intangible or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property (including any IP Ancillary Rights) or any IP Licenses included in the Collateral, execute, deliver and have recorded any document that the Collateral Agent may request to evidence, effect, publicize or record the Collateral Agent's security interest in such Intellectual Property or IP Licenses and the goodwill and general intangibles of such Grantor relating thereto or represented thereby and the Collateral Agent's (on behalf of Lenders and the other Secured Parties) rights and remedies with respect thereto;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against any Collateral, effect any repair or obtain or pay any insurance called for by the terms of the Loan Agreement (including all or any part of the premiums therefor and the costs thereof);

(iv) execute, in connection with any sale provided for in Section 6.1 or 6.5, any document to effect or otherwise necessary or appropriate in relation to evidence the sale of any Collateral; or

(v) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct, (B) ask or demand for, and collect and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) sign and indorse any invoice, freight or express bill, bill of lading, storage or warehouse receipt, draft against debtors, assignment, verification, notice and other document in connection with any Collateral, (D) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (E) defend any actions, suits, proceedings, audits, claims, demands, orders or disputes brought against such Grantor with respect to any Collateral, (F) settle, compromise or adjust any such actions, suits, proceedings, audits, claims, demands, orders or disputes and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate, (G) assign or license any Intellectual Property included in the Collateral throughout the Territory on such terms and conditions and in such manner as the Collateral Agent shall in its sole discretion determine, including the execution and filing of any document necessary to effectuate or record such assignment or license and (H) generally, sell, assign, license, convey, transfer or grant a Lien on, make any contractual obligation with respect to and otherwise deal with, any Collateral as fully and completely as though the Collateral Agent on behalf of Lenders and the other Secured Parties were the absolute owner thereof for all purposes and do, at the Collateral Agent's option, at any time or from time to time, all acts and things that the Collateral Agent deems necessary to protect, preserve or realize upon any Collateral and the Collateral Agent's, Lenders' and the other Secured Parties' security interests therein and to effect the intent of the Loan Documents, all as fully and effectively as such Grantor might do.

(vi) If any Grantor fails to perform or comply with any contractual obligation contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such contractual obligation.

(b) The expenses of the Collateral Agent, Lenders and the other Secured Parties incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at the Default Rate, from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Collateral Agent on demand.

(c) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this Section 7.1. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

Section 7.2 Authorization to File Financing Statements. Each Grantor authorizes the Collateral Agent and its Related Party, at any time and from time to time, without notice to any Grantor, to file or record financing statements, amendments thereto, and other filing or recording documents or instruments with respect to any Collateral in such form, in such jurisdictions and in such offices as the Collateral Agent reasonably determines appropriate to perfect or protect the security interests of the Collateral Agent, Lenders and the other Secured Parties under this Agreement or any other Loan Document (and the Collateral Agent's, Lenders' and the other Secured Parties' rights in respect thereof), and such financing statements and amendments and may include a notice that any disposition of the Collateral, by any Grantor or other Person, shall be deemed to violate the rights of the Collateral Agent, Lenders

and the other Secured Parties under the Code to the extent not permitted under this Agreement or any other Loan Document. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Such Grantor also hereby ratifies its authorization for the Collateral Agent to have filed any initial financing statement or amendment thereto under the Code (or other similar laws) in effect in any jurisdiction if filed prior to the date hereof.

Section 7.3 Authority of the Collateral Agent. Each Grantor acknowledges that, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for Lenders and all of the other Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation or entitlement to make any inquiry respecting such authority.

Section 7.4 Duty; Obligations and Liabilities. Duty of the Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's, Lenders' and other Secured Parties' interest in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Parties shall be responsible to any Grantor for any act or failure to act hereunder, except for its or their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. In addition, the Collateral Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by the Collateral Agent in good faith.

(a) **Obligations and Liabilities with respect to Collateral.** Neither the Collateral Agent nor Lenders or any other Secured Party and no Related Party thereof shall be liable for failure to demand, collect or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to any Collateral.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Reinstatement. Each Grantor agrees that, if any payment made by any Credit Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to such Credit Party, its estate, trustee, receiver or any other party, including any Grantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, (a) any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing or (b) any provision of the Guaranty hereunder shall have been terminated, cancelled or surrendered, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

Section 8.2 Release of Collateral and Guarantee Obligations. When all Obligations (other than inchoate indemnity obligations) have been paid in full in cash and no Lender has any further obligation or commitment to make extensions of credit pursuant to the Loan Agreement to Borrower, the Collateral shall be released from the Lien created hereby and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent, any Lender or any other Secured Party and each Guarantor and Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party (except as required hereunder), and all rights of the Collateral Agent, any Lender and other Secured Party to the Collateral shall revert to the Grantors.

(a) In connection with any termination or release pursuant to this Section 8.2, the Collateral Agent shall, and to the extent required, Lenders and each other Secured Party hereby authorizes the Collateral Agent to, promptly execute and deliver to any Grantor all instruments, documents and agreements which such Grantor shall reasonably request in writing to evidence and confirm such termination or release (including termination statements under the Code), and will duly assign and transfer to such Grantor, such of the Collateral that may be in the possession of the Collateral Agent, all without further consent or joinder of Lenders or any other Secured Party.

(b) Any termination or release pursuant to this Section 8.2 is subject to reinstatement as provided in Section 8.1.

(c) Upon the release of the Liens on any Collateral or of a Grantor from all of its obligations as a Credit Party under the Loan Agreement and as a Grantor hereunder, any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or such Grantor, as applicable, shall no longer be deemed to be made.

(d) Without limiting the generality of Section 2.4 of the Loan Agreement, Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Collateral Agent, each Lender and each other Secured Party in connection with the taking of any actions pursuant to or as otherwise contemplated by this Section 8.2.

Section 8.3 Independent Obligations. The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations and the Guaranteed Obligations. If any Secured Obligation or Guaranteed Obligation is not paid when due, subject to any grace or cure period, or upon any Event of Default and during the continuance thereof, the Collateral Agent for the benefit of Lenders and the other Secured Parties may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount of any Secured Obligation or Guaranteed Obligation then due, without first proceeding against any other Grantor, any other Credit Party or any other Collateral and without first joining any other Grantor or any other Credit Party in any proceeding.

Section 8.4 No Waiver by Course of Conduct. Neither the Collateral Agent nor Lenders or any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.5), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any Lender or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent, any Lender or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Collateral Agent, any Lender or any other Secured Party would otherwise have on any future occasion.

Section 8.5 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 11.5 of the Loan Agreement; provided, however, that annexes to this Agreement may be supplemented (but no existing provisions may be modified and no Collateral may be released) through Pledge Amendments and Joinder Agreements, in substantially the form of Annex 1 and Annex 2 attached hereto, respectively, in each case, duly executed by the Collateral Agent and each Grantor directly affected thereby.

Section 8.6 Additional Grantors and Guarantors; Additional Pledged Collateral. Joinder Agreements. If, at the option of Borrower or as required pursuant to Section 5.12 or Section 5.13 of the Loan Agreement, a Borrower shall cause any Domestic Subsidiary (other than Excluded Subsidiaries) that is not a Grantor or Guarantor to become a Grantor and Guarantor hereunder, such Domestic Subsidiary shall execute and deliver to the Collateral Agent a Joinder Agreement substantially in the form of Annex 2 attached hereto and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Closing Date.

(a) **Pledge Amendments.** To the extent any Pledged Stock has not been delivered as of the Tranche A Closing Date, such Grantor shall deliver a pledge amendment duly executed by the Grantor in substantially the form of Annex 1 attached hereto (each, a “Pledge Amendment”). Such Grantor authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement.

Section 8.7 Notices. All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 9 of the Loan Agreement; provided, however, that any such notice, request or demand to or upon any Grantor shall be addressed to the Borrower’s notice address set forth in Section 9 of the Loan Agreement.

Section 8.8 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of each Secured Party and their successors and assigns; provided, however, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

Section 8.9 Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or by electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 8.10 Severability. Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

Section 8.11 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York without regard to any principle of conflicts of law that could require the application of the law of any other jurisdiction.

Section 8.12 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN OR RELATED HERETO OR THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PARTY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.12 AND (C) HAS REVIEWED THIS WAIVER WITH ITS COUNSEL. EACH GRANTOR AGREES TO BE BOUND BY THE PROVISIONS OF SECTION 10 OF THE LOAN AGREEMENT.

IN WITNESS WHEREOF, each of the undersigned has caused this Guaranty and Security Agreement to be duly executed and delivered as of the date first above written.

TESARO, INC.,
as Borrower and Grantor

By _____

Name: _____

Title: _____

TESARO SECURITIES CORPORATION,
as Grantor

By _____

Name: _____

Title: _____

ACCEPTED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By _____

Name:

Title:

EXHIBIT D

COMMITMENTS; NOTICE ADDRESSES

<u>Lender</u>	<u>Commitments</u>	<u>Notice Address</u>
BioPharma Credit PLC	Tranche A Commitment: \$222,000,000.00 Tranche B Commitment: 74.0% of the Tranche B Loan Amount	BioPharma Credit PLC c/o Beaufort House 51 New North Road Exeter EX4 4EP United Kingdom Attn: Company Secretary Tel: +44 01 392 477 500 Fax: +44 01 392 253 282 with copies (which shall not constitute notice) to: Pharmakon Advisors LP 110 East 59th Street, #3300 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: +1 (212) 883-2296 Fax: +1 (917) 210-4048 Email: pg@PharmakonAdvisors.com and Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: (212) 872-8081 Fax: (212) 872-1002 Email: gsecol@akingump.com

BioPharma Credit Investments IV Sub LP	Tranche A Commitment: \$78,000,000.00 Tranche B Commitment: 26.0% of the Tranche B Loan Amount	BioPharma Credit Investments IV Sub LP c/o Walkers Corporate Limited Cayman Corporate Centre 27 Hospital Road George Town, Grand Cayman KY1-9008 Cayman Islands Attention: Pedro Gonzalez de Cosio Telephone: +1 (212) 883-2296 Facsimile: +1 (212) 490-7576 Email: pg@PharmakonAdvisors.com with copies (which shall not constitute notice) to: Pharmakon Advisors LP 110 East 59th Street, #3300 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: +1 (212) 883-2296 Fax: +1 (917) 210-4048 Email: pg@PharmakonAdvisors.com and Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: (212) 872-8081 Fax: (212) 872-1002 Email: gsecol@akingump.com

**FIRST AMENDMENT
TO
LOAN AGREEMENT**

This First Amendment to the Loan Agreement (defined below) (this “Amendment”), dated as of February 7, 2018 (the “Effective Date”), is entered into by and among TESARO, INC., a Delaware corporation (as “Borrower”), TESARO SECURITIES CORPORATION, a Massachusetts corporation (as an additional Credit Party), BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as “Collateral Agent” and a “Lender”) and BIOPHARMA CREDIT INVESTMENTS IV SUB LP, a Cayman Islands limited partnership (as a “Lender”).

RECITALS

WHEREAS, Borrower and Lenders have entered into that certain Loan Agreement dated as of November 21, 2017 (the “Loan Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement, as amended; and

WHEREAS, in accordance with Section 11.5 of the Loan Agreement, Borrower and Lenders desire to amend the Loan Agreement on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and intending to be legally bound by this Amendment, the undersigned hereby agrees and declares as follows:

SECTION 1. Amendment to Loan Agreement.

The Loan Agreement shall be amended by deleting in its entirety the definition of “LIBOR Rate” in Section 13.1 of the Loan Agreement and replacing it as follows:

““**LIBOR Rate**” means, as of any Interest Rate Determination Date and for any Interest Period, the rate per annum equal to (a) the rate of interest appearing on Reuters Screen LIBOR01 Page (or any successor page) for three-month Dollar deposits or (b) if no such rate is available, the rate of interest determined by the Collateral Agent to be the rate or the arithmetic mean of rates at which Dollar deposits in immediately available funds are offered to first-tier banks in the London interbank Eurodollar market, in each case under clause (a) or (b) above at approximately 11:00 a.m., London time, on such Interest Rate Determination Date for a period of three months; provided, however, that, for purposes of calculating the Tranche A Rate or the Tranche B Rate, the LIBOR Rate shall at all times have a floor of one percent (1.00%); provided, further, that, for purposes of calculating the Tranche A Rate or the Tranche B Rate, the LIBOR Rate shall at all times be subject to a cap equal to the LIBOR Rate on the Tranche A Funding Date plus 150 basis points.”

SECTION 2. References to and Effect on Loan Agreement. Except as specifically set forth herein, this Amendment shall not modify or in any way affect any of the provisions of the Loan Agreement, which shall remain in full force and effect and is hereby ratified and confirmed in all respects. On and after the Effective Date all references in the Loan Agreement to “this

Agreement,” “hereto,” “hereof,” “hereunder,” or words of like import shall mean the Loan Agreement as amended by this Amendment.

SECTION 3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of laws thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the undersigned has caused this Amendment to be duly executed and delivered as of the date first above written.

**TESARO, INC.,
as Borrower, on its own behalf and on behalf of each
other Credit Party**

By /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: Executive Vice President and Chief Financial
Officer

Signature Page to First Amendment to Loan Agreement

**BIOPHARMA CREDIT PLC,
as Collateral Agent and a Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

**BIOPHARMA CREDIT INVESTMENTS IV SUB LP,
as a Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

Signature Page to First Amendment to Loan Agreement

**AMENDMENT #2
TO THE TESARO, INC.
2012 OMNIBUS INCENTIVE PLAN**

The TESARO, Inc. 2012 Omnibus Incentive Plan (the “Plan”) is hereby amended as set forth below, effective as of the date of adoption (the “Adoption Date”) of this Amendment by the Board of Directors of TESARO, Inc. (the “Company”):

1. The seventh sentence of Section 18.3 of the Plan is deleted in its entirety and replaced with the following:

The maximum number of shares of Stock that may be withheld from any Award to satisfy any federal, state, or local tax withholding requirements upon the exercise, vesting, or lapse of restrictions applicable to any Award or payment of shares of Stock pursuant to such Award, as applicable, may not exceed such number of shares of Stock having a Fair Market Value equal to the minimum statutory amount required by the Company or the applicable Affiliate to be withheld and paid to any such federal, state, or local taxing authority with respect to such exercise, vesting, lapse of restrictions, or payment of shares of Stock; provided, however, for so long as Accounting Standards Update 2016-09 or a similar rule remains in effect, and subject to Applicable Laws, the Board or the Committee has full discretion to choose, or to allow a Grantee to elect, to withhold a number of shares of Stock having an aggregate Fair Market Value that is greater than the applicable minimum required statutory withholding obligation (but such withholding may in no event be in excess of the maximum required statutory withholding amount(s) in such Grantee’s relevant tax jurisdiction).

2. The Plan shall otherwise be unchanged by this Amendment.

* * *

The foregoing Amendment #2 to the Plan was duly adopted and approved by the Board of Directors of the Company by resolution by Unanimous Written Consent on February 24, 2018

/s/ Joseph L. Farmer
Secretary

***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Exhibit 10.46

SEVENTH AMENDMENT TO LEASE

SEVENTH AMENDMENT TO LEASE (this “**Seventh Amendment**”) dated as of this 10th day of October, 2017 (the “**Seventh Amendment Effective Date**”) by and between BP BAY COLONY LLC, a Delaware limited liability company (“**Landlord**”), and TESARO, INC., a Delaware corporation (“**Tenant**”).

RECITALS

A. By Lease dated October 15, 2012 (the “**Lease**”), Landlord did lease to Tenant and Tenant did hire and lease from Landlord certain premises containing 23,814 square feet of rentable floor area in the building known as 1000 Winter Street, Waltham, Massachusetts (the “**Building**”) and consisting of (i) 13,576 rentable square feet located on the second (2nd) and third (3rd) floors of the Building (referred to collectively in the Lease as the “**Original Premises**”), and (ii) 10,238 rentable square feet located on the first (1st) floor of the Building (referred to in the Lease as the “**Expansion Premises**”).

B. By First Amendment to Lease dated as of January 6, 2014 (the “**First Amendment**”), Tenant yielded up the Expansion Premises, and Landlord did lease to Tenant, and Tenant did hire and lease from Landlord, certain additional premises containing 39,666 rentable square feet located on the second (2nd) floor of the Building (the “**First Additional Premises**”), upon the terms and conditions set forth in the First Amendment.

C. By Second Amendment to Lease dated as of April 23, 2015 (the “**Second Amendment**”), Landlord did lease to Tenant, and Tenant did hire and lease from Landlord, certain additional premises containing 17,738 rentable square feet (the “**Second Additional Premises**”), consisting of (a) 10,238 square feet of rentable floor area located on the first (1st) floor of the Building (the “**First Floor Second Additional Premises**”), being the same space referred to above as the Expansion Premises and previously yielded up by Tenant pursuant to the First Amendment, and (b) 7,500 square feet of rentable floor area located on the third (3rd) floor of the Building (the “**Third Floor Second Additional Premises**”), upon the terms and conditions set forth in the Second Amendment.

D. By Third Amendment to Lease dated as of August 2, 2016 (the “**Third Amendment**”), Landlord did lease to Tenant, and Tenant did hire and lease from Landlord, certain additional premises containing 44,634 square feet of rentable floor area consisting of (a) 17,091 square feet of rentable floor area located on the second (2nd) floor of the Building (the “**Second Floor Third Additional Premises**”), and (b) 27,543 square feet of rentable floor area located on the third (3rd) floor of the Building (the “**Third Floor Third Additional Premises**”), upon the terms and conditions set forth in the Third Amendment. The Second Floor Third Additional Premises and the Third Floor Third Additional Premises are sometimes collectively referred to herein as the “**Third Additional Premises**”).

E. By Fourth Amendment to Lease dated as of October 6, 2016 (the “**Fourth Amendment**”), Landlord did lease to Tenant, and Tenant did hire and lease from Landlord, certain additional premises containing 8,784 square feet of rentable floor area located on the third (3rd) floor of the Building (the “**Fourth Additional Premises**”), upon the terms and conditions set forth in the Fourth Amendment.

F. By Fifth Amendment to Lease dated as of February 9, 2017 (the “**Fifth Amendment**”), Landlord and Tenant agreed to amend the parties’ respective obligations with respect to Landlord’s Existing Premises Third Floor Work (as defined in the Third Amendment), as more particularly set forth in the Fifth Amendment.

G. By Sixth Amendment to Lease dated as of June 16, 2017 (the “**Sixth Amendment**”), Landlord did lease to Tenant, and Tenant did hire and lease from Landlord, certain additional premises containing 25,188 square feet of rentable floor area, consisting of (a) 15,229 square feet of rentable floor area located on the fourth (4th) floor of the Building (the “**Vacant Sixth Amendment Premises**”), and (b) 9,959 square feet of rentable floor area located on the fourth (4th) floor of the Building (the “**Occupied Sixth Amendment Premises**,” together with the Vacant Sixth Amendment Premises, collectively the “**Sixth Amendment Premises**”), upon the terms and conditions set forth in the Sixth Amendment. As of the Seventh Amendment Effective Date, Landlord has not delivered the Sixth Amendment Premises to Tenant, and neither the Vacant Sixth Amendment Premises Commencement Date (as defined in the Sixth Amendment) nor the Occupied Sixth Amendment Premises Commencement Date (as defined in the Sixth Amendment) have occurred.

H. The Original Premises, as increased by the First Additional Premises, the Second Additional Premises, the Third Additional Premises, and the Fourth Additional Premises is hereinafter referred to as the “**Existing Premises**”, and contains a total of 124,398 square feet of rentable floor area (the “**Rentable Floor Area of the Existing Premises**”).

I. Tenant has determined to lease from Landlord upon the terms and conditions contained in this Seventh Amendment an additional 28,521 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment Premises**”), consisting of the following:

(i) approximately 4,034 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment A Premises**”) located on the fourth (4th) floor of the Building (the “**Seventh Amendment A Premises**”), which space is shown on Exhibit A attached hereto and made a part hereof;

(ii) approximately 3,334 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment B Premises**”) located on the third (3rd) floor of the Building (the “**Seventh Amendment B Premises**,” together with the Seventh Amendment A Premises, collectively the “**Vacant Seventh Amendment Premises**”), which space is shown on Exhibit B attached hereto and made a part hereof;

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(iii) approximately 3,034 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment C Premises**”) located on the fourth (4th) floor of the Building (the “**Seventh Amendment C Premises**”), which space is shown on Exhibit C attached hereto and made a part hereof;

(iv) approximately 3,005 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment D Premises**”) located on the fourth (4th) floor of the Building (the “**Seventh Amendment D Premises**”), which space is shown on Exhibit D attached hereto and made a part hereof;

(v) approximately 2,700 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment E Premises**”) located on the second (2nd) floor of the Building (the “**Seventh Amendment E Premises**”), which space is shown on Exhibit E attached hereto and made a part hereof; and

(vi) approximately 12,414 square feet of rentable floor area (the “**Rentable Floor Area of the Seventh Amendment F Premises**”) located on the fourth (4th) floor of the Building (the “**Seventh Amendment F Premises**”), which space is shown on Exhibit F attached hereto and made a part hereof.

Each of the premises described in clauses (i) through (vi) of this Recital I are sometimes referred to herein individually as a “**Seventh Amendment Premises**” and collectively as the “**Seventh Amendment Premises**”). The Vacant Sixth Amendment Premises, the Occupied Sixth Amendment Premises, and each of the Seventh Amendment Premises are each sometimes referred to herein individually as a “**Premises Component**.”

J. Subject to the terms and conditions set forth herein, Landlord and Tenant are entering into this instrument to set forth said leasing of the Seventh Amendment Premises, to integrate the Seventh Amendment Premises into the Lease and to amend the Lease, all as more particularly set forth in this Seventh Amendment.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration in hand this date paid by each of the parties to the other, the receipt and sufficiency of which are hereby severally acknowledged, and in further consideration of the mutual promises herein contained, Landlord and Tenant hereby agree to and with each other as follows:

1. **Vacant Seventh Amendment Premises**

(A) **Incorporation into Premises**. As of the Seventh Amendment Effective Date, the Vacant Seventh Amendment Premises shall constitute part of the “Premises” demised to Tenant under the Lease for a term coterminous with the Lease Term, so that the Premises (as defined in the Lease) shall include the Existing Premises and the Vacant Seventh Amendment Premises and shall contain a total of 131,766 square feet of rentable floor area.

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(B) Term. The definition of the “Term” as set forth in Section 1.1 of the Lease, as previously amended, shall be supplemented by adding the following thereto:

“(x) As to the Vacant Seventh Amendment Premises (as defined in the Seventh Amendment), a period beginning on the Seventh Amendment Effective Date (as defined in the Seventh Amendment) and ending on June 30, 2020, unless extended or sooner terminated as provided in the Lease.”

(C) Annual Fixed Rent.

(i) Commencing on the earlier to occur of (a) the date that is one (1) month following the Seventh Amendment Effective Date, and (b) the date Tenant commences occupancy of the Seventh Amendment A Premises for business purposes, and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment A Premises shall be payable at the annual rate of \$[***] (being the product of (x) \$[***] and (y) the Rentable Floor Area of the Seventh Amendment A Premises (being 4,034 square feet)).

(ii) Commencing on the earlier to occur of (a) the date that is one (1) month following the Seventh Amendment Effective Date, and (b) the date Tenant commences occupancy of the Seventh Amendment B Premises for business purposes, and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment B Premises shall be payable at the annual rate of \$[***] (being the product of (x) \$[***] and (y) the Rentable Floor Area of the Seventh Amendment B Premises (being 3,334 square feet)).

(D) OpEx, Taxes and Electricity. For purposes of computing Tenant’s payments for operating expenses pursuant to Section 2.6 of the Lease, Tenant’s payments for real estate taxes pursuant to Section 2.7 of the Lease, and Tenant’s payments for electricity (as determined pursuant to Section 2.5 and 2.8 of the Lease) respecting:

(i) the Seventh Amendment A Premises, the “Rentable Floor Area of the Premises” shall be deemed to be the Rentable Floor Area of the Seventh Amendment A Premises (being 4,034 square feet); and

(ii) the Seventh Amendment B Premises, the “Rentable Floor Area of the Premises” shall be deemed to be the Rentable Floor Area of the Seventh Amendment B Premises (being 3,334 square feet).

(E) Parking. Effective as of the Seventh Amendment Effective Date, the Number of Parking Spaces (referenced in Section 1.1 of the Lease) allocated to Tenant under the Lease shall be increased from three hundred and seventy-one (371) to three hundred and ninety-three (393)

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(reflecting an increase at a rate of three (3) spaces per 1,000 square feet of the total rentable floor area of the Vacant Seventh Amendment Premises (being 7,368 square feet).

(F) Condition of the Seventh Amendment Premises. Tenant agrees to accept the Vacant Seventh Amendment Premises in their “as-is” condition and Landlord shall have no obligation to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto and Landlord shall have no responsibility for the installation or connection of Tenant’s telephone or other communications equipment. Notwithstanding the foregoing, Landlord agrees to deliver the base building systems serving the Vacant Seventh Amendment Premises in good working order and condition on the Seventh Amendment Effective Date.

2. Seventh Amendment C Premises

(A) Incorporation into Premises. As of the Seventh Amendment C Premises Commencement Date (as hereinafter defined), the Seventh Amendment C Premises shall constitute part of the “Premises” demised to Tenant under the Lease for a term coterminous with the Lease Term, so that the Premises, subject to the terms of the Lease, shall include (i) the Existing Premises, (ii) the Seventh Amendment C Premises, and (iii) all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date, and shall contain a total amount of square feet of rentable floor area in an amount equal to the sum of (x) the Rentable Floor Area of the Existing Premises, plus (y) the Rentable Floor Area of the Seventh Amendment C Premises, plus (z) the rentable floor area of all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date.

(B) Commencement Date. The following definition is hereby added to Section 1.1. of the Lease:

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

“Seventh Amendment C
Premises Commencement
Date: _____

The business day following the date on which Landlord delivers possession of the Seventh Amendment C Premises to Tenant free of all occupants, which is estimated to occur on November 1, 2017 (the “**Seventh Amendment C Premises Target Delivery Date**”). If for any reason Landlord fails or is unable to deliver possession of the Seventh Amendment C Premises to Tenant on or before the Seventh Amendment C Premises Target Delivery Date, then (i) Landlord shall not be in default hereunder or be liable for damages therefor, (ii) the validity of the Lease and this Seventh Amendment shall not be affected or impaired thereby, (iii) the Term shall not be extended on account thereof, and (iv) Tenant shall accept possession of the Seventh Amendment C Premises on the date Landlord tenders possession of the Seventh Amendment C Premises to Tenant.”

(C) Outside Delivery Date.

(i) If Landlord shall have failed to deliver possession of the Seventh Amendment C Premises to Tenant free of all occupants on or before February 1, 2018 (the “**Seventh Amendment C Premises Outside Delivery Date**”) (which date shall be extended automatically for such periods of time as Landlord is prevented from so delivering by reason of Force Majeure), Tenant shall have the right to terminate the Lease, as amended, solely as to the Seventh Amendment C Premises by giving notice to Landlord of Tenant’s desire to do so before such delivery and within the time period from the Seventh Amendment C Premises Outside Delivery Date (as so extended) until the date which is thirty (30) days subsequent to the Seventh Amendment C Premises Outside Delivery Date (as so extended); and, upon the giving of such notice, the lease of the Seventh Amendment C Premises (and all rights related thereto) shall cease and come to an end without further liability or obligation on the part of either party unless, within thirty (30) days of such notice, Landlord delivers possession of the Seventh Amendment C Premises to Tenant free of all occupants, in which case, Tenant’s notice shall be deemed null and void and of no further force or effect. For purposes of this Section 2(C)(i) and Sections 3(C)(i), 4(C)(i), and 5(C)(i) below, the term “Force Majeure” shall be deemed to expressly exclude the failure of the current occupant of a Seventh Amendment Premises to vacate such premises.

(ii) If Landlord shall have failed to deliver possession of the Seventh Amendment C Premises to Tenant free of all occupants on or before the Seventh Amendment C Premises Outside Delivery Date (as so extended) and Tenant has

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

not terminated the Lease as provided in Section 2(C)(i) hereinabove, then the Annual Fixed Rent with respect to the Seventh Amendment C Premises as set forth in Section 2(E) below shall be abated by one (1) day for each day beyond the Seventh Amendment C Premises Outside Delivery Date (as so extended) that Landlord thus fails to deliver possession of the Seventh Amendment C Premises, such abatement to be applied commencing on the Seventh Amendment C Premises Commencement Date.

(iii) The foregoing rent abatement and right of termination shall be Tenant's sole and exclusive remedies at law or in equity or otherwise for Landlord's failure to deliver possession of the Seventh Amendment C Premises within the time periods set forth above.

(D) Term. The definition of the "Term" as set forth in Section 1.1 of the Lease, as previously amended, shall be supplemented by adding the following thereto:

"(xi) As to the Seventh Amendment C Premises (as defined in the Seventh Amendment), a period beginning on the Seventh Amendment C Premises Commencement Date (as defined in the Seventh Amendment) and ending on June 30, 2020, unless extended or sooner terminated as provided in the Lease."

(E) Annual Fixed Rent. Commencing on the earlier to occur of (a) the date that is one (1) month following the Seventh Amendment C Premises Commencement Date, and (b) the date Tenant commences occupancy of the Seventh Amendment C Premises for business purposes, and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment C Premises shall be payable at the annual rate of \$[***] (being the product of (y) \$[***] and (z) the Rentable Floor Area of the Seventh Amendment C Premises (being 3,034 square feet)).

(F) OpEx, Taxes and Electricity. For purposes of computing Tenant's payments for operating expenses pursuant to Section 2.6 of the Lease, Tenant's payments for real estate taxes pursuant to Section 2.7 of the Lease, and Tenant's payments for electricity (as determined pursuant to Section 2.5 and 2.8 of the Lease) respecting the Seventh Amendment C Premises, the "Rentable Floor Area of the Premises" shall be deemed to be the Rentable Floor Area of the Seventh Amendment C Premises (being 3,034 square feet).

(G) Parking. Effective as of the Seventh Amendment C Premises Commencement Date, the Number of Parking Spaces (referenced in Section 1.1 of the Lease) allocated to Tenant under the Lease shall be increased by adding nine (9) additional spaces to then current Number of Parking Spaces (reflecting an increase at a rate of three (3) spaces per 1,000 square feet of the Rentable Floor Area of the Seventh Amendment C Premises).

(H) Condition of the Seventh Amendment C Premises. Tenant agrees to accept the Seventh Amendment C Premises in their "as-is" condition and Landlord shall have no obligation to perform any additions, alterations, improvements, demolition or other work therein or pertaining

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

thereto and Landlord shall have no responsibility for the installation or connection of Tenant's telephone or other communications equipment. Notwithstanding the foregoing, Landlord agrees to deliver the base building systems serving the Seventh Amendment C Premises in good working order and condition on the Seventh Amendment C Premises Commencement Date.

3. **Seventh Amendment D Premises**

(A) **Incorporation into Premises.** As of the Seventh Amendment D Premises Commencement Date (as hereinafter defined), the Seventh Amendment D Premises shall constitute part of the "Premises" demised to Tenant under the Lease for a term coterminous with the Lease Term, so that the Premises shall include (i) the Existing Premises, (ii) the Seventh Amendment D Premises, and (iii) all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date, and shall contain a total amount of square feet of rentable floor area in an amount equal to the sum of (x) the Rentable Floor Area of the Existing Premises, plus (y) the Rentable Floor Area of the Seventh Amendment D Premises, plus (z) the rentable floor area of all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date.

(B) **Commencement Date.** The following definition is hereby added to Section 1.1. of the Lease:

"Seventh Amendment D
Premises Commencement
Date: _____

The business day following the date on which Landlord delivers possession of the Seventh Amendment D Premises to Tenant free of all occupants, which is estimated to occur on December 1, 2017 (the "**Seventh Amendment D Premises Target Delivery Date**"). If for any reason Landlord fails or is unable to deliver possession of the Seventh Amendment D Premises to Tenant on or before the Seventh Amendment D Premises Target Delivery Date, then (i) Landlord shall not be in default hereunder or be liable for damages therefor, (ii) the validity of the Lease and this Seventh Amendment shall not be affected or impaired thereby, (iii) the Term shall not be extended on account thereof, and (iv) Tenant shall accept possession of the Seventh Amendment D Premises on the date Landlord tenders possession of the Seventh Amendment D Premises to Tenant.

(C) **Outside Delivery Date.**

(i) If Landlord shall have failed to deliver possession of the Seventh Amendment D Premises to Tenant free of all occupants on or before March 1, 2018 (the "**Seventh Amendment D Premises Outside Delivery Date**") (which date

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

shall be extended automatically for such periods of time as Landlord is prevented from so delivering by reason of Force Majeure), Tenant shall have the right to terminate the Lease, as amended, solely as to the Seventh Amendment D Premises by giving notice to Landlord of Tenant's desire to do so before such delivery and within the time period from the Seventh Amendment D Premises Outside Delivery Date (as so extended) until the date which is thirty (30) days subsequent to the Seventh Amendment D Premises Outside Delivery Date (as so extended); and, upon the giving of such notice, the lease of the Seventh Amendment D Premises (and all rights related thereto) shall cease and come to an end without further liability or obligation on the part of either party unless, within thirty (30) days of such notice, Landlord delivers possession of the Seventh Amendment D Premises to Tenant free of all occupants, in which case, Tenant's notice shall be deemed null and void and of no further force or effect.

(ii) If Landlord shall have failed to deliver possession of the Seventh Amendment D Premises to Tenant free of all occupants on or before the Seventh Amendment D Premises Outside Delivery Date (as so extended) and Tenant has not terminated the Lease as provided in Section 3(C)(i) hereinabove, then the Annual Fixed Rent with respect to the Seventh Amendment D Premises as set forth in Section 3(E) below shall be abated by one (1) day for each day beyond the Seventh Amendment D Premises Outside Delivery Date (as so extended) that Landlord thus fails to deliver possession of the Seventh Amendment D Premises, such abatement to be applied commencing on the Seventh Amendment D Premises Commencement Date.

(iii) The foregoing rent abatement and right of termination shall be Tenant's sole and exclusive remedies at law or in equity or otherwise for Landlord's failure to deliver possession of the Seventh Amendment D Premises within the time periods set forth above.

(D) Term. The definition of the "Term" as set forth in Section 1.1 of the Lease, as previously amended, shall be supplemented by adding the following thereto:

"(xii) As to the Seventh Amendment D Premises (as defined in the Seventh Amendment), a period beginning on the Seventh Amendment D Premises Commencement Date (as defined in the Seventh Amendment) and ending on June 30, 2020, unless extended or sooner terminated as provided in the Lease."

(E) Annual Fixed Rent. Commencing on the earlier to occur of (a) the date that is one (1) month following the Seventh Amendment D Premises Commencement Date, and (b) the date Tenant commences occupancy of the Seventh Amendment D Premises, and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment D Premises shall be payable at the annual rate of \$[***] (being the product of (y) \$[***] and (z) the Rentable Floor Area of the Seventh Amendment D Premises (being 3,005 square feet)).

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(F) OpEx, Taxes and Electricity. For purposes of computing Tenant's payments for operating expenses pursuant to Section 2.6 of the Lease, Tenant's payments for real estate taxes pursuant to Section 2.7 of the Lease, and Tenant's payments for electricity (as determined pursuant to Section 2.5 and 2.8 of the Lease) respecting the Seventh Amendment D Premises, the "Rentable Floor Area of the Premises" shall be deemed to be the Rentable Floor Area of the Seventh Amendment D Premises (being 3,005 square feet).

(G) Parking. Effective as of the Seventh Amendment D Premises Commencement Date, the Number of Parking Spaces (referenced in Section 1.1 of the Lease) allocated to Tenant under the Lease shall be increased by adding nine (9) additional spaces to then current Number of Parking Spaces (reflecting an increase at a rate of three (3) spaces per 1,000 square feet of the Rentable Floor Area of the Seventh Amendment D Premises).

(H) Condition of the Seventh Amendment D Premises. Tenant agrees to accept the Seventh Amendment D Premises in their "as-is" condition and Landlord shall have no obligation to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto and Landlord shall have no responsibility for the installation or connection of Tenant's telephone or other communications equipment. Notwithstanding the foregoing, Landlord agrees to deliver the base building systems serving the Seventh Amendment D Premises in good working order and condition on the Seventh Amendment D Premises Commencement Date.

4. Seventh Amendment E Premises

(A) Incorporation into Premises. As of the Seventh Amendment E Premises Commencement Date (as hereinafter defined), the Seventh Amendment E Premises shall constitute part of the "Premises" demised to Tenant under the Lease for a term coterminous with the Lease Term, so that the Premises shall include (i) the Existing Premises, (ii) the Seventh Amendment E Premises, and (iii) all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date, and shall contain a total amount of square feet of rentable floor area in an amount equal to the sum of (x) the Rentable Floor Area of the Existing Premises, plus (y) the Rentable Floor Area of the Seventh Amendment E Premises, plus (z) the rentable floor area of all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date.

(B) Commencement Date. The following definition is hereby added to Section 1.1. of the Lease:

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[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

“Seventh Amendment E
Premises Commencement
Date: _____

The business day following the date on which Landlord delivers possession of the Seventh Amendment E Premises to Tenant free of all occupants, which is estimated to occur on the earlier of (x) February 1, 2018, and (y) the date selected by Landlord and the current occupant of the Seventh Amendment E Premises if such parties mutually agree upon a separate termination agreement (the “**Seventh Amendment E Premises Target Delivery Date**”). If Landlord and such current occupant enter into a separate termination agreement, then Landlord shall use commercially reasonable efforts to notify Tenant of such selected date within seven (7) days of the full execution and delivery of such termination agreement. If for any reason Landlord fails or is unable to deliver possession of the Seventh Amendment E Premises to Tenant on or before the Seventh Amendment E Premises Target Delivery Date, then (i) Landlord shall not be in default hereunder or be liable for damages therefor, (ii) the validity of the Lease and this Seventh Amendment shall not be affected or impaired thereby, (iii) the Term shall not be extended on account thereof, and (iv) Tenant shall accept possession of the Seventh Amendment E Premises on the date Landlord tenders possession of the Seventh Amendment E Premises to Tenant.

(C) Outside Delivery Date.

(i) If Landlord shall have failed to deliver possession of the Seventh Amendment E Premises to Tenant free of all occupants on or before May 1, 2018 (the “**Seventh Amendment E Premises Outside Delivery Date**”) (which date shall be extended automatically for such periods of time as Landlord is prevented from so delivering by reason of Force Majeure), Tenant shall have the right to terminate the Lease, as amended, solely as to the Seventh Amendment E Premises by giving notice to Landlord of Tenant’s desire to do so before such delivery and within the time period from the Seventh Amendment E Premises Outside Delivery Date (as so extended) until the date which is thirty (30) days subsequent to the Seventh Amendment E Premises Outside Delivery Date (as so extended); and, upon the giving of such notice, the lease of the Seventh Amendment E Premises (and all rights related thereto) shall cease and come to an end without further liability or obligation on the part of either party unless, within thirty (30) days of such notice, Landlord delivers possession of the Seventh Amendment E Premises to Tenant free of all occupants, in which case, Tenant’s notice shall be deemed null and void and of no further force or effect.

- 11 -

[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(ii) If Landlord shall have failed to deliver possession of the Seventh Amendment E Premises to Tenant free of all occupants on or before the Seventh Amendment E Premises Outside Delivery Date (as so extended) and Tenant has not terminated the Lease as provided in Section 4(C)(i) hereinabove, then the Annual Fixed Rent with respect to the Seventh Amendment E Premises as set forth in Section 4(E) below shall be abated by one (1) day for each day beyond the Seventh Amendment E Premises Outside Delivery Date (as so extended) that Landlord thus fails to deliver possession of the Seventh Amendment E Premises, such abatement to be applied commencing on the Seventh Amendment E Premises Commencement Date.

(iii) The foregoing rent abatement and right of termination shall be Tenant's sole and exclusive remedies at law or in equity or otherwise for Landlord's failure to deliver possession of the Seventh Amendment E Premises within the time periods set forth above.

(D) Term. The definition of the "Term" as set forth in Section 1.1 of the Lease, as previously amended, shall be supplemented by adding the following thereto:

"(xiii) As to the Seventh Amendment E Premises (as defined in the Seventh Amendment), a period beginning on the Seventh Amendment E Premises Commencement Date (as defined in the Seventh Amendment) and ending on June 30, 2020, unless extended or sooner terminated as provided in the Lease."

(E) Annual Fixed Rent. Commencing on the Seventh Amendment E Premises Commencement Date and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment E Premises shall be payable at the annual rate of \$[***] (being the product of (y) \$[***] and (z) the Rentable Floor Area of the Seventh Amendment E Premises (being 2,700 square feet)).

(F) OpEx, Taxes and Electricity. For purposes of computing Tenant's payments for operating expenses pursuant to Section 2.6 of the Lease, Tenant's payments for real estate taxes pursuant to Section 2.7 of the Lease, and Tenant's payments for electricity (as determined pursuant to Section 2.5 and 2.8 of the Lease) respecting the Seventh Amendment E Premises, the "Rentable Floor Area of the Premises" shall be deemed to be the Rentable Floor Area of the Seventh Amendment E Premises (being 2,700 square feet).

(G) Parking. Effective as of the Seventh Amendment E Premises Commencement Date, the Number of Parking Spaces (referenced in Section 1.1 of the Lease) allocated to Tenant under the Lease shall be increased by adding nine (9) additional spaces to then current Number of Parking Spaces (reflecting an increase at a rate of three (3) spaces per 1,000 square feet of the Rentable Floor Area of the Seventh Amendment E Premises).

(H) Condition of the Seventh Amendment E Premises. Tenant agrees to accept the

- 12 -

[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Seventh Amendment E Premises in their “as-is” condition and Landlord shall have no obligation to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto and Landlord shall have no responsibility for the installation or connection of Tenant’s telephone or other communications equipment. Notwithstanding the foregoing, Landlord agrees to deliver the base building systems serving the Seventh Amendment E Premises in good working order and condition on the Seventh Amendment E Premises Commencement Date.

5. **Seventh Amendment F Premises**

(A) **Incorporation into Premises.** As of the Seventh Amendment F Premises Commencement Date (as hereinafter defined), the Seventh Amendment F Premises shall constitute part of the “Premises” demised to Tenant under the Lease for a term coterminous with the Lease Term, so that the Premises shall include (i) the Existing Premises, (ii) the Seventh Amendment F Premises, and (iii) all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date, and shall contain a total amount of square feet of rentable floor area in an amount equal to the sum of (x) the Rentable Floor Area of the Existing Premises, plus (y) the Rentable Floor Area of the Seventh Amendment F Premises, plus (z) the rentable floor area of all other Premises Components that were incorporated into the Premises on or before, and that constitute part of the Premises as of, such date.

(B) **Commencement Date.** The following definition is hereby added to Section 1.1. of the Lease:

- 13 -

[***] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

“Seventh Amendment F
Premises Commencement
Date: _____

The business day following the date on which Landlord delivers possession of the Seventh Amendment F Premises to Tenant free of all occupants, which is estimated to occur on the earlier of (x) April 1, 2018, and (y) the date selected by Landlord and the current occupant of the Seventh Amendment F Premises if such parties mutually agree upon a separate termination agreement (the “**Seventh Amendment F Premises Target Delivery Date**”). If Landlord and such current occupant enter into a separate termination agreement, then Landlord shall use commercially reasonable efforts to notify Tenant of such selected date within seven (7) days of the full execution and delivery of such termination agreement. If for any reason Landlord fails or is unable to deliver possession of the Seventh Amendment F Premises to Tenant on or before the Seventh Amendment F Premises Target Delivery Date, then (i) Landlord shall not be in default hereunder or be liable for damages therefor, (ii) the validity of the Lease and this Seventh Amendment shall not be affected or impaired thereby, (iii) the Term shall not be extended on account thereof, and (iv) Tenant shall accept possession of the Seventh Amendment F Premises on the date Landlord tenders possession of the Seventh Amendment F Premises to Tenant.”

(C) Outside Delivery Date.

(i) If Landlord shall have failed to deliver possession of the Seventh Amendment F Premises to Tenant free of all occupants on or before July 1, 2018 (the “**Seventh Amendment F Premises Outside Delivery Date**”) (which date shall be extended automatically for such periods of time as Landlord is prevented from so delivering by reason of Force Majeure), Tenant shall have the right to terminate the Lease, as amended, solely as to the Seventh Amendment F Premises by giving notice to Landlord of Tenant’s desire to do so before such delivery and within the time period from the Seventh Amendment F Premises Outside Delivery Date (as so extended) until the date which is thirty (30) days subsequent to the Seventh Amendment F Premises Outside Delivery Date (as so extended); and, upon the giving of such notice, the lease of the Seventh Amendment F Premises (and all rights related thereto) shall cease and come to an end without further liability or obligation on the part of either party unless, within thirty (30) days of such notice, Landlord delivers possession of the Seventh Amendment F Premises to Tenant free of all occupants, in which case, Tenant’s notice shall be deemed null and void and of no further force or effect.

- 14 -

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(ii) If Landlord shall have failed to deliver possession of the Seventh Amendment F Premises to Tenant free of all occupants on or before the Seventh Amendment F Premises Outside Delivery Date (as so extended) and Tenant has not terminated the Lease as provided in Section 5(C)(i) hereinabove, then the Annual Fixed Rent with respect to the Seventh Amendment C Premises as set forth in Section 5(E) below shall be abated by one (1) day for each day beyond the Seventh Amendment F Premises Outside Delivery Date (as so extended) that Landlord thus fails to deliver possession of the Seventh Amendment F Premises, such abatement to be applied commencing on the Seventh Amendment F Premises Commencement Date.

(iii) The foregoing rent abatement and right of termination shall be Tenant's sole and exclusive remedies at law or in equity or otherwise for Landlord's failure to deliver possession of the Seventh Amendment F Premises within the time periods set forth above.

(D) Term. The definition of the "Term" as set forth in Section 1.1 of the Lease, as previously amended, shall be supplemented by adding the following thereto:

"(xiv) As to the Seventh Amendment F Premises (as defined in the Seventh Amendment), a period beginning on the Seventh Amendment F Premises Commencement Date (as defined in the Seventh Amendment) and ending on June 30, 2020, unless extended or sooner terminated as provided in the Lease."

(E) Annual Fixed Rent. Commencing on the Seventh Amendment F Premises Commencement Date and continuing through the expiration of the Term, Annual Fixed Rent for the Seventh Amendment E Premises shall be payable at the annual rate of \$[***] (being the product of (y) \$[***] and (z) the Rentable Floor Area of the Seventh Amendment F Premises (being 12,414 square feet)).

(F) OpEx, Taxes and Electricity. For purposes of computing Tenant's payments for operating expenses pursuant to Section 2.6 of the Lease, Tenant's payments for real estate taxes pursuant to Section 2.7 of the Lease, and Tenant's payments for electricity (as determined pursuant to Section 2.5 and 2.8 of the Lease) respecting the Seventh Amendment F Premises, the "Rentable Floor Area of the Premises" shall be deemed to be the Rentable Floor Area of the Seventh Amendment F Premises (being 12,414 square feet).

(G) Parking. Effective as of the Seventh Amendment F Premises Commencement Date, the Number of Parking Spaces (referenced in Section 1.1 of the Lease) allocated to Tenant under the Lease shall be increased by adding thirty-seven (37) additional spaces to then current Number of Parking Spaces (reflecting an increase at a rate of three (3) spaces per 1,000 square feet of the Rentable Floor Area of the Seventh Amendment F Premises).

(H) Condition of the Seventh Amendment F Premises. Tenant agrees to accept the

- 15 -

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Seventh Amendment F Premises in their “as-is” condition and Landlord shall have no obligation to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto and Landlord shall have no responsibility for the installation or connection of Tenant’s telephone or other communications equipment. Notwithstanding the foregoing, Landlord agrees to deliver the base building systems serving the Seventh Amendment F Premises in good working order and condition on the Seventh Amendment F Premises Commencement Date.

6. **Seventh Amendment Premises Tenant Allowance**

(A) Landlord shall provide Tenant with a special allowance equal to \$[***] (being the product of (x) \$[***], and (y) the Rentable Floor Area of the Seventh Amendment Premises (being 28,521 square feet)) (the “**Seventh Amendment Premises Tenant Allowance**”), which shall be used and applied by Tenant solely on account of the cost of work performed by Tenant in the Seventh Amendment Premises in accordance with the terms of the Lease, as modified by this Seventh Amendment (the “**Seventh Amendment Premises Work**”).

(B) Provided that the Tenant (i) has completed all such Seventh Amendment Premises Work in accordance with the Lease, (ii) has paid for all such Seventh Amendment Premises Work in full and has delivered to Landlord lien waivers from all persons who might have a lien as a result of such work, in recordable forms reasonably acceptable to Landlord, (iii) has delivered to Landlord its certificate specifying the cost of such Seventh Amendment Premises Work and all contractors, subcontractors and suppliers involved with Seventh Amendment Premises Work, together with evidence of such cost in the form of paid invoices, receipts and the like, (iv) has satisfied the requirements of (i), (ii) and (iii) above and made request for such payment on or before December 31, 2018, (v) is not otherwise in default under the Lease after notice and the expiration of any applicable cure period, and (vi) there are no liens (unless bonded to the reasonable satisfaction of Landlord) against Tenant’s interest in the Lease or against the Building or the Site arising out of the Seventh Amendment Premises Work, then within thirty (30) days after the satisfaction of the forgoing conditions, the Landlord shall pay to the Tenant the lesser of the amount of such costs so certified or the amount of the Seventh Amendment Premises Tenant Allowance. For the purposes hereof, the cost to be so reimbursed by Landlord shall include the cost of leasehold improvements but not the cost of any of Tenant’s personal property, trade fixtures or trade equipment or to any so-called soft costs for architectural and engineering fees above the Seventh Amendment Premises Soft Costs Cap (hereinafter defined). The total amount of the Seventh Amendment Premises Tenant Allowance that may be applied towards soft costs for architectural and engineering fees shall not exceed \$[***] (the “**Seventh Amendment Premises Soft Costs Cap**”). Notwithstanding the foregoing, Landlord shall be under no obligations to apply any portion of the Seventh Amendment Premises Tenant Allowance for any purposes other than as provided in this Section 6, nor shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen. Further, in no event shall Landlord be required to make application of any portion of the Seventh Amendment Premises Tenant Allowance towards Tenant’s personal property, trade fixtures or moving expenses or on account of any supervisory fees, overhead, management fees (other than a commercially reasonable third-party management fee charged to Tenant (not to exceed [***])

- 16 -

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percent ([***]%) of the cost of the Seventh Amendment Premises Work)) or other payments to Tenant, or any partner or affiliate of Tenant. In the event that such cost of the Seventh Amendment Premises Work is less than the Seventh Amendment Premises Tenant Allowance, Tenant shall not be entitled to any payment or credit nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under the Lease.

7. **Seventh Amendment Premises Base Years: OpEx and Real Estate Taxes**

(A) For the purposes of computing Tenant's payments for operating expenses pursuant to Section 2.6 of the Lease for each of the Seventh Amendment Premises, commencing on the Seventh Amendment Effective Date, the definition of "Base Operating Expenses" contained in Section 1.1 of the Lease shall be supplemented by adding the following thereto:

"BASE OPERATING EXPENSES: With respect to each of the Seventh Amendment Premises (as defined in the Seventh Amendment), Landlord's Operating Expenses (as defined in Section 2.6 of the Lease) for calendar year 2018, being the period from January 1, 2018 through December 31, 2018."

(B) For the purposes of computing Tenant's payments for real estate taxes pursuant to Section 2.7 of the Lease for each of the Seventh Amendment Premises, commencing on the Seventh Amendment Effective Date, the definition of "Base Taxes" contained in Section 1.1 of the Lease shall be supplemented by adding the following thereto:

"BASE TAXES: With respect to each of the Seventh Amendment Premises (as defined in the Seventh Amendment), Landlord's Tax Expenses (as defined in Section 2.7 of the Lease) for fiscal year 2018, being the period from July 1, 2017 through June 30, 2018."

(C) Such definitions, as previously amended, shall remain unchanged for such purposes with respect to the Existing Premises and the Sixth Amendment Premises.

8. **Commencement Date Agreements.** Promptly following the occurrence of the commencement date and the rent commencement date (if applicable) for each of the Seventh Amendment Premises (except for the Vacant Seventh Amendment Premises), Landlord and Tenant hereby agree to execute a Commencement Date Agreement in the form attached as Exhibit E to the Lease to confirm such dates; provided, however, that if Landlord or Tenant shall fail to execute said Agreement, the commencement date and rent commencement date (if applicable) for each of the Seventh Amendment Premises (except for the Vacant Seventh Amendment Premises) shall be as reasonably determined by Landlord in accordance with the terms hereof.

9. **Brokers.**

- 17 -

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(A) Tenant warrants and represents that Tenant has not dealt with any broker in connection with the consummation of this Seventh Amendment other than Transwestern/RBJ; and in the event any claim is made against Landlord relative to dealings by Tenant with brokers other than Transwestern/RBJ, Tenant shall defend the claim against Landlord with counsel of Tenant's selection first approved by Landlord (which approval will not be unreasonably withheld) and save harmless and indemnify Landlord on account of loss, cost or damage which may arise by reason of such claim.

(B) Landlord warrants and represents that Landlord has not dealt with any broker in connection with the consummation of this Seventh Amendment other than Transwestern/RBJ; and in the event any claim is made against Tenant relative to dealings by Landlord with brokers other than Transwestern/RBJ, Landlord shall defend the claim against Tenant with counsel of Landlord's selection first approved by Tenant (which approval will not be unreasonably withheld) and save harmless and indemnify Tenant on account of loss, cost or damage which may arise by reason of such claim.

10. **Capitalized Terms.** Except as otherwise expressly provided herein, all capitalized terms used herein without definition shall have the same meanings as are set forth in the Lease.
11. **Ratification.** Except as herein amended, the Lease, as previously amended, shall remain unchanged and in full force and effect. All references to the "Lease" shall be deemed to be references to the Lease as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, and the Sixth Amendment and as herein amended.
12. **Authority.** Each of Landlord and Tenant hereby represents and warrants to the other that all necessary action has been taken to enter this Seventh Amendment and that the person signing this Seventh Amendment on its behalf has been duly authorized to do so.
13. **Electronic Signatures.** The parties acknowledge and agree that this Seventh Amendment may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

[page ends here]

- 18 -

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EXECUTED as of the date and year first above written.

WITNESS:

LANDLORD:

BP BAY COLONY LLC, a Delaware limited liability company

BY: BP BAY COLONY HOLDINGS LLC, a Delaware limited liability company, its sole member

BY: BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, its member

BY: BOSTON PROPERTIES, INC., a Delaware Corporation, its general partner

By: /s/ David C. Provost

Name: David C. Provost

Title: SVP

WITNESS:

TENANT:

TESARO, INC., a Delaware corporation

By: /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: EVP & CFO

- 19 -

Tesaro Seventh Amendment to Lease

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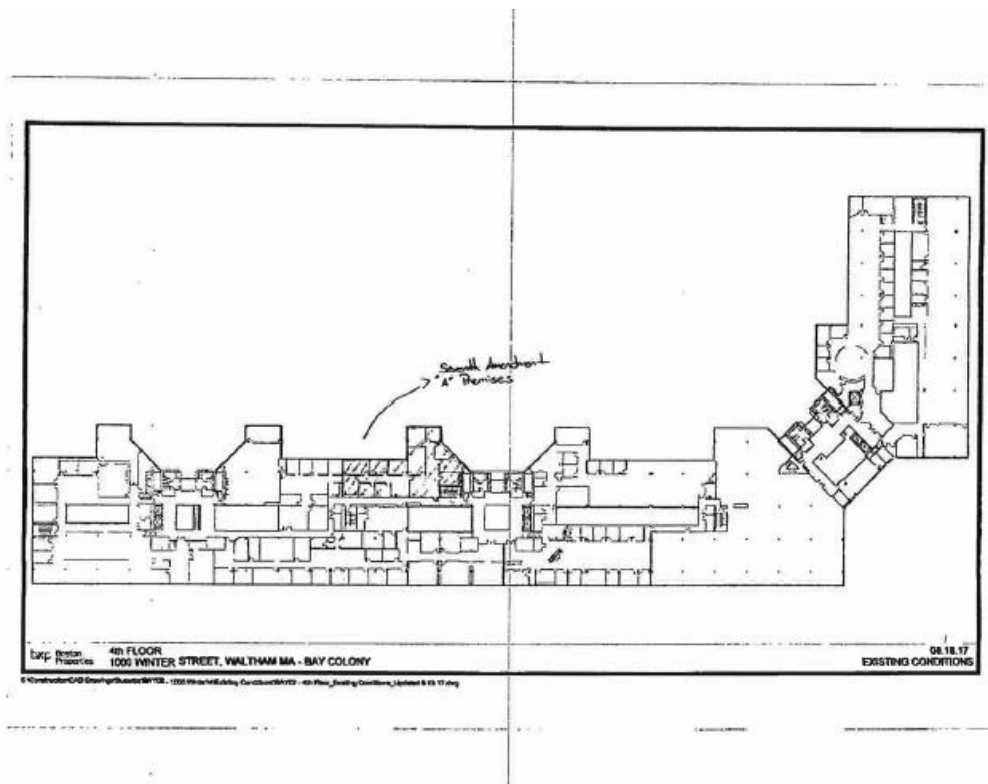
EXHIBIT A

Seventh Amendment A Premises

[Attached]

- 20 -

*** INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.



- 21 -

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EXHIBIT B

Seventh Amendment B Premises

[Attached]

- 22 -

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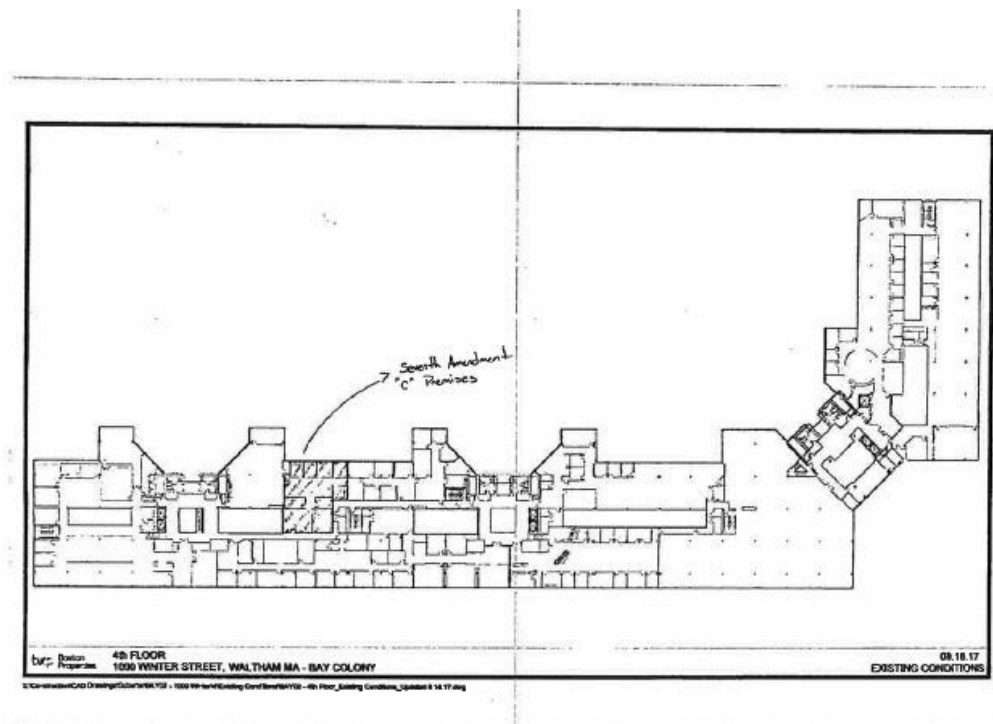
EXHIBIT C

Seventh Amendment C Premises

[Attached]

- 24 -

[*] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.**



- 25 -

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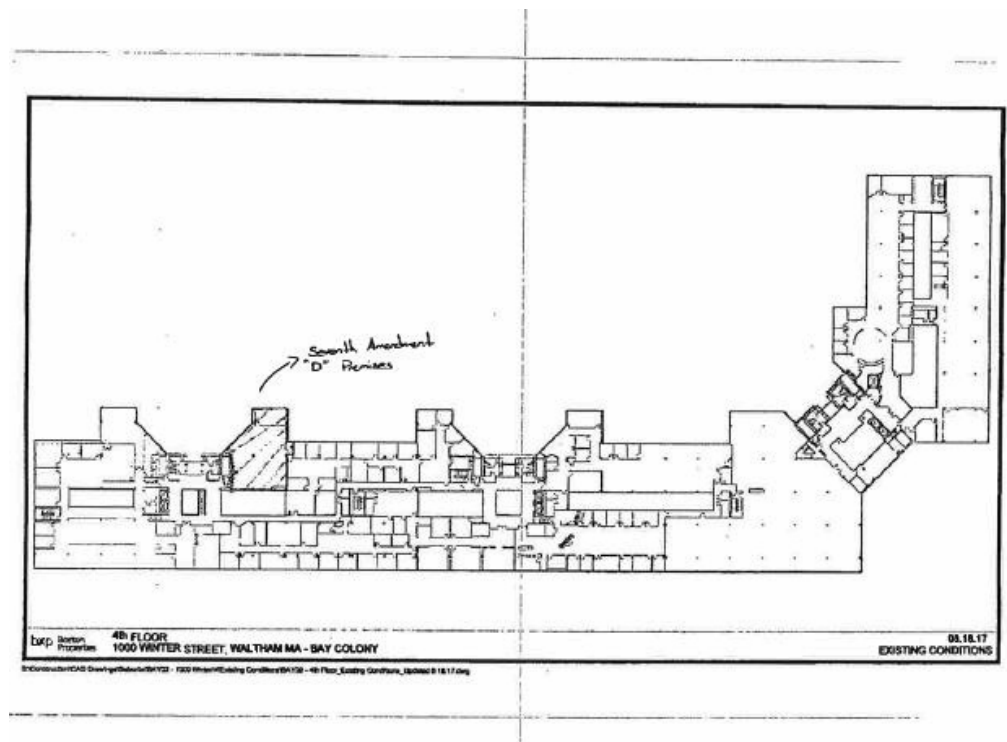
EXHIBIT D

Seventh Amendment D Premises

[Attached]

- 26 -

[*] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.**



- 27 -

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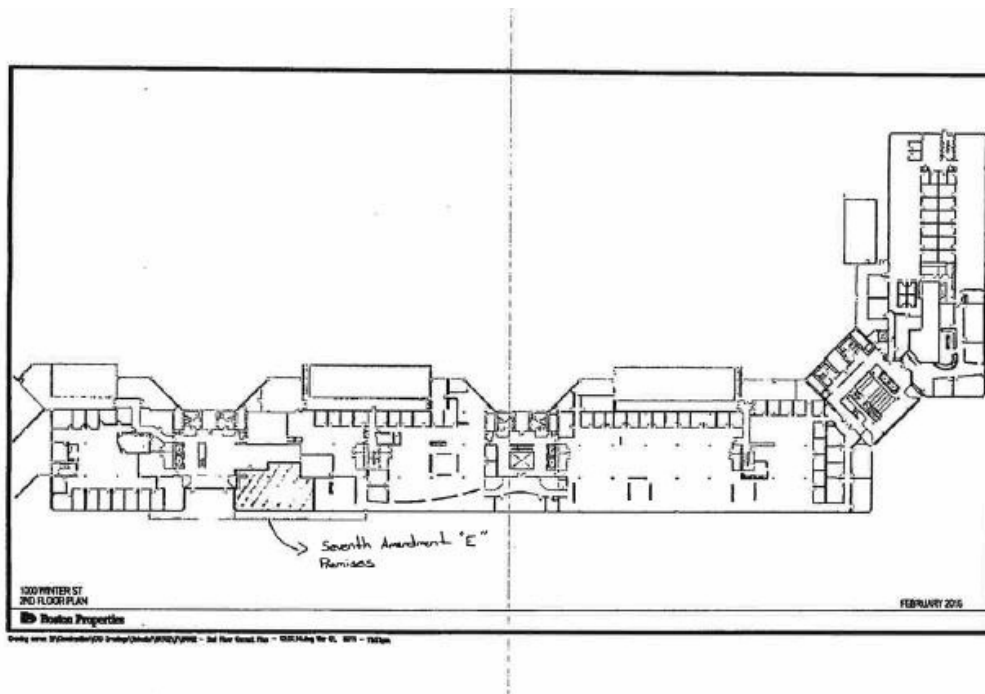
EXHIBIT E

Seventh Amendment E Premises

[Attached]

- 28 -

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- 29 -

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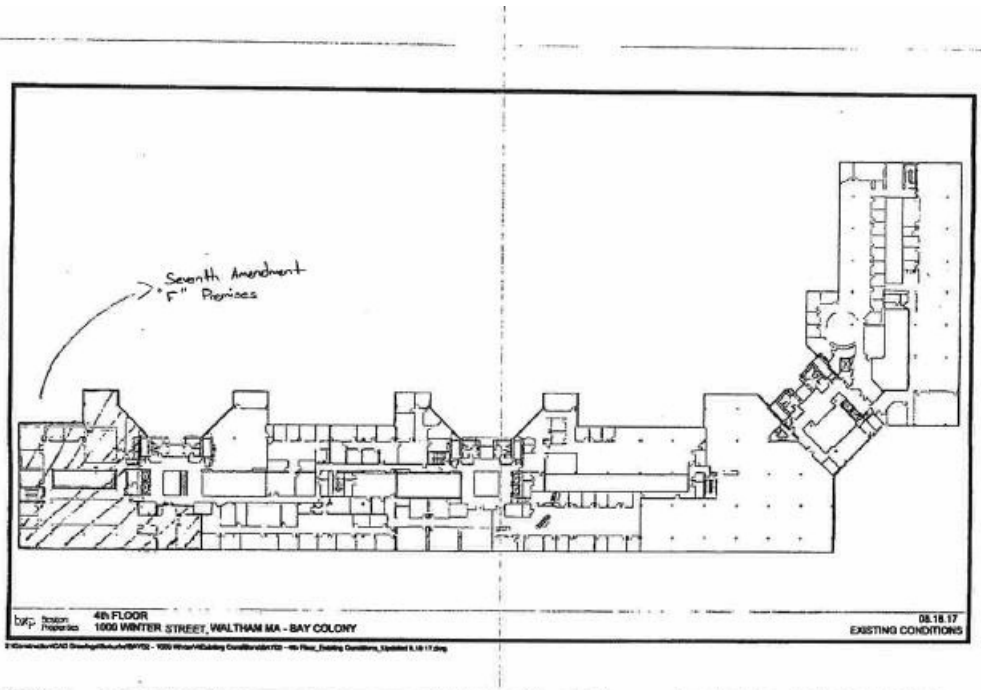
EXHIBIT F

Seventh Amendment F Premises

[Attached]

- 30 -

*** INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24b-2 PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.



- 31 -

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Exhibit 10.47

**BAY COLONY CORPORATE CENTER
1100 WINTER STREET
WALTHAM, MASSACHUSETTS**

Lease Dated December 18, 2017

THIS INSTRUMENT IS AN INDENTURE OF LEASE in which the Landlord and the Tenant are the parties hereinafter named, and which relates to space in a certain building (the "**Building**") known as, and with an address at, 1100 Winter Street, Waltham, Massachusetts 02451.

The parties to this Indenture of Lease hereby agree with each other as follows:

ARTICLE I

Reference Data

1.1 Subjects Referred To

Each reference in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Article:

Landlord:	BP BAY COLONY LLC, a Delaware limited liability company
Landlord's Original Address	c/o Boston Properties Limited Partnership Prudential Center 800 Boylston Street, Suite 1900 Boston, Massachusetts 02199-8103
Landlord's Construction Representative:	***
Tenant:	TESARO, Inc., a Delaware corporation
Tenant's Original Address:	1000 Winter Street, Waltham, MA 02451

Tenant's Email Address for Information Regarding Billings and Statements:	***]
Tenant's Construction Representative:	***]
Commencement Date:	The date hereof.
Rent Commencement Date:	The earlier to occur of (a) the date that is six (6) months following the Commencement Date, and (b) the date Tenant commences occupancy of the Premises for business purposes.
Term or Lease Term (sometimes called the "Original Term"):	The period commencing on the Commencement Date and ending on the last day of the sixtieth (60 th) full calendar month immediately following the Rent Commencement Date, unless sooner terminated as hereinafter provided.
The Site:	That certain parcel of land known as and numbered 1100 Winter Street, Waltham, Middlesex County, Massachusetts.
The Building:	The Building known as and numbered 1100 Winter Street, Waltham, Massachusetts.
The Property:	The Building together with all common areas, parking areas, decks and the Site.
Office Park:	That certain office park known as Bay Colony Corporate Center, containing the Building and the additional buildings known as and numbered 950, 1000, and 1050 Winter Street, Waltham, Massachusetts, located on the property more particularly described in <u>Exhibit A</u> attached hereto.

Page 2

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Tenant's Premises:	A portion of the first (1 st) and second (2 nd) floors of the Building in accordance with the floor plan annexed hereto as <u>Exhibit D</u> and incorporated herein by reference.
Number of Parking Spaces:	Two Hundred and Forty-Nine (249) (being three (3) spaces per 1,000 square feet of the Rentable Floor Area of the Premises).
Annual Fixed Rent:	During the Original Term of this Lease, Annual Fixed Rent shall be payable by Tenant at an annual rate of \$[***] (being the product of (i) \$[***] and (ii) the Rentable Floor Area of the Existing Premises (being 83,389 square feet)
Base Operating Expenses:	Landlord's Operating Expenses (as hereinafter defined in Section 2.6) for calendar year 2018, being January 1, 2018 through December 31, 2018.
Base Taxes:	Landlord's Tax Expenses (as hereinafter defined in Section 2.7) for fiscal tax year 2018, being July 1, 2017 through June 30, 2018.
Tenant Electricity:	As provided in Section 2.8.
Additional Rent:	All charges and other sums payable by Tenant as set forth in this Lease, in addition to Annual Fixed Rent.
Rentable Floor Area of the Premises:	83,389 square feet.
Total Rentable Floor Area of the Building:	275,579 square feet.
Permitted Use:	General office purposes.
Broker(s):	Transwestern.
Security Deposit:	\$[***]

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1.2 Exhibits

There are incorporated as part of this Lease:

- Exhibit A -- Description of Office Park
- Exhibit B-1 -- Work Agreement
- Exhibit B-2 -- Tenant Plan and Working Drawing Requirements
- Exhibit C -- Landlord's Services
- Exhibit D -- Floor Plan
- Exhibit E -- Form of Lien Waivers
- Exhibit F -- [Intentionally Omitted.]
- Exhibit G -- [Intentionally Omitted.]
- Exhibit H -- [Intentionally Omitted.]
- Exhibit I -- Form of Certificate of Insurance
- Exhibit J -- List of Mortgages

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ARTICLE II

Building, Premises, Term and Rent

2.1 The Premises

Landlord hereby demises and leases to Tenant, and Tenant hereby hires and accepts from Landlord, Tenant's Premises in the Building excluding exterior faces of exterior walls, the common stairways and stairwells, elevators and elevator wells, fan rooms, electric and telephone closets, janitor closets, freight elevator vestibules, and pipes, ducts, conduits, wires and appurtenant fixtures serving exclusively or in common other parts of the Building and if Tenant's Premises includes less than the entire rentable area of any floor, excluding the common corridors, elevator lobbies and toilets located on such floor. Tenant's Premises with such exclusions is hereinafter referred to as the "**Premises**."

2.2 Rights to Use Common Facilities

Subject to Landlord's right to change or alter any of the following in Landlord's discretion as herein provided, Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others, subject to reasonable rules of general applicability to tenants of the Building from time to time made by Landlord of which Tenant is given notice (a) the common lobbies, corridors, stairways, elevators and loading platform of the Building, and the pipes, ducts, conduits, wires and appurtenant meters and equipment serving the Premises in common with others, (b) common walkways and driveways necessary for access to the Building, and (c) if the Premises include less than the entire rentable floor area of any floor, the common toilets, corridors and elevator lobby of such floor. Notwithstanding anything to the contrary herein, Landlord has no obligation to allow any particular telecommunication service provider to have access to the Building or to the Premises except as may be required by applicable law. If Landlord permits such access, Landlord may condition such access upon the payment to Landlord by the service provider of fees assessed by Landlord in its sole discretion.

2.2.1 Tenant's Parking

In addition, Tenant shall have the right to use in the parking area the Number of Parking Spaces (referred to in Section 1.1) for the parking of automobiles, in common with use by other tenants from time to time of the Property, provided, however, that Landlord shall not be obligated to furnish stalls or spaces on the Site specifically designated for Tenant's use. In the event that the Rentable Floor Area of the Premises decreases or increases at any time during the Lease Term, the Number of Parking Spaces provided to Tenant hereunder shall be reduced or increased proportionately. Tenant covenants and agrees that it and all persons

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claiming by, through and under it, shall at all times abide by all reasonable rules and regulations promulgated by Landlord with respect to the use of the parking areas on the Site. The parking privileges granted herein are non-transferable. Further, Landlord assumes no responsibility whatsoever for loss or damage due to fire, theft or otherwise to any automobile(s) parked on the Site or to any personal property therein, however caused, and Tenant covenants and agrees, upon request from Landlord from time to time, to notify its officers, employees, agents and invitees of such limitation of liability. Tenant acknowledges and agrees that a license only is hereby granted, and no bailment is intended or shall be created.

2.3 Landlord's Reservations

Landlord reserves the right from time to time, without unreasonable interference with Tenant's use: (a) to install, use, maintain, repair, replace and relocate for service to the Premises and other parts of the Building, or either, pipes, ducts, conduits, wires and appurtenant fixtures, wherever located in the Premises or Building, (b) to perform, or cause to be performed, construction in the common areas and facilities or other leased areas on the Property or in the Office Park and (c) to reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, lay-out and nature of the common areas and facilities and other tenancies and premises on the Property or in the Office Park, to create additional rentable areas through use or enclosure of common areas, and to dedicate roads within the Office Park for public use. Installations, replacements and relocations referred to in clause (a) above shall be located so far as practicable in the central core area of the Building, above ceiling surfaces, below floor surfaces or within perimeter walls of the Premises.

2.4 Habendum

Tenant shall have and hold the Premises for a period commencing on the Commencement Date and continuing for the Term unless sooner terminated as provided in Article VI or Article VII.

2.5 Fixed Rent Payments

Tenant agrees to pay to Landlord (a) on the Rent Commencement Date (defined in Section 1.1 hereof) and thereafter monthly, in advance, on the first day of each and every calendar month during the Term, a sum equal to one twelfth ($1/12^{\text{th}}$) of the Annual Fixed Rent, and (b) on the Commencement Date and thereafter monthly, in advance, on the first day of each and every calendar month during the Term an amount estimated by Landlord from time to time to cover Tenant's monthly payments for electricity under Section 2.8.

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Until notice of some other designation is given, fixed rent and all other charges for which provision is herein made shall be paid by remittance to or for the order of Landlord either (i) by ACH transfer to [***] or (ii) by mail to P.O. Box 3557, Boston, Massachusetts 02241-3557, and in the case of (i) referencing Account Number [***], Tenant's name and the Property address. All remittances received by Boston Properties Limited Partnership as aforesaid, or by any subsequently designated recipient, shall be treated as payment to Landlord.

Annual Fixed Rent for any partial month shall be paid by Tenant to Landlord at such rate on a pro rata basis, and, if the Rent Commencement Date is a day other than the first day of a calendar month, the first payment of Annual Fixed Rent which Tenant shall make to Landlord shall be a payment equal to a proportionate part of such monthly Annual Fixed Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month.

Commencing July 1, 2018 with respect to Taxes and commencing January 1, 2019 with respect to Operating Expenses, Additional Rent on account of Landlord's Operating Expenses and Taxes in accordance with the provisions of this Lease shall be payable by Tenant on a monthly basis, as hereinafter provided, likewise shall be prorated for any partial month, and other provisions of this Lease calling for monthly payments shall be read as incorporating this undertaking by Tenant.

Notwithstanding that the payment of Annual Fixed Rent payable by Tenant to Landlord shall not commence until the Rent Commencement Date, Tenant shall be subject to, and shall comply with, all other provisions of this Lease as and at the times provided in this Lease.

The Annual Fixed Rent and all other charges for which provision is herein made shall be paid by Tenant to Landlord, without offset, deduction or abatement except as otherwise specifically set forth in this Lease.

2.6 Operating Expenses

"Landlord's Operating Expenses" means the cost of operation of the Building and the Site (including, without limitation, costs associated with the operation of other portions of the Office Park, to the extent allocable to the Property) which shall exclude costs of special services rendered to tenants (including Tenant) for which a separate charge is made, but shall include, without limitation, the following: premiums for insurance carried with respect to the Building and the Site (including, without limitation, liability insurance, insurance against loss in case of fire or casualty and insurance of monthly installments of fixed rent and any Additional Rent which may be due under this Lease and other leases of space in the Building for not more than 12 months in the case of both fixed rent and

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Additional Rent and if there be any first mortgage of the Property, including such insurance as may be required by the holder of such first mortgage); compensation and all fringe benefits, worker's compensation insurance premiums and payroll taxes paid to, for or with respect to all persons engaged in the operating, maintaining or cleaning of the Building or Site; water, sewer, electric, gas, oil and telephone charges associated with the common areas of the Building and the Site (excluding utility charges separately chargeable to tenants); cost of building and cleaning supplies and equipment; cost of maintenance, cleaning and repairs (other than repairs not properly chargeable against income or reimbursed from contractors under guarantees); cost of snow removal and care of landscaping; cost of operating, maintaining and cleaning the cafeteria, fitness center and any shared conference facilities serving the Building; payments under service contracts with independent contractors; management fees at reasonable rates for self managed buildings consistent with the type of occupancy and the service rendered; costs of maintaining a regional property management office in connection with the operation, management and maintenance of the Building; all costs of applying and reporting for the Building or any part thereof to seek or maintain certification under the U.S. EPA's Energy Star® rating system, the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system or a similar system or standard; and all other reasonable and necessary expenses paid in connection with the operation, cleaning and maintenance of the Building and the Site and properly chargeable against income. Landlord's Operating Expenses shall include depreciation for capital expenditures made by Landlord during the Lease Term (i) to reduce Landlord's Operating Expenses if Landlord shall have reasonably determined that the annual reduction in Landlord's Operating Expenses shall exceed depreciation therefor or (ii) to comply with applicable laws, rules, regulations, requirements, statutes, ordinances, by-laws and court decisions of all public authorities which first become effective after the date of this Lease (the capital expenditures described in subsections (i) and (ii) being hereinafter referred to as "**Permitted Capital Expenditures**"), plus in the case of both (i) and (ii) an interest factor, reasonably determined by Landlord, as being the interest rate then charged for long term mortgages by institutional lenders on like properties within the locality in which the Building is located, and depreciation in the case of both (i) and (ii) shall be determined by dividing the original cost of such capital expenditure by the number of years of useful life of the capital item acquired and the useful life shall be reasonably determined by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item; provided, however, if Landlord reasonably concludes on the basis of engineering estimates that a particular capital expenditure will effect savings in other Landlord's Operating Expenses, including, without limitation, energy related costs, and that such projected savings will, on an annual basis ("**Projected Annual Savings**"), exceed the annual depreciation therefor, then and in such event the amount of depreciation for such capital expenditure shall be increased to an amount equal to the Projected Annual Savings; and in such circumstance, the increased depreciation (in the amount of the Projected Annual Savings) shall be made for such period of time as it

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would take to fully amortize the cost of the item in question, together with interest thereon at the interest rate as aforesaid in equal monthly payments, each in the amount of 1/12th of the Projected Annual Savings, with such payment to be applied first to interest and the balance to principal.

Notwithstanding the foregoing, the following costs and expenses shall be excluded from Operating Expenses:

- (1) Taxes and Tax Expenses;
- (2) principal or interest on indebtedness, debt amortization or ground rent paid by Landlord in connection with any mortgages, deeds of trust or other financing encumbrances, or ground leases of the Building or the Site;
- (3) capital improvements to the Property except those provided above (and then only to the extent provided above);
- (4) legal, auditing, consulting and professional fees and other costs paid or incurred in connection with financings, refinancings or sales of any interest in Landlord or of Landlord's interest in the Building or the Site or in connection with any ground lease (including, without limitation, recording costs, mortgage recording taxes, title insurance premiums and other similar costs, but excluding those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Building and/or the Site);
- (5) legal fees, space planner's fees, architect's fees, leasing and brokerage commissions, advertising and promotional expenditures and any other marketing expense incurred in connection with the leasing of space in the Building (including new leases, lease amendments, lease terminations and lease renewals);
- (6) the cost of any items to the extent to which such cost is reimbursed to Landlord by tenants of the Property (other than pursuant to this Section 2.6), or other third parties, or is covered by a warranty to the extent of reimbursement for such coverage;
- (7) expenditures for any leasehold improvement which is made in connection with the preparation of any portion of the Building for occupancy by any tenant or which is not made generally to or for the benefit of the Building or the Site;
- (8) the cost of performing work or furnishing service to or for any tenant other than Tenant, at Landlord's expense, to the extent such work or service is in excess of any work or service Landlord is obligated to provide to Tenant or generally to other tenants in the Building at Landlord's expense;

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- (9) the cost of repairs or replacements incurred by reason of fire or other casualty, or condemnation (other than costs not in excess of the deductible on any insurance maintained by Landlord which provides a recovery for such repair or replacement), to the extent Landlord actually receives proceeds of property and casualty insurance policies or condemnation awards or would have received such proceeds had Landlord maintained the insurance required to be maintained by Landlord under this Lease;
- (10) the cost of acquiring sculptures, paintings or other objects of fine art in the Building in excess of amounts typically spent for such items in Class A office buildings of comparable quality in the competitive area of the Building;
- (11) bad debt loss, rent loss, or reserves for bad debt or rent loss;
- (12) unfunded contributions to operating expense reserves by other tenants;
- (13) contributions to charitable or political organizations in excess of amounts typically spent for such contributions in Class A office buildings of comparable quality in the competitive area of the Building;
- (14) damage and repairs necessitated by the gross negligence or willful misconduct of Landlord Parties;
- (15) fees, costs and expenses incurred by Landlord in connection with or relating to claims against or disputes with tenants of the Building;
- (16) interest, fines or penalties for late payment or violations of Legal Requirements by Landlord, if any, except to the extent incurring such expense is either (a) a reasonable business expense under the circumstances or (b) caused by a corresponding late payment or violation of a Legal Requirement by Tenant, in which event Tenant shall be responsible for the full amount of such expense;
- (17) the cost of remediation and removal of "Hazardous Materials" (as that term is defined in Section 5.3 below) in the Building or on the Site required by "Hazardous Materials Laws" (as that term is defined in Section 5.3 below), provided, however, that the provisions of this clause 17 shall not preclude the inclusion of costs with respect to materials (whether existing at the Property as of the date of this Lease or subsequently introduced to the Property) which are not as of the date of this Lease (or as of the date of introduction) deemed to be Hazardous Materials under applicable Hazardous Materials Laws but which are subsequently deemed to be Hazardous Materials under applicable Hazardous Materials Laws (it being understood and agreed that Tenant shall nonetheless

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be responsible for all costs of remediation and removal of Hazardous Materials to the extent caused by Tenant Parties;

(18) costs of replacements, alterations or improvements necessary to make the Building or the Site comply with Legal Requirements in effect and applicable to the Building and/or the Site prior to the date of this Lease, except to the extent the need for such replacements, alterations or improvements is caused by Tenant Parties (in which case Tenant shall nonetheless be responsible for such costs), provided, however, that the provisions of this clause 18 shall not preclude the inclusion of costs of compliance with Legal Requirements enacted prior to the date of this Lease if such compliance is required for the first time by reason of any amendment, modification or reinterpretation of a Legal Requirement which is imposed after the date of this Lease;

(19) costs for the original construction and development of the Building and nonrecurring costs for the repair or replacement of any structural portion of the Building made necessary as a result of defects in the original design, workmanship or materials;

(20) costs and expenses incurred for the administration of the entity which constitutes Landlord, as the same are distinguished from the costs of operation, management, maintenance and repair of the Property, including, without limitation, entity accounting and legal matters;

(21) salaries and all other compensation (including fringe benefits) of partners, officers and executives above the grade of building manager;

(22) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Property unless such wages and benefits are prorated on a reasonable basis to reflect time spent on the operation and management of the Property vis-à-vis time spent on matters unrelated to the operation and management of the Property;

(23) except as may be otherwise expressly provided in this Lease with respect to specific items, the cost of any services or materials provided by any party related to Landlord, to the extent such cost exceeds, the reasonable cost for such services or materials absent such relationship in buildings similar to the Building in the vicinity of the Building; and

(24) depreciation for the Building.

To the extent that Landlord owns other buildings in the Office Park, Landlord's Operating Expenses that relate to the common areas of the Office Park (and not exclusively to the Building or exclusively to any other buildings within the Office Park) shall be reasonably allocated by Landlord among all such buildings in the Office Park.

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“Operating Expenses Allocable to the Premises” shall mean the same proportion of Landlord’s Operating Expenses for and pertaining to the Building and the Site as the Rentable Floor Area of the Premises bears to the Total Rentable Floor Area of the Building.

“Base Operating Expenses” is hereinbefore defined in Section 1.1. Base Operating Expenses shall not include (i) market-wide cost increases due to extraordinary circumstances, including but not limited to, Force Majeure (as defined in Section 6.1), boycotts, strikes, security concerns, conservation surcharges, embargoes or shortages (**“Extraordinary Expenses”**), and (ii) the cost of any Permitted Capital Expenditures. However, if a particular Extraordinary Expense continues for more than twenty-four (24) consecutive months, then during each year after the Base Year in which it continues (and on a pro rata basis if it continues for part, but not all, of a subsequent year), Base Operating Expenses shall include such Extraordinary Expense. By way of example only, if there is a conservation surcharge that constitutes an Extraordinary Expense, and if such surcharge continues for more than twenty-four (24) consecutive months, then for every year after the Base Year in which surcharge exists, Base Operating Expenses shall be increased (in a pro rata basis for partial years after the Base Year) by amount of such surcharge in the Base Year.

“Base Operating Expenses Allocable to the Premises” means the same proportion of Base Operating Expenses for and pertaining to the Building and the Site as the Rentable Floor Area of the Premises bears to the Total Rentable Floor Area of the Building.

If with respect to any calendar year falling within the Term, or fraction of a calendar year falling within the Term at the beginning or end thereof, the Operating Expenses Allocable to the Premises for a full calendar year exceed Base Operating Expenses Allocable to the Premises, or for any such fraction of a calendar year exceed the corresponding fraction of Base Operating Expenses Allocable to the Premises then, Tenant shall pay to Landlord, as Additional Rent, the amount of such excess. Such payments shall be made at the times and in the manner hereinafter provided in this Section 2.6.

Not later than one hundred and twenty (120) days after the end of the first calendar year or fraction thereof ending December 31 and of each succeeding calendar year during the Term or fraction thereof at the end of the Term, Landlord shall render Tenant a statement in reasonable detail and according to usual accounting practices certified by a representative of Landlord, showing for the preceding calendar year or fraction thereof, as the case may be, Landlord’s Operating Expenses and Operating Expenses Allocable to the Premises. Said statement to be rendered to Tenant shall also show for the preceding year or fraction thereof as the case may be the amounts of operating expenses already paid by Tenant as Additional Rent, and the amount of operating expenses remaining due from, or overpaid by, Tenant for the year or other period covered by the statement. Within thirty (30) days after the date of delivery of such statement, Tenant shall pay to Landlord the balance of the

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amounts, if any, required to be paid pursuant to the above provisions of this Section 2.6 with respect to the preceding year or fraction thereof, or Landlord shall credit any amounts due from it to Tenant pursuant to the above provisions of this Section 2.6 against (i) monthly installments of fixed rent next thereafter coming due or (ii) any sums then due from Tenant to Landlord under this Lease (or refund such portion of the overpayment as aforesaid if the Term has ended and Tenant has no further obligation to Landlord).

In addition, Tenant shall make payments monthly on account of Tenant's share of increases in Landlord's Operating Expenses anticipated for the then current year at the time and in the fashion herein provided for the payment of fixed rent. The amount to be paid to Landlord shall be an amount reasonably estimated annually by Landlord to be sufficient to cover, in the aggregate, a sum equal to Tenant's share of such increases in operating expenses for each calendar year during the Term.

Notwithstanding the foregoing, in determining the amount of Landlord's Operating Expenses for any calendar year or portion thereof falling within the Lease Term, if less than ninety-five percent (95%) of the Total Rentable Floor Area of the Building shall have been occupied by tenants at any time during the period in question, then those components of Landlord's Operating Expenses that vary based on occupancy for such period shall be adjusted to equal the amount such components of Landlord's Operating Expenses would have been for such period had occupancy been ninety-five percent (95%) throughout such period.

2.7 Real Estate Taxes

If with respect to any full Tax Year or fraction of a Tax Year falling within the Term, Landlord's Tax Expenses Allocable to the Premises as hereinafter defined for a full Tax Year exceed Base Taxes Allocable to the Premises, or for any such fraction of a Tax Year exceed the corresponding fraction of Base Taxes Allocable to the Premises then, on or before the thirtieth (30th) day following receipt by Tenant of the certified statement referred to below in this Section 2.7, then Tenant shall pay to Landlord, as Additional Rent, the amount of such excess. Not later than ninety (90) days after Landlord's Tax Expenses Allocable to the Premises are determined for the first such Tax Year or fraction thereof and for each succeeding Tax Year or fraction thereof during the Term, Landlord shall render Tenant a statement in reasonable detail certified by a representative of Landlord showing for the preceding year or fraction thereof, as the case may be, real estate taxes on the Building and the Site and abatements and refunds of any taxes and assessments. Expenditures for legal fees and for other expenses incurred in seeking the tax refund or abatement may be charged against the tax refund or abatement before the adjustments are made for the Tax Year. Said statement to be rendered to Tenant shall also show for the preceding Tax Year or fraction thereof as the case may be the amounts of real estate taxes already paid by Tenant as Additional Rent, and the amount of real estate taxes remaining

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due from, or overpaid by, Tenant for the year or other period covered by the statement. Within thirty (30) days after the date of delivery of the foregoing statement, Tenant shall pay to Landlord the balance of the amounts, if any, required to be paid pursuant to the above provisions of this Section 2.7 with respect to the preceding Tax Year or fraction thereof, or Landlord shall within sixty (60) days credit any amounts due from it to Tenant pursuant to the provisions of this Section 2.7 against (i) monthly installments of fixed rent next thereafter coming due or (ii) any sums then due from Tenant to Landlord under this Lease (or refund such portion of the over-payment as aforesaid if the Term has ended and Tenant has no further obligation to Landlord).

In addition, payments by Tenant on account of increases in real estate taxes anticipated for the then current year shall be made monthly at the time and in the fashion herein provided for the payment of fixed rent. The amount so to be paid to Landlord shall be an amount reasonably estimated by Landlord to be sufficient to provide Landlord, in the aggregate, a sum equal to Tenant's share of such increases, at least ten (10) days before the day on which such payments by Landlord would become delinquent.

To the extent that real estate taxes shall be payable to the taxing authority in installments with respect to periods less than a Tax Year, the foregoing statement shall be rendered and payments made on account of such installments.

Terms used herein are defined as follows:

- (i) **"Tax Year"** means the twelve-month period beginning July 1 each year during the Term or if the appropriate governmental tax fiscal period shall begin on any date other than July 1, such other date.
- (ii) **"Landlord's Tax Expenses Allocable to the Premises"** shall mean the same proportion of Landlord's Tax Expenses for and pertaining to the Building and the Site as the Rentable Floor Area of the Premises bears to 95% of the Total Rentable Floor Area of the Building.
- (iii) **"Landlord's Tax Expenses"** with respect to any Tax Year means the aggregate real estate taxes on the Building and Site with respect to that Tax Year, reduced by any abatement receipts with respect to that Tax Year.
- (iv) **"Base Taxes"** is hereinbefore defined in Section 1.1.
- (v) **"Base Taxes Allocable to the Premises"** means the same proportion of Base Taxes for and pertaining to the Building and the Site as the Rentable Floor Area of the Premises bears to the Total Rentable Floor Area of the Building.

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- (vi) **“Real estate taxes”** means all taxes and special assessments of every kind and nature and user fees and other like fees assessed by any governmental authority on the Building or Site which the Landlord shall become obligated to pay because of or in connection with the ownership, leasing and operation of the Site, the Building and the Property (including without limitation, if applicable, the excise prescribed by Massachusetts General Laws (Ter Ed) Chapter 121A, Section 10 and amounts in excess thereof paid to the City of Waltham pursuant to agreement between Landlord and the City) and reasonable expenses of and fees for any formal or informal proceedings for negotiation or abatement of taxes (collectively, **“Abatement Expenses”**), which Abatement Expenses shall be excluded from Base Taxes. The amount of special taxes or special assessments to be included shall be limited to the amount of the installment (plus any interest, other than penalty interest, payable thereon) of such special tax or special assessment required to be paid during the year in respect of which such taxes are being determined. There shall be excluded from such taxes all income, estate, succession, inheritance, franchise, unincorporated business, recording, arena, stadium, entertainment and transfer taxes; provided, however, that if at any time during the Term the present system of ad valorem taxation of real property shall be changed so that expressly in lieu of the whole or any part of the ad valorem tax on real property there shall be assessed on Landlord a capital levy or other tax on the gross rents received with respect to the Site or Building or Property, federal, state, county, municipal, or other local income, franchise, excise or similar tax, assessment, levy or charge (distinct from any now in effect in the jurisdiction in which the Property is located) measured by or based, in whole or in part, upon any such gross rents, then any and all of such taxes, assessments, levies or charges, to the extent so measured or based, shall be deemed to be included within the term “real estate taxes” but only to the extent that the same would be payable if the Site and Buildings were the only property of Landlord.
- (vii) If during the Lease Term the Tax Year is changed by applicable law to less than a full 12-month period, the Base Taxes and Base Taxes Allocable to the Premises shall each be proportionately reduced.

Subject to the provisions of this Section and provided that no Event of Default of Tenant exists, Tenant shall have the right to examine the correctness of the Landlord’s Operating Expense statement or any item contained therein:

1. Any request for examination in respect of any “Operating Year” (as defined hereinbelow) may be made by notice from Tenant to Landlord no more than sixty

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(60) days after the date (the “**Operating Expense Statement Date**”) Landlord provides Tenant a statement of the actual amount of the Landlord’s Operating Expenses in respect of such Operating Year and only if Tenant shall have fully paid such amount. Such notice shall set forth in reasonable detail the matters questioned. Any examination must be completed and the results communicated to Landlord no more than 365 days after the Operating Expense Statement Date. “**Operating Year**” shall mean a period of twelve (12) consecutive calendar months, commencing on the first day of January in each year, except that the first Operating Year of the Lease Term hereof shall be the period commencing on the Commencement Date and ending on the succeeding December 31, and the last Operating Year of the Lease Term hereof shall be the period commencing on January 1 of the calendar year in which the Lease Term ends, and ending with the date on which the Lease Term ends.

2. Tenant hereby acknowledges and agrees that Tenant’s sole right to contest the Operating Expense statement shall be as expressly set forth in this Section. Tenant hereby waives any and all other rights provided pursuant to applicable laws to inspect Landlord’s books and records and/or to contest the Operating Expense statement. If Tenant shall fail to timely exercise Tenant’s right to inspect Landlord’s books and records as provided in this Section, or if Tenant shall fail to timely communicate to Landlord the results of Tenant’s examination as provided in this Section, with respect to any Operating Year Landlord’s statement of Landlord’s Operating Expenses shall be conclusive and binding on Tenant.
3. So much of Landlord’s books and records pertaining to the Landlord’s Operating Expenses for the specific matters questioned by Tenant for the Operating Year included in Landlord’s statement shall be made available to Tenant within a reasonable time after Landlord timely receives the notice from Tenant to make such examination pursuant to this Section, either electronically or during normal business hours at the offices where Landlord keeps such books and records or at another location, as determined by Landlord.
4. Tenant shall have the right to make such examination no more than once in respect of any Operating Year in which Landlord has given Tenant a statement of the Landlord’s Operating Expenses.
5. Such examination may be made only by a qualified employee of Tenant or a qualified independent certified public accounting firm approved by Landlord. No examination shall be conducted by an examiner who is to be compensated, in whole or in part, on a contingent fee basis.

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6. As a condition to performing any such examination, Tenant and its examiners shall be required to execute and deliver to Landlord an agreement, in form acceptable to Landlord, agreeing to keep confidential any information which it discovers about Landlord or the Building in connection with such examination.
7. No subtenant shall have any right to conduct any such examination and no assignee may conduct any such examination with respect to any period during which the assignee was not in possession of the Premises.
8. All of Tenant's costs and expenses of any such examination shall be paid by Tenant, except if such examination shows that the amount of the Landlord's Operating Expenses payable by Tenant was overstated by more than [***] percent ([***]%), Landlord shall reimburse Tenant for the reasonable out-of-pocket costs and expenses incurred by Tenant in such examination, up to a maximum of \$[***].

2.8 Tenant Electricity

If with respect to any calendar year falling within the Term or fraction of a calendar year falling within the Term at the beginning or end thereof, the cost of furnishing electricity for lights and plugs and the distribution components of the heating, ventilating and air conditioning system to the spaces occupied by tenants within the Building (but expressly excluding utility charges that are (i) measured by separate meters serving individual tenant premises within the Building or (ii) separately chargeable to tenants for additional or special services) for a full calendar year exceeds the estimated payments for tenant electricity (payable pursuant to Section 2.5 hereof), or for any such fraction of a calendar year exceeds the corresponding fraction of such estimated payments, then Tenant shall pay to Landlord, as Additional Rent, on or before the thirtieth (30th) day following receipt by Tenant of the statement referred to below in this Section 2.8, its proportionate share of the amount of such excess (i.e. the same ratio of such excess as the Rentable Floor Area of the Premises bears to the total rentable floor area of the Building from time to time under lease to tenants, other than those who are separately metered). If the Landlord shall reasonably determine that the cost of the electricity furnished to the Tenant at the Premises exceeds the amount being paid under Sections 2.5 and 2.8, then the Landlord may charge the Tenant for such excess and the Tenant shall promptly pay the same upon billing therefor. Also, in the event that there is located in the Premises a data center containing high density computing equipment, as defined in the U.S. EPA's Energy Star® rating system ("Energy Star"), Landlord may, at any time during the Term, require the installation in accordance with Energy Star of separate metering or check metering equipment (Tenant being responsible for the costs of any such meter or check meter and the installation and connectivity thereof) provided that Landlord requires such installation by other tenants of the Building with similar high density computing equipment, recognizing that differing circumstances may justify different treatment. Tenant shall directly pay to the utility all

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electric consumption on any meter and shall pay to Landlord, as Additional Rent, all electric consumption on any check meter within thirty (30) days after being billed thereof by Landlord, in addition to other electric charges payable by Tenant under the Lease.

Not later than ninety (90) days after the end of the first calendar year or fraction thereof ending December 31 and of each succeeding calendar year during the Term or fraction thereof at the end of the Term, Landlord shall render Tenant a reasonably detailed accounting certified by a representative of Landlord showing for the preceding calendar year, or fraction thereof, as the case may be, the costs of furnishing electricity to the Building. Said statement to be rendered to Tenant also shall show for the preceding year or fraction thereof, as the case may be, the amount already paid by Tenant on account of electricity, and the amount remaining due from, or overpaid by, Tenant for the year or other period covered by the statement. If said statement reflects an overpayment by Tenant, the Landlord, at its option, shall refund to Tenant the amount of such overpayment within thirty (30) days after the date of such statement or apply a credit in the amount of such overpayment to Tenant's next payment on account of electricity.

ARTICLE III

Condition of Premises; Alterations

3.1 Preparation of Premises

The condition of the Premises upon Landlord's delivery along with any work to be performed by either Landlord or Tenant shall be as set forth in the Work Agreement attached hereto as **Exhibit B-1** and made a part hereof.

ARTICLE IV

Landlord's Covenants; Interruptions and Delays

4.1 Landlord Covenants

4.1.1 Services Furnished by Landlord

To furnish services, utilities, facilities and supplies set forth in **Exhibit C** equal to those customarily provided by landlords in high quality buildings in the Boston West Suburban Market subject to escalation reimbursement in accordance with Section 2.6.

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4.1.2 Additional Services Available to Tenant

To furnish, at Tenant's expense, reasonable additional Building operation services which are usual and customary in similar office buildings in the Boston West Suburban Market upon reasonable advance request of Tenant at reasonable and equitable rates from time to time established by Landlord. Tenant agrees to pay to Landlord, as Additional Rent, the cost of any such additional Building services requested by Tenant and for the cost of any additions, alterations, improvements or other work performed by Landlord in the Premises at the request of Tenant within thirty (30) days after being billed therefor.

4.1.3 Roof, Exterior Wall, Floor Slab and Common Facility Repairs

Except for (a) normal and reasonable wear and use and (b) damage caused by fire and casualty and by eminent domain, and except as otherwise provided in Article VI and subject to the escalation provisions of Section 2.6, (i) to make such repairs to the roof, exterior walls, floor slabs and common areas and facilities as may be necessary to keep them in good condition and (ii) to maintain the Building (exclusive of Tenant's responsibilities under this Lease) in a first class manner comparable to the maintenance of similar properties in the Boston West Suburban Market.

4.1.4 Door and Building Signs

- (A) To provide and install, at Landlord's expense, letters or numerals on exterior doors in the Premises to identify Tenant's official name and Building address. Furthermore, Landlord, at Landlord's expense, shall include Tenant's name on the main directory in the Building lobby. All such letters and numerals and signage installed pursuant to this Section 4.1.4(A) shall be in the building standard graphics and no others shall be used or permitted on the Premises, except as otherwise expressly set forth in Section 4.1.4(B) below.
- (B) In addition to the signage rights allocated to Tenant pursuant to Section 4.1.4(A) above, for so long as (i) Tenant directly leases and occupies a minimum of 80,000 square feet of rentable floor area in the Building, (ii) no Event of Default exists, and (iii) Tenant has not assigned this Lease or sublet more than twenty-five percent (25%) of the Premises (except for an assignment or subletting to a Permitted Transferee), Tenant shall be permitted to:

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- i. at Tenant's expense, erect an exterior sign in the area of the north entrance to the Building containing Tenant's name in a size, design and location consistent with Tenant's existing exterior signage currently located at the 1000 Winter Street building. In addition, the design, proportions, method of installation, and color of such signage shall be subject to the prior reasonable approval of Landlord and shall be further subject to the requirements of the Zoning By-Law of the City of Waltham and any other applicable laws and to Tenant obtaining all necessary permits and approvals therefor. Tenant acknowledges and agrees that, except as otherwise set forth in this Section, Tenant's right to corporate signage on the Building pursuant to this Section is not on an exclusive basis and that Landlord may grant other tenants in the Complex the right to signage on the Site, provided, however that no other tenant shall be granted any exterior signage rights (and no other tenant shall be permitted to erect exterior signage) in the area of the north entrance to the Building for so long as the above conditions to such signage remain satisfied;
- ii. have Landlord install, at Landlord's expense, identity signage on the existing monument located at the North entrance to 1100 Winter Street, subject to Landlord's reasonable prior approval as to the location, design, proportions, method of installation, and color of such signage and to the requirements of the Zoning By-Law of the City of Waltham and any other applicable laws and to Tenant obtaining all necessary permits and approvals therefor; and
- iii. In the event building and/or monument signage is erected pursuant to this Section 4.1.4(B) and the conditions set forth in the first paragraph of this Section 4.1.4(B) are no longer satisfied, Tenant agrees that, upon notice from Landlord, it shall remove the signage described in Section 4.1.4(B)(i) above at Tenant's expense and repair any damage caused by the installation or removal of such signage.

4.2 Interruptions and Delays in Services and Repairs, Etc.

Landlord shall not be liable to Tenant for any compensation or reduction of rent by reason of inconvenience or annoyance or for loss of business arising from the necessity of Landlord or its agents entering the Premises for any of the purposes in this Lease authorized, or for repairing the Premises or any portion of the Building however the necessity may occur. In case Landlord is prevented or delayed from making any repairs,

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alterations or improvements, or furnishing any services or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause reasonably beyond Landlord's control, including without limitation by reason of Force Majeure (as defined in Section 6.1 hereof), Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in Article VI, shall Tenant be entitled to any abatement or reduction of rent by reason thereof, or right to terminate this Lease, nor shall the same give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the Premises.

Notwithstanding the foregoing, and solely for the purposes of this Section 4.2, an "**Abatement Event**" shall be defined as an event or circumstance resulting from or caused by any failure of Landlord to provide electrical, heating, ventilating, air conditioning, or all elevator service to the Premises or access to the Premises that prevents Tenant from using the Premises or any portion thereof, but only as a result of causes which are covered by Landlord's loss of rentals insurance. Tenant shall give Landlord notice ("**Abatement Notice**") of any such Abatement Event, and if such Abatement Event continues beyond the "Eligibility Period" (as that term is defined below), then the Annual Fixed Rent and Tenant's payments on account of Landlord's Tax Expenses Allocable to the Premises and Operating Expenses Allocable to the Premises shall be abated entirely or reduced, as the case may be, in an amount equal to the "Insurance Amount" (hereinafter defined) after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total Rentable Floor Area of the Premises. The term "**Eligibility Period**" shall mean (i) in connection with a failure by Landlord to provide required services or access to the Premises due to an event or circumstance within Landlord's reasonable control and which are as a result of causes which are covered by Landlord's loss of rentals insurance, a period of seven (7) consecutive days after Landlord's receipt of any Abatement Notice(s) and (ii) in connection with a failure by Landlord to provide required services or access to the Premises due to an event or circumstance not within Landlord's reasonable control, a period of thirty (30) consecutive days after Landlord's receipt of any Abatement Notice(s). The "**Insurance Amount**" shall be an amount equal to the payment actually received by Landlord (but only allocable to and on account of the Premises) for such shut down of electricity service to the Premises from Landlord's insurance carrier providing such loss of rents insurance less the amount of any deductible contained in such loss of rents insurance coverage. Notwithstanding anything herein contained to the contrary, in no event shall any of the events referred to in this Section 4.2 give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the Premises.

Landlord reserves the right to stop any service or utility system, when necessary by reason of accident or emergency, or until necessary repairs have been completed; provided,

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however, that in each instance of stoppage, Landlord shall exercise reasonable diligence to eliminate the cause thereof. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

ARTICLE V

Tenant's Covenants

Tenant covenants and agrees to the following during the Term and such further time as Tenant occupies any part of the Premises:

5.1 Payments

To pay when due all fixed rent and Additional Rent and all charges for utility services rendered to the Premises (except as otherwise provided in Exhibit C) and, as further Additional Rent, all charges for additional services rendered pursuant to Section 4.1.2. In the event Tenant pays any utilities for the Premises directly to the utility company or provider, Tenant shall grant Landlord access to Tenant's account with such utility company or provider so that Landlord can review the utility bills relating to the Premises

5.2 Repair and Yield Up

Except as otherwise provided in Article VI and Section 4.1.3 to keep the Premises in good order, repair and condition, reasonable wear and tear only excepted, and all glass in windows (except glass in exterior walls unless the damage thereto is attributable to Tenant's negligence or misuse) and doors of the Premises whole and in good condition with glass of the same type and quality as that injured or broken, damage by fire or taking under the power of eminent domain only excepted, and at the expiration or termination of this Lease peaceably to yield up the Premises all construction, work, improvements, and all alterations and additions thereto in good order, repair and condition, reasonable wear and tear only excepted, first removing all goods and effects of Tenant and, to the extent specified by Landlord by notice to Tenant given at least ten (10) days before such expiration or termination, the wiring for Tenant's computer, telephone and other communication systems and equipment whether located in the Premises or in any other portion of the Building, including all risers and all alterations and additions made by Tenant and all partitions, and repairing any damage caused by such removal and restoring the Premises and leaving them clean and neat. Tenant shall not permit or commit any waste, and Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to common areas in the Building, to the Site or to the other buildings caused by Tenant, Tenant's agents, contractors, employees, sublessees, licensees, concessionaires or invitees.

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5.3 Use

Continuously from the commencement of the Term to use and occupy the Premises for the Permitted Use only, and not to injure or deface the Premises, Building, the Additional Building, the Site or any other part of the Property nor to permit in the Premises or on the Site any auction sale, vending machine, or inflammable fluids or chemicals, or nuisance, or the emission from the Premises of any objectionable noise or odor, nor to permit in the Premises anything which would in any way result in the leakage of fluid or the growth mold, and not to use or devote the Premises or any part thereof for any purpose other than the Permitted Uses, nor any use thereof which is inconsistent with the maintenance of the Building as an office building of the first class in the quality of its maintenance, use and occupancy, or which is improper, offensive, contrary to law or ordinance or liable to invalidate or increase the premiums for any insurance on the Building or its contents or liable to render necessary any alteration or addition to the Building. Further, (i) Tenant shall not, nor shall Tenant permit its employees, invitees, agents, independent contractors, contractors, assignees or subtenants to, keep, maintain, store or dispose of (into the sewage or waste disposal system or otherwise) or engage in any activity which might produce or generate any substance which is or may hereafter be classified as a hazardous material, waste or substance (collectively "**Hazardous Materials**"), under federal, state or local laws, rules and regulations, including, without limitation, 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 9601 et seq., 42 U.S.C. Section 2601 et seq., 49 U.S.C. Section 1802 et seq. and Massachusetts General Laws, Chapter 21E and the rules and regulations promulgated under any of the foregoing, as such laws, rules and regulations may be amended from time to time (collectively "**Hazardous Materials Laws**"), (ii) Tenant shall immediately notify Landlord of any incident in, on or about the Premises, the Building or the Site that would require the filing of a notice under any Hazardous Materials Laws, (iii) Tenant shall comply and shall cause its employees, invitees, agents, independent contractors, contractors, assignees and subtenants to comply with each of the foregoing and (iv) Landlord shall have the right to make such inspections (including testing) as Landlord shall elect from time to time to determine that Tenant is complying with the foregoing.

5.4 Obstructions; Items Visible From Exterior; Rules and Regulations

Not to obstruct in any manner any portion of the Building not hereby leased or any portion thereof or of the other buildings or of the Site used by Tenant in common with others; not without prior consent of Landlord (which shall be in Landlord's sole discretion) to permit the painting or placing of any signs, curtains, blinds, shades, awnings, aerials or flagpoles, or the like, visible from outside the Premises (including, without limitation, from common lobbies within the Building); and to comply with all reasonable rules and regulations now or hereafter made by Landlord, of which Tenant has been given notice, for the care and use

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of the Building and Site and their facilities and approaches; Landlord shall not be liable to Tenant for the failure of other occupants of the Buildings to conform to such rules and regulations.

5.5 Safety Appliances

To keep the Premises equipped with all safety appliances required by any public authority because of any use made by Tenant other than normal office use, and to procure all licenses and permits so required because of such use and, if requested by Landlord, to do any work so required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way Tenant's Permitted Use.

5.6 Assignment; Sublease

Except as otherwise expressly provided herein, Tenant covenants and agrees that it shall not assign, mortgage, pledge, hypothecate or otherwise transfer this Lease and/or Tenant's interest in this Lease or sublet (which term, without limitation, shall include granting of concessions, licenses or the like) the whole or any part of the Premises. Any assignment, mortgage, pledge, hypothecation, transfer or subletting not expressly permitted in or consented to by Landlord under Sections 5.6.1-5.6.6 shall, at Landlord's election, be void; shall be of no force and effect; and shall confer no rights on or in favor of third parties. In addition, Landlord shall be entitled to seek specific performance of or other equitable relief with respect to the provisions hereof.

5.6.1 (A) Notwithstanding the provisions of Section 5.6 above, in the event Tenant desires to market the Premises for a proposed assignment or subletting of the Premises, Tenant may notify Landlord in writing of its intent to seek a possible assignee or subtenant (such notice being hereinafter referred to as "**Tenant's Marketing Notice**") and Landlord shall have the right at its sole option, to be exercised within thirty (30) days after receipt of Tenant's Marketing Notice, to terminate this Lease as of a date specified in a notice to Tenant, which date shall not be earlier than thirty (30) days after Landlord's notice to Tenant; provided, however, that upon the termination date as set forth in Landlord's notice, all obligations relating to the period after such termination date (but not those relating to the period before such termination date) shall cease and promptly upon being billed therefor by Landlord, Tenant shall make final payment of all Annual Fixed Rent and Additional Rent due from Tenant through the termination date. In the event that Landlord shall not exercise its termination rights as aforesaid, or shall fail to give any or timely notice pursuant to this Section the provisions of Section 5.6.1(B) and Sections 5.6.2-5.6.5 shall be applicable. This Section 5.6.1(A) shall not be applicable to an assignment or sublease pursuant to Section 5.6.4 below.

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(B) Notwithstanding the provisions of Section 5.6 above, in the event Tenant desires to assign this Lease or to sublet the whole (but not part) of the Premises (no partial subletting being permitted other than as provided in Section 5.6.4 below), Tenant shall give Landlord notice (the “**Proposed Transfer Notice**”) of any proposed sublease or assignment, and said notice shall specify the provisions of the proposed assignment or subletting, including (a) the name and address of the proposed assignee or subtenant, (b) in the case of a proposed assignment or subletting pursuant to Section 5.6.3 below, such information as to the proposed assignee’s or proposed subtenant’s net worth and financial capability and standing as may reasonably be required for Landlord to make the determination referred to in said Section 5.6.3 (provided, however, that Landlord shall hold such information confidential having the right to release same to its officers, accountants, attorneys and mortgage lenders on a confidential basis), (c) all of the terms and provisions upon which the proposed assignment or subletting is to be made, (d) in the case of a proposed assignment or subletting pursuant to Section 5.6.3 below, all other information necessary to make the determination referred to in said Section 5.6.3 and (e) in the case of a proposed assignment or subletting pursuant to Section 5.6.4 below, such information as may be reasonably required by Landlord to determine that such proposed assignment or subletting complies with the requirements of said Section 5.6.4. In addition to the other requirements set forth in this Lease and notwithstanding any other provision of this Lease, partial sublettings of the Premises shall only be permitted under the following terms and conditions: (i) the layout of both the subleased premises and the remainder of the Premises must comply with applicable laws, ordinances, rules and/or regulations and be reasonably approved by Landlord, including, without limitation, all requirements concerning access and egress; (ii) in the event the subleased premises are separately physically demised from the remainder of the Premises, Tenant shall pay all costs of separately physically demising the subleased premises (collectively, “**Demising Work**”); (iii) at the expiration or earlier termination of the Lease, Tenant shall, at Tenant’s sole cost and expense, remove all Demising Work and restore the Premises to their condition immediately prior to any such demising work; and (iv) there shall be no more than one (1) sublease in effect in the Premises at any given time.

- 5.6.2 Except in the event Tenant shall have delivered Tenant’s Marketing Notice pursuant to Section 5.6.1(A) above and Landlord shall not have exercised the termination right set forth in such Section, Landlord shall have the right at its sole option, to be exercised within thirty (30) days after receipt of Tenant’s Proposed Transfer Notice (the “**Acceptance Period**”), to terminate this Lease as of a date specified in a notice to Tenant, which date shall not be earlier than thirty (30) days after Landlord’s notice to Tenant; provided, however, that upon the termination date as set forth in Landlord’s notice, all obligations relating to the period after such

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termination date (but not those relating to the period before such termination date) shall cease and within thirty (30) days after being billed therefor by Landlord, Tenant shall make final payment of all Annual Fixed Rent and Additional Rent due from Tenant through the termination date, provided further, that such notice of termination shall be null and void and of no force and effect and this Lease shall remain in full force and effect, if within five (5) days after Landlord's Termination Notice, Tenant notifies Landlord that Tenant withdraws Tenant's request to assign the Lease or sublet the Premises. In the event that Landlord shall not exercise its termination rights as aforesaid, or shall fail to give any or timely notice pursuant to this Section the provisions of Sections 5.6.3, 5.6.5 and 5.6.6 shall be applicable. This Section 5.6.2 shall not be applicable to an assignment or sublease pursuant to Section 5.6.4.

- 5.6.3 Notwithstanding the provisions of Section 5.6 above, but subject to the provisions of this Section 5.6.3 and the provisions of Sections 5.6.5 and 5.6.6 below, in the event that (i) Tenant shall have elected not to deliver any Tenant's Marketing Notice pursuant to Section 5.6.1(A) above and Landlord shall not have exercised the termination right set forth in Section 5.6.2 or shall have failed to give timely notice under Section 5.6.2 or (ii) Tenant shall have delivered a Tenant's Marketing Notice and Landlord shall not have exercised the termination right as set forth in Section 5.6.2, or shall have failed to give any or timely notice under Section 5.6.2, 5.6.1(A), then for a period of one hundred eighty (180) days (i) after the receipt of Landlord's notice stating that Landlord does not elect the termination right, or (ii) after the expiration of the Acceptance Period, in the event Landlord shall not give any or timely notice under Section 5.6.2 as the case may be, Tenant shall have the right to assign this Lease or sublet the Premises (in whole or in part) in accordance with the Proposed Transfer Notice provided that, in each instance, Tenant first obtains the express prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

Without limiting the foregoing standard, Landlord shall not be deemed to be unreasonably withholding its consent to such a proposed assignment or subleasing if:

- (a) the proposed assignee or subtenant is a tenant in the Building or elsewhere within the Office Park or is in active negotiation with Landlord or an affiliate of Landlord for premises in the Building or elsewhere within the Office Park or is not of a character consistent with the operation of a first class office building (by way of example Landlord shall not be deemed to be unreasonably withholding its consent to an assignment or subleasing to any governmental or quasi-governmental agency), or

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- (b) the proposed assignee or subtenant is not of good character and reputation, or
- (c) the proposed assignee or subtenant does not possess adequate financial capability to perform the Tenant obligations as and when due or required, or
- (d) the assignee or subtenant proposes to use the Premises (or part thereof) for a purpose other than the purpose for which the Premises may be used as stated in Section 1.1 hereof, or
- (e) the character of the business to be conducted or the proposed use of the Premises by the proposed subtenant or assignee shall (i) be likely to increase Landlord's Operating Expenses beyond that which Landlord now incurs for use by Tenant; (ii) be likely to increase the burden on elevators or other Building systems or equipment over the burden generated by normal and customary office usage; or (iii) violate or be likely to violate any provisions or restrictions contained herein relating to the use or occupancy of the Premises, or
- (f) there shall be existing an Event of Default (defined in Section 7.1) or there have been three (3) or more Event of Default occurrences during the Term, or
- (g) the proposed rent and other charges to be payable by the proposed assignee or subtenant are less than the market rent and other charges for first class office space for properties of a similar character in the Boston West Suburban market, or
- (h) any part of the rent payable under the proposed assignment or sublease shall be based in whole or in part on the income or profits derived from the Premises or if any proposed assignment or sublease shall potentially have any adverse effect on the real estate investment trust qualification requirements applicable to Landlord and its affiliates, or
- (i) the holder of any mortgage or ground lease on property which includes the Premises does not approve of the proposed assignment or sublease, or

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- (j) due to the identity or business of a proposed assignee or subtenant, such approval would cause Landlord to be in violation of any covenant or restriction contained in another lease or other agreement affecting space in the Building or elsewhere in the Property.

If Landlord shall consent to the proposed assignment or subletting, as the case may be, then, in such event, Tenant may thereafter sublease (the whole but not part of the Premises) or assign pursuant to Tenant's notice, as given hereunder; provided, however, that if such assignment or sublease shall not be executed and delivered to Landlord within ninety (90) days after the date of Landlord's consent, the consent shall be deemed null and void and the provisions of Section 5.6.1 shall be applicable.

- 2.1.4 Notwithstanding the foregoing provisions of Sections 5.6, 5.6.2 and 5.6.3 above, but subject to the provisions of Sections 5.6.5 and 5.6.6 below, Tenant shall have the right to assign this Lease or to sublet the Premises (in whole or in part) to any other entity (the "**Successor Entity**") (i) which controls or is controlled by Tenant or Tenant's parent corporation, or (ii) which is under common control with Tenant, or (iii) which purchases all or substantially all of the assets of Tenant, or (iv) which purchases all or substantially all of the stock of (or other Ownership or membership interests in) Tenant or (v) which merges or combines with Tenant, provided that the entity to which this Lease is so assigned or which so sublets the Premises has a credit worthiness (e.g. net assets on a pro forma basis using generally accepted accounting principles consistently applied and using the most recent financial statements) which is the same or better than the Tenant as of the date of this Lease (the foregoing transferees referred to, individually or collectively, as a "**Permitted Transferee**"). Except in cases of statutory merger, in which case the surviving entity in the merger shall be liable as the Tenant under this Lease, Tenant shall continue to remain fully liable under this Lease, on a joint and several basis with the Permitted Transferee. If any parent, affiliate or subsidiary of Tenant to which this Lease is assigned or the Premises sublet (in whole or in part) shall cease to be such a parent, affiliate or subsidiary, such cessation shall be considered an assignment or subletting requiring Landlord's consent.

- 2.1.5 In the case of any assignment or subleasing as to which Landlord may consent (other than an assignment or subletting permitted under Section 5.6.4 above) such consent shall be upon the express and further condition, covenant and agreement, and Tenant hereby covenants and agrees that, in addition to the Annual Fixed Rent, Additional Rent and other charges to be paid pursuant to this Lease, fifty percent (50%) of the "Assignment/Sublease Profits" (hereinafter defined), if any, shall be paid to Landlord. The "**Assignment/Sublease Profits**" shall be the excess, if any, of (a) the "Assignment/Sublease Net Revenues" as hereinafter defined over (b) the

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Annual Fixed Rent and Additional Rent and other charges provided in this Lease (provided, however, that for the purpose of calculating the Assignment/Sublease Profits in the case of a sublease, appropriate prorations in the applicable Annual Fixed Rent, Additional Rent and other charges under this Lease shall be made based on the percentage of the Premises subleased and on the terms of the sublease). The “**Assignment/Sublease Net Revenues**” shall be the fixed rent, Additional Rent and all other charges and sums payable either initially or over the term of the sublease or assignment plus all other profits and increases to be derived by Tenant as a result of such subletting or assignment, less the reasonable costs of Tenant incurred in such subleasing or assignment (the definition of which shall be limited to brokerage commissions and alteration allowances, in each case actually paid), as set forth in a statement certified by an appropriate officer of Tenant and delivered to Landlord within thirty (30) days of the full execution of the sublease or assignment document, amortized over the term of the sublease or assignment.

All payments of the Assignment/Sublease Profits due Landlord shall be made within ten (10) days of receipt of same by Tenant.

- 5.6.6 (A) It shall be a condition of the validity of any assignment or subletting consented to under Section 5.6.3 above, or any assignment or subletting of right under Section 5.6.4 above, that both Tenant and the assignee or sublessee enter into a separate written instrument directly with Landlord in a form and containing terms and provisions reasonably required by Landlord, including, without limitation, the agreement of the assignee or sublessee to be bound directly to Landlord for all the obligations of the Tenant under this Lease (including any amendments or extensions thereof), including, without limitation, the obligation (a) to pay the rent and other amounts provided for under this Lease (but in the case of a partial subletting pursuant to Section 5.6.4, such subtenant shall agree on a pro rata basis to be so bound), (b) to comply with the provisions of Sections 5.6 through 5.6.6 hereof and (c) to indemnify the “Landlord Parties” (as defined in Section 8.13) as provided in Section 8.1 hereof. Such assignment or subletting shall not relieve the Tenant named herein of any of the obligations of the Tenant hereunder and Tenant shall remain fully and primarily liable therefor and the liability of Tenant and such assignee (or subtenant, as the case may be) shall be joint and several. Further, and notwithstanding the foregoing, the provisions hereof shall not constitute a recognition of the sublease or the subtenant thereunder, as the case may be, and at Landlord’s option, upon the termination or expiration of the Lease (whether such termination is based upon a cause beyond Tenant’s control, a default of Tenant, the agreement of Tenant and Landlord or any other reason), the sublease shall be terminated.

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(B) As Additional Rent, Tenant shall pay to Landlord as a fee for Landlord's review of any proposed assignment or sublease requested by Tenant and the preparation of any associated documentation in connection therewith, within thirty (30) days after receipt of an invoice from Landlord, an amount equal to the sum of (i) \$[***] and/or (ii) reasonable out of pocket legal fees or other expenses incurred by Landlord in connection with such request.

(C) If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may upon prior notice to Tenant, at any time and from time to time, collect rent and other charges from the assignee, sublessee or occupant and apply the net amount collected to the rent and other charges herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or a waiver of the provisions of Sections 5.6 through 5.6.6 hereof, or the acceptance of the assignee, sublessee or occupant as a tenant or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained, the Tenant herein named to remain primarily liable under this Lease.

(D) The consent by Landlord to an assignment or subletting under Section 5.6.3 above, or the consummation of an assignment or subletting of right under Section 5.6.4 above, shall in no way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting.

(E) On or after the occurrence of an "Event of Default" (defined in Section 7.1), Landlord shall be entitled to one hundred percent (100%) of any Assignment/Sublease Profits.

(F) Without limiting Tenant's obligations under Section 5.12, Tenant shall be responsible, at Tenant's sole cost and expense, for performing all work necessary to comply with Legal Requirements and Insurance Requirements in connection with any assignment or subletting hereunder including, without limitation, any work in connection with such assignment or subletting.

5.7 Right of Entry

To permit Landlord and its agents to examine the Premises at reasonable times and, if Landlord shall so elect, to make any alterations, additions or improvements contemplated by this Lease or any repairs or replacements Landlord may deem necessary in accordance with the terms and provisions of this Lease; to remove, at Tenant's expense, any alterations, addition, signs, curtains, blinds, shades, awnings, arials, flagpoles, or the like not consented to in writing; and to show the Premises to prospective tenants during the eleven

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(11) months preceding expiration of the Term and to prospective purchasers and mortgagees at all reasonable times.

5.8 Floor Load; Prevention of Vibration and Noise

Not to place a load upon the Premises exceeding an average rate of 70 pounds of live load per square foot of floor area (partitions shall be considered as part of the live load); and not to move any safe, vault or other heavy equipment in, about or out of the Premises except in such manner and at such time as Landlord shall in each instance authorize; Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building shall be so installed, maintained and used by Tenant so as to eliminate such vibration or noise.

5.9 Personal Property Taxes

To pay promptly when due all taxes which may be imposed upon "Tenant's Property" (as defined in Section 8.4 hereof) in the Premises to whomever assessed.

5.10 Compliance with Laws

To comply with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and requirements of all public authorities ("**Legal Requirements**") now or hereafter in force which shall impose a duty on Landlord or Tenant relating to or as a result of the use or occupancy of the Premises; provided that Tenant shall not be required to make any alterations or additions to the structure, roof, exterior and load bearing walls, foundation, structural floor slabs and other structural elements of the Building unless the same are required by such Legal Requirements as a result of or in connection with Tenant's use or occupancy of the Premises beyond normal use of space of this kind. Tenant shall promptly pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section 5.10.

5.11 Payment of Litigation Expenses

To pay, as Additional Rent, all reasonable costs, counsel and other fees incurred by Landlord in connection with (i) the successful enforcement by Landlord of any obligations of Tenant under this Lease, or (ii) the successful defense of any action brought by Tenant, or (iii) or in connection with any bankruptcy case involving Tenant or any guarantor. Landlord hereby similarly agrees to pay all reasonable costs, counsel and other fees incurred by Tenant in connection with (i) the successful enforcement by Tenant of any obligations of Landlord under this Lease, or (ii) the successful defense of any action brought by Landlord, or (iii) in connection with any bankruptcy case involving Landlord.

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5.12 Alterations

Tenant shall not make alterations and additions to Tenant's Premises except in accordance with plans and specifications therefor first approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. However, Landlord's determination of matters relating to aesthetic issues relating to alterations, additions or improvements which are visible outside the Premises (including, without limitation, from common lobbies within the Building) shall be in Landlord's sole discretion. Without limiting such standard Landlord shall not be deemed unreasonable for withholding approval of any alterations or additions (including, without limitation, any alterations or additions to be performed by Tenant under Article III) which (a) in Landlord's opinion might adversely affect any structural or exterior element of the Building, any area or element outside of the Premises, or any facility or base building mechanical system serving any area of the Building outside of the Premises, or (b) involve or affect the exterior design, size, height, or other exterior dimensions of the Building or (c) will require unusual expense to readapt the Premises to normal office use on Lease termination or expiration or increase the cost of construction or of insurance or taxes on the Building or of the services called for by Section 4.1 unless Tenant first gives assurance acceptable to Landlord for payment of such increased cost and that such readaptation will be made prior to such termination or expiration without expense to Landlord, (d) enlarge the Rentable Floor Area of the Premises, or (e) are inconsistent, in Landlord's judgment, with alterations satisfying Landlord's standards for new alterations in the Building. Landlord's review and approval of any such plans and specifications and consent to perform work described therein shall not be deemed an agreement by Landlord that such plans, specifications and work conform with applicable Legal Requirements and requirements of insurers of the Building and the other requirements of this Lease with respect to Tenant's insurance obligations (herein called "**Insurance Requirements**") nor deemed a waiver of Tenant's obligations under this Lease with respect to applicable Legal Requirements and Insurance Requirements nor impose any liability or obligation upon Landlord with respect to the completeness, design sufficiency or compliance of such plans, specifications and work with applicable Legal Requirements and Insurance Requirements nor give right to any other parties. Further, Tenant acknowledges that Tenant is acting for its own benefit and account, and that Tenant shall not be acting as Landlord's agent in performing any work in the Premises, accordingly, no contractor, subcontractor or supplier shall have a right to lien Landlord's interest in the Property in connection with any such work. Within thirty (30) days after receipt of an invoice from Landlord, Tenant shall pay to Landlord as a fee for Landlord's review of any work or plans (excluding any review respecting initial improvements performed pursuant to Article III hereof for which a fee has previously been paid but including any review of plans or work relating to any assignment or subletting), as Additional Rent, an amount equal to the sum of: (i) \$[***] per hour for time spent by Landlord's in-house personnel, plus (ii) third party expenses incurred by Landlord to review Tenant's plans and Tenant's work. All alterations and additions shall be part of the Building unless and until Landlord shall specify the same for

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removal pursuant to Section 5.2. All of Tenant's alterations and additions and installation of furnishings shall be coordinated with any work being performed by Landlord and in such manner as to maintain harmonious labor relations and not to damage the Buildings or Site or interfere with construction or operation of the Buildings and other improvements to the Site and, except for installation of furnishings, shall be performed by Landlord's general contractor or by contractors or workers first approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Except for work by Landlord's general contractor, Tenant, before its work is started, shall secure all licenses and permits necessary therefor; deliver to Landlord a statement of the names of all its contractors and subcontractors and the estimated cost of all labor and material to be furnished by them and security satisfactory to Landlord protecting Landlord against liens arising out of the furnishing of such labor and material; and cause each contractor to carry insurance in accordance with Section 8.14 herein and to deliver to Landlord certificates of all such insurance. Tenant shall also prepare and submit to Landlord a set of as-built plans, in both print and electronic forms, showing such work performed by Tenant to the Premises promptly after any such alterations, improvements or installations are substantially complete and promptly after any wiring or cabling for Tenant's computer, telephone and other communications systems is installed by Tenant or Tenant's contractor. Without limiting any of Tenant's obligations hereunder, Tenant shall be responsible, as Additional Rent, for the costs of any alterations, additions or improvements in or to the Building that are required in order to comply with Legal Requirements as a result of any work performed by Tenant. Landlord shall have the right to provide such reasonable rules and regulations relative to the performance of any alterations, additions, improvements and installations by Tenant hereunder and Tenant shall abide by all such reasonable rules and regulations and shall cause all of its contractors to so abide including, without limitation, payment for the reasonable costs of using Building services. Tenant agrees to pay promptly when due the entire cost of any work done on the Premises by Tenant, its agents, employees, or independent contractors, and not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises or the Buildings or the Site and immediately to discharge any such liens which may so attach. Tenant shall pay, as Additional Rent, 100% of any real estate taxes on the Property which shall, at any time after commencement of the Term, result from any alteration, addition or improvement to the Premises made by Tenant. Tenant acknowledges and agrees that Landlord shall be the owner of any additions, alterations and improvements in the Premises or the Building to the extent paid for by Landlord.

5.13 Vendors

Any vendors engaged by Tenant to perform services in or to the Premises including, without limitation, janitorial contractors and moving contractors shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations and not to damage the Building or the Property or interfere with

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Building construction or operation and shall be performed by vendors first approved by Landlord.

5.14 Patriot Act

As an inducement to Landlord to enter into this Lease, Tenant hereby represents and warrants that: (i) Tenant is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, “Specially Designated National and Blocked Person” or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a “**Prohibited Person**”); (ii) Tenant is not (nor is it owned, controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Tenant (and any person, group, or entity which Tenant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Lease or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by Tenant of the foregoing representations and warranties shall be deemed an immediate Event of Default by Tenant under Section 7.1 of this Lease (without the benefit of notice or grace) and shall be covered by the indemnity provisions of Section 8.1 below, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease.

(B) As an inducement to Tenant to enter into this Lease, Landlord hereby represents and warrants that: (i) Landlord is not, nor is it owned or controlled directly or indirectly by, any Prohibited Person; (ii) Landlord is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Landlord (and any person, group, or entity which Landlord controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, is expressly understood and agreed that the

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representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, for the purposes of this subsection (B) the phrase “owned or controlled directly or indirectly by any person, group, entity or nation” and all similar such phrases shall not include (x) any shareholder of Boston Properties, Inc., (y) any holder of a direct or indirect interest in a publicly traded company whose shares are listed and traded on a United States national stock exchange or (z) any limited partner, unit holder or shareholder owning an interest of five percent (5%) or less in Boston Properties Limited Partnership or the holder of any direct or indirect interest in Boston Properties Limited Partnership.

ARTICLE VI

Casualty and Taking

6.1 Damage Resulting from Casualty

In case during the Lease Term the Building or the Site are damaged by fire or casualty and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within one hundred twenty (120) days from the time that repair work would commence, Landlord may, at its election, terminate this Lease by notice given to Tenant within sixty (60) days after the date of such fire or other casualty, specifying the effective date of termination. The effective date of termination specified by Landlord shall not be less than thirty (30) days nor more than forty-five (45) days after the date of notice of such termination.

In case during the last year of the Lease Term, the Premises are damaged by fire or casualty and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within one hundred fifty (150) days (and/or as to special work or work which requires long lead time then if such work cannot reasonably be expected to be repaired within such additional time as is reasonable under the circumstances given the nature of the work) from the time that repair work would commence, Tenant may, at its election, terminate this Lease by notice given to Landlord within sixty (60) days after the date of such fire or other casualty, specifying the effective date of termination. The effective date of termination specified by Tenant shall be not less than thirty (30) days or more than forty-five (45) days after the date of notice of such termination.

Unless terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect following any such damage subject, however, to the following provisions.

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If the Building or the Site or any part thereof are damaged by fire or other casualty and this Lease is not so terminated, or Landlord or Tenant have no right to terminate this Lease, and in any such case the holder of any mortgage which includes the Building as a part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net insurance proceeds to be applied to the restoration of the Building (and/or the Site), Landlord promptly after such damage and the determination of the net amount of insurance proceeds available shall use due diligence to restore the Premises and the Building in the event of damage thereto (excluding "Tenant's Property" (as defined in Section 8.4 hereof), except as expressly provided in the immediately following paragraph of this Section 6.1) into proper condition for use and occupation and a just proportion of the Annual Fixed Rent, Tenant's share of Operating Costs and Tenant's share of real estate taxes according to the nature and extent of the injury to the Premises shall be abated until the Premises shall have been put by Landlord substantially into such condition except for punch list items and long lead items. Notwithstanding anything herein contained to the contrary, Landlord shall not be obligated to expend for such repair and restoration any amount in excess of the net insurance proceeds.

Notwithstanding the foregoing, if Landlord is proceeding with the restoration of the Building and the Premises in accordance with the previous paragraph, Landlord shall also restore any alterations, additions or improvements within the Premises that are part of Tenant's Property (x) which have previously been approved by Landlord in accordance with the terms and provisions of this Lease and (y) with respect to which Tenant has carried "all risk" insurance covering the loss or damage in accordance with Section 8.4 below and pays the proceeds of such insurance (or an amount equivalent thereto) to Landlord within five (5) business days following Landlord's written request; provided, however, that in no event shall Landlord be required to fund any insufficiency in the insurance proceeds (or equivalent amount) provided by Tenant with respect to such loss or damage (or to fund any of the costs of restoration in the absence of any payment by Tenant).

Unless such restoration is completed within one (1) year from the date of the casualty or taking, such period to be subject, however, to extension where the delay in completion of such work is due to Force Majeure, as defined hereinbelow, (but in no event beyond eighteen (18) months from the date of the casualty or taking), Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease at any time after the expiration of such one-year (as extended) period until the restoration is substantially completed, such termination to take effect as of the thirtieth (30th) day after the date of receipt by Landlord of Tenant's notice, with the same force and effect as if such date were the date originally established as the expiration date hereof unless, within thirty (30) days after Landlord's receipt of Tenant's notice, such restoration is substantially completed, in which case Tenant's notice of termination shall be of no force and effect and this Lease and the Lease Term shall continue in full force and effect. When used herein, "Force

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Majeure” shall mean any prevention, delay or stoppage due to governmental regulation, strikes, lockouts, acts of God, acts of war, terrorists acts, civil commotions, unusual scarcity of or inability to obtain labor or materials, labor difficulties, casualty or other causes reasonably beyond Landlord’s control or attributable to Tenant’s action or inaction.

6.2 Uninsured Casualty

Notwithstanding anything to the contrary contained in this Lease, if the Building or the Premises shall be substantially damaged by fire or casualty as the result of a risk not covered by the forms of casualty insurance at the time maintained by Landlord and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within ninety (90) days from the time that repair work would commence, Landlord may, at its election, terminate the Term of this Lease by notice to the Tenant given within sixty (60) days after such loss. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

6.3 Rights of Termination for Taking

If the entire Building, or such portion of the Premises as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) unsuitable for Tenant’s purposes, shall be taken by condemnation or right of eminent domain, Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its desire to do so, provided that such notice is given not later than thirty (30) days after Tenant has been deprived of possession. If either party shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Further, if so much of the Building shall be so taken that continued operation of the Building would be uneconomic as a result of the taking, Landlord shall have the right to terminate this Lease by giving notice to Tenant of Landlord’s desire to do so not later than thirty (30) days after Tenant has been deprived of possession of the Premises (or such portion thereof as may be taken). If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Should any part of the Premises be so taken or condemned during the Lease Term hereof, and should this Lease not be terminated in accordance with the foregoing provisions, and the holder of any mortgage which includes the Premises as part of the mortgaged premises or any ground lessor of any ground lease which includes the Site as part of the demised premises allows the net condemnation proceeds to be applied to the restoration of the Building, Landlord agrees that after the determination of the net amount of condemnation

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proceeds available to Landlord, Landlord shall use due diligence to put what may remain of the Premises into proper condition for use and occupation as nearly like the condition of the Premises prior to such taking as shall be practicable (excluding Tenant's Property). Notwithstanding the foregoing, Landlord shall not be obligated to expend for such repair and restoration any amount in excess of the net condemnation proceeds made available to it.

If the Premises shall be affected by any exercise of the power of eminent domain, then the Annual Fixed Rent, Tenant's share of operating costs and Tenant's share of real estate taxes shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant; and in case of a taking which permanently reduces the Rentable Floor Area of the Premises, a just proportion of the Annual Fixed Rent, Tenant's share of operating costs and Tenant's share of real estate taxes shall be abated for the remainder of the Lease Term.

6.4 Award

Landlord shall have and hereby reserves to itself any and all rights to receive awards made for damages to the Premises, the Buildings, the Property and the Site and the leasehold hereby created, or any one or more of them, accruing by reason of exercise of eminent domain or by reason of anything lawfully done in pursuance of public or other authority. Tenant hereby grants, releases and assigns to Landlord all Tenant's rights to such awards, and covenants to execute and deliver such further assignments and assurances thereof as Landlord may from time to time request, and if Tenant shall fail to execute and deliver the same within fifteen (15) days after notice from Landlord, Tenant hereby covenants and agrees that Landlord shall be irrevocably designated and appointed as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof which conform with the provisions hereof.

Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceeding a claim for the value of any of Tenant's usual trade fixtures installed in the Premises by Tenant at Tenant's expense and for relocation and moving expenses, provided that such action and any resulting award shall not affect or diminish the amount of compensation otherwise recoverable by Landlord from the taking authority.

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ARTICLE VII

Default

7.1 Tenant's Default

- (a) If at any time subsequent to the date of this Lease any one or more of the following events (herein sometimes called an "**Event of Default**") shall occur:
- (i) Tenant shall fail to pay the fixed rent, Additional Rent or other charges for which provision is made herein on or before the date on which the same become due and payable, and the same continues for five (5) days after notice from Landlord thereof; or
 - (ii) Landlord having rightfully given the notice specified in subdivision (i) above twice in any calendar year, Tenant shall thereafter in the same calendar year fail to pay the fixed rent, Additional Rent or other charges on or before the date on which the same become due and payable; or
 - (iii) Tenant shall assign its interest in this Lease or sublet any portion of the Premises in violation of the requirements of Sections 5.6 through 5.6.5 of this Lease; or
 - (iv) Tenant shall fail to perform or observe some term or condition of this Lease which, because of its character, would immediately jeopardize Landlord's interest (such as, but without limitation, failure to maintain general liability insurance, or the employment of labor and contractors within the Premises which interfere with Landlord's work, in violation of **Exhibit B-1**), and such failure continues for three (3) days after notice from Landlord to Tenant thereof; or
 - (v) Tenant shall neglect or fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and to prosecute such remedy to completion with diligence and continuity; or

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- (vi) Tenant's leasehold interest in the Premises shall be taken on execution or by other process of law directed against Tenant; or
- (vii) Tenant shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation for the relief of debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall admit in writing its inability to pay its debts generally as they become due; or
- (viii) A petition shall be filed against Tenant in bankruptcy or under any other law seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation and shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any debtor in possession (whether or not Tenant) trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive) then, and in any of said cases (notwithstanding any license of a former breach of covenant or waiver of the benefit hereof or consent in a former instance).

Landlord lawfully may, immediately or at any time thereafter, and without demand or further notice terminate this Lease by notice to Tenant, specifying a date not less than ten (10) days after the giving of such notice on which this Lease shall terminate, and this Lease shall come to an end on the date specified therein as fully and completely as if such date were the date herein originally fixed for the expiration of the Lease Term (Tenant hereby waiving any rights of redemption), and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided.

- (b) If this Lease shall have been terminated as provided in this Article, then Landlord may, without notice, re-enter the Premises, either by force, summary proceedings, ejectment or otherwise, and remove and dispossess Tenant and all other persons and any and all property from the same, as if this Lease had not been made, and

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Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

- (c) In the event that this Lease is terminated under any of the provisions contained in Section 7.1 (a) or shall be otherwise terminated by breach of any obligation of Tenant, Tenant covenants and agrees forthwith to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the Term, and for the whole thereof, but in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent and other charges received by Landlord in reletting, after deduction of all expenses incurred in reletting the Premises (including, without limitation, remodeling costs, brokerage fees and the like), and in collecting the rent in connection therewith, in the following manner:

Amounts received by Landlord after reletting shall first be applied against such Landlord's expenses, until the same are recovered, and until such recovery, Tenant shall pay, as of each day when a payment would fall due under this Lease, the amount which Tenant is obligated to pay under the terms of this Lease (Tenant's liability prior to any such reletting and such recovery not in any way to be diminished as a result of the fact that such reletting might be for a rent higher than the rent provided for in this Lease); when and if such expenses have been completely recovered, the amounts received from reletting by Landlord as have not previously been applied shall be credited against Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof shall be payable by Tenant. Further, amounts received by Landlord from such reletting for any period shall be credited only against obligations of Tenant allocable to such period, and shall not be credited against obligations of Tenant hereunder accruing subsequent or prior to such period; nor shall any credit of any kind be due for any period after the date when the term of this Lease is scheduled to expire according to its terms.

Landlord agrees to use reasonable efforts to relet the Premises after Tenant vacates the same in the event this Lease is terminated based upon an Event of Default by Tenant hereunder. The marketing of the Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control within the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts" hereunder. In no event shall Landlord be required to (i) solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord

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obtains full and complete possession of the Premises (including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant), (ii) relet the Premises before leasing other vacant space in the Building, or (iii) lease the Premises for a rental less than the current fair market rent then prevailing for similar office space in the Building.

- (d) (i) Landlord may elect, as an alternative, to have Tenant pay liquidated damages, which election may be made by notice given to Tenant at any time after such termination and whether or not Landlord shall have collected any damages as aforesaid, as liquidated final damages and in lieu of all other damages beyond the date of such notice. Upon such notice, Tenant shall promptly pay to Landlord, as liquidated damages, in addition to any damages collected or due from Tenant for any period prior to such notice and all expenses which Landlord may have incurred with respect to the collection of such damages, such a sum as at the time of the giving of such notice represents the amount of the excess, if any, of the total rent and other benefits which would have accrued to Landlord under this Lease from the date of such notice for what would be the then unexpired Lease Term if the Lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for the balance of the Lease Term.
- (ii) For the purposes of this Article, if Landlord elects to require Tenant to pay damages in accordance with the immediately preceding paragraph, the total rent shall be computed by assuming that Tenant's share of excess taxes, Tenant's share of excess operating costs and Tenant's share of excess electrical costs would be, for the balance of the unexpired Term from the date of such notice, the amount thereof (if any) for the immediately preceding annual period payable by Tenant to Landlord.
- (e) In case of any Event of Default, re-entry, dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Term of this Lease and may grant concessions, abatements or free rent to the extent that Landlord considers advisable or necessary to re-let the same and (ii) may make such alterations, repairs and decorations in the Premises as Landlord in its sole judgment considers advisable or necessary for the purpose of reletting the Premises; and the making of such alterations, repairs and decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under re-letting. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event

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of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease.

- (f) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be entitled lawfully, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for. Further, nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.
- (g) In lieu of any other damages or indemnity and in lieu of the recovery by Landlord of all sums payable under all the foregoing provisions of this Section 7.1, Landlord may elect to collect from Tenant, by notice to Tenant, at any time after this Lease is terminated under any of the provisions contained in this Article VII or otherwise terminated by breach of any obligation of Tenant and before full recovery under such foregoing provisions, and Tenant shall thereupon pay, as liquidated damages, an amount equal to the sum of the Annual Fixed Rent and all Additional Rent payable for the twelve (12) months ended next prior to such termination plus the amount of Annual Fixed Rent and Additional Rent of any kind accrued and unpaid at the time of such election plus any and all expenses which the Landlord may have incurred for and with respect of the collection of any of such rent.

7.2 Landlord's Default

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. The Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim.

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ARTICLE VIII

Insurance and Indemnity

8.1 Tenant's Indemnity

(a) Indemnity. To the fullest extent permitted by law, Tenant waives any right to contribution against the Landlord Parties (as hereinafter defined) and agrees to indemnify and save harmless the Landlord Parties from and against all claims of whatever nature arising from or claimed to have arisen from (i) any act, omission or negligence of the Tenant Parties (as hereinafter defined); (ii) any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring in or about the Premises from the earlier of (A) the date on which any Tenant Party first enters the Premises for any reason or (B) the Commencement Date, and thereafter throughout and until the end of the Lease Term, and after the end of the Lease Term for so long after the end of the Lease Term as Tenant or anyone acting by, through or under Tenant is in occupancy of the Premises or any portion thereof; (iii) any accident, injury or damage whatsoever occurring outside the Premises but within the Building, or on common areas within the Office Park, where such accident, injury or damage results, or is claimed to have resulted, from any act, omission or negligence on the part of any of the Tenant Parties; or (iv) any breach of this Lease by Tenant. Tenant shall pay such indemnified amounts as they are incurred by the Landlord Parties. This indemnification shall not be construed to deny or reduce any other rights or obligations of indemnity that any of the Landlord Parties may have under this Lease or the common law.

(b) Breach. In the event that Tenant breaches any of its indemnity obligations hereunder or under any other contractual or common law indemnity: (i) Tenant shall pay to the Landlord Parties all liabilities, loss, cost, or expense (including attorney's fees) incurred as a result of said breach; and (ii) the Landlord Parties may deduct and offset from any amounts due to Tenant under this Lease any amounts owed by Tenant pursuant to this Section 8.1(b).

(c) No limitation. The indemnification obligations under this Section 8.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant or any subtenant or other occupant of the Premises under workers' compensation acts, disability benefit acts, or other employee benefit acts. Tenant waives any immunity from or limitation on its indemnity or contribution liability to the Landlord Parties based upon such acts.

(d) Subtenants and other occupants. Tenant shall require its subtenants and other occupants of the Premises to provide similar indemnities to the Landlord Parties in a form acceptable to Landlord.

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(e) Survival. The terms of this Section 8.1 shall survive any termination or expiration of this Lease.

(f) Costs. The foregoing indemnity and hold harmless agreement shall include indemnity for all costs, expenses and liabilities (including, without limitation, attorneys' fees and disbursements) incurred by the Landlord Parties in connection with any such claim or any action or proceeding brought thereon, and the defense thereof. In addition, in the event that any action or proceeding shall be brought against one or more Landlord Parties by reason of any such claim, Tenant, upon request from the Landlord Party, shall resist and defend such action or proceeding on behalf of the Landlord Party by counsel appointed by Tenant's insurer (if such claim is covered by insurance without reservation) or otherwise by counsel reasonably satisfactory to the Landlord Party. The Landlord Parties shall not be bound by any compromise or settlement of any such claim, action or proceeding without the prior written consent of such Landlord Parties.

8.2 Tenant's Risk

Tenant agrees to use and occupy the Premises, and to use such other portions of the Building, the Site and the Office Park as Tenant is given the right to use by this Lease at Tenant's own risk. The Landlord Parties shall not be liable to the Tenant Parties for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or loss to a Tenant Party's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, repairs to any portion of the Premises, the Building, the Property or the Office Park, any fire, robbery, theft, mysterious disappearance, or any other crime or casualty, the actions of any other tenants of the Office Park or of any other person or persons, or any leakage in any part or portion of the Premises or the Building or the Property, or from water, rain or snow that may leak into, or flow from any part of the Premises or the Building or the Property, or from drains, pipes or plumbing fixtures in the Building or the Property, unless and to the extent arising solely from the negligence of Landlord. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk of the Tenant Party, and neither the Landlord Parties nor their insurers shall in any manner be held responsible therefor, unless and to the extent arising solely from the negligence of Landlord. The Landlord Parties shall not be responsible or liable to a Tenant Party, or to those claiming by, through or under a Tenant Party, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Premises or any part of the Building or otherwise. The provisions of this section shall be applicable to the fullest extent permitted by law, and until the expiration or earlier termination of the Lease Term, and during such further period as Tenant may use or be in occupancy of any part of the Premises or of the Building.

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8.3 Tenant's Commercial General Liability Insurance

Tenant agrees to maintain in full force on or before the earlier of (i) the date on which any Tenant Party first enters the Premises for any reason or (ii) the Commencement Date, and thereafter throughout and until the end of the Lease Term, and after the end of the Lease Term for so long as Tenant or anyone acting by, through or under Tenant is in occupancy of the Premises or any portion thereafter, a policy of commercial general liability insurance, on an occurrence basis, issued on a form at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 10 01 or another Commercial General Liability "occurrence" form providing equivalent coverage. Such insurance shall include broad form contractual liability coverage, specifically covering but not limited to the indemnification obligations undertaken by Tenant in this Lease. The minimum limits of liability of such insurance shall be \$5,000,000 per occurrence. In addition, in the event Tenant hosts a function in the Premises, Tenant agrees to obtain, and cause any persons or parties providing services for such function to obtain, the appropriate insurance coverages as determined by Landlord (including liquor liability coverage, if applicable) and provide Landlord with evidence of the same.

8.4 Tenant's Property Insurance

Tenant shall maintain at all times during the Term of the Lease, and during such earlier time as Tenant may be performing work in or to the Premises or have property, fixtures, furniture, equipment, machinery, goods, supplies, wares or merchandise on the Premises, and containing thereafter so long as Tenant is in occupancy of any part of the Premises, business interruption insurance and insurance against loss or damage covered by the so-called "all risk" type insurance coverage with respect to Tenant's property, fixtures, furniture, equipment, machinery, goods, supplies, wares and merchandise, and all alterations, improvements and other modifications made by or on behalf of the Tenant in the Premises, and other property of Tenant located at the Premises, which are permitted to be removed by Tenant at the expiration or earlier termination of the Lease Term except to the extent paid for by Landlord (collectively "Tenant's Property"). The business interruption insurance required by this Section 8.4 shall be in minimum amounts typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than the Annual Fixed Rent then in effect during any year during the Term, plus any Additional Rent due and payable for the immediately preceding year during the Term. The "all risk" insurance required by this section shall be in an amount at least equal to the full replacement cost of Tenant's Property. In addition, during such time as Tenant is performing work in or to the Premises, Tenant, at Tenant's expense, shall also maintain, or shall cause its contractor(s) to maintain, builder's risk insurance for the full insurable value of such work. Landlord and such additional persons or entities as Landlord may reasonably request shall be named as loss payees, as their interests may appear, on the policy or policies required by this Lease. In the event of loss or damage covered by the "all

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risk” insurance required by this Lease, the responsibilities for repairing or restoring the loss or damage shall be determined in accordance with Article VI. To the extent that Landlord is obligated to pay for the repair or restoration of the loss or damage covered by the policy, Landlord shall be paid the proceeds of the “all risk” insurance covering the loss or damage. To the extent Tenant is obligated to pay for the repair or restoration of the loss or damage, covered by the policy, Tenant shall be paid the proceeds of the “all risk” insurance covering the loss or damage. If both Landlord and Tenant are obligated to pay for the repair or restoration of the loss or damage covered by the policy, the insurance proceeds shall be paid to each of them in the pro rata proportion of their obligations to repair or restore the loss or damage. If the loss or damage is not repaired or restored (for example, if the Lease is terminated pursuant to Article VI), the insurance proceeds shall be paid to Landlord and Tenant in the pro rata proportion of their relative contributions to the cost of the leasehold improvements covered by the policy.

8.5 Tenant’s Other Insurance

Tenant agrees to maintain in full force on or before the earlier of (i) the date on which any Tenant Party first enters the Premises for any reason or (ii) the Commencement Date, and thereafter throughout the end of the Term, and after the end of the Term for so long after the end of the Term as Tenant or anyone acting by, through or under Tenant is in occupancy of the Premises or any portion thereafter, (1) comprehensive automobile liability insurance (covering any automobiles owned or operated by Tenant) issued on a form at least as broad as ISO Business Auto Coverage form CA 00 01 07 97 or other form providing equivalent coverage; (2) worker’s compensation insurance; and (3) employer’s liability insurance. Such automobile liability insurance shall be in an amount not less than One Million Dollars (\$1,000,000) for each accident. Such worker’s compensation insurance shall carry minimum limits as defined by the law of the jurisdiction in which the Premises are located (as the same may be amended from time to time). Such employer’s liability insurance shall be in an amount not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) disease-policy limit, and One Million Dollars (\$1,000,000) disease-each employee.

8.6 Requirements for Tenant’s Insurance

All insurance required to be maintained by Tenant pursuant to this Lease shall be maintained with responsible companies that are admitted to do business, and are in good standing in the Commonwealth of Massachusetts and that have a rating of at least “A” and are within a financial size category of not less than “Class X” in the most current Best’s Key Rating Guide or such similar rating as may be reasonably selected by Landlord. All such insurance shall: (1) be acceptable in form and content to Landlord; (2) be primary and noncontributory; and (3) contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance, or change in coverage without the insurer first giving

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Landlord thirty (30) days' prior written notice (by certified or registered mail, return receipt requested, or by fax or email) of such proposed action. No such policy shall contain any deductible or self-insured retention greater than \$25,000. Such deductibles and self-insured retentions shall be deemed to be "insurance" for purposes of the waiver in Section 8.13 below. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts of insurance based on such limits as are customarily carried with respect to similar properties in the area in which the Premises are located. The minimum amounts of insurance required by this Lease shall not be reduced by the payment of claims or for any other reason. In the event Tenant shall fail to obtain or maintain any insurance meeting the requirements of this Article, or to deliver such policies or certificates as required by this Article, Landlord may, at its option, on five (5) days notice to Tenant, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

8.7 Additional Insureds

To the fullest extent permitted by law, the commercial general liability and auto insurance carried by Tenant pursuant to this Lease, and any additional liability insurance carried by Tenant pursuant to Section 8.3 of this Lease, shall name Landlord, Landlord's managing agent, and such other persons as Landlord may reasonably request from time to time as additional insureds with respect to liability arising out of or related to this Lease or the operations of Tenant (collectively "**Additional Insureds**"). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Landlord, Landlord's managing agent, or other Additional Insureds. Such insurance shall also waive any right of subrogation against each Additional Insured.

8.8 Certificates of Insurance

On or before the earlier of (i) the date on which any Tenant Party first enters the Premises for any reason or (ii) the Commencement Date, Tenant shall furnish Landlord with certificates evidencing the insurance coverage required by this Lease, and renewal certificates shall be furnished to Landlord at least annually thereafter, and at least thirty (30) days prior to the expiration date of each policy for which a certificate was furnished (acceptable forms of such certificates as of the date hereof for liability and property insurance, respectively, are attached as Exhibit I, however, other forms may be acceptable). Failure by the Tenant to provide the certificates or letters required by this Section 8.8 shall not be deemed to be a waiver of the requirements in this Section 8.8. Upon request by Landlord, a true and complete copy of any insurance policy required by this Lease shall be delivered to Landlord within ten (10) days following Landlord's request.

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8.9 Subtenants and Other Occupants

Tenant shall require its subtenants and other occupants of the Premises to provide written documentation evidencing the obligation of such subtenant or other occupant to indemnify the Landlord Parties to the same extent that Tenant is required to indemnify the Landlord Parties pursuant to Section 8.1 above, and to maintain insurance that meets the requirements of this Article, and otherwise to comply with the requirements of this Article. Tenant shall require all such subtenants and occupants to supply certificates of insurance evidencing that the insurance requirements of this Article have been met and shall forward such certificates to Landlord on or before the earlier of (i) the date on which the subtenant or other occupant or any of their respective direct or indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, servants, employees, principals, contractors, licensees, agents, invitees or representatives first enters the Premises or (ii) the commencement of the sublease. Tenant shall be responsible for identifying and remedying any deficiencies in such certificates or policy provisions.

8.10 No Violation of Building Policies

Tenant shall not commit or permit any violation of the policies of fire, boiler, sprinkler, water damage or other insurance covering the Property and/or the fixtures, equipment and property therein carried by Landlord, or do or permit anything to be done, or keep or permit anything to be kept, in the Premises, which in case of any of the foregoing (i) would result in termination of any such policies, (ii) would adversely affect Landlord's right of recovery under any of such policies, or (iii) would result in reputable and independent insurance companies refusing to insure the Property or the property of Landlord in amounts reasonably satisfactory to Landlord.

8.11 Tenant to Pay Premium Increases

If, because of anything done, caused or permitted to be done, or omitted by Tenant (or its subtenant or other occupants of the Premises), the rates for liability, fire, boiler, sprinkler, water damage or other insurance on the Property and equipment of Landlord or any other tenant or subtenant in the Building shall be higher than they otherwise would be, Tenant shall reimburse Landlord and/or the other tenants and subtenants in the Building for the additional insurance premiums thereafter paid by Landlord or by any of the other tenants and subtenants in the Building which shall have been charged because of the aforesaid reasons, such reimbursement to be made from time to time on Landlord's demand.

8.12 Landlord's Insurance

(a) Required insurance. Landlord shall maintain insurance against loss or damage with respect to the Building on an "all risk" type insurance form, with customary exceptions,

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subject to such deductibles as Landlord may determine, in an amount equal to at least the replacement value of the Building. Landlord shall also maintain such insurance with respect to any improvements, alterations, and fixtures of Tenant located at the Premises to the extent paid for by Landlord. The cost of such insurance shall be treated as a part of Landlord's Operating Expenses. Such insurance shall be maintained with an insurance company selected by Landlord. Payment for losses thereunder shall be made solely to Landlord.

(b) Optional insurance. Landlord may maintain such additional insurance with respect to the Building and the Property, including, without limitation, earthquake insurance, terrorism insurance, flood insurance, liability insurance and/or rent insurance, as Landlord may in its sole discretion elect. Landlord may also maintain such other insurance as may from time to time be required by the holder of any mortgage on the Building or Property. The cost of all such additional insurance shall also be part of the Landlord's Operating Expenses.

(c) Blanket and self-insurance. Any or all of Landlord's insurance may be provided by blanket coverage maintained by Landlord or any affiliate of Landlord under its insurance program for its portfolio of properties, or by Landlord or any affiliate of Landlord under a program of self-insurance, and in such event Landlord's Operating Expenses shall include the portion of the reasonable cost of blanket insurance or self-insurance that is allocated to the Building.

(d) No obligation. Landlord shall not be obligated to insure, and shall not assume any liability of risk of loss for, Tenant's Property, including any such property or work of Tenant's subtenants or occupants. Landlord will also have no obligation to carry insurance against, nor be responsible for, any loss suffered by Tenant, subtenants or other occupants due to interruption of Tenant's or any subtenant's or occupant's business.

8.13 Waiver of Subrogation

To the fullest extent permitted by law, the parties hereto waive and release any and all rights of recovery against the other, and agree not to seek to recover from the other or to make any claim against the other, and in the case of Landlord, against all "Tenant Parties" (hereinafter defined), and in the case of Tenant, against all "Landlord Parties" (hereinafter defined), for any loss or damage incurred by the waiving/releasing party to the extent such loss or damage is insured under any insurance policy required by this Lease or which would have been so insured had the party carried the insurance it was required to carry hereunder. Tenant shall obtain from its subtenants and other occupants of the Premises a similar waiver and release of claims against any or all of Tenant or Landlord. In addition, the parties hereto (and in the case of Tenant, its subtenants and other occupants of the Premises) shall procure an appropriate clause in, or endorsement on, any insurance policy required by

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this Lease pursuant to which the insurance company waives subrogation. The insurance policies required by this Lease shall contain no provision that would invalidate or restrict the parties' waiver and release of the rights of recovery in this section. The parties hereto covenant that no insurer shall hold any right of subrogation against the parties hereto by virtue of such insurance policy.

The term "**Landlord Party**" or "**Landlord Parties**" shall mean Landlord, any affiliate of Landlord, Landlord's managing agents for the Building, each mortgagee (if any), each ground lessor (if any), and each of their respective direct or indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, servants, employees, principals, contractors, licensees, agents or representatives. For the purposes of this Lease, the term "Tenant Party" or "Tenant Parties" shall mean Tenant, any affiliate of Tenant, any permitted subtenant or any other permitted occupant of the Premises, and each of their respective direct or indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, servants, employees, principals, contractors, licensees, agents, invitees or representatives.

8.14 Tenant's Work

During such times as Tenant is performing work or having work or services performed in or to the Premises, Tenant shall require its contractors, and their subcontractors of all tiers, to obtain and maintain commercial general liability, automobile, workers compensation, employer's liability, builder's risk, and equipment/property insurance in such amounts and on such terms as are customarily required of such contractors and subcontractors on similar projects. The amounts and terms of all such insurance are subject to Landlord's written approval, which approval shall not be unreasonably withheld. The commercial general liability and auto insurance carried by Tenant's contractors and their subcontractors of all tiers pursuant to this section shall name Landlord, Landlord's managing agent, and such other persons as Landlord may reasonably request from time to time as additional insureds with respect to liability arising out of or related to their work or services (collectively "**Contractor/Subcontractor Additional Insureds**"). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Landlord, Landlord's managing agent, or other Contractor/Subcontractor Additional Insureds. Such insurance shall also waive any right of subrogation against each Additional Insured. Tenant shall obtain and submit to Landlord, prior to the earlier of (i) the entry onto the Premises by such contractors or subcontractors or (ii) commencement of the work or services, certificates of insurance evidencing compliance with the requirements of this section.

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article ix

Miscellaneous Provisions

9.1 Waiver

Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Tenant or Landlord, respectively, of any of its rights hereunder. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's or Tenant's consent or approval to or of subsequent similar act by the other.

No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

9.2 Cumulative Remedies

Except as expressly provided in this Lease, the specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which such party may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions.

9.3 Quiet Enjoyment

This Lease is subject and subordinate to all matters of record. Tenant, subject to the terms and provisions of this Lease on payment of the rent and observing, keeping and performing all of the terms and provisions of this Lease on Tenant's part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises during the Term (exclusive of any period during which Tenant is holding over after the expiration or termination of this Lease without the consent of Landlord), without hindrance

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or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to Tenant, subject, however, to the terms of this Lease; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied; and it is understood and agreed that this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors, including ground or master lessees, only with respect to breaches occurring during Landlord's or Landlord's successors' respective ownership of Landlord's interest hereunder, as the case may be.

Further, Tenant specifically agrees to look solely to Landlord's then equity interest in the Building at the time owned (including proceeds of rent, casualty, condemnation, refinancing and sale (collectively, "**Proceeds**"), or in which Landlord holds an interest as ground lessee, for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord (original or successor), nor any beneficiary of any trust of which any person holding Landlord's interest is trustee, nor any member, manager, partner, director or stockholder, nor Landlord's managing agent, shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant (except with respect to Proceeds). The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any action not involving the personal liability of Landlord (original or successor), any successor trustee to the persons named herein as Landlord, or any beneficiary of any trust of which any person holding Landlord's interest is trustee, or of any manager, member, partner, director or stockholder of Landlord or of Landlord's managing agent to respond in monetary damages from Landlord's assets other than Landlord's equity interest aforesaid in the Building, but in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its covenants or any warranties or promises hereunder, except in the case of a wrongful eviction of Tenant from the demised premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same. In no event shall Landlord ever be liable to Tenant for any indirect or consequential damages or loss of profits or the like. In the event that Landlord shall be determined to have acted unreasonably in withholding any consent or approval under this Lease, the sole recourse and remedy of Tenant in respect thereof shall be to specifically enforce Landlord's obligation to grant such consent or approval, and in no event shall the Landlord be responsible for any damages of whatever nature in respect of its failure to give such consent or approval nor shall the same otherwise affect the obligations of Tenant under this Lease or act as any termination of this Lease.

9.4 Notice to Mortgagee and Ground Lessor

After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Premises as part of the mortgaged premises, or that it is the ground lessor

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under a lease with Landlord, as ground lessee, which includes the Premises as a part of the demised premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor, and the curing of any of Landlord's defaults by such holder or ground lessor within a reasonable time thereafter (including a reasonable time to obtain possession of the premises if the mortgagee or ground lessor elects to do so) shall be treated as performance by Landlord. For the purposes of this Section 9.4 or Section 9.14, the term "mortgage" includes a mortgage on a leasehold interest of Landlord (but not one on Tenant's leasehold interest). If any mortgage is listed on Exhibit J then the same shall constitute notice from the holder of such mortgage for the purposes of this Section 9.4. Further no Annual Fixed Rent or Additional Rent may be paid by Tenant more than thirty (30) days in advance except with the prior written consent of all holder(s) of such mortgages and ground leases, and any such payment without such consent shall not be binding on such holder(s).

9.5 Assignment of Rents

With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage or ground lease on property which includes the Premises, Tenant agrees:

- (a) That the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage or the ground lessor, shall never be treated as an assumption by such holder or ground lessor of any of the obligations of Landlord hereunder, unless such holder, or ground lessor, shall, by notice sent to Tenant, specifically otherwise elect; and
- (b) That, except as aforesaid, such holder or ground lessor shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises, or, in the case of a ground lessor, the assumption of Landlord's position hereunder by such ground lessor.

In no event shall the acquisition of title to the Building and the land on which the same is located by a purchaser which, simultaneously therewith, leases the entire Building or such land back to the seller thereof be treated as an assumption by such purchaser-lessor, by operation of law or otherwise, of Landlord's obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder subject to the provisions of Section 9.3 hereof. In any such event, this Lease shall be subject and subordinate to the lease to such purchaser provided that such purchaser agrees to recognize the right of Tenant to use and occupy the Premises upon the payment of rent and other charges payable by Tenant under this Lease

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and the performance by Tenant of Tenant's obligations hereunder and provided that Tenant agrees to attorn to such purchaser. For all purposes, such seller-lessee, and its successors in title, shall be the landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser-lessor.

9.6 Surrender

No act or thing done by Landlord during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of the Lease or a surrender of the Premises.

9.7 Brokerage

(A) Tenant warrants and represents that Tenant has not dealt with any broker in connection with the consummation of this Lease other than the broker, person or firm, if any, designated in Section 1.1 hereof; and in the event any claim is made against the Landlord relative to dealings by Tenant with brokers other than the Brokers, if any, designated in Section 1.1 hereof, Tenant shall defend the claim against Landlord with counsel of Tenant's selection first approved by Landlord (which approval will not be unreasonably withheld) and save harmless and indemnify Landlord on account of loss, cost or damage which may arise by reason of such claim.

(B) Landlord warrants and represents that Landlord has not dealt with any broker in connection with the consummation of this Lease other than the broker, person or firm, if any, designated in Section 1.1 hereof; and in the event any claim is made against the Tenant relative to dealings by Landlord with brokers other than the Brokers, if any, designated in Section 1.1 hereof, Landlord shall defend the claim against Tenant with counsel of Landlord's selection and save harmless and indemnify Tenant on account of loss, cost or damage which may arise by reason of such claim. Landlord agrees that it shall be solely responsible for the payment of brokerage commissions to the Broker for the Term of this Lease, if any, designated in Section 1.1 hereof.

9.8 Invalidity of Particular Provisions

If any term or provision of this Lease, including but not limited to any waiver of contribution or claims, indemnity, obligation, or limitation of liability or of damages, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable,

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shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

9.9 Provisions Binding, Etc.

The obligations of this Lease shall run with the land, and except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to subletting or assignment by Tenant.

9.10 Recording; Confidentiality

Tenant agrees not to record the within Lease, but each party hereto agrees, on the request of the other, to execute a so-called Notice of Lease or short form lease in form recordable and complying with applicable law and reasonably satisfactory to both Landlord's and Tenant's attorneys. In no event shall such document set forth rent or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

Tenant agrees that this Lease and the terms contained herein will be treated as strictly confidential and except as required by law (or except with the written consent of Landlord) Tenant shall not disclose the same to any third party except for Tenant's partners, lenders, accountants and attorneys who have been advised of the confidentiality provisions contained herein and agree to be bound by the same. In the event Tenant is required by law to provide this Lease or disclose any of its terms, Tenant shall give Landlord prompt notice of such requirement prior to making disclosure so that Landlord may seek an appropriate protective order. If failing the entry of a protective order Tenant is compelled to make disclosure, Tenant shall only disclose portions of the Lease which Tenant is required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the information so disclosed.

9.11 Notices

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be sent by overnight commercial courier or by registered or certified mail postage or delivery charges prepaid, as the case may be:

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If intended for Landlord, addressed to Landlord at the address set forth in Article I of this Lease (or to such other address or addresses as may from time to time hereafter be designated by Landlord by like notice) with a copy to Landlord, Attention: Regional General Counsel.

If intended for Tenant, addressed to Tenant at the address set forth in Article I of this Lease except that from and after the Commencement Date the address of Tenant shall be the Premises (or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice).

Except as otherwise provided herein, all such notices shall be effective when received; provided, that (i) if receipt is refused, notice shall be effective upon the first occasion that such receipt is refused, (ii) if the notice is unable to be delivered due to a change of address of which no notice was given, notice shall be effective upon the date such delivery was attempted, (iii) if the notice address is a post office box number, notice shall be effective the day after such notice is sent as provided hereinabove or (iv) if the notice is to a foreign address, notice shall be effective two (2) days after such notice is sent as provided hereinabove.

Where provision is made for the attention of an individual or department, the notice shall be effective only if the wrapper in which such notice is sent is addressed to the attention of such individual or department.

Any notice given by an attorney on behalf of Landlord or by Landlord's managing agent shall be considered as given by Landlord and shall be fully effective.

Time is of the essence with respect to any and all notices and periods for giving notice or taking any action thereto under this Lease.

9.12 When Lease Becomes Binding and Authority

Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof. Landlord and Tenant hereby represents and warrants to the other that all necessary action has been taken to enter this

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Lease and that the person signing this Lease on behalf of Landlord and Tenant has been duly authorized to do so.

9.13 Section Headings

The titles of the Articles throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

9.14 Rights of Mortgagee

This Lease shall be subject and subordinate to any mortgage now or hereafter on the Site or the Building, or both, and to each advance made or hereafter to be made under any mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor provided that the holder of such mortgage agrees to recognize the rights of Tenant under this Lease (including the right to use and occupy the Premises) upon the payment of rent and other charges payable by Tenant under this Lease and the performance by Tenant of Tenant's obligations hereunder. In confirmation of such subordination and recognition, Tenant shall execute and deliver promptly such instruments of subordination and recognition as such mortgagee may reasonably request subject to receipt of such instruments of recognition from such mortgagee as Tenant may reasonably request (Tenant hereby agreeing to pay any legal or other fees charged by the mortgagee in connection with providing any instrument requested by Tenant). Tenant hereby appoints such mortgagee (from time to time) as Tenant's attorney-in-fact to execute such subordination upon default of Tenant in complying with such mortgagee's (from time to time) request. In the event that any mortgagee or its respective successor in title shall succeed to the interest of Landlord, then, this Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to such mortgagee or successor and to recognize such mortgagee or successor as its landlord. If any holder of a mortgage which includes the Premises, executed and recorded prior to the date of this Lease, shall so elect, this Lease and the rights of Tenant hereunder, shall be superior in right to the rights of such holder, with the same force and effect as if this Lease had been executed, delivered and recorded, or a statutory notice hereof recorded, prior to the execution, delivery and recording of any such mortgage. The election of any such holder shall become effective upon either notice from such holder to Tenant in the same fashion as notices from Landlord to Tenant are to be given hereunder or by the recording in the appropriate registry or recorder's office of an instrument in which such holder subordinates its rights under such mortgage to this Lease.

If in connection with obtaining financing a bank, insurance company, pension trust or other institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or condition its consent

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thereto, provided that such modifications do not increase the monetary obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created.

9.15 Status Reports and Financial Statements

Recognizing that Landlord may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, Tenant, on the request of Landlord made from time to time, will promptly furnish to Landlord, or any existing or potential holder of any mortgage encumbering the Premises, the Building, the Site and/or the Property or any potential purchaser of the Premises, the Building, the Site and/or the Property, (each an “**Interested Party**”), a statement of the status of any matter pertaining to this Lease, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Lease. In addition, Tenant shall deliver to Landlord, or any Interested Party designated by Landlord, financial statements of Tenant and any guarantor of Tenant’s obligations under this Lease, as reasonably requested by Landlord, including, but not limited to financial statements for the past three (3) years. Any such status statement or financial statement delivered by Tenant pursuant to this Section 9.15 may be relied upon by any Interested Party.

Landlord shall keep any non-public information provided by Tenant pursuant to this Section 9.15 confidential, and shall not disclose the same other than (i) to Landlord’s officers, employees and consultants (or to any of the Interested Parties) or (ii) to the extent required by applicable law or by any administrative, governmental or judicial proceeding.

9.16 Self-Help

If Tenant shall at any time default in the performance of any obligation under this Lease, Landlord shall have the right, but shall not be obligated, to enter upon the Premises and to perform such obligation notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing such obligation, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the rate of two and one-half percentage points over the then prevailing prime rate in Boston as set by Bank of America, N.A., or its successor (but in no event greater than the maximum rate permitted by applicable law) and all costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be Additional Rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

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9.17 Holding Over

Any holding over by Tenant after the expiration of the term of this Lease shall be treated as a tenancy at sufferance and shall be on the terms and conditions as set forth in this Lease, as far as applicable except that Tenant shall pay as a use and occupancy charge an amount equal to the greater of (x) for the first ninety (90) days of any such holdover, 150% of the Annual Fixed Rent and Additional Rent calculated (on a daily basis) at the highest rate payable under the terms of this Lease; and thereafter, 200% of the Annual Fixed Rent and Additional Rent calculated (on a daily basis) at the highest rate payable under the terms of this Lease, or (y) the fair market rental value of the Premises, in each case for the period measured from the day on which Tenant's hold-over commences and terminating on the day on which Tenant vacates the Premises. In addition, Tenant shall save Landlord, its agents and employees harmless and will exonerate, defend and indemnify Landlord, its agents and employees from and against any and all damages which Landlord may suffer on account of Tenant's hold-over in the Premises after the expiration or prior termination of the term of this Lease. Nothing in the foregoing nor any other term or provision of this Lease shall be deemed to permit Tenant to retain possession of the Premises or hold over in the Premises after the expiration or earlier termination of the Lease Term. All property which remains in the Building or the Premises after the expiration or termination of this Lease shall be conclusively deemed to be abandoned and may either be retained by Landlord as its property or sold or otherwise disposed of in such manner as Landlord may see fit. If any part thereof shall be sold, then Landlord may receive the proceeds of such sale and apply the same, at its option against the expenses of the sale, the cost of moving and storage, any arrears of rent or other charges payable hereunder by Tenant to Landlord and any damages to which Landlord may be entitled under this Lease and at law and in equity.

9.18 [Intentionally Omitted.]

9.19 Security Deposit

Tenant agrees that the Security Deposit shall be paid upon execution and delivery of this Lease, and that Landlord shall hold the same, throughout the Term of this Lease, as security for the performance by Tenant of all obligations on the part of Tenant to be kept and performed. Landlord shall have the right from time to time without prejudice to any other remedy Landlord may have on account thereof, after the occurrence of an Event of Default to apply such deposit, or any part thereof, to Landlord's damages arising from such Event of Default. If Landlord so applies all or any portion of such deposit, Tenant shall within seven (7) days after notice from Landlord deliver cash to Landlord in an amount sufficient to restore such deposit to the full amount stated in Section 1.1. Tenant not then being in default and having performed all of its obligations under this Lease, including the payment of all Annual Fixed Rent, Landlord shall return the deposit, or so much thereof as shall not

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have theretofore been applied in accordance with the terms of this Section 9.19, to Tenant on the expiration or earlier termination of the term of this Lease and surrender possession of the Premises by Tenant to Landlord in the condition required in the Lease at such time. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 9.19, and the return thereof in accordance herewith.

Neither the holder of any mortgage nor the lessor in any ground lease on property which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such holder or ground lessor.

9.20 Late Payment

If Landlord shall not have received any payment or installment of Annual Fixed Rent or Additional Rent (the "**Outstanding Amount**") on or before the date on which the same first becomes payable under this Lease (the "**Due Date**"), the amount of such payment or installment shall incur a late charge equal to the sum of: (a) five percent (5%) of the Outstanding Amount for administration and bookkeeping costs associated with the late payment and (b) interest on the Outstanding Amount from the Due Date through and including the date such payment or installment is received by Landlord, at a rate equal to the lesser of (i) the rate announced by Bank of America, N.A. (or its successor) from time to time as its prime or base rate (or if such rate is no longer available, a comparable rate reasonably selected by Landlord), plus two percent (2%), or (ii) the maximum applicable legal rate, if any. Such interest shall be deemed Additional Rent and shall be paid by Tenant to Landlord upon demand.

9.21 Tenant's Payments

Each and every payment and expenditure, other than Annual Fixed Rent, shall be deemed to be Additional Rent or additional rent hereunder, whether or not the provisions requiring payment of such amounts specifically so state, and shall be payable, unless otherwise provided in this Lease, within ten (10) days after written demand by Landlord, and in the case of the non-payment of any such amount, Landlord shall have, in addition to all of its other rights and remedies, all the rights and remedies available to Landlord hereunder or by law in the case of non-payment of Annual Fixed Rent. Unless expressly otherwise provided in this Lease, the performance and observance by Tenant of all the terms, covenants and conditions of this Lease to be performed and observed by Tenant shall be at

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Tenant's sole cost and expense, subject to any reimbursement to which Tenant may be entitled pursuant to the provisions of subparagraph 8 of Section 2.7. If Tenant has not objected to any statement of Additional Rent which is rendered by Landlord to Tenant within three hundred sixty-five (365) days after Landlord has rendered the same to Tenant, then the same shall be deemed to be a final account between Landlord and Tenant not subject to any further dispute. In the event that Tenant shall seek Landlord's consent or approval under this Lease, then Tenant shall reimburse Landlord, upon demand, as Additional Rent, for all reasonable costs and expenses, including legal and architectural costs and expenses, incurred by Landlord in processing such request, whether or not such consent or approval shall be given. Notwithstanding anything in this Lease to the contrary, if Landlord or any affiliate of Landlord has elected to qualify as a real estate investment trust ("**REIT**"), any service required or permitted to be performed by Landlord pursuant to this Lease, the charge or cost of which may be treated as impermissible tenant service income under the laws governing a REIT, may be performed by a taxable REIT subsidiary that is affiliated with either Landlord or Landlord's property manager, an independent contractor of Landlord or Landlord's property manager (the "**Service Provider**"). If Tenant is subject to a charge under this Lease for any such service, then, at Landlord's direction, Tenant will pay such charge either to Landlord for further payment to the Service Provider or directly to the Service Provider, and, in either case, (i) Landlord will credit such payment against Additional Rent due from Tenant under this Lease for such service, and (ii) such payment to the Service Provider will not relieve Landlord from any obligation under the Lease concerning the provisions of such service.

9.22 Waiver of Trial By Jury

The parties hereto waive any right to trial by jury in any action, proceeding or counterclaim brought by either Landlord or Tenant on any matters whatsoever arising out of or any way connected with this Lease, the relationship of the Landlord and the Tenant, the Tenant's use or occupancy of the Premises and/or any claim of injury or damage, including but not limited to, any summary process eviction action.

9.23 Governing Law

This Lease shall be governed exclusively by the provisions hereof and by the law of the Commonwealth of Massachusetts, as the same may from time to time exist.

9.24 Light and Air

Tenant agrees that no diminution of light, air or view by any structure (inside or outside the Building) which may hereafter be erected or modified (whether or not by Landlord) shall entitle Tenant to any reduction of rent hereunder, result in any liability of Landlord to Tenant, or in any other way affect this Lease.

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9.25 Name of Building

Tenant shall not use the name of the Building or Office Park for any purpose other than as the address of the business conducted by Tenant in the Premises without the written consent of Landlord. Landlord reserves the right to change the name of the Building and/or the Office Park at any time in its sole discretion by written notice to Tenant and Landlord shall not be liable to Tenant for any loss, cost or expense on account of any such change of name.

9.26 Electronic Signatures

The parties acknowledge and agree that this Lease may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or an electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

(signatures on next page)

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EXECUTED as a sealed instrument in two or more counterparts each of which shall be deemed to be an original.

WITNESS:

LANDLORD:

BP BAY COLONY LLC,
a Delaware limited liability company

By: BP Bay Colony Holdings LLC,
its manager

By: Boston Properties Limited
Partnership, its manager

By: Boston Properties, Inc.,
its general partner

By: /s/ David C.
Provost

Name: David C. Provost

Title: SVP

TENANT:

ATTEST:

TESARO, Inc.

By:

Name:

Title: Secretary or Assistant
Secretary

By: /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: President or Vice President

Hereto duly authorized

By: /s/ Timothy R. Pearson

Name: Timothy R. Pearson

Title: Treasurer or Assistant Treasurer

Hereto duly authorized

(CORPORATE SEAL)

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EXHIBIT A

DESCRIPTION OF OFFICE PARK

Parcel I:

That certain parcel of land situate in Waltham in the County of Middlesex, Commonwealth of Massachusetts, described as follows:

Northeasterly by Winter Street, eight hundred sixty-six and 87/100 feet;

Easterly by land now or formerly of City of Cambridge, four hundred forty-two and 93/100 feet;

Southwesterly by land now or formerly of Waltham Resources Corp., ten hundred and fifty feet; and

Northerly, by three lines measuring together, four hundred fourteen and 19/100 feet,

Northwesterly, by three lines measuring together, seven hundred forty-three and 28/100 feet,

Southwesterly, being a curving line, three hundred sixty-four and 63/100 feet,

Northwesterly, one hundred forty and 15/100 feet,

Northeasterly, ninety-two and 37/100 feet,

Northwesterly, twenty feet,

Northeasterly, three hundred and eighty-three feet, and

Northwesterly, twenty feet, all by Lot 6 as shown on plan hereinafter mentioned.

Said parcel is shown as Lot 5, Sheet 4, on said plan. (Plan No. 41218C).

All of said boundaries are determined by the Land Court to be located as shown on a subdivision plan, as approved by the Land Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 1051, Page 79, with Certificate 184229.

Page 1
Exhibit A

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Parcel II:

That certain parcel of land situate in Waltham in the County of Middlesex, Commonwealth of Massachusetts, described as follows:

Northeasterly, by Winter Street, four hundred and one feet,
Southeasterly, twenty feet,
Southwesterly, three hundred and eighty-three feet,
Southeasterly, twenty feet,
Southwesterly, ninety-two and 37/100 feet,
Southeasterly, one hundred forty and 19/100 feet,
Northeasterly, being a curving line, three hundred sixty-four and 63/100 feet,
Southeasterly, by three lines measuring together, seven hundred forty-three and 28/100 feet,
and
Southerly, by three lines measuring together, four hundred fourteen and 19/100 feet, all by Lot 5 as shown on plan hereinafter mentioned;
Southwesterly by land now or formerly of Waltham Resources Corp., four hundred eighty-nine and 18/100 feet,
Northerly, four hundred twelve and 10/100 feet, and
Northwesterly, three hundred twenty-six and 44/100 feet, by Lot 7 on said plan; and
Northeasterly, thirteen and 10/100 feet,
Northwesterly, three hundred seventy-nine and 63/100 feet,
Northwesterly, again, four hundred forty-seven and 33/100 feet,
Northeasterly, two hundred five and 91/100 feet, and
Northwesterly, twenty feet, all by Lot 8 on said plan.

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Said parcel is shown as Lot 6, Sheet 3, on said plan, (Plan No. 41218C).

All of said boundaries are determined by the Land Court to be located as shown on a subdivision plan, as approved by the Land Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 1051, Page 79, with Certificate 184229.

Parcel III:

Those certain parcels of land situate in Waltham in the County of Middlesex, Commonwealth of Massachusetts, being shown as Lots 10 and 11 on a plan entitled "Land Court Plan of Land in Waltham, Mass., Prepared for: London & Leeds Development Corp., scale: 1"-80', dated May 2, 1995, prepared by Schofield Brothers of New England, Inc., 1071 Worcester Road, Framingham, Mass. 01701, filed in the Land Registration Office as Land Court Plan No. 41218E.

Parcel IV (Appurtenant Rights):

TOGETHER WITH the rights, easements, benefits and appurtenances in the following instruments:

- A. Declaration of Easement dated April 30, 1984 and filed with the Middlesex South Registry District of the Land Court as Document Number 661086.
- B. Declaration of Restrictions dated October 20, 1983 and recorded with the Middlesex South Registry of Deeds at Book 15274, Page 590.
- C. Grant of Utility Easements dated October 20, 1983 and recorded with the Middlesex South Registry of Deeds at Book 15274, Page 577 and filed with the Middlesex South Registry District of the Land Court as Document Number 649824.
- D. License Agreement dated June 8, 1984 and recorded with the Middlesex South Registry of Deeds at Book 15651, Page 171.
- E. Declaration of Easements and Covenants dated October 30, 1986 and filed with the Land Court as Document number 726257; as amended by First Amendment of Declaration of Easements and Covenants dated December 15, 1997 and filed with the Land Court as Document Number 1049953.
- F. Grant of Drainage Easements dated October 20, 1983 and recorded with the Registry of Deeds at Book 15274, Page 597.

Page 3
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EXHIBIT B-1

WORK AGREEMENT

1.1 Tenant's Work

(A) Tenant shall accept the Premises in their as-is condition without any obligation on the Landlord's part to perform any additions, alterations, improvements, demolition or other work therein or pertaining thereto; provided, however, that Landlord represents that the Premises shall be delivered with the base Building systems serving the Premises in good working order and condition on the Commencement Date. Tenant, at its sole cost and expense, shall perform all work necessary to prepare the Premises for Tenant's occupancy in accordance with plans and specifications prepared by an architect, licensed by the Commonwealth of Massachusetts and reasonably approved by Landlord, such plans and specifications to be subject to the reasonable approval of the Landlord. Tenant shall submit to Landlord a detailed floor plan layout together with working drawings (the "Tenant's Submission") for work to be performed by Tenant to prepare the Premises for Tenant's occupancy ("Tenant's Work"). Such floor plan layout and working drawings (the "Plans") shall contain at least the information required by, and shall conform to the requirements of, Exhibit B-2. Provided that the Plans contain at least the information required by, and conform to the requirements of, said Exhibit B-2, Landlord's approval of the Plans shall not be unreasonably withheld or delayed and if Landlord fails to respond within fourteen (14) days after delivery thereof and such failure shall continue for three (3) business days after written notice from Tenant to Landlord of such failure, then the Plans will be deemed approved by Landlord; however, Landlord's determination of matters relating to aesthetic issues relating to alterations or changes which are visible outside the Premises shall be in Landlord's sole discretion. If Landlord, in accordance with the immediately preceding sentence, disapproves of any Plans, then Tenant shall have the Plans revised by its architect to incorporate all objections and conditions presented by Landlord and shall resubmit such plans to Landlord no later than seven (7) days after Landlord has submitted to Tenant its objections and conditions. If Landlord fails to respond within five (5) calendar days after delivery of the revised Plans, Landlord shall be deemed to have approved such revised Plans. Such process shall be followed until the Plans shall have been approved by the Landlord without objection or condition.

(B) Once the Plans have been approved by Landlord, Tenant, at its sole cost and expense, shall promptly, and with all due diligence, perform Tenant's Work as set forth on the Plans, and, in connection therewith, the Tenant shall obtain all necessary governmental permits and approvals for Tenant's Work. All of Tenant's Work shall be performed substantially in accordance with the Plans and in accordance with applicable Legal Requirements (as defined in Section 1.3 hereof) and Insurance Requirements (as defined in Section 5.12 of the Lease). Tenant shall have Tenant's Work performed by contractors, reasonably approved by Landlord, which contractors shall provide to Landlord such

Page 1
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insurance as required by Section 8.14 of the Lease. Landlord hereby approves the following contractors: JCA; Chapman; CM&B; and Commodore. Landlord shall have the right to provide such reasonable rules and regulations relative to the performance of Tenant's Work and any other work which the Tenant may perform under the Lease and Tenant shall abide by all such reasonable rules and regulations and shall cause all of its contractors to so abide. Prior to the Rent Commencement Date, Tenant shall not be required to pay for the costs of using Building services or utilities in connection with Tenant's Work unless such usage exceeds usual and customary usage levels for work of the scope and nature of Tenant's Work. It shall be Tenant's obligation to obtain a certificate of occupancy or other like governmental approval for the use and occupancy of the Premises to the extent required by law, and Tenant shall not occupy the Premises for the conduct of business until and unless it has obtained such approval and has submitted to Landlord a copy of the same together with waivers of lien from all of Tenant's major contractors (defined as any construction contracts for a total estimated cost of \$100,000.00 or more) in form adequate for recording purposes. Tenant shall also prepare and submit to Landlord promptly after Tenant's Work is substantially complete a set of as-built plans in electronic form showing the work performed by Tenant to the Premises including, without limitation, any wiring or cabling installed by Tenant or Tenant's contractor for Tenant's computer, telephone and other communication systems.

1.2 Quality and Performance of Work

All construction work required or permitted by the Lease shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and requirements of all public authorities ("Legal Requirements") and all Insurance Requirements (as defined in Section 5.12 of the Lease). All of Tenant's work shall be coordinated with any work being performed by or for Landlord and in such manner as to maintain harmonious labor relations. Each party may inspect the work of the other at reasonable times and shall promptly give notice of observed defects. Each party authorizes the other to rely in connection with design and construction upon approval and other actions on the party's behalf by any Construction Representative of the party named in Section 1.1 of the Lease or any person hereafter designated in substitution or addition by notice to the party relying. Tenant acknowledges that Tenant is acting for its own benefit and account and that Tenant will not be acting as Landlord's agent in performing any Tenant Work, accordingly, no contractor, subcontractor or supplier shall have a right to lien Landlord's interest in the Property in connection with any work.

1.3 Special Allowance

Landlord shall provide to Tenant a special allowance equal to the product of (x) \$[***] and (y) the Rentable Floor Area of the Premises (the "Tenant Allowance"). The Tenant Allowance shall be used and applied by Tenant solely on account of the cost of Tenant's

Page 2
Exhibit B-1

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Work. Provided that the Tenant (i) has completed all of such Tenant's Work for which disbursement of the Tenant Allowance is requested in accordance with the terms of the Lease, (ii) has paid for all of such Tenant's Work for which disbursement of the Tenant Allowance is requested in full and has delivered to Landlord lien waivers from all persons who might have a lien as a result of such work, in the recordable forms attached hereto as **Exhibit E**, (iii) has delivered to Landlord its certificate specifying the cost of such Tenant's Work and all contractors, subcontractors and suppliers involved with Tenant's Work, together with evidence of such cost in the form of paid invoices, receipts and the like, (iv) in the case of the final Requisition (as hereinafter defined) has delivered to Landlord a final set of record drawings for Tenant's Work, (v) is not in monetary default or material non-monetary default under the Lease, and (vi) there are no liens (unless bonded to the reasonable satisfaction of Landlord) against Tenant's interest in the Lease or against the Building or the Site arising out of Tenant's Work or any litigation in which Tenant is a party, then within thirty (30) days after the satisfaction of the foregoing conditions, the Landlord shall pay to the Tenant the amount of such costs shown on each Requisition submitted by Tenant to Landlord, subject to the following conditions: (1) Tenant may not make a request for disbursement of any of the Tenant Allowance more frequently than once every thirty (30) days, (2) the aggregate amount of all requests made by Tenant for disbursement of the Tenant Allowance may not exceed the total amount of the Tenant Allowance, (3) Tenant may not draw the final ten percent (10%) of the Tenant Allowance until Tenant has completed all of the Tenant's Work, delivered to Landlord a final set of record drawings for the Tenant's Work and opened for business in the Premises, (4) Tenant may not make a request for disbursement of any of the Tenant Allowance after the date that is twelve (12) months following the Rent Commencement Date (the "Reimbursement Deadline"), and (5) Landlord shall have the right, upon reasonable advance notice to Tenant, to inspect Tenant's books and records relating to each Requisition in order to verify the amount thereof. If Tenant fails to properly requisition the entire Tenant Allowance on or before the Reimbursement Deadline, Tenant shall be deemed to have waived and forfeited its right to receive any amount of the Tenant Allowance not timely and properly requisitioned as of such Reimbursement Deadline. "Requisition" shall mean written documentation (including, without limitation, invoices from Tenant's contractors, vendors, service providers and consultants, and lien waivers as required above) showing in reasonable detail the costs of the item in question or of the improvements installed to date in the Premises, accompanied by certifications from Tenant that the amount of the Requisition in question does not exceed the cost of the items, services and work covered by such Requisition. Each Requisition shall be accompanied by evidence reasonably satisfactory to Landlord that all items, services, and work covered by such Requisition has been fully paid by Tenant. Notwithstanding anything to the contrary herein contained, Landlord shall have no obligation to advance funds on account of the Tenant Allowance unless and until Landlord has received a Requisition complying with this Section 1.3.

For the purposes hereof, the cost to be so reimbursed by Landlord shall include the cost of leasehold improvements but not the cost of any of Tenant's personal property, trade

Page 3
Exhibit B-1

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fixtures or trade equipment, moving expenses or any so-called soft costs for architectural and engineering fees above the Soft Costs Cap (as hereinafter defined); provided, however, that the Tenant Allowance may be applied towards soft costs for architectural and engineering fees in an amount not to exceed [***] percent ([***]%) of the total Tenant Allowance (the "Soft Costs Cap"). Notwithstanding the foregoing, Landlord shall be under no obligation to apply any portion of the Tenant Allowance for any purposes other than as provided in this Section 1.3, nor shall Landlord be deemed to have assumed any obligations, in whole or in part, of Tenant to any contractors, subcontractors, suppliers, workers or materialmen. Further, in no event shall Landlord be required to make application of any portion of the Tenant Allowance on account of any supervisory fees, overhead, management fees or other payments to Tenant, or any partner or affiliate of Tenant. In the event that such cost of Tenant's Work is less than the Tenant Allowance, Tenant shall not be entitled to any payment or credit nor shall there be any application of the same toward Annual Fixed Rent or Additional Rent owed by Tenant under the Lease. Landlord shall be entitled to deduct from the Tenant Allowance an amount equal to reasonable actual third party expenses incurred by Landlord to review Tenant's Plans and Tenant's Work.

Page 4
Exhibit B-1

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EXHIBIT B-2

TENANT PLAN AND WORKING DRAWING REQUIREMENTS

1. Floor plan indicating location of partitions and doors (details required of partition and door types).
2. Location of standard electrical convenience outlets and telephone outlets.
3. Location and details of special electrical outlets; (e.g. Xerox), including voltage, amperage, phase and NEMA configuration of outlets.
4. Reflected ceiling plan showing layout of standard ceiling and lighting fixtures. Partitions to be shown lightly with switches located indicating fixtures to be controlled.
5. Locations and details of special ceiling conditions, lighting fixtures, speakers, etc.
6. Location and heat load in BTU/Hr. of all special air conditioning and ventilating requirements and all necessary HVAC mechanical drawings.
7. Location and details of special structural requirements, e.g., slab penetrations and areas with floor loadings exceeding a live load of 70 lbs./s.f.
8. Locations and details of all plumbing fixtures; sinks, drinking fountains, etc.
9. Location and specifications of floor coverings, e.g., vinyl tile, carpet, ceramic tile, etc.
10. Finish schedule plan indicating wall covering, paint or paneling with paint colors referenced to standard color system.
11. Details and specifications of special millwork, glass partitions, rolling doors and grilles, blackboards, shelves, etc.
12. Hardware schedule indicating door number keyed to plan, size, hardware required including butts, latchsets or locksets, closures, stops, and any special items such as thresholds, soundproofing, etc. Keying schedule is required.
13. Verified dimensions of all built-in equipment (file cabinets, lockers, plan files, etc.).
14. Location of any special soundproofing requirements.

Page 1
Exhibit B-2

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15. All drawings to be uniform size (30" X 42") and shall incorporate the standard project electrical and plumbing symbols and be at a scale of 1/8" = 1' or larger.
16. Drawing submittal shall include the appropriate quantity required for Landlord to file for permit along with four half size sets and one full size set for Landlord's review and use.
17. Provide all other information necessary to obtain all permits and approvals for Landlord's Work.
18. Upon completion of the Landlord's Work, Tenant shall provide Landlord with two hard copies and one CAD file of all updated architectural and mechanical drawings to reflect all project sketches and changes.

Page 2
Exhibit B-2

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EXHIBIT C

LANDLORD SERVICES

I. CLEANING

Cleaning and janitorial services shall be provided as needed Monday through Friday, exclusive of holidays observed by the cleaning company and Saturdays and Sundays.

A. OFFICE AREAS

Cleaning and janitorial services to be provided in the office areas shall include:

1. Vacuuming, damp mopping of resilient floors and trash removal.
2. Dusting of horizontal surfaces within normal reach (tenant equipment to remain in place).
3. High dusting and dusting of vertical blinds to be rendered as needed.

B. LAVATORIES

Cleaning and janitorial services to be provided in the common area lavatories of the building shall include:

1. Dusting, damp mopping of resilient floors, trash removal, sanitizing of basins, bowls and urinals as well as cleaning of mirrors and bright work.
2. Refilling of soap, towel, tissue and sanitary dispensers to be rendered as necessary.
3. High dusting to be rendered as needed.

C. MAIN LOBBIES, ELEVATORS, STAIRWELLS AND COMMON CORRIDORS

Page 1
Exhibit C

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Cleaning and janitorial services to be provided in the common areas of the building shall include:

1. Trash removal, vacuuming, dusting and damp mopping of resilient floors and cleaning and sanitizing of water fountains.
2. High dusting to be rendered as needed.

D. WINDOW CLEANING

All exterior windows shall be washed on the inside and outside surfaces at frequency necessary to maintain a first class appearance.

II. HVAC

- A. Heating, ventilating and air conditioning equipment will be provided with sufficient capacity to accommodate a maximum population density of one (1) person per one hundred fifty (150) square feet of useable floor area served, and a combined lighting and standard electrical load of 3.0 watts per square foot of useable floor area. In the event Tenant introduces into the Premises personnel or equipment which overloads the system's ability to adequately perform its proper functions, Landlord shall so notify Tenant in writing and supplementary system(s) may be required and installed by Landlord at Tenant's expense, if within fifteen (15) days Tenant has not modified its use so as not to cause such overload.

Operating criteria of the basic system shall not be less than the following:

- (i) Cooling season indoor temperatures of not in excess of 73 - 79 degrees Fahrenheit when outdoor temperatures are 91 degrees Fahrenheit ambient.
- (ii) Heating season minimum room temperature of 68 - 75 degrees Fahrenheit when outdoor temperatures are 6 degrees Fahrenheit ambient.

- B. Landlord shall provide heating, ventilating and air conditioning as normal seasonal changes may require during the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday (legal holidays in all cases excepted).

If Tenant shall require air conditioning (during the air conditioning season) or heating or ventilating during any other time period, Landlord

Page 2
Exhibit C

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shall use landlord's best efforts to furnish such services for the area or areas specified by written request of Tenant delivered to the Building Superintendent or the Landlord before 3:00 p.m. of the business day preceding the extra usage. Landlord shall charge Tenant for such extra-hours usage at reasonable rates customary for first-class office buildings in the Boston Suburban market, and Tenant shall pay Landlord, as Additional Rent, upon receipt of billing therefor.

III. ELECTRICAL SERVICES

- A. Landlord shall provide electric power for a combined load of 3.0 watts per square foot of useable area for lighting and for office machines through standard receptacles for the typical office space.
- B. In the event that Tenant has special equipment (such as computers and reproduction equipment) that requires either 3-phase electric power or any voltage other than 120 volts, or for any other usage in excess of 3.0 watts per square foot, Landlord may at its option require the installation of separate metering (Tenant being solely responsible for the costs of any such separate meter and the installation thereof) and direct billing to Tenant for the electric power required for any such special equipment.
- C. Landlord will furnish and install, at Tenant's expense, all replacement lighting tubes, lamps and ballasts required by Tenant. Landlord will clean lighting fixtures on a regularly scheduled basis at Tenant's expense.

IV. ELEVATORS

Provide passenger elevator service.

V. WATER

Provide hot water for lavatory purposes and cold water for drinking, lavatory and toilet purposes.

VI. CARD ACCESS SYSTEM

Landlord will provide a card access system at one entry door of the building and up to 95 access cards free of charge upon occupancy.

Page 3
Exhibit C

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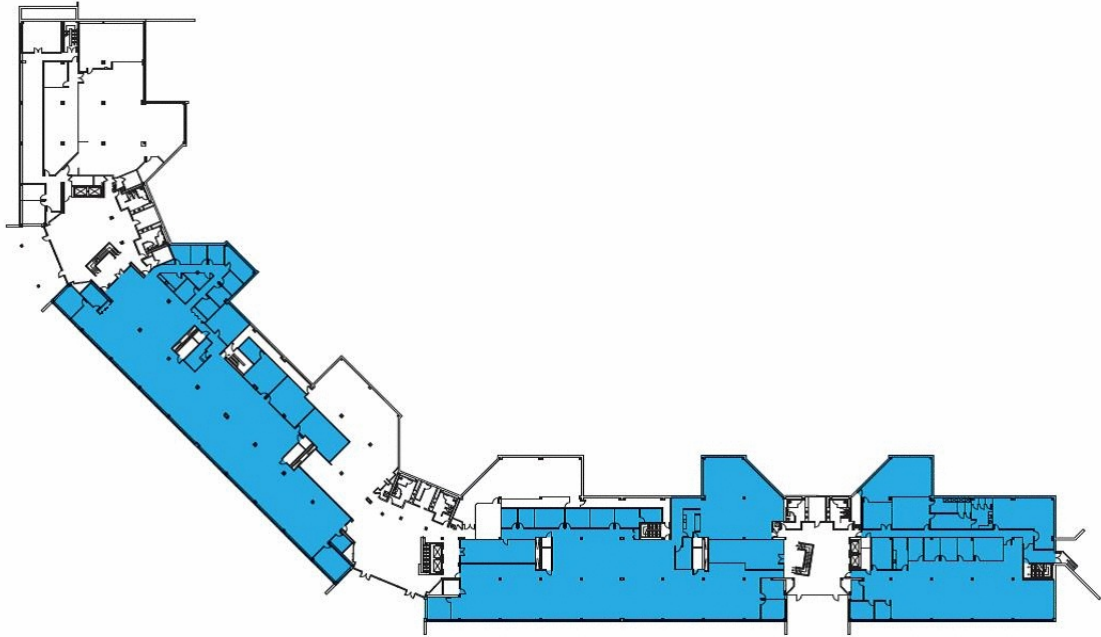
EXHIBIT D

FLOOR PLAN

[Attached]

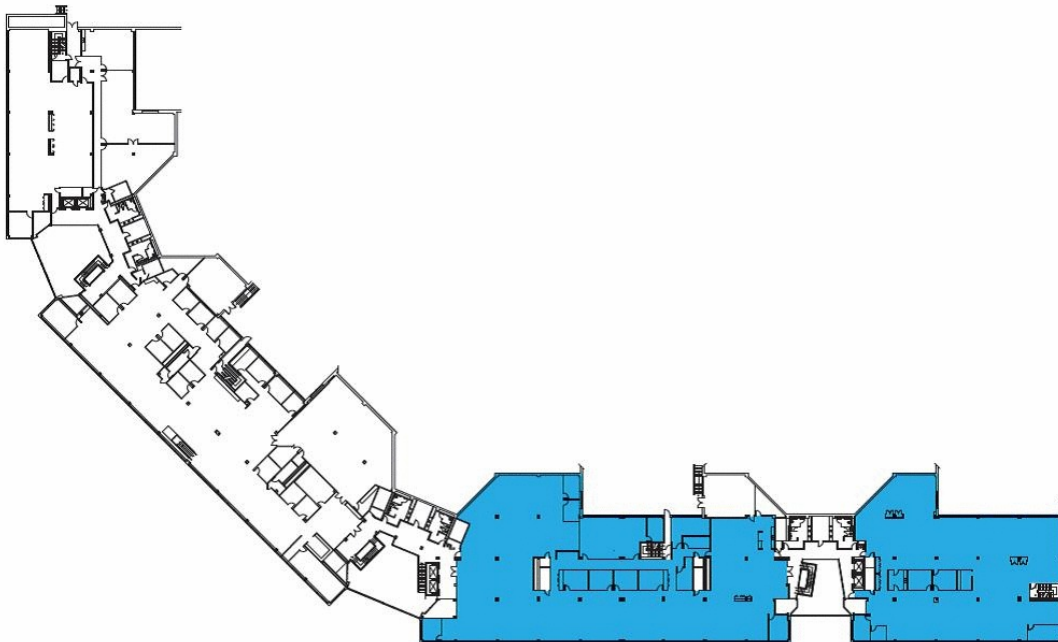
Page 1
Exhibit D

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EXHIBIT E

FORM OF LIEN WAIVERS

CONTRACTOR'S PARTIAL WAIVER AND SUBORDINATION OF LIEN

STATE OF _____ Date: _____
_____ COUNTY Application for Payment No.: _____

OWNER: _____

CONTRACTOR: _____

LENDER / MORTGAGEE: None

1.	Original Contract Amount:	\$	_____
2.	Approved Change Orders:	\$	_____
3.	Adjusted Contract Amount: (line 1 plus line 2)	\$	_____
4.	Completed to Date:	\$	_____
5.	Less Retainage:	\$	_____
6.	Total Payable to Date: (line 4 less line 5)	\$	_____
7.	Less Previous Payments:	\$	_____
8.	Current Amount Due: (line 6 less line 7)	\$	_____
9.	Pending Change Orders:	\$	_____

Page 1
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10. Disputed Claims: \$ _____

The undersigned who has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as located in _____ (city or town), _____ County, _____ and owned by _____, upon receipt of _____ (\$ _____) in payment of an invoice/requisition/application for payment dated _____ does hereby:

- (a) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date _____ (payment period), except for retainage, unpaid agreed or pending change orders, and disputed claims as stated above;
- (b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this _____ day of _____, 20__.

WITNESS:

CONTRACTOR:

Name: _____
Title: _____

Name: _____
Title: _____

Page 2
Exhibit E

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SUBCONTRACTOR'S LIEN WAIVER

General Contractor: _____

Subcontractor: _____

Owner: _____

Project: _____

Total Amount Previously Paid: \$ _____

Amount Paid This Date: \$ _____

Retainage (Including This Payment) Held to Date: \$ _____

In consideration of the receipt of the amount of payment set forth above and any and all past payments received from the Contractor in connection with the Project, the undersigned acknowledges and agrees that it has been paid all sums due for all labor, materials and/or equipment furnished by the undersigned to or in connection with the Project and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, liens and rights under any Notice of Identification, Notice of Contract or statement of account with respect to the Owner, the Project and/or against the Contractor on account of any labor, materials and/or equipment furnished through the date hereof.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned and that this document binds the undersigned to the extent that the payment referred to herein is received.

The undersigned represents and warrants that it has paid in full each and every sub-subcontractor, laborer and labor and/or material supplier with whom undersigned has dealt in connection with the Project and the undersigned agrees at its sole cost and expense to defend, indemnify and hold harmless the Contractor against any claims, demands, suits, disputes, damages, costs, expenses (including attorneys' fees), liens and/or claims of lien made by such sub-subcontractors, laborers and labor and/or material suppliers arising out of or in any way related to the Project.

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Signed under the penalties of perjury as of this _____ day of _____, 20__.

SUBCONTRACTOR:

Signature and Printed Name of
Individual
Signing this Lien Waiver

WITNESS:

Name: _____

Title: _____

Dated: _____

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CONTRACTOR'S WAIVER OF CLAIMS AGAINST OWNER AND ACKNOWLEDGMENT
OF FINAL PAYMENT

Commonwealth of Massachusetts

Date: _____

COUNTY OF _____

Invoice No.: _____

OWNER: _____

CONTRACTOR: _____

PROJECT: _____

1.	Original Contract Amount:	\$	_____
2.	Approved Change Orders:	\$	_____
3.	Adjusted Contract Amount:	\$	_____
4.	Sums Paid on Account of Contract Amount:	\$	_____
5.	Less Final Payment Due:	\$	_____

The undersigned being duly sworn hereby attests that when the Final Payment Due as set forth above is paid in full by Owner, such payment shall constitute payment in full for all labor, materials, equipment and work in place furnished by the undersigned in connection with the aforesaid contract and that no further payment is or will be due to the undersigned.

The undersigned hereby attests that it has satisfied all claims against it for items, including by way of illustration but not by way of limitation, items of: labor, materials, insurance, taxes, union benefits, equipment, etc. employed in the prosecution of the work of said contract, and acknowledges that satisfaction of such claims serves as an inducement for the Owner to release the Final Payment Due.

The undersigned hereby agrees to indemnify and hold harmless the Owner from and against all claims arising in connection with its Contract with respect to claims for the furnishing of labor, materials and equipment by others. Said indemnification and hold harmless shall include the reimbursement of all actual attorney's fees and all costs and expenses of every nature, and shall

Page 5
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be to the fullest extent permitted by law.

The undersigned hereby irrevocably waives and releases any and all liens and right of lien on such real property and other property of the Owner for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished by the undersigned, and anyone claiming by, through, or under the undersigned, in connection with the Project.

The undersigned hereby releases, remises and discharges the Owner, any agent of the Owner and their respective predecessors, successors, assigns, employees, officers, shareholders, directors, and principals, whether disclosed or undisclosed (collectively "Releasees") from and against any and all claims, losses, damages, actions and causes of action (collectively "Claims") which the undersigned and anyone claiming by, through or under the undersigned has or may have against the Releasees, including, without limitation, any claims arising in connection with the Contract and the work performed thereunder.

Notwithstanding anything to the contrary herein, payment to the undersigned of the Final Payment Due sum as set forth above, shall not constitute a waiver by the Owner of any of its rights under the contract including by way of illustration but not by way of limitation guarantees and/or warranties. Payment will not be made until a signed waiver is returned to Owner.

The undersigned individual represents and warrants that he/she is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned.

Page 6
Exhibit E

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Signed under the penalties of perjury as of this ____ day of _____, ____.

Corporation

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF
SUFOLK

By: _____
Name: _____
Title: _____
Hereunto duly authorized

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it as _____ for _____, a corporation/partnership voluntarily for its stated purpose.

NOTARY PUBLIC
My Commission Expires: _____

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EXHIBIT F

[Intentionally Omitted]

Page 1
Exhibit F

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EXHIBIT G

[Intentionally Omitted]

Page 1
Exhibit G

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EXHIBIT H

[Intentionally Omitted]

Page 1
Exhibit H

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EXHIBIT I

FORM OF CERTIFICATE OF INSURANCE

Page 1
Exhibit I

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ACORD TM CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YY)
PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
109722-ALL-GL-06-07		COMPANIES AFFORDING COVERAGE			
INSURED		COMPANY A			
		COMPANY B			
		COMPANY C			
		COMPANY D			
COVERAGES This certificate supersedes and replaces any previously issued certificate. THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ COMBINED SINGLE LIMIT \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY ☐ UMBRELLA FORM ☐ OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: ☐ INCL ☐ EXCL OTHER				☒ WC STATUTORY LIMITS ☐ OTHER EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS					
CERTIFICATE HOLDER		NYC-002611111-01		CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURANCE COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.	
				AUTHORIZED REPRESENTATIVE <i>Nancy Bartolino</i> Nancy Bartolino	
ACORD 25 (11/05) © ACORD CORPORATION 1988					

Page 2
Exhibit I

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EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

AGENCY		PHONE (A/C, No, Ext):		COMPANY	
FAX (A/C, No):		E-MAIL ADDRESS:			
CODE:		SUB CODE:			
AGENCY CUSTOMER ID #:		INSURED		LOAN NUMBER	
				POLICY NUMBER	
				EFFECTIVE DATE	
				EXPIRATION DATE	
				CONTINUED UNTIL TERMINATED IF CHECKED	
				THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE

REMARKS (including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

NAME AND ADDRESS	☐ MORTGAGEE	☐ ADDITIONAL INSURED
	☐ LOSS PAYEE	
	LOAN #	
	AUTHORIZED REPRESENTATIVE	

ACORD 27 (2006/07)

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Page 3
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EXHIBIT J

LIST OF MORTGAGES

None.

Page 1
Exhibit J

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TESARO, Inc.

CALCULATION OF EARNINGS TO FIXED CHARGES

(UNAUDITED)

	Years Ended December 31,				
	2013	2014	2015 (a)	2016 (a)	2017
Earnings:	(dollars in thousands)				
Income (Loss) from Operations before Income Taxes	\$ (92,362)	\$ (171,012)	\$ (247,749)	\$ (372,749)	\$ (494,802)
Add: Fixed Charges	129	4,081	15,832	17,158	20,833
Total Earnings Available for Fixed Charges	<u>\$ (92,233)</u>	<u>\$ (166,931)</u>	<u>\$ (235,576)</u>	<u>\$ (355,591)</u>	<u>\$ (473,969)</u>
Fixed Charges:					
Interest Expense (b)	\$ —	\$ 3,776	\$ 15,414	\$ 16,487	\$ 19,758
Interest Portion of Rent Expense (c)	129	305	418	671	1,075
Total Fixed Charges	<u>\$ 129</u>	<u>\$ 4,081</u>	<u>\$ 15,832</u>	<u>\$ 17,158</u>	<u>\$ 20,833</u>
Ratio of Earnings to Fixed Charges: (d)	N/A	N/A	N/A	N/A	N/A
Coverage Deficiency:	\$ 92,362	\$ 171,012	\$ 251,408	\$ 372,749	\$ 494,802

- (a) Income (Loss) from Operations before Income Taxes for the years ended December 31, 2015 and 2016 have been revised to reflect our adoption of Financial Accounting Standards Board Accounting Standards Update, or ASU, No. 2014-09 effective January 1, 2017, with full retrospective application to January 1, 2015.
- (b) Includes the amortization of our debt discount and debt issuance costs.
- (c) Represents estimated interest associated with certain facility leases (at an assumed rate of 20% of total rent expense for facility leases).
- (d) The ratio of earnings to fixed charges was less than one-to-one for each of the years presented.

Subsidiaries of the Company

Legal Name	Jurisdiction of Organization
TESARO Securities Corporation*	Massachusetts
TESARO UK Limited*	United Kingdom
TESARO Development, Ltd.*	Bermuda
TESARO Bio GmbH*	Switzerland
TESARO Bio Germany GmbH*	Germany
TESARO Bio Italy S.r.l.*	Italy
TESARO Bio France SAS*	France
TESARO Bio Spain, S.L.*	Spain
TESARO Bio Netherlands B.V.*	Netherlands
TESARO Bio Sweden AB*	Sweden
TESARO Bio Austria GmbH*	Austria

*The above named subsidiary does business only under its legal name.

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-182915) pertaining to the TESARO, Inc. 2012 Employee Stock Purchase Plan,
- (2) Registration Statement (Form S-8 No. 333-182916) pertaining to the TESARO, Inc. 2012 Omnibus Incentive Plan and the TESARO, Inc. 2010 Stock Incentive Plan,
- (3) Registration Statement (Form S-8 No. 333-206189) pertaining to the TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan and Inducement Stock Option Award for Joseph L. Farmer,
- (4) Registration Statement (Form S-8 No. 333-206190) pertaining to the TESARO, Inc. 2012 Omnibus Incentive Plan, and
- (5) Registration Statement (Form S-3ASR No. 333-212324) pertaining to TESARO, Inc.'s shelf registration statement for common stock, preferred stock, debt securities, warrants, units or any combination of the foregoing;

of our reports dated February 28, 2018, with respect to the consolidated financial statements and schedule of TESARO, Inc. and the effectiveness of internal control over financial reporting of TESARO, Inc., included in this Annual Report (Form 10-K) of TESARO, Inc. for the year ended December 31, 2017.

/s/ Ernst & Young LLP

Boston, Massachusetts
February 28, 2018

CERTIFICATIONS

I, Leon O. Moulder, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of TESARO, Inc.;
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 officer(s) 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 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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(s) 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: February 28, 2018

/s/ Leon O. Moulder, Jr.
 Leon O. Moulder, Jr.
 Chief Executive Officer
 (principal executive officer)

CERTIFICATIONS

I, Timothy R. Pearson, certify that:

1. I have reviewed this Annual Report on Form 10-K of TESARO, Inc.;
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 officer(s) 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 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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(s) 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: February 28, 2018

/s/ Timothy R. Pearson

Timothy R. Pearson
Executive Vice President and Chief Financial Officer
(principal financial officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of TESARO, Inc., or the Company, on Form 10-K for the year ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Leon O. Moulder, Jr., Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 28, 2018

/s/ Leon O. Moulder, Jr.

Leon O. Moulder, Jr.
Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of TESARO, Inc., or the Company, on Form 10-K for the year ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Timothy R. Pearson, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 28, 2018

/s/ Timothy R. Pearson

Timothy R. Pearson

Executive Vice President and Chief Financial Officer

SECTION 5 – TESARO 2016 ANNUAL REPORT EXTRACTS

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We are an oncology-focused biopharmaceutical company dedicated to improving the lives of cancer patients. We have in-licensed and are developing several oncology-related product candidates, including rolapitant, niraparib, and the product candidates under our immuno-oncology platform.

On September 1, 2015, our first commercial product, VARUBI®, which is the oral formulation of rolapitant, was approved by the U.S. Food and Drug Administration, or FDA, for use in combination with other antiemetic agents in adults for the prevention of delayed nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. We commenced shipments of VARUBI to distributors in November 2015.

A summary description of our current products and product candidates is as follows:

- *Rolapitant* is a potent and long-acting neurokinin-1, or NK-1, receptor antagonist for the prevention of chemotherapy induced nausea and vomiting, or CINV. The oral form of rolapitant, VARUBI, is approved for commercialization in the United States, and we are developing an intravenous, or IV, formulation of rolapitant. We submitted a new drug application, or NDA, for rolapitant IV to the FDA in March 2016. In January 2017, the FDA issued a complete response letter requesting additional information regarding the *in vitro* release method utilized to characterize the drug product and demonstrate comparability of drug product produced by our two proposed commercial manufacturers of rolapitant IV that were included in the NDA. We will need to provide the additional requested information to the FDA in the form of a resubmission of the NDA, which the FDA will need to deem acceptable, in order for the NDA to be approved and for us to be allowed to market and sell rolapitant IV in the U.S. We also submitted a Marketing Authorization Application, or MAA, for oral rolapitant to the European Medicines Agency, or EMA, in March 2016. In February 2017, the EMA's Committee for Medicinal Products for Human Use, or CHMP, rendered a positive opinion for our MAA for oral rolapitant, for the prevention of delayed nausea and vomiting associated with highly and moderately emetogenic chemotherapy in adults.
- *Niraparib* is an orally active and potent poly (ADP-ribose) polymerase, or PARP, inhibitor. We have several ongoing clinical trials evaluating niraparib for the treatment of ovarian or breast cancers, and we expect to initiate dosing in further clinical trials of niraparib during 2017. We are also collaborating with various other organizations to evaluate niraparib in combination with other therapeutics for the treatment of various cancers. Based on research related to PARP inhibitors generally, we believe niraparib may also be active in the treatment of several other tumor types. In June 2016, we announced that the Phase 3 NOVA trial of niraparib successfully achieved its primary endpoint, demonstrating that niraparib significantly prolonged progression-free survival, or PFS, compared to control among patients with recurrent ovarian cancer. We submitted an MAA for niraparib in October 2016, which the EMA has accepted for review. We also submitted an NDA for niraparib in October 2016, for which the FDA has granted a priority review designation with a target Prescription Drug User Fee Act action date of June 30, 2017.
- *Immuno-Oncology Platform*: In March 2014, we added immuno-oncology programs to our portfolio of product candidates by entering into a collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, for the discovery and development of antibodies for several immuno-oncology targets. We initiated a Phase 1, dose escalation study in March 2016 for our first immuno-oncology antibody, TSR-042, which targets PD-1. In July 2016, we commenced the dosing of the first patient in a Phase 1, dose escalation study for our second immuno-oncology antibody, TSR-022, which targets TIM-3. We have commenced pre-clinical research for our antibody candidate targeting LAG-3, TSR-033, and expect to initiate a Phase 1 study in 2017. As part of our collaboration with AnaptysBio, we received exclusive rights to monospecific antibody product candidates targeting PD-1, TIM-3, and LAG-3, and certain bi-specific antibody product candidates. In addition, we are evaluating our immuno-oncology anti-tumor agents, including TSR-042, in preclinical combination studies with niraparib and other anti-tumor agents.

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In February 2016, we entered into an exclusive collaboration with the Institute for Applied Cancer Science at The University of Texas MD Anderson Cancer Center, or MDACC, to discover and develop small molecule product candidates against undisclosed immuno-oncology targets. Under the terms of the agreement, we will receive exclusive worldwide rights to develop and commercialize any small molecule product candidates that result from this collaboration. MDACC will be responsible for conducting research activities aimed at identifying clinical candidates with defined characteristics targeting certain immuno-oncology targets. We will fund research, development, and commercialization expenses for this collaboration.

In April 2016, we entered into a global prostate cancer collaboration and license agreement, or the Collaboration Agreement, with Janssen Biotech, Inc., or Janssen, under which we granted Janssen licenses under certain patent rights and know-how relating to niraparib, for prostate cancer worldwide, except for Japan. We retain all rights worldwide (except China) to develop and commercialize niraparib outside of prostate cancer. In connection with the execution of the Collaboration Agreement, we received a \$35.0 million up-front license fee from Janssen, and assuming successful development and commercialization of niraparib products for prostate cancer, we could receive up to an additional \$415 million in clinical, regulatory and sales milestones as well as tiered, double-digit royalties on aggregate net sales of products in the field of prostate cancer. Janssen is responsible for conducting and funding all development and commercialization of niraparib in prostate cancer worldwide (excluding Japan), including research, development, manufacturing, regulatory and commercialization activities. We also entered into separate stock purchase and investor agreements with an affiliate of Janssen, Johnson & Johnson Innovation — JJDC, Inc., or JJDC, whereby we sold and issued 1,130,198 shares of our common stock to JJDC on April 5, 2016 at a price of \$44.24 per share, for an aggregate purchase price of approximately \$50.0 million.

In September 2016, we entered into a collaboration, development and license agreement with Zai Lab (Shanghai) Co., Ltd., or Zai Lab. Under the terms of the agreement, we granted to Zai Lab an exclusive license to develop and commercialize niraparib for the territories of China, Hong Kong and Macao, or the China Territories. In partial consideration for the license grant to Zai Lab for the China Territories, Zai Lab paid us a non-refundable, up-front license fee of \$15.0 million in the fourth quarter of 2016. We will be eligible to receive milestone payments contingent on Zai Lab achieving certain specified development and commercial goals. In return for certain consideration, we also have an option to co-market niraparib in the China Territories with Zai Lab. If we elect not to exercise this option, we will be eligible to receive tiered royalties based on percentages of net sales of niraparib in the China Territories ranging from the mid- to high-teens. This agreement also provides us with the right of first refusal with respect to licenses for two novel, discovery-stage immuno-oncology programs from Zai Lab.

As of December 31, 2016 we had an accumulated deficit of \$990.7 million. Our net losses were \$387.5 million, \$251.4 million, and \$171.0 million for the years ended December 31, 2016, 2015 and 2014, respectively. We expect to incur significant expenses and operating losses for the foreseeable future. Overall, we expect operating expenses to continue to increase over current levels as we incur increased costs related to: (i) our ongoing U.S. and international commercialization and pre-commercial activities including executing related marketing and promotional programs for the commercialization of VARUBI and our other product candidates; (ii) the advancement of clinical trial and other development and regulatory activities under our current development programs such as rolapitant IV, niraparib, TSR-042 and TSR-022; (iii) the immuno-oncology development activities under our collaborations; (iv) costs related to expanding our international operations; and (v) other research and development activities and potential future collaborative or in-licensed development programs. In addition, future license payments or milestone payments could cause our total operating expenses and cash usage to fluctuate. For example, if our NDA and MAA submissions for niraparib are approved, we will be obligated to make milestone payments of \$25.0 million and \$15.0 million, respectively, to Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., or Merck. If we obtain regulatory approval for any of our product candidates in addition to rolapitant, or in anticipation of obtaining regulatory approval, we expect that we will incur significant additional commercialization expenses related to product sales, marketing, manufacturing and distribution. Furthermore, we expect to incur increasing selling, general and administrative costs associated with our anticipated growth, international expansion, and continuing operation as a multinational public company, and we will continue to incur substantial interest expense related to our outstanding convertible debt. The actual amount of many of the expenditures described above will depend on numerous factors, including the timing of expenses and the timing and progress of our clinical trial activity and commercialization efforts for VARUBI, rolapitant IV, niraparib and our other product candidates. Accordingly, until we can generate a sufficient amount of revenue from our products, if ever, we will need to finance our operations in part through additional public or private equity or debt offerings and may seek additional capital through arrangements with strategic partners or from other sources. Adequate additional financing may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy. We will need to generate significant revenues to achieve profitability, and we may never do so.

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Rolapitant. In December 2010, we entered into a license agreement with OPKO to obtain exclusive worldwide rights to research, develop, manufacture, market and sell rolapitant. The license agreement also extended to an additional, backup compound, SCH900978, to which we have similar rights and obligations as rolapitant, but which we are not currently advancing. We are required to make development milestone payments to OPKO of up to an aggregate of \$30.0 million, of which we have paid \$20.0 million to date, if specified regulatory and initial commercial sales milestones are achieved in the U.S. and Europe. In addition, we are required to make milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved. We are required to pay OPKO tiered royalties on the amount of annual net sales achieved in the United States and Europe at percentage rates that range from the low teens to the low twenties, which we expect will result in an effective royalty rate in the low teens. The royalty rate on annual net sales outside of the United States and Europe is slightly above the single digits. We will pay royalties on rolapitant until the later of (i) the date that all of the patent rights licensed from OPKO and covering rolapitant expire, are invalidated or are not enforceable, and (ii) 12 years from the first commercial sale of the product, in each case, on a country-by-country and product-by-product basis. We are also required to pay OPKO an annual minimum royalty of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI. Additionally, if we elect to develop and commercialize rolapitant in Japan through a third-party licensee, we will share equally with OPKO all amounts received by us in connection with such activities under our agreement with such third party, subject to certain exceptions and deductions. We are responsible for all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant.

Rolapitant — Intravenous Formulation. We are developing a single dose IV formulation of rolapitant to address what we believe is a market need. If approved, this formulation will provide physicians with another route of administering rolapitant, in addition to VARUBI, the oral formulation. We believe the IV formulation will alleviate certain concerns associated with payor pre-approval, logistics and pharmacy availability that are sometimes associated with oral formulations of drugs utilized by cancer patients. We submitted a new drug application, or NDA, for rolapitant IV to the FDA in March 2016.

Niraparib. In May 2012, we entered into a license agreement with Merck, under which we obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib and a backup compound, MK-2512, for all therapeutic and prophylactic uses in humans. We are not currently advancing MK-2512. We are required to make total milestone payments to Merck of up to \$57.0 million in U.S. and European development and regulatory milestones for the first indication, up to \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. We have made milestone payments to Merck to date totaling \$12.8 million. If commercial sales of niraparib commence, we will pay Merck tiered royalties at percentage rates in the low teens based on worldwide annual net sales, until the later of the expiration of the last patent licensed from Merck covering or claiming niraparib, or the tenth anniversary of the first commercial sale of niraparib, in either case, on a country-by-country basis.

We are responsible for all clinical, regulatory and other activities necessary to develop and commercialize niraparib. At the time of the license transaction, niraparib had completed a Phase 1 clinical trial in cancer patients as a monotherapy. We have evaluated niraparib for the treatment of patients with recurrent ovarian cancer in our NOVA Phase 3 clinical study, for which dosing was initiated in July 2013. In June 2016, we announced that the Phase 3 NOVA trial of niraparib successfully achieved its primary endpoint, demonstrating that niraparib significantly prolonged progression-free survival, or PFS, compared to control. In October 2016, we submitted an NDA and an MAA for niraparib for the treatment of patients with recurrent ovarian cancer, based on the results of the NOVA clinical study. We have initiated commercial preparations in support of the potential launch of niraparib, pending regulatory approvals that we anticipate in the U.S. in the first half of 2017 and in Europe in the second half of 2017. We also commenced our QUADRA trial in April 2015. QUADRA is a Phase 2 clinical trial of niraparib for the treatment of patients with ovarian cancer who have received three or four regimens of therapy. We also commenced the PRIMA Phase 3 clinical trial of niraparib as a maintenance treatment in ovarian cancer patients following response to first-line platinum-based chemotherapy, in August 2016. We are also evaluating niraparib in breast cancer patients with germline BRCA mutations in the BRAVO Phase 3 clinical trial, which we commenced in April 2014. In May 2015, we entered into a research agreement with Merck Sharp & Dohme B.V., a subsidiary of Merck, to perform a trial to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® in patients with triple negative breast cancer and patients with ovarian cancer. This trial, referred to as TOPACIO, initiated dosing in April 2016. We also are collaborating with the Nordic Society of Gynecologic Oncology, or NSGO (in collaboration with the European Network for Gynaecological Oncological Trial groups, or ENGOT) in their trial evaluating niraparib plus bevacizumab in ovarian cancer patients in a Phase 1/2 trial referred to as the AVANOVA trial. Based on research related to PARP inhibitors generally, we believe niraparib may also be active in the treatment of several other tumor types.

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Immuno-Oncology Platform. In March 2014, we entered into a collaboration and exclusive license agreement with AnaptysBio, a therapeutic antibody company, which we expanded by amending the agreement in November 2014. We entered into another amendment in February 2016 to extend the term of the initial discovery period and our and AnaptysBio's associated activities under the agreement. Under the terms of this agreement, we obtained an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of immunotherapy antibody product candidates targeting PD-1, TIM-3 and LAG-3, and certain bi-specific antibody product candidates. Under the amended agreement, AnaptysBio is responsible for performing initial discovery and development of therapeutic antibodies against immune checkpoint proteins, with the goal of generating immunotherapy antibodies for use in the treatment of cancer. We are responsible for all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs, and we are obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program.

Under the terms of the amended agreement, in 2014 we made up-front, non-creditable and non-refundable cash payments of \$19.0 million to AnaptysBio. Under the terms of the amended agreement, we are required to reimburse AnaptysBio on a quarterly basis for specified costs incurred by AnaptysBio in its initial discovery and development activities covered by the agreement. For each of the four development programs, we will be required to make milestone payments to AnaptysBio of up to \$18.0 million if certain research and development milestone events are achieved, of which we have paid \$11.0 million to date, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. We will also be required to pay AnaptysBio tiered single-digit royalties, on a product-by-product basis, on worldwide annual net sales, and additional commercial milestone payments if specified levels of annual net sales of a product are attained.

Public Offerings of Common Stock, Private Placements of Securities and Issuance of Convertible Notes. As of December 31, 2016, our principal source of liquidity was cash and cash equivalents, which totaled \$785.9 million. Since our inception in 2010, we have funded our operations primarily through public offerings of our common stock, the private placement of our equity securities and issuance of convertible notes. From inception through December 31, 2016, we received \$1.4 billion in proceeds, net of underwriting discounts and commissions and offering expenses, from public offerings of common stock and private placements of convertible preferred stock. On September 29, 2014, we issued \$201.3 million aggregate principal amount of Convertible Notes, with net proceeds of \$194.7 million, and we used \$20.8 million of the proceeds from this transaction to enter into capped call option transactions, or Capped Calls, associated with the Convertible Notes. In March 2016, we sold 4,404,658 shares of our common stock in a private placement at a price of \$35.19 per share, and received approximately \$155.0 million in net proceeds. In April 2016, we sold 1,130,198 shares of common stock to JJDC at a price of \$44.24 per share, for an aggregate purchase price of approximately \$50.0 million. In July 2016, we sold 5,347,500 shares of our common stock, in an underwritten follow-on public offering at a price to the public of \$81.00 per share, resulting in net proceeds of \$408.9 million. In November 2016, we sold 1,750,000 shares of our common stock, in an underwritten follow-on public offering at a price to the public of \$135.00 per share, resulting in net proceeds of \$224.2 million.

Financial Operations Overview

Revenue

Product revenue is currently derived from sales of our sole commercial product, VARUBI, in the United States. License, collaboration and other revenues relate to our license agreements with Janssen and Jiangsu Hengrui Medicine Co., Ltd. or Hengrui. Janssen has licensed the rights to develop, manufacture and commercialize niraparib worldwide (except for Japan) for the treatment of prostate cancer. Hengrui has licensed the rights to develop, manufacture and commercialize rolapitant in the China Territories.

For further discussion of our revenue recognition policy, see "Critical Accounting Policies and Significant Judgments and Estimates" below. Our ability to generate revenue and become profitable depends upon our ability to successfully commercialize products, including any of our product candidates that we have in-licensed (rolapitant, niraparib, and products potentially resulting from our immuno-oncology collaboration with AnaptysBio) or other products or product candidates that we may in-license or acquire in the future. We expect to incur losses for the foreseeable future, and these losses may increase as we continue our development of, and seek regulatory approvals for, niraparib and rolapitant IV, continue commercial activities associated with VARUBI, continue to establish our commercial infrastructure, incur additional costs related to our continued development of our immuno-oncology platform, incur costs associated with our anticipated growth and international expansion, engage in pre-commercial activities relating to our product candidates, and incur increased interest expenses.

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Because of the numerous risks and uncertainties associated with product development and regulatory determinations, we are unable to predict the timing or amount of increased expenses, or when or if we will be able to achieve or maintain profitability. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels and be forced to reduce our operations.

We intend to adopt new revenue accounting guidance during 2017, which will impact the amount and timing of our future revenue recognition as well as the amount of revenue previously recognized in our published financial statements. For further discussion, see Note 2, “*Summary of Significant Accounting Policies*”, in our consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Research and Development Expenses

Research and development expenses consist primarily of costs incurred for the development of our product candidates, which include:

- pre-commercial license fees and milestone payments related to the acquisition of in-licensed product candidates, which are reported on our statements of operations as acquired in-process research and development;
- employee-related expenses, including salaries, bonuses, benefits, travel and stock-based compensation expense;
- fees and expenses incurred under agreements with contract research organizations, investigative sites, research consortia and other entities in connection with the conduct of clinical trials and preclinical studies and related services, such as administrative, data management, laboratory and biostatistics services;
- the cost of acquiring, developing and manufacturing active pharmaceutical ingredients for product candidates that have not received regulatory approval, clinical trial materials and other research and development materials;
- fees and costs related to regulatory filings and activities;
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent, utilities, maintenance of facilities, insurance and other supplies; and
- other costs associated with clinical, preclinical discovery and other research activities.

Research and development costs are expensed as incurred. License fees and development milestone payments related to in-licensed products and technology are expensed as acquired in-process research and development if it is determined that they have no alternative future use. Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations or information provided to us by our vendors.

Research and development activities are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials and manufacturing costs. We expect that our total research and development costs will continue to increase over current levels, depending on the progress of our clinical development programs. More specifically, we expect costs to increase as we: continue our currently ongoing Phase 2 and 3 trials for, continue our manufacturing development and validation related to, and initiate additional investigative and collaborative studies related to, niraparib; continue manufacturing and regulatory activities for the IV formulation of rolapitant; incur potential research and development related milestones; incur increased discovery, development and manufacturing related expenses associated with our immuno-oncology platform; and hire additional personnel.

We cannot determine with certainty the duration and completion costs of the current or future clinical trials of our product candidates or if, when, or to what extent we will generate revenues from the commercialization and sale of any of our product candidates that obtain regulatory approval. We may never succeed in achieving regulatory approval for any of our currently unapproved product candidates. The duration, costs and timing of clinical trials and development of our product candidates will depend on a variety of factors, including the uncertainties of future clinical and preclinical studies, uncertainties in clinical trial enrollment rates and significant and changing government regulation. In addition, the probability of success for each product candidate will depend on numerous factors, including competition, manufacturing capability and commercial

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viability. We will determine which programs to pursue and how much to fund each program in response to the scientific and clinical success of each product candidate, as well as an assessment of each product candidate's commercial potential. If we experience delays in the completion of, or the termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our future ability to generate product revenues from any of these product candidates will be delayed or jeopardized. These occurrences would harm our business, financial condition and prospects, perhaps significantly, which would require us to alter our current operation plan and potentially delay, scale back, or discontinue the development or commercialization of one or more programs and/or other areas of the business in order to reduce our future expenses and continue to fund our remaining operations.

The following table presents research and development expenses and acquired in-process research and development expenses on a program-specific basis for our in-licensed products and product candidates for the years ended December 31, 2014, 2015 and 2016, respectively (in thousands).

	Year Ended December 31,		
	2014	2015	2016
<i>Rolapitant Expenses</i>			
Acquired in-process research and development	\$ 5,000	\$ —	\$ —
Research and development	33,017	25,799	16,628
Rolapitant total	38,017	25,799	16,628
<i>Niraparib Expenses</i>			
Acquired in-process research and development	900	—	9,940
Research and development	46,694	60,982	104,778
Niraparib total	47,594	60,982	114,718
<i>Immuno-Oncology Platform Expenses</i>			
Acquired in-process research and development	19,000	2,000	9,000
Research and development	5,726	20,384	34,646
Immuno-Oncology Platform total	24,726	22,384	43,646
<i>TSR-011 Expenses (1)</i>			
Acquired in-process research and development	—	—	—
Research and development	6,014	4,313	1,581
TSR-011 total	6,014	4,313	1,581
<i>Personnel and Other Expenses</i>	26,974	43,912	77,511
Total	\$ 143,325	\$ 157,390	\$ 254,084

⁽¹⁾ In October 2015 our Board of Directors determined to discontinue the development of TSR-011. 2016 expenses relate to the wind-down of our Phase 1/2a clinical trial.

For further discussion of the changes in our research and development expenses with respect to the year ended December 31, 2016 and the corresponding period of 2015, see “Results of Operations — Comparison of the Year Ended December 31, 2016 to the Year Ended December 31, 2015 — Research and Development Expenses” below.

Personnel-related costs, depreciation and stock-based compensation are not allocated to any programs, as they are deployed across multiple projects under development and, as such, are separately classified as personnel and other expenses in the table above.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of salaries and related costs, including stock-based compensation, for our commercial personnel, including our field sales force, certain medical education professionals and other commercial support personnel, as well as personnel in executive and other administrative or non-research and development functions. Selling, general and administrative expenses also include certain facility-related costs, communication expenses,

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pre-commercial and commercial consulting, advertising, market research, and other activities necessary to prepare for and support the launches of VARUBI and other product candidates, and professional fees for legal, patent review, consulting and accounting services.

We anticipate that our selling, general and administrative expenses will increase in the future in support of our U.S. and ex-U.S. commercial and pre-commercial activities related to VARUBI, rolapitant IV, niraparib and our other product candidates, continued research and development activities, as well as the continued costs of operating as a public multinational company. If any of our product candidates are approved, these increases will likely be significant and will likely include increased costs related to the hiring of additional personnel domestically and internationally, executing global marketing and promotional programs, hiring consultants, leasing of additional facility space, enhancing information technology systems, and legal and other professional fees, among other expenses.

Other Income and Expense

Other income and expense consists primarily of interest expense related to the Convertible Notes and interest income earned on cash and cash equivalents. A portion of the interest expense on the Convertible Notes is non-cash expense relating to accretion of the debt discount and amortization of issuance costs.

Results of Operations

Comparison of the Year Ended December 31, 2016 to the Year Ended December 31, 2015

	Year Ended December 31,		Increase/ (Decrease)
	2015	2016	
	(in thousands)		
Revenues:			
Product revenue, net	\$ —	\$ 6,877	\$ 6,877
License, collaboration and other revenues	317	37,946	37,629
Total revenues	317	44,823	44,506
Expenses:			
Cost of sales - product	—	1,256	1,256
Cost of sales - intangible asset amortization	268	1,855	1,587
Research and development	155,390	235,144	79,754
Selling, general and administrative	78,701	158,578	79,877
Acquired in-process research and development	2,000	18,940	16,940
Total expenses	236,359	415,773	179,414
Loss from operations	(236,042)	(370,950)	(134,908)
Other income (expense), net	(15,366)	(15,047)	319
Loss before income taxes	(251,408)	(385,997)	(134,589)
Provision for income taxes	—	1,475	1,475
Net loss	<u>\$ (251,408)</u>	<u>\$ (387,472)</u>	<u>\$ (136,064)</u>

Product Revenue. We recorded no product revenue for the year ended December 31, 2015. We recorded \$6.9 million of net product revenue for the year ended December 31, 2016. This amount relates to U.S. sales of VARUBI, our first commercial product, which we began shipping in the U.S. in November 2015. We distribute our product in the U.S. principally through a limited number of specialty distributors and to a lesser extent through the specialty pharmacy channel. During the year ended December 31, 2016, we have recorded product revenue related to VARUBI shipped to date by the specialty pharmacy to patients, and by the specialty distributors to providers. We have not recorded any product revenue from VARUBI units that remained in distributors' inventories as of December 31, 2016. For such shipments, we have concluded that we had not met the revenue recognition criteria under current accounting guidance. The corresponding costs of product sales for which we have not recognized product revenue (which are not material) have similarly not been reflected in the consolidated statement of operations. We expect specialty distributors to comprise a majority of our ultimate product sales. For further discussion regarding our revenue recognition policy, see the "Critical Accounting Policies" section below and Note 2,

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“Summary of Significant Accounting Policies”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K.

Since the launch of VARUBI, we have shipped approximately 23,800 units to our specialty distributors and specialty pharmacy, of which approximately 22,800 units were subsequently shipped by those distributors to providers and patients through December 31, 2016. For product sales recognized to date which, as described above, are comprised of units shipped by distributors to providers or patients through December 31, 2016, the average net sales price per unit to us (after accounting for fees, rebates, chargebacks, and other discounts or reserves, or, the gross-to-net adjustment) was approximately \$301 or approximately 57% of the list price at which our direct customers purchased each unit of VARUBI. We expect that our gross-to-net adjustment to VARUBI revenues will be higher in the future (and net revenue per unit will be lower) as a result of changes to our customer and payor mix and market demands for increased discounts and concessions.

License, Collaboration and Other Revenues. License revenue of \$37.9 million for the year ended December 31, 2016 relates to our license agreements with Janssen and Hengrui, and includes amortization of up-front license payments and shipments of materials to our collaborators. License revenue of \$0.3 million for the year ended December 31, 2015 relates to our license agreement with Hengrui.

Cost of Sales - Product. Cost of sales of \$1.3 million for the year ended December 31, 2016 consists primarily of costs associated with the manufacturing of VARUBI and royalties owed to our licensor for VARUBI sales, as well as costs of product provided under our sampling and other commercial programs and certain period costs. Based on our policy to expense costs associated with the manufacture of our products prior to regulatory approval, certain of the costs of VARUBI units recognized as revenue during the year ended December 31, 2016 were expensed prior to the September 2015 FDA approval, and therefore are not included in cost of sales during the year. We expect cost of sales to increase in relation to net product revenues as we deplete these inventories. No product cost of sales was recorded for the year ended December 31, 2015.

Cost of Sales - Intangible Asset Amortization. Cost of sales of \$1.9 million for the year ended December 31, 2016 consists of amortization of the intangible asset recorded in 2015 as a result of the \$15.0 million milestone paid to OPKO upon the first commercial sale of VARUBI. Amortization of \$0.3 million was recorded for the year ended December 31, 2015.

Research and Development Expenses. Research and development expenses were \$235.1 million for the year ended December 31, 2016, compared to \$155.4 million for the year ended December 31, 2015, an increase of \$79.7 million. The increase was primarily due to higher expenses related to the development of niraparib and our immuno-oncology platform, as well as the hiring of additional personnel, and was partially offset by lower expenses associated with the development of rolapitant and TSR-011. Significant changes resulting in this increase included:

- an increase of \$43.8 million in costs associated with the niraparib program, primarily comprised of increased costs related to ongoing or new clinical trials, manufacturing development and regulatory activities;
- an increase of \$24.8 million in personnel and other costs (excluding stock-based compensation), primarily related to increased research and development headcount supporting the growth of our development activities;
- an increase of \$14.3 million in costs associated with our immuno-oncology platform due to increased costs related to biologics manufacturing and non-clinical research activities; and
- a decrease of \$9.2 million in costs associated with rolapitant, primarily due to lower costs relating to rolapitant IV development activities.

In addition, stock-based compensation expense included in research and development expenses increased by \$8.7 million, primarily related to increased awards of employee stock options and higher grant-date fair values of those awards.

Inventory-related costs of \$1.4 million and \$5.1 million incurred prior to FDA approval of VARUBI were recorded as research and development expenses in our consolidated statements of operations and comprehensive loss for the years ended December 31, 2014 and 2015, respectively. We expect to use the remaining pre-commercialization inventory and materials through future product sales.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$158.6 million for the year ended December 31, 2016, compared to \$78.7 million for the year ended December 31, 2015, an increase of \$79.9

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million. The increase was primarily due to increases of: \$36.2 million in salaries, benefits and other personnel-related costs (excluding stock-based compensation), primarily due to the hiring of sales, marketing, medical affairs and other support personnel associated with the commercialization of VARUBI, and hiring to support our international operations; \$30.6 million in professional and consulting fees and other expenses to support corporate operational, international and commercialization activities; and \$14.0 million in stock-based compensation expense.

Acquired In-Process Research and Development Expenses. We recorded \$18.9 million in acquired in-process research and development expenses for the year ended December 31, 2016, of which \$9.0 million related to our immuno-oncology platform and \$9.9 million related to the niraparib program. We recorded \$2.0 million in acquired in-process research and development expenses for the year ended December 31, 2015, comprised of two \$1.0 million milestones related to our immuno-oncology platform.

Other Income (Expense), Net. Other income (expense) is primarily comprised of interest expense related to our Convertible Notes, and interest income earned on cash and cash equivalents. Interest income increased by \$1.4 million during the year ended December 31, 2016, primarily due to higher balances of interest-bearing cash equivalents. Interest expense increased by \$1.1 million due to the accretion of the debt discount, which is a component of interest expense, and the use of the effective interest method.

Provision for Income Taxes. Provision for income taxes of \$1.5 million for the year ended December 31, 2016 consisted of \$0.2 million of current income tax expense, which relates primarily to subsidiary operations in foreign tax jurisdictions, \$1.4 million of China withholding taxes on the up-front license payment we received from Zai Lab, and \$(0.1) million of foreign deferred tax benefit. We recorded no provision for income taxes for the year ended December 31, 2015.

Comparison of the Year Ended December 31, 2015 to the Year Ended December 31, 2014

	Year Ended December 31,		Increase/ (Decrease)
	2014	2015	
	(in thousands)		
License, collaboration and other revenues	\$ —	\$ 317	\$ 317
Expenses:			
Cost of sales - intangible asset amortization	—	268	268
Research and development	118,425	155,390	36,965
General and administrative	23,935	78,701	54,766
Acquired in-process research and development	24,900	2,000	(22,900)
Total expenses	167,260	236,359	69,099
Loss from operations	(167,260)	(236,042)	(68,782)
Other income (expense), net	(3,752)	(15,366)	(11,614)
Net loss	<u>\$ (171,012)</u>	<u>\$ (251,408)</u>	<u>\$ (80,396)</u>

License, Collaboration and Other Revenues. License revenue of \$0.3 million during 2015 relates to our license agreement with Hengrui. At December 31, 2015, we had received an up-front payment of \$1.0 million and amortized \$0.3 million of license revenue during the year ended December 31, 2015.

During the fourth quarter of 2015, and in connection with the launch of VARUBI, we shipped 6,170 units for stocking to distributors. We did not recognize product revenue during the year ended December 31, 2015 related to these shipments, as we concluded that at the time we did not meet the revenue recognition criteria under current accounting guidance. We recognized revenue on these shipments during 2016 once we concluded that we had met all applicable revenue recognition criteria. As we had not recognized any product revenue, the corresponding costs of product sales similarly were not recognized during the year ended December 31, 2015.

Cost of Sales - Intangible Asset Amortization. Cost of sales of \$0.3 million for the year ended December 31, 2015 consists of amortization of the intangible asset recorded as a result of the \$15.0 million milestone paid to OPKO upon the first commercial sale of VARUBI.

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Research and Development Expenses. Research and development expenses were \$155.4 million for the year ended December 31, 2015, compared to \$118.4 million for the year ended December 31, 2014, an increase of \$37.0 million. The increase was primarily due to higher expenses related to the development of our immuno-oncology platform, niraparib, and additional personnel, partially offset by lower expenses associated with the development of rolapitant and TSR-011. Significant changes resulting in this increase included:

- an increase of \$14.7 million in costs associated with our immuno-oncology platform due to increased costs related to biologics manufacturing and non-clinical research activities. In addition, the 2015 expense represented a full year of effort on all of the current antibody candidates, while the expense for the prior year period reflected effort only on those candidates identified in the initial collaboration and exclusive license agreement with AnaptysBio, which was executed during March 2014;
- an increase of \$14.3 million in costs associated with niraparib development activities, primarily related to increased costs of our ovarian cancer clinical trials, partially offset by lower costs relating to drug process development and manufacturing;
- an increase of \$11.3 million in personnel and other costs (excluding stock-based compensation), primarily related to increased research and development headcount supporting the growth of our development activities; and
- a decrease of \$7.2 million in costs associated with rolapitant development activities, primarily due to lower costs related to the oral rolapitant Phase 3 clinical trials, which were completed in 2014, partially offset by increased costs relating to drug process development and manufacturing and costs relating to rolapitant IV development activities.

In addition, stock-based compensation expense included in research and development expenses increased by \$5.7 million, primarily related to increased awards of employee stock options and higher grant-date fair values of those awards.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$78.7 million for the year ended December 31, 2015, compared to \$23.9 million for the year ended December 31, 2014, an increase of \$54.8 million. The increase was primarily due to increases of: \$30.8 million in salaries, benefits and other personnel-related costs (excluding stock-based compensation), primarily due to the hiring of sales, marketing, medical affairs and other support personnel associated with the commercialization of VARUBI; \$15.8 million in professional and consulting fees and other expenses to support corporate operational, pre-commercialization and commercial market research, advertising and other activities; and \$8.1 million in stock-based compensation expense.

Acquired In-Process Research and Development Expenses. We recorded \$2.0 million in acquired in-process research and development expenses for the year ended December 31, 2015, comprised of two \$1.0 million milestones related to our immuno-oncology platform. We recorded \$24.9 million in acquired in-process research and development expenses for the year ended December 31, 2014. This amount consisted of \$19.0 million in total up-front payments under the agreement with AnaptysBio, a \$5.0 million milestone payment to OPKO related to the acceptance of the oral rolapitant NDA for review by the FDA, and a \$0.9 million milestone payment to Merck related to the niraparib program.

Other Income (Expense), Net. Other income (expense) is primarily comprised of interest expense related to our Convertible Notes, and interest income earned on cash and cash equivalents. Interest expense increased by \$11.6 million in the year ended December 31, 2015, due to there being a full year of expense related to the convertible notes in the 2015 period compared to three months of expense in the 2014 period.

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Liquidity and Capital Resources

Cash Flows

The following table presents a summary of the primary sources and uses of cash for the years ended December 31, 2014, 2015 and 2016 (in thousands):

	Year Ended December 31,		
	2014	2015	2016
Net cash provided by (used in):			
Operating activities	\$ (117,485)	\$ (194,531)	\$ (287,671)
Investing activities	(25,911)	(19,805)	(23,324)
Financing activities	269,947	187,621	866,884
Effect of exchange rate changes on cash and cash equivalents	—	—	(158)
Increase (decrease) in cash and cash equivalents	\$ 126,551	\$ (26,715)	\$ 555,731

Operating Activities. The use of cash in all periods resulted primarily from our net losses adjusted for non-cash charges and changes in components of working capital. The significant increases in cash used in operating activities for the years ended December 31, 2015 and 2016 were primarily due to increased external research and development expenses as we continued to progress the niraparib development program and the immuno-oncology platform, and increased internal and external expenses related to pre-commercial and other commercial activities related to the VARUBI approval and launch. Higher costs associated with increased employee headcount related to expanded development activities also contributed to the increase in cash used in operating activities. These factors were partially offset by lower external development costs associated with our rolapitant program. Purchases of VARUBI inventories also contributed to the increase in cash used in operating activities for the year ended December 31, 2016.

Amounts recorded in the consolidated statements of operations as “Acquired in-process research and development” are included in the consolidated statements of cash flows as adjustments to reconcile net loss to net cash used in operating activities because these amounts are charged to expense as incurred in the respective periods, but the cash payments relating to these expenses are classified as investing activities in the consolidated statements of cash flows, as described below.

Investing Activities. Cash used in investing activities primarily consisted of the following amounts relating to the acquisition of product candidate licenses and milestone payments, which were recorded as acquired in-process research and development expense as incurred, except as noted:

- for the year ended December 31, 2014, \$19.0 million in total up-front payments for the immuno-oncology platform, a \$5.0 million milestone payment for the rolapitant program and a \$0.9 million milestone payment for the niraparib program;
- for the year ended December 31, 2015, a \$15.0 million commercial milestone payment to OPKO for the rolapitant program (recorded as an intangible asset), and \$2.0 million in milestone payments for the immuno-oncology platform; and
- for the year ended December 31, 2016, \$9.0 million in milestone payments for the immuno-oncology platform and \$9.9 million for the niraparib program.

Cash used in investing activities for the years ended December 31, 2014, 2015 and 2016 also included the use of \$1.0 million, \$2.3 million, and \$2.9 million, respectively, for purchases of property and equipment.

Financing Activities. Cash provided by financing activities primarily consisted of the following amounts raised in issuances of equity and debt instruments:

- for the year ended December 31, 2014, net cash proceeds of \$194.7 million (net of underwriting discounts and commissions and offering expenses) from the issuance of the Convertible Notes, partly offset by the use of \$20.8 million in cash associated with the Capped Calls, as well as net cash proceeds of \$94.2 million from a follow-on offering of common stock;

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- for the year ended December 31, 2015, net cash proceeds of \$179.8 million from a follow-on offering of common stock; and
- for the year ended December 31, 2016, net cash proceeds of \$838.1 million from offerings of our common stock, consisting of: \$155.0 million from the March 2016 private placement of common stock; \$50.0 million from the April 2016 private sale of common stock to JJDC; and \$408.9 million and \$224.2 million, respectively, from follow-on public offerings of common stock in July 2016 and November 2016.

Cash provided by financing activities during the years ended December 31, 2014, 2015 and 2016 also included \$1.9 million, \$7.9 million and \$28.8 million, respectively, in proceeds from exercises of stock options under our 2010 Stock Incentive Plan and 2012 Omnibus Incentive Plan, and issuances of common stock under our 2012 Employee Stock Purchase Plan.

Operating Capital Requirements

We expect to incur significant expenses and operating losses for the foreseeable future. Overall, we expect operating expenses to continue to increase over current levels as we incur increased costs related to: (i) our ongoing U.S. and international commercialization and pre-commercial activities including executing related marketing and promotional programs for the commercialization of VARUBI and our other product candidates; (ii) the advancement of clinical trial and other development and regulatory activities under our current development programs including rolapitant IV, niraparib, TSR-042 and TSR-022; (iii) the immuno-oncology development activities under our collaborations; (iv) costs related to expanding our international operations; and (v) other research and development activities and potential future collaborative or in-licensed development programs. We are subject to the risks incident in the development of new biopharmaceutical products, and global expansion, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business and cause increased uses of cash.

We may require additional capital for the continuing commercialization of VARUBI, further development and potential commercialization of our other product candidates, including any license payments or milestone obligations that may arise, required costs relating to our immuno-oncology development programs, and cash interest obligations related to our Convertible Notes. We may also need additional funds to pursue our strategy of in-licensing or acquiring additional product candidates and to meet our obligation to repay the Convertible Notes at maturity or, at our election, upon conversion. We believe our existing cash and cash equivalents and the cash we expect to generate from product sales will be sufficient to fund our existing cash flow requirements and our operations at their currently planned levels through at least the 12 months following the filing of this Annual Report on Form 10-K.

Unless and until we can generate a sufficient amount of revenue from our products, we expect to finance future cash needs through public or private equity or debt offerings and may seek additional capital through arrangements with strategic partners or from other sources. Additional capital may not be available on reasonable terms, if at all. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we would have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates and/or other areas of our business. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. Furthermore, these securities may have rights senior to those of our common stock and Convertible Notes and could contain covenants that would restrict our operations and potentially impair our competitiveness, 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. Any of these events could significantly harm our business, financial condition and prospects.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements, both short and long-term, will depend on many factors, including:

- our ability to generate revenues from sales of VARUBI and future products, including rolapitant IV and niraparib;
- the cost of expanding our sales, marketing and distribution capabilities;

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- the outcome, timing and cost of regulatory approvals by the FDA and comparable non-U.S. regulatory authorities, including the potential that the FDA or comparable non-U.S. regulatory authorities may require that we perform more studies than those that we currently expect;
- the initiation, progress, timing, costs and results of clinical trials for our product candidates and any future product candidates we may in-license, including our current and potential future Phase 2 and 3 clinical trials for niraparib;
- the cost and timing of completion of commercial-scale outsourced manufacturing activities;
- the discovery, preclinical and clinical development plans that are or will be established for our immuno-oncology assets and potential product candidates under our collaboration with MDACC;
- the attainment of milestones and our obligations to make milestone payments, royalty payments, or both to OPKO, Merck or AnaptysBio or to any other future product candidate licensor, if any, under our in-licensing agreements;
- the number and characteristics of product candidates that we in-license and develop;
- the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the amount and timing of potential conversion requests, if any, and interest expense associated with our Convertible Notes; and
- the effect of competing technological and market developments.

If we lack sufficient capital to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2016 (in thousands):

	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Convertible Notes (a)	\$ 229,929	\$ 6,038	\$ 12,075	\$ 211,816	\$ —
Purchase commitments and other commitments	46,652	37,856	6,296	2,500	—
Operating lease obligations	19,546	5,200	11,259	3,087	—
Totals	\$ 296,127	\$ 49,094	\$ 29,630	\$ 217,403	\$ —

(a) See Note 7, “Convertible Notes”, in the Notes to Financial Statements included in Part II, Item 8, “Financial Statements and Supplementary Data”, of this Annual Report on Form 10-K for additional information. Amounts include both principal and interest.

Purchase and Other Commitments

Purchase commitments in the table above relate to agreements with certain vendors for the provision of services, including services related to commercial manufacturing, data management, clinical operation support and diagnostic development for which we are not contractually able to terminate for convenience and avoid any and all future obligations to the vendors. Certain agreements provide for termination rights subject to termination fees. Under such agreements, we are contractually obligated to make certain minimum payments to the vendors, mainly to reimburse the vendor for unrecoverable outlays incurred prior to cancellation; the exact amounts of which are dependent on the timing of termination and the exact terms of the relevant agreement and cannot be estimated with reasonable accuracy. In the table above, we have included our estimated commitments under such agreements as of December 31, 2016, assuming we do not terminate these agreements.

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These amounts do not represent our entire anticipated purchases in the future, but generally represent only our estimate of those items for which we have a contractual commitment to pay. The actual amounts we pay in the future to the vendors under such agreements may be less than the amounts shown in the table above.

Purchase commitments also include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Such obligations are related principally to inventory purchase orders based on our current manufacturing needs and require significant lead times to be fulfilled by our vendors. Purchase commitments exclude agreements that are cancelable without penalty, including open purchase orders that represent authorizations to purchase rather than legally binding agreements. Other commitments relate principally to minimum royalty and milestone payments under certain licensing and collaboration agreements that we are obligated to pay even if we terminate such license agreements. Our license agreement with OPKO requires us to pay OPKO tiered royalties on the amount of annual net of rolapitant sales achieved in the United States and Europe at percentage rates that range from the low teens to the low twenties, which we expect will result in an effective royalty rate in the low teens. However, in the table above, we have only included our minimum commitment to OPKO, which includes an annual minimum royalty payment of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI.

As of December 31, 2016, we had several ongoing clinical studies in various clinical trial stages. Our most significant clinical trial expenditures are made to clinical research organizations, or CROs. Due to cancellation rights included in our contractual agreements with our CROs, we have not included any amounts related to our CRO contracts in the contractual obligations table above (other than those described in the preceding paragraph).

Our collaboration agreement with Myriad Genetics, Inc. allows us to terminate the agreement with proper written notice. However, we are required to pay any remaining unpaid milestones up to \$5.5 million, which are included in the table above in the less than 1 year column, consistent with our product development expectations.

Operating and Facility Lease Obligations

Operating lease obligations in the table above relate to operating leases for office facilities. We lease approximately 124,000 square feet of office space in Waltham, Massachusetts under a non-cancelable operating lease agreement. The term of the lease commenced April 1, 2013 and continues through June 30, 2020. We also lease approximately 7,100 square feet of office space in Zug, Switzerland under a non-cancelable operating lease agreement executed in August 2016 with a lease term through August 31, 2021.

Product Licenses

In addition to the amounts set forth in the table above, we have certain obligations under licensing agreements with third parties that are contingent upon achieving various development, regulatory and commercial milestones. Pursuant to our license agreement with OPKO for the development and commercialization of rolapitant, we are required to make milestone payments to OPKO of up to an aggregate of \$30.0 million if certain regulatory approvals and initial commercial sales milestones are achieved, of which we have paid \$20.0 million to date through December 31, 2016. Further, we are required to make additional milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved. Pursuant to our license agreement with Merck for the development and commercialization of niraparib, we are required to make total milestone payments to Merck of up to \$57.0 million in development and regulatory milestones for the first indication, up to \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. We have made milestone payments to Merck totaling \$12.8 million to date. Pursuant to our collaboration and exclusive license agreement and the associated amendment with AnaptysBio, we are required to reimburse AnaptysBio on a quarterly basis for specified costs incurred by AnaptysBio in its initial discovery and development activities covered by the agreement. For each of our four development programs, we will also be required to make milestone payments to AnaptysBio of up to \$18.0 million if certain research and development milestone events are achieved, up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications, and additional commercial milestone payments if specified levels of annual net sales of a product are attained. We have made milestone payments to AnaptysBio totaling \$11.0 million to date. Finally, pursuant to the terms of each of these license agreements, when and if commercial sales of a product commence, we will pay royalties to our licensors on net sales of the respective products.

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In October 2016, we submitted an NDA to the FDA, and an MAA to the EMA, for niraparib, and those regulatory submissions are currently under review. If they are approved, we will be obligated to make milestone payments of \$25.0 million and \$15.0 million, respectively, to Merck. We also have submitted an MAA to the EMA for oral rolapitant, and if this submission is approved, then upon our first commercial sale in Europe, we will be obligated to make a \$10.0 million milestone payment to OPKO. Also, under our license and collaboration agreement with AnaptysBio, we could be obligated to make milestone payments totaling \$10.0 million during 2017, based on our current clinical development plans.

Technology Licenses

In October 2012, we entered into two license agreements with AstraZeneca UK Limited, under which we made aggregate up-front payments of \$0.4 million. These agreements provide us with the exclusive right to certain methods of treating patients with PARP inhibitors solely with respect to niraparib. Under certain circumstances, we may be required to make milestone and royalty payments to AstraZeneca UK Limited based on the achievement of certain development and regulatory milestone events with regard to niraparib, and on net sales of niraparib. We have not included any amounts related to these agreements in the table above. We have made milestone payments to AstraZeneca totaling \$0.4 million through December 31, 2016.

Off-Balance Sheet Arrangements

As of December 31, 2016, we did not have any off-balance sheet arrangements as defined in Regulation S-K, Item 303(a)(4)(ii).

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities in our financial statements. On an ongoing basis, we evaluate our estimates and judgments, including those related to accrued research and development expenses, net product revenue, stock-based compensation expense and intangible assets. We base our estimates on historical experience, known trends and events and various other factors 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 from these estimates under different assumptions or conditions. In making estimates and judgments, management employs critical accounting policies.

While our significant accounting policies are described in more detail in the notes to our financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies to be most critical to the judgments and estimates used in the preparation of our financial statements.

Accrued Research and Development Expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost. The majority of our service providers invoice us monthly in arrears for services performed or when contractual milestones are met. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued research and development expenses include fees paid to:

- CROs in connection with clinical studies;
- investigative sites in connection with clinical studies;
- vendors related to product manufacturing, development and distribution of clinical supplies;
- collaborator entities in connection with our collaboration agreements; and

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- vendors in connection with preclinical development activities.

We record expenses related to clinical studies and manufacturing development activities based on our estimates of the services received and efforts expended pursuant to contracts with multiple CROs and manufacturing vendors that conduct and manage these activities on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract, and may result in uneven payment flows. There may be instances in which payments made to our vendors will exceed the level of services provided and result in a prepayment of the expense. Payments under some of these contracts depend on factors such as the successful enrollment of subjects and the completion of clinical trial milestones. In accruing service fees, we estimate the time period over which services will be performed, enrollment of subjects, number of sites activated and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrued or prepaid expense balance accordingly. Although we do not expect our estimates to be materially different from amounts actually incurred, if our estimates of the status and timing of services performed differ from the actual status and timing of services performed, we may report amounts that are too high or too low in any particular period. To date, there have been no material differences from our estimates to the amounts actually incurred.

Stock-Based Compensation

We recognize compensation costs related to stock options, restricted stock units and restricted stock awards granted to employees based on the estimated fair value of the awards on the date of grant. Following the consummation of our initial public offering, stock option, restricted stock units and restricted stock award fair values are determined utilizing the quoted market price of our common stock. For awards with performance conditions, the related compensation cost is recognized as an expense, starting when the milestone becomes probable of being met, over the remaining performance period. Described below is the methodology we utilize in measuring stock-based compensation expense.

Since our inception in March 2010, we have applied the fair value recognition provisions of Financial Accounting Standards Board, or FASB, Accounting Standards Codification Topic 718, *Compensation - Stock Compensation*. Determining the amount of stock-based compensation to be recorded requires us to estimate the fair value of a stock-based award as of its grant date. Stock-based compensation expense is recognized ratably over the requisite service period, which in most cases is the vesting period of the award. Estimating the fair value of stock-based awards requires us to make subjective assumptions. We use the Black-Scholes option pricing model to value our stock option awards. This valuation methodology requires us to make assumptions regarding the expected volatility of our common stock, the expected term of the stock option, the risk-free interest rate for a period that approximates the expected term of the stock option, and our expected dividend yield. Prior to June 2012, we were a privately-held company with a limited operating history and accordingly we utilized data from representative peer companies to estimate expected stock price volatility from our inception to our initial public offering. We selected peer companies from the biopharmaceutical industry with similar characteristics as us, including stage of product development, market capitalization and therapeutic focus. Since our initial public offering in June 2012, we have continued to use volatility data from a representative peer group, blended with our own actual volatility, to estimate expected stock price volatility, due to the limited public trading history of our common stock. To determine the expected term assumption, we use the simplified method as prescribed by U.S. Securities and Exchange Commission, or SEC, Staff Accounting Bulletin No. 107, *Share-Based Payment*, as we do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term of stock options granted to employees. We utilize a dividend yield of zero based on the fact that we have never paid cash dividends and have no current intention to pay cash dividends. The risk-free interest rate used for each stock option is based on the U.S. Treasury yield curve in effect at the time of grant for instruments with a similar expected term.

The following table presents the assumptions used in estimating the grant-date fair values of stock options granted during the years ended December 31, 2014, 2015 and 2016:

	Years Ended December 31,		
	2014	2015	2016
Dividend yield	—	—	—
Volatility	69% - 76%	63% - 65%	57% - 59%
Risk-free interest rate	1.65% - 2.07%	1.35% - 1.95%	1.07% - 2.10%
Expected term (years)	5.50 - 6.08	5.50 - 6.08	5.50 - 6.08

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Stock-based compensation expense totaled \$11.7 million, \$25.9 million, and \$48.5 million, respectively, for the years ended December 31, 2014, 2015 and 2016. We expect stock-based compensation expense to increase in future periods primarily due to recent and expected increases in headcount and related equity award grants.

Effective January 1, 2016, we adopted FASB Accounting Standards Update No. 2016-09. Upon adoption, we made an accounting policy election to account for the impact of pre-vesting forfeitures as they occur rather than by applying an estimated forfeiture rate, as previously required.

In-Process Research and Development

As part of our business strategy, we may in-license the rights to develop and commercialize product candidates. For each in-license transaction we evaluate whether we have acquired processes or activities along with inputs that would be sufficient to constitute a “business” as defined under GAAP. A “business” as defined under GAAP consists of inputs and processes applied to those inputs that have the ability to create outputs. Although businesses usually have outputs, outputs are not required for an integrated set of activities to qualify as a business. When we determine that we have not acquired sufficient processes or activities to constitute a business, any up-front payments, as well as pre-commercial milestone payments, are immediately expensed as acquired in-process research and development in the period in which they are incurred. Milestone payments made to third parties subsequent to regulatory approval are capitalized as intangible assets and amortized over the estimated remaining useful life of the related product.

Product Revenue

We are currently approved to sell VARUBI in the United States. We distribute our product in the U.S. principally through a limited number of specialty distributors and to a lesser extent through the specialty pharmacy channel, or collectively, our Customers. Our Customers subsequently resell our products to health care providers and patients.

Revenues from product sales are recognized when persuasive evidence of an arrangement exists, delivery has occurred and title of the product and associated risk of loss has passed to the customer, the price is fixed or determinable, collection from the customer has been reasonably assured and all performance obligations have been met and returns and allowances can be reasonably estimated. Product revenues are recorded net of estimated rebates, chargebacks, discounts, co-pay assistance and other deductions as well as estimated product returns. Allowances are recorded as a reduction of revenue at the time product revenues are recognized.

In addition to distribution agreements with our Customers, we have entered into direct and indirect arrangements with many health care providers and payors that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of VARUBI. We have determined that we do not yet meet the criteria for revenue recognition for shipments of VARUBI at the time of shipment to our specialty pharmacy and specialty distributor customers. For shipments of VARUBI from specialty distributors and specialty pharmacies to providers and patients through December 31, 2016, allowances for rebates, chargebacks, discounts, co-pay assistance and other deductions are known or are estimable because they are based on the actual invoice information, claims data, or other market information and analyses. As a result, we have concluded that we can recognize revenue related to such shipments. For units that remain in the distribution channel inventories as of December 31, 2016, we continue to conclude that we cannot yet reasonably make certain estimates necessary to recognize revenue on such units.

During the year ended December 31, 2016, we recognized \$6.9 million in net product revenues related to VARUBI sales through the specialty pharmacy and specialty distributor channels.

Payments received from Customers in advance of recognition of revenue are recorded as deferred revenue by the Company net of payments made to Customers, providers and payors.

For those quantities shipped to Customers for which revenue has not been recognized, the cost of the related units has been accounted for within “Other current assets” on the consolidated balance sheets, and will be recorded to cost of sales upon recognition of the related product revenue. We assess the recoverability of these costs on a quarterly basis. We will continue to evaluate the criteria for revenue recognition in future periods to determine if and when we have met these criteria with respect to any previously deferred product revenues.

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The following table presents an analysis of product sales allowances and accruals for the year ended December 31, 2016 (in thousands):

	Chargebacks, Discounts and Fees	Governmental and Other Rebates and Fees	Returns	Total
Balance at December 31, 2015	\$ —	\$ —	\$ —	\$ —
Provision related to current period sales	3,599	1,591	18	5,208
Adjustment related to prior period sales	—	—	—	—
Credits or payments made	(3,178)	(740)	—	(3,918)
Balance at December 31, 2016	\$ 421	\$ 851	\$ 18	\$ 1,290
Total gross product sales				\$ 12,085
Total provision for product sales allowances and accruals as a percentage of total gross product sales				43%

In addition, greater than 60% of our VARUBI end-user demand from launch through December 31, 2016 was generated by members of a single group purchasing organization, or GPO, with whom we have contracted. Of this amount, there is a concentration of a small number of members that form the significant majority of such purchases. Although we expect the number of providers purchasing VARUBI to expand in the future, if this GPO or any one of its largest members were to change their purchasing practices, the impact to VARUBI net product revenues in future periods may be significant.

We intend to adopt new revenue accounting guidance during 2017, which will impact the amount and timing of our future revenue recognition as well as the amount of revenue previously recognized in our published financial statements. For further discussion, see Note 2, “*Summary of Significant Accounting Policies*”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “*Financial Statements and Supplementary Data*”, of this Annual Report on Form 10-K.

Intangible Assets

We maintain definite-lived intangible assets related to certain capitalized milestones. These assets are amortized on a straight-line basis over their remaining useful lives, which are estimated to be the remaining patent life. If our estimate of the product’s useful life is shorter than the remaining patent life, then the shorter period is used. Amortization expense is recorded as a component of cost of sales in the consolidated statements of operations.

We assess our intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, may include actions by regulatory authorities with respect to us or our competitors, the receipt of additional clinical or nonclinical data regarding our drug candidate or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, we perform a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, we would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value.

Recently Issued Accounting Pronouncements

For a discussion of new accounting pronouncements, see Note 2, “*Summary of Significant Accounting Policies*”, in the Notes to Consolidated Financial Statements included in Part II, Item 8, “*Financial Statements and Supplementary Data*”, of this Annual Report on Form 10-K.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

TESARO, Inc.

Consolidated Financial Statements

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
TESARO, Inc.

We have audited the accompanying consolidated balance sheets of TESARO, Inc. (the “Company”) as of December 31, 2015 and 2016, and the related consolidated statements of operations and comprehensive loss, stockholders’ equity and cash flows for each of the three years in the period ended December 31, 2016. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of TESARO, Inc. as of December 31, 2015 and 2016, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2016, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), TESARO, Inc.’s internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 28, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Boston, Massachusetts
February 28, 2017

TESARO, Inc.

Consolidated Balance Sheets

(all amounts in 000's, except share and per share data)

	December 31, 2015	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	\$ 230,146	\$ 785,877
Accounts receivable	679	5,343
Inventories	1,106	14,700
Other current assets	4,560	8,919
Total current assets	236,491	814,839
Intangible assets, net	14,732	12,877
Property and equipment, net	2,779	6,640
Restricted cash	500	1,694
Other assets	779	3,795
Total assets	<u>\$ 255,281</u>	<u>\$ 839,845</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 8,019	\$ 5,236
Accrued expenses	36,628	68,271
Deferred revenue, current	500	288
Other current liabilities	1,534	2,978
Total current liabilities	46,681	76,773
Convertible notes, net	121,325	131,775
Deferred revenue, non-current	288	—
Customer deposit	—	15,000
Other non-current liabilities	113	5,086
Total liabilities	168,407	228,634
Commitments and contingencies (Notes 12 and 13)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized at both December 31, 2015 and December 31, 2016; no shares issued or outstanding at both December 31, 2015 and December 31, 2016	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized at both December 31, 2015 and December 31, 2016; 40,279,783 and 53,621,679 shares issued and outstanding at December 31, 2015 and December 31, 2016, respectively	4	5
Additional paid-in capital	688,788	1,604,798
Accumulated other comprehensive loss	—	(2,924)
Accumulated deficit	(601,918)	(990,668)
Total stockholders' equity	86,874	611,211
Total liabilities and stockholders' equity	<u>\$ 255,281</u>	<u>\$ 839,845</u>

See accompanying notes to consolidated financial statements.

TESARO, Inc.

Consolidated Statements of Operations and Comprehensive Loss

(all amounts in 000's, except per share data)

	Years Ended December 31,		
	2014	2015	2016
Revenues:			
Product revenue, net	\$ —	\$ —	\$ 6,877
License, collaboration and other revenues	—	317	37,946
Total revenues	—	317	44,823
Expenses:			
Cost of sales – product	—	—	1,256
Cost of sales – intangible asset amortization	—	268	1,855
Research and development	118,425	155,390	235,144
Selling, general and administrative	23,935	78,701	158,578
Acquired in-process research and development	24,900	2,000	18,940
Total expenses	167,260	236,359	415,773
Loss from operations	(167,260)	(236,042)	(370,950)
Interest expense	(3,776)	(15,414)	(16,487)
Interest income	24	48	1,440
Loss before income taxes	(171,012)	(251,408)	(385,997)
Provision for income taxes	—	—	1,475
Net loss	\$ (171,012)	\$ (251,408)	\$ (387,472)
Net loss per share applicable to common stockholders - basic and diluted	\$ (4.79)	\$ (6.38)	\$ (8.13)
Weighted-average number of common shares used in net loss per share applicable to common stockholders - basic and diluted	35,739	39,387	47,652
Comprehensive loss:			
Net loss	(171,012)	(251,408)	(387,472)
Other comprehensive loss:			
Unrealized loss on pension obligation	—	—	(2,782)
Foreign currency translation adjustments	—	—	(142)
Other comprehensive loss	—	—	(2,924)
Comprehensive loss	\$ (171,012)	\$ (251,408)	\$ (390,396)

See accompanying notes to consolidated financial statements.

TESARO, Inc.
Consolidated Statements of Stockholders' Equity
(all amounts in 000's, except share data)

	Common Stock		Additional	Accumulated		Total
	Shares	Amount	Paid-in	Other	Accumulated	Stockholders'
			Capital	Comprehensive	Deficit	Equity
				Loss		
Balance at December 31, 2013	32,739,008	\$ 3	\$ 302,647	\$ —	\$ (179,498)	\$ 123,152
Issuance of common stock, net of issuance costs of \$6,601	3,200,000	1	94,198	—	—	94,199
Issuance of common stock resulting from exercise of stock options, net of shares withheld for taxes	159,747	—	1,630	—	—	1,630
Issuance of common stock resulting from Employee Stock Purchase Plan	9,845	—	249	—	—	249
Cancellation of unvested restricted stock	(8,929)	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	10,411	—	274	—	—	274
Conversion option of convertible notes - net of issuance costs of \$2,859	—	—	84,984	—	—	84,984
Capped call options associated with convertible notes	—	—	(20,829)	—	—	(20,829)
Stock-based compensation expense	—	—	11,409	—	—	11,409
Net loss	—	—	—	—	(171,012)	(171,012)
Balance at December 31, 2014	36,110,082	\$ 4	\$ 474,562	\$ —	\$ (350,510)	\$ 124,056
Issuance of common stock, net of issuance costs of \$11,752	3,755,000	—	179,753	—	—	179,753
Issuance of common stock resulting from exercise of stock options	382,580	—	7,930	—	—	7,930
Issuance of common stock resulting from Employee Stock Purchase Plan	20,601	—	830	—	—	830
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	8,091	—	(201)	—	—	(201)
Issuance of common stock as payment of Board of Directors fees in lieu of cash	3,429	—	266	—	—	266
Stock-based compensation expense	—	—	25,648	—	—	25,648
Net loss	—	—	—	—	(251,408)	(251,408)
Balance at December 31, 2015	40,279,783	\$ 4	\$ 688,788	\$ —	\$ (601,918)	\$ 86,874
Retroactive adjustment to beginning accumulated deficit and additional paid-in capital resulting from adoption of ASU 2016-09	—	—	1,278	—	(1,278)	—
Issuance of common stock, net of issuance costs of \$36,305	12,632,356	1	838,090	—	—	838,091
Issuance of common stock resulting from exercise of stock options	643,035	—	25,958	—	—	25,958
Issuance of common stock resulting from Employee Stock Purchase Plan	42,478	—	2,229	—	—	2,229
Issuance of common stock resulting from the vesting of restricted stock units, net of shares withheld for taxes	18,000	—	—	—	—	—
Issuance of common stock as payment of Board of Directors fees in lieu of cash	6,027	—	345	—	—	345
Stock-based compensation expense	—	—	48,110	—	—	48,110
Other comprehensive loss	—	—	—	(2,924)	—	(2,924)
Net loss	—	—	—	—	(387,472)	(387,472)
Balance at December 31, 2016	53,621,679	\$ 5	\$ 1,604,798	\$ (2,924)	\$ (990,668)	\$ 611,211

See accompanying notes to consolidated financial statements.

TESARO, Inc.
Consolidated Statements of Cash Flows

(all amounts in 000's)

	Years Ended December 31,		
	2014	2015	2016
Operating activities			
Net loss	\$ (171,012)	\$ (251,408)	\$ (387,472)
Adjustments to reconcile net loss to net cash used in operating activities:			
Acquired in-process research and development	24,900	2,000	18,940
Depreciation and amortization expense	349	1,037	3,113
Stock-based compensation expense	11,683	25,914	48,455
Non-cash interest expense	2,249	9,360	10,450
Loss on disposal of property and equipment	80	—	—
Changes in operating assets and liabilities:			
Accounts receivable	—	(679)	(4,664)
Inventories	—	(1,106)	(13,594)
Other assets	2,327	(2,128)	(7,685)
Accounts payable	4,220	1,924	(2,835)
Accrued expenses	6,209	19,646	31,897
Deferred revenues and customer deposit	—	788	14,501
Other liabilities	1,510	121	1,223
Net cash used in operating activities	(117,485)	(194,531)	(287,671)
Investing activities			
Acquisition of product candidate and technology licenses and milestone payments	(24,900)	(17,000)	(18,940)
Purchase of property and equipment	(1,011)	(2,305)	(2,895)
Change in restricted cash	—	(500)	(1,489)
Net cash used in investing activities	(25,911)	(19,805)	(23,324)
Financing activities			
Proceeds from issuance of convertible notes, net of issuance costs	194,698	—	—
Purchase of capped call options	(20,829)	—	—
Proceeds from sale of common stock, net of issuance costs	94,199	179,753	838,099
Proceeds from exercise of stock options	1,663	7,239	26,556
Proceeds from issuance of common stock under Employee Stock Purchase Plan	249	830	2,229
Payment of minimum tax withholdings on share-based awards	(33)	(201)	—
Net cash provided by financing activities	269,947	187,621	866,884
Effect of exchange rate changes on cash and cash equivalents	—	—	(158)
Increase (decrease) in cash and cash equivalents	126,551	(26,715)	555,731
Cash and cash equivalents at beginning of period	130,310	256,861	230,146
Cash and cash equivalents at end of period	\$ 256,861	\$ 230,146	\$ 785,877
Non-cash investing and financing activities			
Stock option exercise proceeds receivable as of period end	\$ —	\$ 691	\$ 93
Leasehold improvement assets funded by lessor	\$ —	\$ —	\$ 2,230
Purchase of property and equipment - cash not paid as of period end	\$ —	\$ 238	\$ 230
Supplemental disclosure of cash flow information			
Cash paid for interest	\$ —	\$ 6,071	\$ 6,038

See accompanying notes to consolidated financial statements.

TESARO, Inc.

Notes to Consolidated Financial Statements

1. Nature of Business

The Company

TESARO, Inc., or the Company or TESARO, was incorporated in Delaware on March 26, 2010 and commenced operations in May 2010. Headquartered in Waltham, Massachusetts, TESARO is an oncology-focused biopharmaceutical company dedicated to improving the lives of cancer patients. TESARO acquires, in-licenses and develops oncology product candidates and, if approved for marketing, commercializes these products. Since incorporation, primary activities have consisted of acquiring product candidates, advancing development of these product candidates, developing intellectual property, recruiting personnel and raising capital. As part of its business strategy, the Company intends to continue to in-license or acquire additional product candidates across various stages of development. The Company operates in one segment. The Company is subject to a number of risks, including dependence on key individuals, regulatory and manufacturing risks, the need to develop additional commercially viable products, risks associated with competitors, many of which are larger and better capitalized, risks related to intellectual property, and the need to obtain adequate additional financing to fund the development and potential commercialization of its product candidates and further its in-licensing and acquisition activities.

On September 1, 2015, the Company's first commercial product, VARUBI® (oral formulation of rolapitant), was approved by the U.S. Food and Drug Administration, or FDA, in combination with other antiemetic agents in adults for the prevention of delayed nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy, including, but not limited to, highly emetogenic chemotherapy. The Company commenced shipments of VARUBI during the fourth quarter of 2015.

Liquidity

The Company has incurred significant operating losses since inception and has relied on its ability to fund its operations through private and public equity and debt financings, and to a lesser extent license and collaboration arrangements, and management expects operating losses and negative operating cash flows to continue for the foreseeable future. The Company believes its existing cash and cash equivalents and the cash it expects to generate from sales of VARUBI will be sufficient to fund its existing cash flow requirements and its operations at their currently planned levels through at least the 12 months following the filing of this Annual Report on Form 10-K. As the Company continues to incur losses, the transition to profitability is dependent upon the successful development, approval, and commercialization of its products and product candidates and the achievement of a level of revenues adequate to support its cost structure. The Company may never achieve profitability, and unless and until it does, the Company will continue to need to raise additional capital. Management may seek additional capital through additional private or public equity or debt financings, through arrangements with strategic partners or from other sources. If such funding is not obtained on a timely basis, the Company would be required to change its current operating plans to reduce its future expenses, in order to continue to fund operations, at such reduced levels.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company's consolidated financial statements reflect the operations of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States, or GAAP.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment, which is the business of developing and commercializing safer and more effective oncology-focused therapeutics.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities and expenses, other comprehensive loss and the related disclosures. On an ongoing basis, management evaluates its estimates, including estimates related to accrued clinical trial and manufacturing development expenses, net product revenues, license, collaboration and other revenues, stock-based compensation expense, inventory and intangible assets and related amortization. Significant estimates in these consolidated financial statements include estimates made in connection with accrued research and development expenses, stock-based compensation expense, revenue, valuation of convertible notes, intangible assets and related amortization. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. Actual results may differ from those estimates or assumptions.

Concentrations of Credit Risk and Off-Balance Sheet Risk

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash and cash equivalents. The Company maintains its cash and cash equivalent balances primarily in the form of money market fund accounts with financial institutions that management believes are creditworthy. The Company's investment policy includes guidelines on the quality of the institutions and financial instruments and defines allowable investments that the Company believes minimizes the exposure to concentration of credit risk. The Company has no financial instruments with off-balance-sheet risk of loss.

The Company also is subject to credit risk from its accounts receivable related to its product sales, collaborators and licenses. As part of its credit management policy, the Company performs ongoing credit evaluations of its customers, and the Company has not required collateral from any customer. The Company has not recorded any allowances for doubtful accounts at either December 31, 2015 or 2016.

Foreign Currency

A subsidiary's functional currency is the currency of the primary economic environment in which the subsidiary operates; normally, that is the currency of the environment in which a subsidiary primarily generates and expends cash. In making the determination of the appropriate functional currency for a subsidiary, the Company considers cash flow indicators, local market indicators, financing indicators and the subsidiary's relationship with both the parent company and other subsidiaries. For subsidiaries that are primarily a direct and integral component or extension of the parent entity's operations, the U.S. dollar is the functional currency.

For each foreign subsidiary with a functional currency other than the U.S. dollar, assets and liabilities are translated at current exchange rates at the balance sheet date. Income and expense items are translated at average foreign exchange rates for the period. Adjustments resulting from the translation of the financial statements of these subsidiaries into U.S. dollars are excluded from the determination of net loss and are recorded in accumulated other comprehensive loss, a separate component of stockholders' equity. For foreign subsidiaries with the U.S. dollar as the functional currency, monetary assets and liabilities are re-measured into U.S. dollars at the current exchange rate on the balance sheet date. Nonmonetary assets and liabilities are re-measured into U.S. dollars at historical exchange rates. Revenue and expense items are translated at average exchange rates prevailing during each period.

Consolidated realized and unrealized foreign currency transaction gains and losses were negligible for the years ended December 31, 2015 and 2016.

Revenue Recognition

Product Revenue

Revenues from product sales are recognized when persuasive evidence of an arrangement exists, delivery has occurred and title of the product and associated risk of loss has passed to the customer, the price is fixed or determinable, collection from the customer has been reasonably assured, all performance obligations have been met, and returns and allowances can be reasonably estimated. Product revenues are recorded net of estimated rebates, chargebacks, discounts, co-pay assistance and other deductions as well as estimated product returns.

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VARUBI is currently distributed in the U.S. principally through a limited number of specialty distributors and to a lesser extent through the specialty pharmacy channel, or collectively, Customers. Customers subsequently resell VARUBI to health care providers and patients.

In addition to distribution agreements with Customers, the Company has entered into arrangements with many health care providers and payors that provide for government-mandated and/or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of VARUBI.

The Company has determined that it does not yet meet the criteria for the recognition of revenue for shipments of VARUBI at the time of shipment to its specialty pharmacy and specialty distributor customers. For shipments of VARUBI from specialty distributors and from specialty pharmacies to providers and patients through December 31, 2016, allowances for rebates, chargebacks, discounts, co-pay assistance and other deductions are known or are estimable because they are based on the actual invoice information, claims data, or other market information and analyses. As a result, the Company has concluded that it can recognize revenue related to such shipments. For units that remained in distribution channel inventories as of December 31, 2016, the Company continues to conclude that it cannot yet reasonably make certain estimates necessary to recognize revenue on such shipments.

During the year ended December 31, 2016, the Company recognized \$6.9 million in net product revenue related to VARUBI sales. No net product revenue was recognized for the years ended December 31, 2014 or 2015.

License, Collaboration and Other Revenues

The Company may enter into arrangements under which it licenses certain rights to its product candidates to third parties. Revenues from license arrangements are recognized when persuasive evidence of an arrangement exists, delivery of goods or services has occurred (including passage of title to the product and associated risk of loss to the customer), the price is fixed or determinable, collection from the customer has been reasonably assured, all performance obligations have been met, and associated reductions of revenue can be reasonably estimated, if any. Activities under licensing agreements are evaluated to determine if they represent a multiple element arrangement. The Company identifies the deliverables included within the agreement and evaluates which deliverables represent separate units of accounting. The Company accounts for those components as separate units of accounting if the following two criteria are met:

- the delivered item or items have stand-alone value to the customer; and
- if the arrangement includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in the control of the Company.

Factors considered in this determination include, among other things, whether any other vendors sell the items separately and if the licensee could use the delivered item for its intended purpose without the receipt of the remaining deliverables. The consideration that is fixed or determinable is allocated to the separate units of accounting based on the relative selling prices of each deliverable. The consideration allocated to each unit of accounting is recognized as the related goods and services are delivered. The amount allocable to the delivered units of accounting is limited to the amount that is not contingent upon the delivery of additional items or meeting other specified performance conditions.

The Company determines the selling price on the basis of vendor-specific objective evidence, or VSOE, third party evidence, or best estimate of selling price. VSOE is the price charged for a deliverable when it is sold separately. Third party evidence is the price that the Company or vendors charge for a similar deliverable when sold separately. Best estimate is the price at which the Company would sell the deliverable if the Company sold the deliverable regularly on a stand-alone basis.

When multiple deliverables are combined and accounted for as a single unit of accounting, the Company bases its revenue recognition on the last element to be delivered using the straight-line or proportional performance method depending on the Company's ability to estimate the performance obligation. Amounts received or recorded as receivable prior to satisfying the associated revenue recognition criteria are recorded as deferred revenue or customer deposits on the consolidated balance sheets. Amounts not expected to be recognized within one year following the balance sheet date are classified as non-current deferred revenue.

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If a future milestone payment under a license agreement is contingent upon the achievement of a substantive milestone, license revenue is recognized in its entirety in the period in which the milestone is achieved. A milestone is substantive if:

- it can only be achieved based in whole or in part on either the Company's performance or the occurrence of a specific outcome resulting from the Company's performance;
- there is substantive uncertainty at the date an arrangement is entered into that the event will be achieved; and
- it would result in additional payments being due to the Company.

Commercial milestone and royalty payments received under license agreements will be recognized as license revenue when they are earned.

In July 2015, the Company entered into a license agreement with Jiangsu Hengrui Medicine Co., Ltd., or Hengrui, pursuant to which Hengrui has licensed the rights to develop, manufacture and commercialize rolapitant in China, including Hong Kong and Macao, or the China Territories. In April 2016, the Company entered into a collaboration and license agreement with Janssen Biotech, Inc., or Janssen, under which the Company granted Janssen licenses under certain patent rights and know-how relating to niraparib, for prostate cancer worldwide, except Japan. In September 2016, the Company entered into a collaboration, development and license agreement with Zai Lab (Shanghai) Co., Ltd., or Zai Lab, under which the Company granted Zai Lab an exclusive license to develop and commercialize niraparib in the China Territories. See Note 13, "*License and Collaboration Arrangements*", for further discussion of these out-license agreements.

Cash and Cash Equivalents

The Company considers all highly-liquid investments with original or remaining maturity from the date of purchase of three months or less to be cash equivalents. Cash and cash equivalents include bank demand deposits and money market funds that invest primarily in certificates of deposit, commercial paper and U.S. government and U.S. government agency obligations. Cash equivalents are reported at fair value.

Restricted Cash

Restricted cash consists of cash balances held as collateral for the Company's employee credit card programs.

Fair Value of Financial Instruments

The Company is required to disclose information on all assets and liabilities reported at fair value that enables an assessment of the inputs used in determining the reported fair values. The fair value hierarchy prioritizes valuation inputs based on the observable nature of those inputs. The fair value hierarchy applies only to the valuation inputs used in determining the reported fair value of the investments and is not a measure of investment credit quality. The hierarchy defines three levels of valuation inputs:

Level 1 inputs	Quoted prices in active markets for identical assets or liabilities
Level 2 inputs	Observable inputs other than Level 1 inputs, including quoted prices in active markets for similar assets or liabilities and quoted prices for identical assets or liabilities in markets that are not active
Level 3 inputs	Unobservable inputs that reflect the Company's own assumptions about the assumptions market participants would use in pricing the asset or liability

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The following table presents information about the Company's financial assets and liabilities that have been measured at fair value at December 31, 2015 and 2016 and indicates the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands):

Description	Balance Sheet Classification	December 31, 2015			
		Total	Level 1	Level 2	Level 3
Assets:					
Money market funds	Cash and cash equivalents	\$ 224,885	\$ 224,885	\$ —	\$ —
Total assets		<u>\$ 224,885</u>	<u>\$ 224,885</u>	<u>\$ —</u>	<u>\$ —</u>

Description	Balance Sheet Classification	December 31, 2016			
		Total	Level 1	Level 2	Level 3
Assets:					
Money market funds	Cash and cash equivalents	\$ 766,186	\$ 766,186	\$ —	\$ —
Total assets		<u>\$ 766,186</u>	<u>\$ 766,186</u>	<u>\$ —</u>	<u>\$ —</u>

The carrying amounts of accounts payable and accrued expenses approximate their fair values due to their short-term maturities.

In September 2014, the Company issued \$201.3 million aggregate principal amount of 3.00% convertible senior notes due October 1, 2021, or the Convertible Notes. Interest is payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2015. As of December 31, 2016, the carrying value of the Convertible Notes was \$131.8 million, net of unamortized discount and debt issuance costs and the fair value of the principal amount was \$771.4 million. The Convertible Notes are discussed in more detail in Note 7, "Convertible Notes."

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the economic life of the asset or the remaining lease term, whichever is shorter. Maintenance and repairs are expensed as incurred. The following estimated useful lives were used to depreciate the Company's assets:

	Estimated Useful Life
Furniture and fixtures	5 years
Computer equipment and software	3 years
Manufacturing equipment	7 years
Leasehold improvements	Shorter of the useful life or the remaining lease term

Upon retirement or sale, the cost of the disposed asset and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is recognized in income.

The Company reviews long-lived assets when events or changes in circumstances indicate the carrying value of the assets may not be recoverable. Recoverability is measured by comparison of an asset's book value to the estimated undiscounted future net cash flows that the asset is expected to generate. If the estimated future undiscounted net cash flows are less than the book value, the asset is considered to be impaired, and the impairment loss to be recognized in income is measured as the amount by which the book value of the asset exceeds its fair value, which is measured based on the estimated discounted future net cash flows that the asset is expected to generate.

Research and Development Expenses

Research and development costs are charged to expense as incurred and include:

- pre-commercial license fees and milestone payments related to the acquisition of in-licensed product candidates, which are reported on the statements of operations as acquired in-process research and development;
- employee-related expenses, including salaries, bonuses, benefits, travel and stock-based compensation expense;

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- fees and expenses incurred under agreements with contract research organizations, investigative sites, research consortia and other entities in connection with the conduct of clinical trials and preclinical studies and related services, such as administrative, data management, laboratory and biostatistics services;
- the cost of acquiring, developing and manufacturing active pharmaceutical ingredients for product candidates that have not received regulatory approval, clinical trial materials and other research and development materials;
- fees and costs related to regulatory filings and activities;
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent, utilities, maintenance of facilities, insurance and other supplies; and
- other costs associated with clinical and preclinical activities.

Costs for certain development activities, such as clinical trials and manufacturing development activities, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, or information provided to the Company by its vendors on their actual costs incurred or level of effort expended. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected on the consolidated balance sheets as prepaid or accrued research and development expenses. Certain clinical development costs incurred by the Company with respect to its niraparib program are reimbursed as part of a collaborative research agreement with Merck Sharp & Dohme B.V., a subsidiary of Merck & Co., Inc., or Merck. Cost-sharing amounts received by the Company are recorded as a reduction to research and development expenses.

Acquired In-Process Research and Development Expense

The Company has acquired the rights to develop and commercialize new product candidates. Up-front payments that relate to the acquisition of a new drug compound, as well as pre-commercial milestone payments, are immediately expensed as acquired in-process research and development in the period in which they are incurred, provided that the new drug compound did not also include processes or activities that would constitute a “business” as defined under GAAP, the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, has no alternative future use. Milestone payments made to third parties subsequent to regulatory approval are capitalized as intangible assets and amortized over the estimated remaining useful life of the related product. Royalties owed on sales of the products licensed pursuant to the agreements are expensed in the period the related revenues are recognized.

Advertising Expenses

The costs of advertising are expensed as incurred and included in selling, general, and administrative expenses in the consolidated statements of operations and comprehensive loss. For the years ended December 31, 2014, 2015 and 2016, advertising expenses totaled \$1.1 million, \$3.6 million, and \$9.2 million, respectively.

Comprehensive Loss

Comprehensive loss is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive loss consists of net loss and other comprehensive loss. Other comprehensive loss includes foreign currency translation adjustments and unrealized gains and losses on pension obligations.

Income Taxes

The Company accounts for income taxes in accordance with Accounting Standards Codification, or ASC, Topic 740, *Accounting for Income Taxes*, which provides for deferred taxes using an asset and liability approach. The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. The Company determines its deferred tax assets and liabilities based on differences between financial reporting and tax bases of assets and liabilities, which are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Valuation allowances are provided if, based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

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The Company accounts for uncertain tax positions in accordance with the provisions of ASC Topic 740. When uncertain tax positions exist, the Company recognizes the tax benefit of tax positions to the extent that the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position as well as consideration of the available facts and circumstances.

The Company has not provided for U.S. income taxes on the undistributed earnings of foreign subsidiaries, as it currently plans to permanently reinvest these amounts and has the intent and ability to do so. Such earnings to date have been immaterial.

Stock-Based Compensation Expense

Stock-based compensation is recognized as expense for each stock-based award based on its estimated fair value. The Company determines the fair value of each stock option award at its grant date using the Black-Scholes option pricing model. The Company determines the fair value of each restricted stock unit at its grant date based on the closing market price of the Company's common stock on that date. The value of the award is recognized as expense on a straight-line basis over the requisite service period and is adjusted for pre-vesting forfeitures in the period in which the forfeitures occur. For stock awards that have a performance condition, the Company recognizes compensation expense based on its assessment of the probability that the performance condition will be achieved, using an accelerated attribution model, over the explicit or implicit service period.

Inventory

Inventories are stated at the lower of cost or estimated net realizable value, on a first-in, first-out, or FIFO, basis.

Prior to the regulatory approval of its product candidates, the Company incurs expenses for the manufacture of drug product that could potentially be available to support the commercial launch of its products. Until the first reporting period when regulatory approval has been received or is otherwise considered probable, the Company records all such costs as research and development expense. Beginning in the third quarter of 2015, the Company began to capitalize inventory costs associated with VARUBI when it was determined that the inventory had a probable future economic benefit. The Company periodically analyzes its inventory levels, and writes down inventory that has become obsolete, inventory that has a cost basis in excess of its estimated realizable value and inventory in excess of expected sales requirements as cost of product sales. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required, which would be recorded as a cost of product sales in the consolidated statements of operations.

Intangible Assets

The Company maintains definite-lived intangible assets related to certain capitalized milestones. These assets are amortized on a straight-line basis over their remaining useful lives, which are estimated to be the remaining patent life. If the Company's estimate of the product's useful life is shorter than the remaining patent life, then the shorter period is used. Amortization expense is recorded as a component of cost of sales in the consolidated statements of operations.

The Company assesses its intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. Events that could result in an impairment, or trigger an interim impairment assessment, include the receipt of additional clinical or nonclinical data regarding our drug candidate or a potentially competitive drug candidate, changes in the clinical development program for a drug candidate, or new information regarding potential sales for the drug. If impairment indicators are present or changes in circumstance suggest that impairment may exist, the Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value.

Net Loss Per Share

Basic and diluted net loss per common share is calculated by dividing net loss applicable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock

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equivalents. The Company's potentially dilutive shares, which include outstanding stock awards, unvested restricted stock, and shares issuable upon conversion of the Convertible Notes, are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

The following table presents amounts that were excluded from the calculation of diluted net loss per share, due to their anti-dilutive effect (in thousands):

	Years Ended December 31,		
	2014	2015	2016
Outstanding stock awards	3,742	5,938	7,739
Unvested restricted stock	4	—	—
Shares issuable upon conversion of Convertible Notes	—	492	3,765
	<u>3,746</u>	<u>6,430</u>	<u>11,504</u>

In September 2014, the Company issued Convertible Notes, which provide in certain situations for the conversion of the outstanding principal amount of the Convertible Notes into shares of the Company's common stock at a predefined conversion rate. See Note 7, "Convertible Notes", for additional information. In conjunction with the issuance of the Convertible Notes, the Company entered into capped call option transactions, or Capped Calls, with certain counterparties. The Capped Calls are expected generally to reduce the potential dilution, and/or offset, to an extent, the cash payments the Company may choose to make in excess of the principal amount, upon conversion of the Convertible Notes.

As provided by the terms of the indenture underlying the Convertible Notes, the Company has a choice to settle the conversion obligation for the Convertible Notes in cash, shares or any combination of the two. The Company currently intends to settle the par value of the Convertible Notes in cash and any excess conversion premium in shares. Accordingly, the par value of the Convertible Notes will not be included in the calculation of diluted income per share, but the dilutive effect of the conversion premium will be considered in the calculation of diluted net income per share using the treasury stock method. The Convertible Notes were convertible as of December 31, 2016 and 2015. The share figures in the table above represent the estimated incremental shares that would be issued, after the consideration of the Capped Calls, assuming conversion of all of the outstanding Convertible Notes as of the respective balance sheet date.

New Accounting Pronouncements - Recently Adopted

In June 2014, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, No. 2014-12. The amendments in this ASU apply to reporting entities that grant their employees share-based payments in which the terms of the award provide that a performance target can be achieved after a requisite service period. The amendments require an entity to treat a performance target that affects vesting, and that could be achieved after the requisite service period, as a performance condition. A reporting entity should apply existing guidance in ASC Topic 718 relating to awards with performance conditions that affect vesting to account for such awards. The performance target should not be reflected in estimating the grant-date fair value of the award. Compensation cost should be recognized in the period in which it becomes probable that the performance target will be achieved and should represent the compensation cost attributable to the period(s) for which the requisite service has already been rendered. The amendments in this ASU are effective for annual reporting periods and interim periods within those annual reporting periods beginning after December 15, 2015, and early adoption is permitted. The Company adopted this ASU on January 1, 2016, and the adoption of this guidance did not have an impact on the Company's consolidated financial statements.

In April 2015, the FASB issued ASU No. 2015-05, which provides guidance to customers about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, then the customer should account for the software license element of the arrangement consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, the customer should account for the arrangement as a service contract. The guidance will not change GAAP for a customer's accounting for service contracts. ASU No. 2015-05 is effective for annual periods, including interim periods within those annual periods, beginning after December 15, 2015. Early adoption is permitted. An entity can elect to adopt the amendments either (1) prospectively to all arrangements entered into or materially modified after the effective date, or (2) retrospectively. For prospective transition, the only disclosure requirements at transition are the nature of and reason for the change in accounting principle, the transition method, and a qualitative description of the financial statement line items affected by the change. For retrospective transition, the disclosure requirements at transition include the requirements for prospective transition and quantitative information about

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the effects of the accounting change. The Company adopted this ASU prospectively on January 1, 2016 and the adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, which simplifies various aspects of accounting for share-based payments to employees. Key provisions of the new standard include requiring excess tax benefits and shortfalls to be recorded as income tax benefit or expense in the income statement, rather than in equity, and permitting an election to record the impact of pre-vesting forfeitures as they occur. The new guidance is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years, with early adoption permitted. The Company elected to early adopt ASU No. 2016-09, effective January 1, 2016.

Impact of Adoption

As a result of adopting ASU No. 2016-09, the Company adjusted retained earnings for amendments related to an entity-wide accounting policy election to recognize the impact of share-based award forfeitures only as they occur rather than by applying an estimated forfeiture rate as previously required. ASU No. 2016-09 requires that this change be applied using a modified-retrospective transition method by means of a cumulative-effect adjustment to retained earnings as of the beginning of the fiscal year in which the guidance is adopted. The following table summarizes the impact to the Company's consolidated balance sheet, including the amount charged to retained earnings as of January 1, 2016 (in thousands):

	Balance Sheet Classification	Amount
Increase to additional paid-in capital resulting from the Company's election to recognize forfeitures as they occur rather than applying an estimated forfeiture rate	Additional paid-in capital	\$ 1,278
Charge to accumulated deficit for cumulative-effect adjustment from adoption of ASU No. 2016-09	Accumulated deficit	\$ 1,278

See Note 10, "*Income Taxes*", for further discussion of the adoption of this guidance.

In August 2014, the FASB issued ASU No. 2014-15, which is intended to define management's responsibility to evaluate whether there is substantial doubt about an organization's ability to continue as a going concern and to provide related footnote disclosures. Substantial doubt about an entity's ability to continue as a going concern exists when relevant conditions and events, considered in the aggregate, indicate that it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued (or are available to be issued). ASU No. 2014-15 provides guidance to an organization's management, with principles and definitions intended to reduce diversity in the timing and content of disclosures commonly provided by organizations in the footnotes of their financial statements. ASU No. 2014-15 is effective for annual reporting periods ending after December 15, 2016, and for annual and interim periods thereafter. The Company adopted this guidance as of December 31, 2016. The adoption of this guidance did not have an impact on the Company's consolidated financial statements. Management of the Company considered any relevant potential conditions and events, and has concluded that when considered in the aggregate, such conditions and events do not give rise to substantial doubt about the Company's ability to continue as a going concern through at least the twelve months following the filing of this Annual Report on Form 10-K. Therefore, no further disclosures are currently required.

New Accounting Pronouncements - Recently Issued

In May 2014, the FASB issued ASU No. 2014-09, which amends the guidance for accounting for revenue from contracts with customers. This ASU supersedes the revenue recognition requirements in ASC Topic 605, *Revenue Recognition*, and creates a new Topic 606, *Revenue from Contracts with Customers*. In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date by one year to December 15, 2017 for annual reporting periods beginning after that date, including interim periods within those periods. The FASB also approved permitting early adoption of the standard, but not before the original effective date of December 15, 2016. In 2016, the FASB issued four additional ASUs related to Topic 606: ASU Nos. 2016-08, 2016-10, 2016-12, and 2016-20. These ASUs clarify various aspects of the new revenue guidance, including principal versus agent considerations, identifying performance obligations, and licensing, and they include other improvements and practical expedients. Two adoption methods are permitted: retrospectively to all prior reporting periods presented, with certain practical expedients permitted; or retrospectively with the cumulative effect of initially adopting the ASU recognized at the date of initial application.

Under Topic 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To

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determine revenue recognition for arrangements that an entity determines are within the scope of Topic 606, the entity 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 entity satisfies a performance obligation. Topic 606 also impacts certain other areas, such as the accounting for costs to obtain or fulfill a contract. The standard also requires disclosure of the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company has elected to early adopt this new standard effective January 1, 2017, using the full retrospective transition method. Under this method, the Company will revise its results for the years ended December 31, 2015 and 2016, and applicable interim periods within those years, as if Topic 606 had been effective for those periods. To date, the Company has assessed the effect of adoption of this standard as it relates to net product revenue from sales of VARUBI and license, collaboration and other revenues as it relates to the license and collaboration arrangement with Janssen. However, as described further below, the Company has not yet completed its assessment of the effect of adoption of this standard as it relates to its license agreements with Zai Lab and Hengrui. Currently, the Company anticipates the effects of adoption to be as described below. Estimated impacts from the adoption of this standard could differ upon the final adoption and implementation of the standard.

Product Revenue

To date, the Company's only source of product revenue has been sales of the oral formulation of VARUBI, which it began shipping to its customers in November 2015. Under current GAAP, revenue recognition is deferred until the transaction price is fixed or determinable. As a result, if the Company did not have sufficient history or basis upon which to make reasonable and reliable estimates of the transaction price (including rebates, chargebacks, discounts, co-pay assistance and other deductions), it did not record any revenue upon shipment of products to its customers. Instead, the Company recognized net product revenue after the product had been shipped from its customers to health care providers or patients, and once it was able to make sufficiently reasonable estimates of the net sales price. Under Topic 606, the Company will be required to make estimates of the net sales price, including estimates of variable consideration (including rebates, chargebacks, discounts, co-pay assistance and other deductions), and recognize the estimated amount as revenue, when it transfers control of the product to its customers (i.e., generally upon shipment or delivery). Variable consideration must be determined using either an expected value or most likely amount method. The estimate of variable consideration is also subject to a constraint such that some or all of the estimated amount of variable consideration will only be included in the transaction price to the extent that it is probable that a significant reversal of revenue (in the context of the contract) will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Estimating variable consideration and the related constraint will require the use of significant management judgment.

Due to the factors described above, the Company currently estimates the following impacts to total net product revenues for the years ended December 31, 2015 and 2016 after the adoption of Topic 606 (in millions):

	Range of estimated increase (decrease)			
	Year ended December 31,			
	2015		2016	
	Low	High	Low	High
Product revenue, net	\$ 1.5	\$ 2.5	\$ (1.0)	\$ (2.0)

The Company estimates that less than \$1.0 million of the revised total net product revenues for the year ended December 31, 2016, were not recognized as product revenue for the year ended December 31, 2016 (under Topic 605), and would have been recognized as product revenue in 2017 under Topic 605. In addition, the Company does not expect cost of sales (product) to be affected materially in any period due to the adoption of Topic 606.

For periods beginning January 1, 2017, the Company does not expect total net product revenues to be materially different than they would have been if recorded under previous accounting guidance for the oral formulation of VARUBI. This is because the Company believes it would have had sufficient information to conclude that the transaction price was fixed or determinable under current GAAP and would have recorded revenue upon shipment to the customers under either Topic 605 or Topic 606.

License, Collaboration and Other Revenues

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To date, the Company's sources of license, collaboration and other revenue have been three license and collaboration agreements with three separate third party licensees: Janssen, Zai Lab and Hengrui. The Company has performed an evaluation of the expected effect of adoption on its accounting for its license and collaboration agreement with Janssen as discussed further below. The Company has not yet completed its assessments with respect to its license and collaboration agreements with Zai Lab and Hengrui. With regard to Zai Lab, as described in Note 13, as a result of the inclusion of the option to co-market niraparib and its associated potential future payment, the transaction price was determined not to be fixed or determinable. Therefore, the Company has concluded that it had not met certain of the revenue recognition criteria under Topic 605, and no revenue was recognized associated with the Zai Agreement in 2016. The Company is evaluating whether this conclusion will be consistent with the guidance in Topic 606. With regard to Hengrui, the Company has not yet completed its assessment of the adoption of Topic 606 and does not believe the impact of adoption will be material.

The Company expects the accounting for contingent milestone payments to be the most significant change in the accounting for its license and collaboration agreements. Topic 605 provides guidance specific to the accounting for milestone payments, including the ability to defer the recognition of any milestones until received and, if certain criteria are met, the ability to recognize milestone payments as revenue when received. However, Topic 606 does not contain guidance specific to milestone payments, thereby requiring potential milestone payments to be considered in accordance with the overall model of Topic 606. As a result, revenues from contingent milestone payments may be recognized earlier under Topic 606 than under Topic 605, based on an assessment of the probability of achievement of the milestone and the likelihood of a significant reversal of such milestone revenue at each reporting date. This assessment may result in recognizing milestone revenue before the milestone event has been achieved. In addition, Topic 606 changes guidance regarding the accounting for variable consideration received from licensees, which may impact the estimation of, and determination of the timing of, the related revenue recognition.

With respect to its license and collaboration agreement with Janssen, the Company currently estimates the following impacts to total license, collaboration and other revenues for the years ended December 31, 2015 and 2016 after the adoption of Topic 606 (in millions):

	Range of estimated increase (decrease)			
	Year ended December 31,			
	2015		2016	
	Low	High	Low	High
License, collaboration and other revenue	\$ —	\$ —	\$ —	\$ (1.5)

In addition to the effects on product revenue, license, collaboration and other revenue, and cost of sales described above, the Company expects to revise balances of working capital components associated with net product revenues and license, collaboration and other revenues, such as accounts receivable, deferred revenue, and accrued expenses. Overall (with the exception of any possible effects related to the Zai Lab and Hengrui license and collaboration agreements, for which the Company has not yet completed its assessments), the Company currently expects current assets to increase as a result of these changes by \$2.0 to \$3.0 million and less than \$1.0 million as of December 31, 2015 and 2016, respectively, and it currently expects current liabilities to increase by less than \$1.5 million as of December 31, 2015 and 2016.

The quantitative ranges provided above are estimates of the expected effects of the Company's adoption of Topic 606. These ranges represent management's best estimates of the effects of adopting Topic 606 at the time of the preparation of this Annual Report on Form 10-K. The actual, final quantitative effects of the adoption of Topic 606 are subject to change from these estimates and such change may be significant, pending the completion of the Company's assessment in the first quarter of 2017.

Finally, Topic 606 requires more robust disclosures than required by previous guidance, including disclosures related to disaggregation of revenue into appropriate categories, performance obligations, the judgments made in revenue recognition determinations, adjustments to revenue which relate to activities from previous quarters or years, any significant reversals of revenue, and costs to obtain or fulfill contracts.

In July 2015, the FASB issued ASU No. 2015-11, which amends existing guidance for measurement of inventory. Current inventory guidance requires an entity to measure inventory at the lower of cost or market. Market could be replacement cost, net realizable value, or net realizable value less an approximately normal profit margin. The amendments do not apply to inventory that is measured using last-in, first-out (LIFO) or the retail inventory method. The amendments apply to all other inventory, which includes inventory that is measured using first-in, first-out or average cost. An entity should measure all inventory to which the amendments apply at the lower of cost and net realizable value. Net realizable value is the estimated

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selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. Subsequent measurement is unchanged for inventory measured using LIFO or the retail inventory method. The amendments in this ASU more closely align the measurement of inventory in GAAP with the measurement of inventory in International Financial Reporting Standards. The amendments are effective for fiscal years beginning after December 15, 2016, and interim periods within fiscal years beginning after December 15, 2017. The amendments should be applied prospectively with earlier application permitted as of the beginning of an interim or annual reporting period. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU No. 2016-02, a comprehensive new lease accounting standard, which provides revised guidance on accounting for lease arrangements by both lessors and lessees and requires lessees to recognize a lease liability and a right-of-use asset for most leases. The new guidance is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years, with early adoption permitted. The new standard must be applied using a modified retrospective transition approach which requires application of the new guidance for all periods presented. The Company is currently in the process of evaluating the impact that the adoption of this guidance will have on its consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASU No. 2016-15, which is intended to simplify and clarify how certain transactions are classified in the statement of cash flows, and to reduce diversity in practice for such transactions. This ASU addresses eight specific issues regarding classification of cash flows. The standard is effective for financial statements issued for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted, provided that all of the amendments are adopted in the same period. The guidance requires application using a retrospective transition method. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU No. 2016-16, which removes the prohibition in ASC Topic 740 against the immediate recognition of the current and deferred income tax effects of intra-entity transfers of assets other than inventory. ASU No. 2016-16 is effective for the Company for annual periods beginning after December 15, 2017, and interim periods within those annual periods. Early adoption is permitted as of the beginning of a fiscal year for which neither the annual nor the interim (if applicable) financial statements have been issued. The Company is currently in the process of evaluating the impact that the adoption of this guidance will have on its consolidated financial statements and related disclosures.

In November 2016, the FASB issued ASU No. 2016-18, which requires amounts generally described as restricted cash and restricted cash equivalents to be included with cash and cash equivalents when reconciling the total beginning and ending amounts for the periods shown on the statement of cash flows. ASU No. 2016-18 is effective for fiscal years beginning after December 15, 2018 (including interim periods within those periods) using a retrospective transition method to each period presented. The Company believes that the adoption of this guidance will not have a significant impact on its consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU No. 2017-01, which clarifies the definition of a business. To be considered a business (instead of an asset), an acquisition would have to include an input and a substantive process that together significantly contribute to the ability to create outputs. The new guidance provides a framework to evaluate when an input and a substantive process are present (including for early stage companies that have not generated outputs). To be a business without outputs, there will now need to be an organized workforce. The new guidance narrows the definition of the term “outputs” to be consistent with how it is described in Topic 606, *Revenue from Contracts with Customers*. Under the final definition, an output is the result of inputs and substantive processes that provide goods or services to customers, other revenue, or investment income, such as dividends and interest. The new guidance is effective on a prospective basis for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. The Company does not expect the adoption of this guidance to have a material impact on its consolidated financial statements, although this guidance could impact the Company’s accounting conclusions for certain future transactions, such as in-licensing agreements.

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3. Inventories

The following table presents inventories (in thousands):

	December 31,	
	2015	2016
Raw materials	\$ 364	\$ 13,263
Work in process	83	584
Finished goods	659	853
Total inventories	<u>\$ 1,106</u>	<u>\$ 14,700</u>

Inventories are related to the Company's product, VARUBI. If further sales of VARUBI are less than expected, the Company may be required to write down the value of such inventories.

4. Intangible Assets

The following table presents intangible assets (in thousands):

	December 31,		
	2015	2016	Estimated useful life
Intangible asset - OPKO milestone	\$ 15,000	\$ 15,000	8 Years
Less accumulated amortization	(268)	(2,123)	
Total intangible asset, net	<u>\$ 14,732</u>	<u>\$ 12,877</u>	

The Company recorded \$0.3 million and \$1.9 million, respectively, in amortization expense related to this intangible asset during the years ended December 31, 2015 and 2016. Estimated future amortization expense for intangible assets as of December 31, 2016 is as follows (in thousands):

	Total
2017	\$ 1,855
2018	1,855
2019	1,855
2020	1,855
2021	1,855
Thereafter	3,602
	<u>\$ 12,877</u>

5. Property and Equipment

The following table presents property and equipment, at cost, and related accumulated depreciation (in thousands):

	December 31,	
	2015	2016
Furniture and fixtures	\$ 1,547	\$ 2,481
Computer equipment and software	2,113	3,459
Leasehold improvements	350	3,190
Manufacturing equipment	124	124
Total property and equipment, at cost	4,134	9,254
Less accumulated depreciation and amortization	(1,355)	(2,614)
Total property and equipment, net	<u>\$ 2,779</u>	<u>\$ 6,640</u>

Total depreciation expense amounted to \$0.3 million, \$0.8 million and \$1.3 million for the years ended December 31, 2014, 2015 and 2016, respectively.

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6. Accrued Expenses

The following table presents the components of accrued expenses (in thousands):

	December 31,	
	2015	2016
Research and development	\$ 23,048	\$ 36,759
Salaries, bonuses and other compensation	9,634	20,654
Sales and marketing	1,747	3,177
Professional services	1,021	2,743
Other accrued expenses	1,178	4,938
Total accrued expenses	\$ 36,628	\$ 68,271

7. Convertible Notes

On September 29, 2014, in a registered underwritten public offering, the Company completed the issuance of \$201.3 million aggregate principal amount of Convertible Notes. The Company received net proceeds of \$194.7 million from the sale of the Convertible Notes, after deducting discounts, commissions and other expenses of \$6.6 million. In conjunction with the sale of the Convertible Notes, the Company used \$20.8 million of the net proceeds to enter into separate Capped Calls, as described below.

The Convertible Notes are governed by the terms of a Senior Debt Securities Indenture, as supplemented by the First Supplemental Indenture relating to the Convertible Notes, collectively the Indenture, between the Company and U.S. Bank National Association, as trustee. The Convertible Notes bear interest at a rate of 3.00% per annum, payable semi-annually on April 1 and October 1, beginning from April 1, 2015, and will be convertible into cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. The Convertible Notes will mature on October 1, 2021, unless earlier converted or repurchased in accordance with their terms. Prior to the close of business on the business day immediately preceding April 1, 2021, the Convertible Notes will be convertible only upon the occurrence of certain events and during certain periods as discussed below, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The initial conversion price of the Convertible Notes is approximately \$35.13 per share of common stock at an initial conversion rate of 28.4627 shares of the Company's common stock per \$1,000 principal amount of Convertible Notes, which represents a premium of approximately 35% over the last reported sale price of the Company's common stock on September 23, 2014.

The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, the issuance of stock dividends and payment of cash dividends. At any time prior to the close of business on the business day immediately preceding April 1, 2021, holders may convert their Convertible Notes at their option only under the following circumstances:

- (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the closing sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter in which the conversion occurs is greater than 130% of the conversion price on each applicable trading day;
- (2) during the five business day period after any ten consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the closing sale price of the Company's common stock and the conversion rate on each such trading day; or
- (3) upon the occurrence of specified corporate events.

On or after April 1, 2021 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Convertible Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

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If a make-whole adjustment event, as described in the Indenture, occurs and a holder elects to convert its Convertible Notes in connection with such make-whole adjustment event, such holder may be entitled to an increase in the conversion rate as described in the Indenture.

The Company may not redeem the Convertible Notes prior to the maturity date and no “sinking fund” is provided for the Convertible Notes, which means that the Company is not required to periodically redeem or retire the Convertible Notes. Upon the occurrence of certain fundamental changes involving the Company, holders of the Convertible Notes may require the Company to repurchase for cash all or part of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest.

The Indenture does not contain any financial covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by the Company or any of its subsidiaries.

The terms of the Indenture provide the Company with the option to settle the Convertible Notes in cash, common stock, or a combination of cash and common stock. As a result, in accordance with ASC Subtopic 470-20, *Debt with Conversion and Other Options*, the Company separately accounts for the liability and equity components of the Convertible Notes by allocating the principal between the liability component and the embedded conversion option, or equity component. Based on market data available for publicly traded, senior, unsecured corporate bonds issued by companies in the same industry and with similar maturity, the Company estimated the implied interest rate, assuming no conversion option. Assumptions used in the estimate represent what market participants would use in pricing the liability component, including market interest rates, credit standing, and yield curves, all of which are defined as Level 2 observable inputs. The estimated implied interest rate was applied to the Convertible Notes, which resulted in a fair value of the liability component of \$113.4 million upon issuance, calculated as the present value of implied future payments based on the \$201.3 million aggregate principal amount. The equity component of the Convertible Notes was recognized as a debt discount, recorded in additional paid-in capital, and represents the difference between the aggregate principal of the Convertible Notes and the fair value of the Convertible Notes without conversion option on their issuance date. The debt discount is amortized to interest expense using the effective interest method over seven years, or the life of the Convertible Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

The Company's outstanding convertible note balances at December 31, 2016 consisted of the following (in thousands):

	December 31, 2016
Liability component	
Principal	\$ 201,250
Less: debt discount and issuance costs, net	(69,475)
Net carrying amount	\$ 131,775
Equity component	\$ 87,843

In connection with the issuance of the Convertible Notes, the Company incurred issuance costs, primarily consisting of underwriting, legal and other professional fees, which the Company allocated to the liability and equity components in a manner consistent with the allocation of the principal, as described above. Of the total \$6.6 million of debt issuance costs, \$2.9 million were allocated to the equity component and recorded as a reduction to additional paid-in capital and \$3.7 million were allocated to the liability component and recorded as a reduction in the carrying amount of the convertible note. The portion allocated to the liability component is amortized to interest expense over the expected life of the Convertible Notes using the effective interest method.

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The Company determined the expected life of the debt was equal to the seven year contractual term of the Convertible Notes. As of December 31, 2016, the carrying value of the Convertible Notes was \$131.8 million and the fair value of the Convertible Notes approximated \$771.4 million. The effective interest rate on the liability component is 12.9%. The following table sets forth total interest expense recognized related to the Convertible Notes during the years ended December 31, 2015 and 2016 (in thousands):

	Years Ended December 31,	
	2015	2016
Contractual interest expense	\$ 6,054	\$ 6,037
Amortization of debt discount	8,697	9,851
Amortization of debt issuance costs	663	599
Total interest expense	\$ 15,414	\$ 16,487

The Company has evaluated the Indenture for derivatives pursuant to ASC Topic 815, Derivatives and Hedging, and identified an embedded derivative that requires bifurcation as the feature is not clearly and closely related to the host instrument. The embedded derivative is a default provision, which could require additional interest payments. The Company has determined that the fair value of this embedded derivative was nominal as of December 31, 2016.

In conjunction with the offering of the Convertible Notes, the Company entered into privately-negotiated Capped Calls with certain counterparties. Each Capped Call is an integrated instrument consisting of a call option on the Company's common stock purchased by the Company from the counterparties with an exercise price equal to the conversion price of \$35.13 per share for the underlying number of shares and a cap component that incorporates a cap price of \$45.54 per share. The cap component is economically equivalent to a call option sold by the Company to the counterparties for the underlying number of shares with an exercise price of \$45.54 per share. As an integrated instrument, the settlement of the Capped Calls coincides with the maturity date of the Convertible Notes. The aggregate cost of the Capped Calls was \$20.8 million and was recorded in stockholders' equity and will not be remeasured.

8. Stockholders' Equity

As of December 31, 2016, the authorized capital stock of the Company consisted of 10,000,000 shares of preferred stock and 100,000,000 shares of common stock, both with a par value of \$0.0001, of which no shares of preferred stock were issued or outstanding and 53,621,679 shares of common stock were issued and outstanding.

Preferred Stock

The Company's certificate of incorporation authorizes its board of directors to issue preferred stock from time to time in one or more series. The rights, preferences, restrictions, qualifications and limitations of such stock are determined by the board of directors.

Common Stock

In February 2014, the Company sold 3,200,000 shares of common stock, in an underwritten public offering at a price to the public of \$31.50 per share, resulting in gross proceeds of approximately \$100.8 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$94.2 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

In March 2015, the Company sold 3,755,000 shares of common stock, in an underwritten public offering at a price to the public of \$51.00 per share, resulting in gross proceeds of approximately \$191.5 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$179.8 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

In March 2016, the Company sold 4,404,658 shares of common stock in a private placement offering at a price of \$35.19 per share, to certain accredited investors, including funds affiliated with three of its directors and current investors, resulting in gross proceeds of approximately \$155.0 million. The price per share was equal to the volume weighted average price for the ten-day period ending on March 17, 2016. There were no placement agents used for this financing. The sale and issuance of the shares of common stock in the private placement was made in reliance on the exemption afforded by Section 4(a)(2) under the Securities Act of 1933 and Regulation D promulgated under the Securities Act.

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In April 2016, the Company sold 1,130,198 shares of common stock to Johnson & Johnson Innovation – JJDC, Inc., or JJDC, at a price of \$44.24 per share, for an aggregate purchase price of approximately \$50.0 million. The price per share was equal to the volume weighted average price for the five-day period ending on April 4, 2016. There were no placement agents used, or any underwriting discounts or commissions paid in connection with the transaction. The sale and issuance of the shares of common stock was made in reliance on the exemption afforded by Section 4(a)(2) under the Securities Act of 1933 and Regulation D promulgated under the Securities Act.

In July 2016, the Company sold 5,347,500 shares of common stock, in an underwritten public offering at a price to the public of \$81.00 per share, resulting in gross proceeds of approximately \$433.1 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$408.9 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

In November 2016, the Company sold 1,750,000 shares of common stock, in an underwritten public offering at a price to the public of \$135.00 per share, resulting in gross proceeds of approximately \$236.3 million. Net proceeds to the Company after deducting fees, commissions and other expenses related to the offering were approximately \$224.2 million. The shares were issued pursuant to an automatic shelf registration statement on Form S-3.

The holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders of the Company. Subject to the preferences that may be applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Company's board of directors.

9. Stock-Based Compensation

The following table presents stock-based compensation expense as reflected in the Company's consolidated statements of operations and comprehensive loss (in thousands):

	Years Ended December 31,		
	2014	2015	2016
Research and development	\$ 4,954	\$ 11,082	\$ 19,783
Selling, general and administrative	6,729	14,832	28,672
Total stock-based compensation expense	\$ 11,683	\$ 25,914	\$ 48,455

The Company maintains several equity compensation plans, including the TESARO, Inc. 2012 Omnibus Incentive Plan, or the 2012 Incentive Plan, the TESARO, Inc. 2010 Stock Incentive Plan, or the 2010 Incentive Plan, the TESARO, Inc. 2015 Non-Employee Director Stock Incentive Plan, or the 2015 Director Plan, and the TESARO, Inc. 2012 Employee Stock Purchase Plan, or the 2012 ESPP. Terms of stock award agreements, including vesting requirements, are determined by the board of directors, subject to the provisions of the individual plans. To date, stock option awards granted to employees by the Company generally vest either monthly over four years, or 25% one year from the vesting start date and 75% in equal installments over the subsequent thirty-six (36) months, and are exercisable from the date of grant for a period of ten years. Restricted stock units, or RSUs, granted to employees by the Company generally vest annually over four years in equal annual installments of 25% each.

2010 Stock Incentive Plan

In connection with the Company's formation, the Company adopted the 2010 Incentive Plan, under which it was authorized to grant stock-based awards of up to 1,981,130 shares of common stock as of January 1, 2012. As of April 27, 2012, the Company ceased making awards under the 2010 Incentive Plan and the remaining 6,857 shares available for future grants were added to the total number of shares reserved for issuance under the 2012 Incentive Plan. For options granted under the 2010 Incentive Plan, the exercise price equaled the estimated fair value of the common stock as determined by the board of directors on the date of grant. As of December 31, 2016, there are no shares available for grant under the 2010 Incentive Plan.

2012 Omnibus Incentive Plan

On April 27, 2012, the stockholders of the Company approved the 2012 Incentive Plan, which had been previously adopted by the board of directors. Upon effectiveness of the 2012 Incentive Plan, the Company ceased making awards under the 2010 Incentive Plan. The 2012 Incentive Plan allows the Company to grant awards for up to 1,428,571 shares of common

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stock plus the number of shares of common stock available for grant under the 2010 Incentive Plan as of the effectiveness of the 2012 Incentive Plan (which is an additional 6,857 shares) plus that number of shares of common stock related to awards outstanding under the 2010 Incentive Plan that terminate by expiration, forfeiture, cancellation, cash settlement or otherwise. The number of shares available for grants of awards under the 2012 Incentive Plan is increased automatically on January 1 by a number of shares of common stock equal to the lesser of 4% of the shares of common stock outstanding at such time or the number of shares determined by the Company's board of directors. Accordingly, effective January 1, 2016 and 2017, the number of shares authorized for issuance under the 2012 Incentive Plan was increased by 1,611,191 shares and 2,144,867 shares, respectively. Awards under the 2012 Incentive Plan may include the following award types: stock options, which may be either incentive stock options or nonqualified stock options; stock appreciation rights; restricted stock; RSUs; dividend equivalent rights; performance shares; performance units; cash-based awards; other stock-based awards, including unrestricted shares; or any combination of the foregoing. The exercise price of stock options granted under the 2012 Incentive Plan is equal to the closing price of a share of the Company's common stock on the grant date. As of December 31, 2016, there were 694,923 shares available for grant under the 2012 Incentive Plan, prior to taking into account the additional shares authorized for issuance as of January 1, 2017, as described above.

2015 Director Plan

On May 14, 2015, the stockholders of the Company approved the 2015 Director Plan, which had been previously adopted by the board of directors in order to have a plan in addition to the 2012 Incentive Plan for purposes of granting awards to non-employee directors. On May 11, 2016, the Company's stockholders approved certain amendments to the 2015 Director Plan to limit the number of shares of the Company's common stock subject to awards granted in a calendar year to any non-employee director to 50,000 shares, and to affirm the number of shares reserved for issuance under the plan. The 2015 Director Plan allows the Company to grant awards for up to 500,000 shares of common stock. Awards under the 2015 Director Plan may include the following award types: stock options; stock appreciation rights; restricted stock; RSUs; unrestricted stock; or any combination of the foregoing. The exercise price of stock options granted under the 2015 Director Plan is equal to the closing price of a share of the Company's common stock on the grant date. As of December 31, 2016, there were 297,544 shares available for grant under the 2015 Director Plan.

Stock Options

The following table presents a summary of the Company's stock option activity and related information:

	Shares	Weighted-average exercise price per share	Weighted- average remaining contractual term (years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2015	5,878,352	\$ 35.00	8.1	\$ 110,798
Granted	2,000,366	58.51		
Exercised	(643,035)	40.37		
Cancelled	(257,062)	51.06		
Outstanding at December 31, 2016	6,978,621	\$ 40.65	7.6	\$ 655,099
Vested at December 31, 2016	3,322,925	\$ 25.25	6.5	\$ 362,968

The fair value of each stock option was estimated at the date of grant using a Black-Scholes option-pricing model with the following assumptions:

	Years Ended December 31,					
	2014		2015		2016	
Dividend yield	—		—		—	
Volatility	69%	- 76%	63%	- 65%	57%	- 59%
Risk-free interest rate	1.65%	- 2.07%	1.35%	- 1.95%	1.07%	- 2.10%
Expected term (years)	5.50	- 6.08	5.50	- 6.08	5.50	- 6.08

The Company uses the simplified method as prescribed by U.S. Securities and Exchange Commission Staff Accounting Bulletin No. 107, *Share-Based Payment*, to calculate the expected term, as it does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term for options granted. The expected term is

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applied to all stock option grants as a whole, as the Company does not expect substantially different exercise or post-vesting termination behavior among its population. The computation of expected volatility is based on a blend of the historical volatility of the company and the volatility of a representative group of public biopharmaceutical companies with similar characteristics to the Company, including substantial product development and therapeutic focus. The risk-free interest rate is based on a U.S. Treasury instrument whose term is consistent with the expected term of the stock options. The value of the award is recognized as expense on a straight-line basis over the requisite service period and is adjusted for pre-vesting forfeitures in the period in which the forfeitures occur. For stock awards that have a performance condition, the Company recognizes compensation expense based on its assessment of the probability that the performance condition will be achieved, using an accelerated attribution model, over the explicit or implicit service period.

The Company recorded stock-based compensation expense associated with stock options of \$11.1 million, \$24.5 million, and \$40.0 million for the years ended December 31, 2014, 2015 and 2016, respectively. The totals for the years ended December 31, 2014, 2015 and 2016 include \$0.3 million, \$0.3 million, and \$1.0 million, respectively, related to accounting for awards held by non-employee consultants. The weighted-average grant date fair values of options granted in the years ended December 31, 2014, 2015 and 2016 were \$20.33, \$32.05 and \$32.13 per share, respectively. The aggregate intrinsic value of options exercised during the years ended December 31, 2014, 2015 and 2016 was \$3.4 million, \$11.8 million and \$37.4 million, respectively. The intrinsic value of a stock option is the amount by which the fair market value of the underlying stock on the exercise date exceeds the exercise price of the stock option.

During July 2016, a former employee resigned from employment with the Company and transitioned to serving the Company as a non-employee consultant through April 30, 2017. As a result, beginning in July 2016, the Company accounted for unvested stock awards previously granted to the employee as non-employee awards. The Company recorded stock-based compensation expense based on the fair values of the awards as measured on their vesting dates, and the fair values of any unvested awards are remeasured at each financial reporting date until they vest, with any increases or decreases in fair value recorded as stock-based compensation expense. Fair values of stock options were determined on each measurement date using the Black-Scholes option pricing model, and fair values of RSUs were equal to the fair market value of the Company's common stock on each measurement date. During the year ended December 31, 2016, the Company recorded incremental stock-based compensation expense of \$1.0 million associated with these awards (options and RSUs), as the result of the change in status of the former employee.

In June 2014, June 2015, and June 2016 as provided for under the 2012 Incentive Plan and the 2015 Director Plan, the Company issued 10,411, 3,429 and 6,027 shares of common stock, respectively, with aggregate values of \$0.3 million for all three periods, to certain non-employee board members who elected to receive shares of common stock in lieu of cash, as payment of fees owed them for services as members of the Company's board of directors.

At December 31, 2016, there was \$107.9 million of total unrecognized compensation cost related to unvested stock options, which the Company expects to recognize over a remaining weighted-average period of 2.6 years.

Restricted Stock Units

The following table presents a summary of the Company's RSU activity and related information:

	Shares	Weighted-average grant date fair value per share
Unvested restricted stock units at December 31, 2015	60,000	\$ 56.00
Granted	741,398	58.47
Vested	(18,000)	61.64
Forfeited	(23,275)	47.11
Unvested restricted stock units at December 31, 2016	760,123	\$ 58.55

In July 2016, the Company issued 15,000 RSUs with service and performance conditions to certain employees, of which 3,000 vested during the year ended December 31, 2016. Vesting of these awards is contingent on the occurrence of certain milestone events and fulfillment of any remaining service condition. As a result, the related compensation cost is recognized as an expense when achievement of the milestone is considered probable. The expense recognized for these awards is based on the grant date fair value of the Company's common stock multiplied by the number of units granted. The Company recognized \$0.4 million of related expense during the year ended December 31, 2016.

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The weighted-average grant date fair values of RSUs granted during the years ended December 31, 2014, 2015 and 2016 were \$29.04, \$56.00, and \$58.47 per share, respectively. The total grant date fair value of RSUs that vested during the years ended December 31, 2014, 2015 and 2016 was \$0.1 million, \$0.5 million and \$1.1 million, respectively, based upon the number of RSUs vested multiplied by the closing stock price of the Company's common stock on the grant date. As of December 31, 2016, there was approximately \$37.3 million of unrecognized compensation cost related to unvested RSUs that the Company expects to recognize over a remaining weighted-average period of approximately 3.2 years.

Employee Stock Purchase Plan

On June 6, 2012, the board of directors adopted the 2012 ESPP, and the stockholders approved it on June 18, 2012, to be effective in connection with the closing of the Company's initial public offering. A total of 275,000 shares of common stock were originally approved for future issuance under the 2012 ESPP pursuant to purchase rights granted to the Company's employees or to employees of the Company's designated subsidiaries. As of December 31, 2016, 194,245 shares remained available for issuance. The 2012 ESPP provides for consecutive six-month offering periods, during which participating employees may elect to have a portion of their compensation withheld and used for the purchase of common stock at the end of each offering period. The purchase price is equal to 85% of the lower of the fair market value of a share of common stock on the first trading date of each offering period or the fair market value of a share of common stock on the last trading day of the offering period, and is limited by participant to \$25,000 in fair value of common stock per year. The 2012 ESPP will terminate on June 6, 2022, the tenth anniversary of the date of initial adoption of the plan. For the years ended December 31, 2014, 2015 and 2016, the Company issued a total of 9,845, 20,601 and 42,478 shares of common stock, respectively, under the 2012 ESPP and recognized \$0.1 million, \$0.3 million and \$0.9 million, respectively, in related stock-based compensation expense.

10. Income Taxes

The following table presents the components of income (loss) before the provision for (benefit from) income taxes during the years ended December 31, 2014, 2015, and 2016 (in thousands):

	Years Ended December 31,		
	2014	2015	2016
United States	\$ (141,119)	\$ (212,707)	\$ (297,319)
Foreign	(29,893)	(38,701)	(88,678)
(Loss) income before provision for (benefit from) income taxes	\$ (171,012)	\$ (251,408)	\$ (385,997)

Provisions for income taxes for the years ended December 31, 2014, 2015 and 2016 are as follows (in thousands):

	Years Ended December 31,		
	2014	2015	2016
Current:			
Federal	\$ —	\$ —	\$ —
State	—	—	3
Foreign	—	—	1,597
	—	—	1,600
Deferred:			
Federal	—	—	—
State	—	—	—
Foreign	—	—	(125)
	—	—	(125)
Provision for income taxes	\$ —	\$ —	\$ 1,475

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The following table presents a reconciliation of income tax expense (benefit) at the statutory federal income tax rate to the effective income tax rate as reflected in the consolidated financial statements:

	Years Ended December 31,		
	2014	2015	2016
Federal income tax (benefit) expense at statutory rate	(34.0)%	(34.0)%	(35.0)%
State income tax (benefit) expense	(4.4)	(2.3)	(0.4)
Permanent items	0.7	0.2	(0.1)
Foreign rate differential	5.9	5.1	7.1
Federal research and development credit	(1.4)	(1.6)	(10.7)
Change in valuation allowance	33.2	32.6	39.1
Other	0.0	0.0	0.4
Effective income tax rate	0.0 %	0.0 %	0.4 %

The Company's effective rate for the year ended December 31, 2016 compared to the year ended December 31, 2015 increased primarily as a result of subsidiary operations in foreign tax jurisdictions and China withholding taxes on the up-front license payment received from Zai Lab.

The Company accounts for income taxes in accordance with ASC Topic 740. Deferred income tax assets and liabilities are determined based upon temporary differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The following table presents the principal components of the Company's deferred tax assets and liabilities (in thousands):

	December 31,	
	2015	2016
Deferred tax assets:		
Federal net operating loss carryforwards	\$ 147,611	\$ 231,085
State net operating loss carryforwards	17,361	18,016
Depreciation and amortization	13,594	18,840
Stock-based compensation	11,845	21,393
Tax credit carryforwards	10,573	54,950
Other	3,120	7,374
Total deferred tax assets	204,104	351,658
Less: valuation allowance	(183,421)	(333,879)
Net deferred tax assets	20,683	17,779
Deferred tax liability:		
Debt discount on convertible notes	(20,683)	(17,654)
Net deferred taxes	\$ —	\$ 125

ASC Topic 740 requires a valuation allowance to reduce the deferred tax assets reported if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. After consideration of all the evidence, both positive and negative, the Company has recorded full valuation allowances against its domestic deferred tax assets at both December 31, 2015 and 2016, because management has determined that it is more likely than not that these assets will not be realized. The valuation allowance increased by \$150.5 million from December 31, 2015 to December 31, 2016, primarily due to increases in operating losses and tax credits.

As of December 31, 2016, the Company had cumulative federal and state net operating loss, or NOL, carryforwards of \$660.2 million and \$352.8 million, respectively. The federal and state NOL carryforwards will expire at various dates through 2036, if not utilized. The Company adopted ASU No. 2016-09 effective January 1, 2016. As a result of adoption, the deferred tax assets associated with federal and state net operating losses were increased by \$13.1 million and \$9.1 million, respectively. These amounts were offset by a corresponding increase in the valuation allowance. The adoption of ASU No. 2016-09 with respect to the Company's NOLs had no impact on the Company's consolidated statement of operations, balance sheet, or retained earnings.

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As of December 31, 2016, the Company had federal general business and state research and development tax credit carryforwards of approximately \$52.9 million and \$3.2 million, respectively, available to reduce future tax liabilities. The federal general business and state research and development tax credits will expire at various dates through 2036. During 2016, a study was conducted to document the qualified research activities of the Company. The study resulted in \$22.9 million of additional tax credit carryforward which has been fully offset by a valuation allowance.

Under the provisions of the Internal Revenue Code, the NOL and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. NOL and tax credit carryforwards may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant shareholders over a three-year period in excess of 50 percent, as defined under Sections 382 and 383 of the Internal Revenue Code, respectively, as well as similar state provisions. This could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. The Company has completed several financings since its inception which it believes may have resulted in a change in control as defined by Sections 382 and 383 of the Internal Revenue Code.

The Company and its subsidiaries file income tax returns in the United States, as well as various state and foreign jurisdictions. Generally, the tax years 2013 through 2015 remain open to examination by the major taxing jurisdictions to which the Company is subject. To the extent the Company has tax attribute carryforwards, the tax years in which the attribute was generated may still be adjusted upon examination by the Internal Revenue Service, or state or foreign tax authorities, to the extent utilized in a future period.

A reconciliation of the amount of unrecognized tax benefit is as follows (in thousands):

	2016
Balance at December 31, 2015	\$ —
Increases related to prior year tax positions	4,304
Increases related to current year tax positions	3,440
Reductions for tax positions of prior periods	—
Decreases related to lapse of applicable statute of limitations	—
Decreases related to settlements with tax authorities	—
Balance at December 31, 2016	\$ 7,744

During the year ended December 31, 2016, the Company established gross reserves of \$4.3 million and \$3.4 million related to research and development tax credits and the allocation of taxable income to the various jurisdictions where the Company is subject to tax, respectively.

The Company's policy is to record estimated interest and penalties related to the underpayment of income taxes as a component of its income tax provision. As of December 31, 2015 and 2016, the Company had no accrued interest or penalties related to uncertain tax positions and no amounts have been recognized in the Company's consolidated statement of operations.

11. Employee Benefit Plans

In 2010, the Company adopted a retirement plan, which is qualified under section 401(k) of the Internal Revenue Code, for its U.S. employees. The plan allows eligible employees to defer, at the employee's discretion, pre-tax or post-tax compensation up to the IRS annual limits. Company contributions may be made at the discretion of the board of directors.

Effective as of January 1, 2012, the Company amended its 401(k) plan to provide for employer matching contributions equal to (1) 100% of employee deferral contributions up to a deferral rate of 3% of compensation, plus (2) 50% of employee deferral contributions up to a deferral rate of an additional 2% of compensation. During the years ended December 31, 2014, 2015 and 2016, the Company made aggregate matching contributions of \$0.5 million, \$1.0 million and \$2.2 million, respectively.

The Company maintains a pension plan covering employees of its wholly owned subsidiary in Switzerland. This plan is considered a defined benefit plan and is a government-mandated retirement fund that provides benefits to employees upon retirement, death, or disability. Employer and employee contributions are made based on various percentages of salaries and wages that vary based on employee age and other factors. As of December 31, 2016, the plan had an unfunded net pension

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obligation of approximately \$3.0 million and plan assets of approximately \$4.3 million. In 2016, the Company recognized expense of \$0.4 million related to this plan.

12. Commitments and Contingencies

The Company leases office space for its corporate headquarters in Waltham, Massachusetts under a non-cancelable operating lease agreement. Since the lease term commenced on April 1, 2013, the Company has executed four amendments to increase its leased space to a total of approximately 124,000 square feet as of December 31, 2016. The lease term, as amended, continues through June 30, 2020. The lease agreement, as amended, provides for varying periods of free rent with respect to portions of the leased premises and tenant improvement allowances of \$2.9 million. The Company also leases 7,100 square feet of office space in Zug, Switzerland for its European headquarters under a non-cancelable operating lease agreement executed in August 2016 with a lease term through August 31, 2021.

The Company recognizes rent expense on a straight-line basis over the respective lease term including any free rent periods and tenant allowances. The following table presents future minimum rental commitments, by fiscal year and in the aggregate, as of December 31, 2016 (in thousands):

	Operating Leases
2017	\$ 5,200
2018	5,629
2019	5,629
2020	2,931
2021	157
Thereafter	—
Total minimum lease payments	\$ 19,546

The Company recorded \$1.5 million, \$2.1 million and \$3.4 million in rent expense for the years ended December 31, 2014, 2015 and 2016, respectively.

The Company has entered into agreements with certain vendors for the provision of services, including services related to data management clinical operation support services, that the Company is not contractually able to terminate for convenience and avoid any and all future obligations to the vendors. Under such agreements, the Company is contractually obligated to make certain minimum payments to the vendors, with the exact amounts in the event of termination to be based on the timing of the termination and the exact terms of the agreement.

Litigation

The Company may periodically become subject to legal proceedings and claims arising in connection with ongoing business activities, including claims or disputes related to patents that have been issued or that are pending in the field of research on which the Company is focused. The Company is not a party to any litigation and does not have contingency reserves established for any litigation liabilities.

13. License and Collaboration Agreements

Rolapitant In-License

In December 2010, the Company entered into a license agreement with OPKO Health, Inc., or OPKO, to obtain an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell rolapitant. The license agreement also extended to an additional, backup compound, SCH900978, to which the Company has the same rights and obligations as rolapitant, but which the Company is not currently advancing. Under the OPKO license the Company is obligated to use commercially reasonable efforts to conduct all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant. Under the terms of the OPKO license, the Company paid OPKO \$6.0 million upon signing the agreement and issued to OPKO shares of its convertible preferred stock, then valued at \$0.6 million which shares have since been converted into common stock. The Company is also required to make development milestone payments to OPKO of up to an aggregate of \$30.0 million if specified regulatory and initial commercial sales milestones are achieved. In addition, the Company is required to make additional milestone payments to OPKO of up to an aggregate of \$85.0 million if specified levels of annual net sales of rolapitant are achieved.

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Upon the commencement of commercial sales of rolapitant, the Company is required to pay OPKO tiered royalties on the amount of annual net sales of rolapitant achieved in the United States and Europe at percentage rates that range from the low teens to the low twenties, which the Company expects will result in an effective royalty rate in the low teens. The royalty rate on annual net sales outside of the United States and Europe is slightly above the single digits. The Company is required to pay OPKO an annual minimum royalty of \$2.5 million in each of the first five full calendar years of commercial sales of VARUBI. In any year during this period, if royalty payments amount to less than \$2.5 million, the difference will be deemed a royalty shortfall and will be payable within 45 days of each calendar year end. Royalty shortfalls may be offset dollar for dollar against royalties due in future periods, for the first five calendar years of VARUBI sales. As of December 31, 2016, the Company had incurred \$0.7 million of royalties based on its 2016 VARUBI net product revenues. As this amount was less than the \$2.5 million annual minimum, the Company accrued an additional \$1.8 million royalty obligation owed to OPKO as of December 31, 2016, which is capitalized in the 'other assets' caption on the consolidated balance sheet. The Company believes this amount will be recoverable in future years.

If the Company elects to develop and commercialize rolapitant in Japan through a third-party licensee the Company will share equally with OPKO all amounts received by it in connection with such activities under the Company's agreement with such third party, subject to certain exceptions and deductions. The Company is responsible for all preclinical, clinical, regulatory and other activities necessary to develop and commercialize rolapitant. There were no ongoing clinical trials for rolapitant at the time of its acquisition. As of the date of acquisition, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As no processes or activities that would constitute a "business" were acquired along with the license, the transaction was accounted for as an asset acquisition by recording the entire purchase price of \$6.6 million as acquired in-process research and development expense. As of December 31, 2016, the Company has made milestone payments to date totaling \$20.0 million under this license agreement, \$15.0 million of which was paid in November 2015 and has been capitalized as an intangible asset on the consolidated balance sheet.

Niraparib In-License

In May 2012, the Company entered into a license agreement with Merck Sharp & Dohme Corp., a subsidiary of Merck, under which the Company obtained exclusive, worldwide rights to certain patents and non-exclusive rights to certain Merck know-how, to research, develop, manufacture, market and sell niraparib and a backup compound, MK-2512, for all therapeutic and prophylactic uses in humans. The Company is not currently advancing MK-2512. Under the Merck license, the Company is obligated to use diligent efforts to develop and commercialize a licensed product. Under the terms of the license agreement, the Company was required to make an up-front payment to Merck of \$7.0 million in June 2012. The Company is also required to make milestone payments to Merck of up to \$57.0 million in development and regulatory milestones for the first indication, up to \$29.5 million in development and regulatory milestones for each successive indication, and up to \$87.5 million in one-time sales milestones based on the achievement of annual sales objectives. If commercial sales of niraparib commence, the Company will pay Merck tiered royalties at a percentage rate in the low teens based on worldwide annual net sales. As of the date of acquisition, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As no processes or activities that would constitute a "business" were acquired along with the license, the transaction has been accounted for as an asset acquisition and the entire purchase price of \$7.0 million has been recorded as acquired in-process research and development expense. The Company has made milestone payments to date totaling \$12.8 million, including \$9.9 million during the year ended December 31, 2016.

Immuno-Oncology Platform License

In March 2014, the Company entered into a collaboration and exclusive license agreement with AnaptysBio, Inc., or AnaptysBio, a therapeutic antibody company. Under the terms of this agreement, the Company obtained an exclusive, royalty-bearing, sublicensable worldwide license to research, develop, manufacture, market and sell products based on AnaptysBio's proprietary technology for the discovery, generation and optimization of certain specified immunotherapy antibodies. Specifically, the Company received exclusive rights to monospecific antibody product candidates targeting PD-1, TIM-3 and LAG-3, and certain bi-specific antibody product candidates. The Company and AnaptysBio entered into an amendment in November 2014 to add an additional bi-specific antibody product candidate to the agreement. Under the agreement, AnaptysBio is responsible for performing initial discovery and development of therapeutic antibodies, with the goal of generating immunotherapy antibodies for use in the treatment of cancer. The Company is responsible for the performance and costs of all subsequent preclinical, clinical, regulatory, manufacturing and other activities necessary to develop and commercialize antibodies selected under each of four development programs and is obligated to use commercially reasonable efforts to research, develop or commercialize at least one product under each development program. The Company also

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entered into an amendment in February 2016 to extend the term of the initial discovery period and the Company's and AnaptysBio's associated activities under the agreement.

Under the terms of the agreement, the Company made an up-front, non-creditable and non-refundable cash payment of \$17.0 million to AnaptysBio in March 2014. Under the terms of the first amendment to the agreement, the Company made an up-front, non-creditable and non-refundable cash payment of \$2.0 million in December 2014. The Company is also required to reimburse AnaptysBio on a quarterly basis for up to two years from the effective date of the agreement for specified costs incurred by AnaptysBio in its initial discovery and development activities covered by the agreement. Programs may be extended by mutual agreement of the parties, and the Company can terminate on a program-by-program basis by providing 90 days prior written notice, subject to a wind-down period during which the Company's obligation to reimburse AnaptysBio for specified costs would continue. For each of the four development programs, the Company will be required to make milestone payments to AnaptysBio of up to \$18.0 million if certain research and development milestone events are achieved, and up to an additional \$90.0 million of milestone payments if certain U.S. and non-U.S. regulatory submissions and approvals occur in initial and subsequent indications. The Company will be required to pay AnaptysBio tiered single-digit royalties, on a product-by-product basis, on worldwide annual net sales, and additional commercial milestone payments if specified levels of annual net sales of a product are attained. The Company has made milestone payments to date totaling \$11.0 million, including \$9.0 million during the year ended December 31, 2016.

As of the date of the license transaction, none of the assets acquired had alternative future uses, nor had they reached a stage of technological feasibility. As the processes or activities that were acquired along with the license do not constitute a "business", the transaction has been accounted for as an asset acquisition. In addition, the Company has concluded that it is reimbursing AnaptysBio at fair value for the research services called for under the agreement. As a result of these factors, the up-front payments totaling \$19.0 million have been recorded as acquired in-process research and development expense, and no portion of the payments has been ascribed to the future services to be provided to the Company by AnaptysBio. For the years ended December 31, 2015 and 2016, the Company recorded approximately \$6.5 million and \$3.3 million, respectively, of research and development expense, associated with amounts due to AnaptysBio under the collaboration.

Technology Licenses

In October 2012, the Company entered into two license agreements with AstraZeneca UK Limited, having aggregate up-front payments of \$0.4 million. These agreements provide the Company with the exclusive right to certain methods of treating patients with PARP inhibitors solely with respect to niraparib. Under certain circumstances, the Company may be required to make milestone and royalty payments to AstraZeneca UK Limited based on the achievement of certain development and regulatory milestone events with regard to niraparib, and on net sales of niraparib. The Company has made milestone payments to AstraZeneca totaling \$0.4 million to date.

Merck Collaboration

In May 2015, the Company entered into a research agreement with Merck to perform a trial to evaluate the preliminary safety and efficacy of niraparib plus KEYTRUDA® in patients with triple negative breast cancer and patients with ovarian cancer. Under the terms of this agreement, the Company is responsible for providing niraparib study materials and for carrying out clinical research activities. The Company and Merck share in the external costs of the study equally, with certain exceptions. The Company records cost-sharing payments received from Merck as reductions of research and development expense. During the year ended December 31, 2016, the Company incurred \$3.9 million in external costs related to this study, of which \$1.9 million is reimbursable by Merck. At December 31, 2016, \$0.6 million of cost-sharing receivable from Merck has been recorded in accounts receivable on the consolidated balance sheet.

Out-Licenses

Janssen Biotech, Inc.

On April 5, 2016, the Company entered into separate transactions with Janssen and its affiliate, JJDC, consisting of a collaboration and license agreement with Janssen, or the Collaboration Agreement, and a stock purchase agreement and investor agreement, each with JJDC (the "Stock Purchase Agreement" and the "Investor Agreement," respectively, and collectively with the Collaboration Agreement, the "Agreements").

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Under the terms of the Collaboration Agreement, the Company granted Janssen licenses under certain patent rights and know-how relating to niraparib for prostate cancer worldwide, except for Japan. Janssen will conduct all development and commercialization of niraparib in the field of prostate cancer worldwide (excluding Japan). With the exception of China, under the Collaboration Agreement, the Company retained all rights worldwide to develop and commercialize niraparib outside of prostate cancer.

Pursuant to the Collaboration Agreement, within 30 days after the date of the Collaboration Agreement, the Company provided Janssen with electronic copies of certain know-how relating to development of niraparib. In addition, and in return for certain reimbursement, the Company is also responsible for manufacturing and supplying to Janssen all of Janssen's requirements of active pharmaceutical ingredient, or API, for niraparib and niraparib products to be used by Janssen for its development activities in prostate cancer indications. The Company is also responsible for manufacturing of certain niraparib products and API for commercial sale in the field of prostate cancer. In both cases, the Company will receive reimbursement from Janssen that will at least cover the cost of providing such manufacturing services.

The Company received a \$35 million up-front, non-refundable license fee from Janssen. Assuming successful development and commercialization of niraparib products for prostate cancer, the Company could receive up to an additional \$43 million in clinical milestones and \$372 million in regulatory and sales milestones as well as tiered, double-digit royalties on aggregate net sales of products in the field of prostate cancer. Janssen is responsible for funding all development and commercialization of niraparib in prostate cancer worldwide (excluding Japan), including research, development, manufacturing, regulatory and commercialization activities. Janssen may terminate the Collaboration Agreement at any time after April 5, 2017 upon 90 days' written notice, upon termination of the Merck License Agreement or in the event of certain safety concerns. Either party may terminate the Collaboration Agreement for uncured material breach or bankruptcy.

The Company evaluated the Collaboration Agreement under ASC Subtopic 605-25, *Multiple Element Arrangements*, or ASC 605-25. The Company identified four deliverables including: (1) the licenses under certain patent rights relating to niraparib for prostate cancer worldwide, except for Japan, and transfer of certain development and regulatory information within 30 days after the effective date; (2) the participation in Joint Committees; (3) the Company's obligation to supply API for Janssen's development needs; and (4) the Company's obligation to manufacture clinical supply of niraparib product. Each deliverable was determined to have a stand-alone value and to meet the criteria to be accounted for as a separate unit of accounting. For the license and manufacturing deliverables, the Company considered the manufacturing capabilities of Janssen, Janssen's right to sublicense and manufacture API, and the fact that the manufacturing services are not proprietary and can be provided by other vendors. The Company is obligated to participate in the Joint Committees and provide development, regulatory and commercialization information to Janssen and, therefore, the Company identified the participation in the Joint Committees as a separate deliverable.

The consideration allocable to the delivered unit or units of accounting is limited to the amount that is not contingent upon the delivery of additional items or meeting other specified performance conditions. Therefore, the Company will exclude from the allocable consideration the milestone payments and royalties, regardless of the probability that such milestone and royalty payments will be made, until the events that give rise to such payments actually occur. Consideration for undelivered manufacturing services was not allocated because the amount is not fixed and determinable and it is not being provided at a significant and incremental discount.

The Company allocated consideration to each unit of accounting using the relative selling price method based on the Company's best estimate of selling price for the license and other deliverables. The best estimate of selling price for the license was calculated using an income approach model and using the following key assumptions: the development timeline, revenue forecast, discount rate and probabilities of technical and regulatory success. The Company believes that a change in the assumptions used to determine its best estimate of selling price for the license most likely would not have a significant effect on the allocation of consideration transferred.

The amount that the Company recognized concurrent with the transfer of license and certain development and regulatory know-how was limited to the lesser of the amount otherwise allocable using the relative selling price method, which was \$45.1 million, or the non-contingent amount, which was the \$35.0 million up-front fee. As the remaining deliverables are provided, any consideration received would be first allocated to license revenue until such time as the full \$45.1 million has been recognized as license revenue. Thereafter, any consideration received will be allocated to all deliverables based on their relative percentages. Through December 31, 2016, the Company recognized \$36.8 million as license and collaboration revenue under the Collaboration Agreement.

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Revenue allocated to the manufacturing unit of accounting is recognized when general revenue recognition criteria are met, under the proportional performance method. Revenue allocated to the participation in Joint Committees unit of accounting is recognized on a straight-line basis over the Company's estimate of the period of the obligation to participate in Joint Committees through the completion of any non-contingent deliverables.

The Company determined that the milestone payments under the Collaboration Agreement are not subject to ASC Subtopic 605-28, *Milestone Method*, because the achievement of the milestone events depends solely on Janssen's performance. The milestone payments will instead be allocated to license revenue and the other units of accounting based on the relative selling price percentages and the revenue associated with the milestone payment will then be recognized in accordance with the pattern of recognition for each unit of accounting to which it was allocated. The Company will recognize royalty revenue and commercial milestones when the specified net sales threshold is achieved. For income statement presentation, sales-based royalties are recognized as earned.

Additionally, the Company considered whether the Stock Purchase Agreement and the Investor Agreement with JJDC would be subject to combination with the Collaboration Agreement. The Company determined that they should not be combined because the deliverables and terms in these arrangements are not closely interrelated or interdependent in terms of payment or functionality, the arrangements were negotiated separately, and the common stock was sold at approximately its fair value.

In connection with entry into the Agreements with Janssen discussed above, the Company also entered into Amendment No. 1 to the License Agreement dated as of May 22, 2012 by and between the Company and Merck. This amendment was executed in April 2016 to make certain conforming changes to the Agreements with Janssen.

Zai Lab (Shanghai) Co., Ltd.

On September 28, 2016, or the Effective Date, the Company entered into a Collaboration, Development and License Agreement, or the Zai Agreement, with Zai Lab. Under the terms of the Zai Agreement, the Company exclusively licensed the rights to develop and commercialize niraparib to Zai Lab for the China Territories. Zai Lab will conduct all development and commercialization of niraparib in the China Territories, except for prostate cancer. The Company retains all rights outside of the China Territories, to develop and commercialize niraparib with the exception of prostate cancer.

Under the terms of the Zai Agreement, the Company received a \$15.0 million up-front, non-refundable license fee from Zai Lab in the fourth quarter of 2016. Assuming successful development and commercialization of niraparib products in the China Territories, the Company could receive additional regulatory and sales milestones as well as tiered, double-digit royalties on aggregate net sales of products in the China Territories. Zai Lab is responsible for funding all development and commercialization of niraparib in the China Territories, including research, development, manufacturing, regulatory and commercialization activities. The term of the Zai Agreement continues, on a country-by-country basis, until the later of expiration of the last patent in the China Territories covering the niraparib product, or ten years from the first commercial sale in such country. The Zai Agreement may also be terminated by Zai Lab at any time upon prior written notice, or by either party for material breach or insolvency.

Pursuant to the Zai Agreement, over the six-month period commencing on the Effective Date, the Company agreed to provide Zai Lab with electronic copies of certain know-how relating to the development of niraparib, as well as technical assistance. In addition, and in return for certain reimbursement, the Company is also responsible for manufacturing and supplying to Zai Lab an initial supply of certain materials for niraparib. The Company may also become responsible for manufacturing of certain niraparib products and materials for commercial sale in certain instances based on regulatory requirements in the China Territories. In both cases, the Company will receive reimbursement from Zai Lab that will at least cover the cost of providing such manufacturing services.

The Zai Agreement also provides the Company with an option to co-market niraparib in the China Territories with Zai Lab, in return for certain consideration. This co-marketing right must be exercised by the Company prior to the first anniversary of the launch of niraparib in the China Territories. In addition, the Zai Agreement provides the Company with the right of first refusal with respect to licenses for two novel, discovery-stage immuno-oncology programs from Zai Lab.

The Company evaluated the Zai Agreement under ASC 605-25. As a result of the inclusion of the co-marketing option and its associated potential future payment, the contract price was determined not to be fixed or determinable.

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Therefore, the Company has concluded that it has not met certain of the above revenue recognition criteria, and no revenue has been recognized associated with the Zai Agreement.

Jiangsu Hengrui Medicine Co., Ltd.

In July 2015, the Company entered into a license agreement with Hengrui, pursuant to which Hengrui has licensed the rights to develop, manufacture and commercialize rolapitant in the China Territories. For this arrangement, the Company has determined that there is only one unit of accounting that includes the licensed patents and the licensed know-how, which will be delivered over a period of time. The Company recorded \$0.3 million and \$0.5 million of license revenue, respectively, related to a \$1.0 million up-front payment under this arrangement during the years ended December 31, 2015 and 2016. This \$1.0 million payment is being recognized as license revenue over the two-year period of performance relating to the Company's obligations to provide the licensed know-how to Hengrui. Under the terms of the agreement, the Company would be entitled to additional payments of up to \$2.0 million contingent on the achievement of certain regulatory milestones, as well as royalties on product sales at percentage rates in the low teens.

14. Segment Information

Revenues by Geographic Location

Product revenues are attributed to countries based on the location of the customer. License, collaboration and other revenues are attributed to the operations of the Company in the United States. Royalty revenues are attributed to countries based on the location of the collaborator. All revenues for the years ended December 31, 2015 and 2016 were attributed to the United States.

Significant Customers

Revenues and accounts receivable from each of the Company's customers who individually accounted for 10% or more of total revenues and/or 10% or more of accounts receivable consisted of the following (* indicates less than 10%):

	Percent of Total Revenues				Percent of Accounts Receivable			
	Years Ended December 31,				December 31,			
	2015		2016		2015		2016	
Janssen Biotech, Inc.	*	%	82	%	*	%	30	%
Jiangsu Hengrui Medicine Co., Ltd.	100	%	*	%	15	%	12	%
Merck Sharp & Dohme B.V.	*	%	*	%	85	%	11	%
Distributor "A"	*	%	*	%	*	%	41	%

In addition, approximately 63% of VARUBI end-user demand from launch through December 31, 2016 was generated by members of a single group purchasing organization with whom the Company has contracted.

Property and Equipment, Net by Location

Property and equipment, net by location consisted of the following (in thousands):

		December 31,	
		2015	2016
United States	\$	2,779	\$ 6,194
Switzerland		—	446
Total property and equipment, net	\$	2,779	\$ 6,640

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15. Consolidated Quarterly Financial Data - Unaudited

The following table presents unaudited consolidated quarterly financial data for the years ended December 31, 2015 and 2016 (in thousands, except per share data):

	Three Months Ended							
	March 31, 2015	June 30, 2015	September 30, 2015	December 31, 2015	March 31, 2016 (h)	June 30, 2016	September 30, 2016	December 31, 2016
Revenues:								
Product revenue, net	\$ —	\$ —	\$ —	\$ —	\$ 173	\$ 1,436	\$ 2,799	\$ 2,469
License, collaboration and other revenues	—	—	87	230	134	35,125 (d)	931	1,756
Total revenues	—	—	87	230	307	36,561	3,730	4,225
Expenses:								
Cost of sales - product	—	—	—	—	76	238	424	518
Cost of sales - intangible asset amortization	—	—	—	268	464	463	464	464
Research and development	33,545	38,930	40,063	42,852	52,709	50,138	60,783	71,514
Selling, general and administrative	11,242	16,783	22,766	27,910	30,149	36,218	37,685	54,526
Acquired in-process research and development	—	1,000 (a)	—	1,000 (b)	4,000 (c)	4,000 (e)	1,940 (f)	9,000 (g)
Total expenses	44,787	56,713	62,829	72,030	87,398	91,057	101,296	136,022
Loss from operations	(44,787)	(56,713)	(62,742)	(71,800)	(87,091)	(54,496)	(97,566)	(131,797)
Interest expense	(3,726)	(3,853)	(3,853)	(3,982)	(3,981)	(4,120)	(4,119)	(4,267)
Interest income	7	9	9	23	102	209	532	597
Loss before income taxes	(48,506)	(60,557)	(66,586)	(75,759)	(90,970)	(58,407)	(101,153)	(135,467)
Provision for income taxes	—	—	—	—	—	—	—	1,475
Net loss	\$ (48,506)	\$ (60,557)	\$ (66,586)	\$ (75,759)	\$ (90,970)	\$ (58,407)	\$ (101,153)	\$ (136,942)
Net loss per share - basic and diluted	\$ (1.30)	\$ (1.51)	\$ (1.66)	\$ (1.89)	\$ (2.22)	\$ (1.28)	\$ (1.98)	\$ (2.60)
Weighted-average shares - basic and diluted	37,312	40,008	40,038	40,151	40,966	45,808	51,151	52,589

- (a) In the quarter ended June 30, 2015, the Company incurred a \$1.0 million milestone obligation to AnaptysBio related to the immuno-oncology platform.
- (b) In the quarter ended December 31, 2015, the Company made a \$1.0 million milestone payment to AnaptysBio related to the immuno-oncology platform.
- (c) In the quarter ended March 31, 2016, the Company made a \$4.0 million milestone payment to AnaptysBio related to the immuno-oncology platform.
- (d) In the quarter ended June 30, 2016, the Company received \$35.0 million and transferred the license and related know-how required under its Collaboration Agreement with Janssen.
- (e) In the quarter ended June 30, 2016, the Company made a \$4.0 million milestone payment to AnaptysBio related to the immuno-oncology platform.
- (f) In the quarter ended September 30, 2016, the Company made a \$1.0 million milestone payment to AnaptysBio related to the immuno-oncology platform and incurred a \$0.9 million milestone obligation related to Merck as a result of achieving development and regulatory milestones related to niraparib.
- (g) In the quarter ended December 31, 2016, the Company made milestone payments of \$9.0 million to Merck as a result of achieving development and regulatory milestones related to niraparib.
- (h) Amounts for the quarter ended March 31, 2016 have been retroactively adjusted to reflect an increase in research and development costs and selling, general and administrative costs in the amount of \$0.1 million and \$0.1 million, respectively, as a result of the adoption of ASU 2016-09.

APPENDIX 1 – APPLICATION FORM FOR THE OFFER FOR SUBSCRIPTION

BioPharma Credit Plc

If you wish to apply for C Shares, please complete, sign and return this Application Form, by post or (during normal business hours only) by hand to Link Asset Services, Corporate Actions, The Registry, 34 Beckenham Road, Beckenham BR3 4TU, **so as to be received by no later than 11:00 am on 12 April 2018.**

IMPORTANT: Before completing this Application Form, you should read the prospectus dated 14 March 2018 published by the Company (the “Prospectus”), to which this Application Form is appended, and the notes set out under the section entitled “Notes on how to complete the Application Form for the Offer” at the back of this Application Form. Applicants who are individuals must complete Box 2 and corporate applicants should complete Box 3.

If you have any questions relating to this document, and the completion and return of the Application Form, please telephone Link Asset Services on 0371 664 0321. Calls are charged at the standard geographic rate and will vary by provider. Calls from outside the United Kingdom will be charged at the applicable international rate. Lines are open between 9:00 am – 5:30 pm, Monday to Friday excluding public holidays in England and Wales. Different charges may apply to calls from mobile telephones and calls may be recorded and randomly monitored for security and training purposes. The helpline cannot provide advice on the merits of the Offer nor give any financial, legal or tax advice.

To: **BIOPHARMA CREDIT PLC**

1. APPLICATION

I/We offer to subscribe for a number of fully paid C Shares to be calculated by dividing the subscription amount set out in Box 1 below by the Issue Price of US\$1.00 per C Share (the minimum amount of such subscription being US\$1,000), subject to the terms and conditions set out in Part XII (Terms and Conditions of the Offer for Subscription) of the Prospectus, including the representations, warranties and agreements therein, and subject to the memorandum of association and Articles of the Company (as amended from time to time) and, if paying by cheque or banker's draft, enclose a cheque or banker's draft for the amount payable (the “**Application Monies**”).

Minimum amount of US\$1,000 (thereafter in multiples of US\$1,000)	US\$

2. APPLICANT DETAILS (INDIVIDUALS)

2.1 Single Applicant

Title	
Forenames (in full)	
Surname	
Address (in full)	
Postcode	
Date of Birth	



2.2 Joint Applicants

By completing Box 2.2 below, you are deemed to have read the Prospectus and agreed to the terms and conditions set out in Part XII (Terms and Conditions of the Offer for Subscription) of the Prospectus and to have given the representations, warranties and agreements therein.

Second joint applicant	
Title	
Forenames (in full)	
Surname	
Date of Birth	
Third joint applicant	
Title	
Forenames (in full)	
Surname	
Date of Birth	
Fourth joint applicant	
Title	
Forenames (in full)	
Surname	
Date of Birth	

3. APPLICANT DETAILS (CORPORATE)

Full Company Name	
Registered Number	
Company Address	

4. PAYMENT DETAILS

Complete Box 4.1, Box 4.2 or Box 4.3.

4.1 By Bank Transfer ☐

4.1.1 Please provide the following details:

Name of Bank	
Branch	
Sort Code	
Account Name	
Account Number	
Reference (your initials and telephone number)	

4.1.2 Link Electronic Bank details

Account Name	Link Market Services Ltd re: BioPharma CHAPS A/C
Account Number	56427811
Sort Code	20-00-00
IBAN	GB31BARC20000056427811
SWIFT No	BARCGB20

4.2 By Cheque or Banker's Draft ☐

Attach your cheque or banker's draft for the exact amount shown in Box 1 made payable to **Link Market Services Ltd re: BioPharma CHQ A/C** and crossed "A/C Payee".

4.3 By CREST ☐

I/We confirm that I/we will make payment through CREST via a DVP (Delivery Versus Payment).

5. CREST DETAILS

Only complete this Box 5 if you wish to register your application directly into your CREST account, which should be in the same name(s) as the applicants identified in Boxes 2 or 3 above (as applicable).

CREST Participant ID	
CREST Member Account ID	

6. SIGNATURE

By completing Box 6 below, you are deemed to have read the Prospectus and agreed to the terms and conditions set out in Part XII (Terms and Conditions of the Offer for Subscription) of the Prospectus and to have given the representations, warranties and agreements therein.

6.1 Execution by Individuals:

First Applicant Signature		Date	
Second Applicant Signature		Date	
Third Applicant Signature		Date	
Fourth Applicant Signature		Date	



6.2 Execution by a Corporate:

Executed by (Name of Corporate)			
Name of Director			
Signature of Director		Date	
Name of Director/Secretary			
Signature of Director/Secretary		Date	
If you are affixing a company seal, please mark a cross here:		Affix Company Seal here:	

7. IDENTITY INFORMATION

Link Asset Services

Individual Shareholders

Verification of your name and address

Under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Link Asset Services ("Link") are obliged to obtain evidence of identity and place of residence, where either shares are transferred via Link as part of a larger transaction or payment for shares is made to or by Link, amounting to the sterling equivalent (at that time) of €15,000, or more. This also applies to multiple applications where monies have been drawn from the same bank account.

What do I need to do?

Please send us two different documents to verify your name and your address from the list below:

- List A – will be used to verify your name
- List B – will be used to verify your address.

Please note that we cannot accept mobile telephone bills or a P45 or P60 document as evidence.

The documents should either be originals or certified in true ink copies (please see over the page for certification guidance) and should be sent by post to:

Link Asset Services
Corporate Actions
The Registry
34 Beckenham Road
Beckenham
Kent BR3 4TU

Please also provide your daytime telephone number and / or email address with your documents so that we can contact you if we have any queries.

List A	List B
Acceptable Government-issue documents of evidence of identity	Evidence of address (not older than 3 months)
☐ Current Full signed valid passport	☐ Bank, Building Society, Credit Union statement or passbook
☐ Current Full UK/EU valid photo-card driving licence (full or provisional)	☐ Water, Gas, Electricity or other utility bill
☐ EEA member state identity Card	☐ Union statement or passbook
☐ UK Firearms certificate or shotgun licence	☐ Recent evidence of entitlement to a state or local authority-funded benefit (including housing benefit and council tax benefit), tax credit, pension, educational or other grant
☐ Identity card issued by the Electoral Office for Northern Ireland	☐ Most recent Inland Revenue tax notification
☐ State Pension Letter or Benefit Book	☐ Current council tax statement or demand letter



What do joint investors need to provide?

For joint or multiple shareholdings, we need the first named investor to supply two documents, one from List A and one from List B as explained above. The second, third or fourth named investor should supply one document from List A only.

What if I am authorised to act on behalf of the shareholder?

If you are acting under a Power of Attorney, please supply an original or certified copy of the Power of Attorney in English, along with the evidence documentation for the shareholder from List A and one from List B as explained above.

Do I need to send original documents?

We can accept both original and certified in true ink copy documents. However we cannot accept faxed documents or copies of documents printed from the internet. Any copy document provided to Link must be certified as a true copy of the original.

What are Link's requirements for copy documents?

Where certified copy documents are required these may be certified by any of the following:	
UK Jurisdiction	All Offshore Jurisdictions
- Registered Chartered Accountant - Bank/building society official - Legal secretary (members and fellows of ILSPA) - Member of Parliament - Police officer (must include their badge number on the documents) - Solicitor/Lawyer/Barrister - FCA listed individual - Notary public - Qualified Doctor or Dentist - UK school teacher / university lecturer - Post Office Official Identification documents for a non-UK national can be certified by: - An embassy, consulate or high commission of the country of issue - A Lawyer or attorney	- An embassy, consulate or high commission of the country of issue of the document - A member of the judiciary, senior civil servant or serving police officer or customs officer - A lawyer or notary public who is a member of a recognised professional body - An actuary, accountant or tax advisor who is a member of a recognised professional body - A director, officer or manager of a regulated financial institution operating in the UK, Jersey, Guernsey, Isle of Man or a comparable jurisdiction Identification documents for a non-Crown Dependencies national can be certified by: - An embassy, consulate or high commission of the country of issue - A Lawyer or attorney Other Jurisdictions: Local Compliance does not distinguish between types of certifiers in higher risk jurisdictions, but do require that independent checks are made on the certifier.

Please note that the documents cannot be self-certified (i.e. by yourself for your own investment) or by anyone that is related, living at the same address or with a personal or professional relationship.

The certification of documentary evidence of Name ID must contain the following wording:

“I hereby certify this document is a complete, accurate and true copy of the original document which I have seen and the photograph contained therein bears a true likeness of the individual”.

The certification of documentary evidence of address must contain the following wording:

“I hereby certify this document is a complete, accurate and true copy of the original document which I have seen”.

The certifier must state on the first page of all copy documents:

- His/her full name printed in Capitals
- Position or capacity
- Address
- A telephone number or email at which they can be contacted
- The date
- The certifier must sign and date the copy documents

What happens next?

Please send us the documents we have asked for as above within the required timescales. Failure to provide the necessary evidence of identity and address in the agreed timescales may result in Link being unable to proceed with your account for the Offer for Subscription.

All original documents will be returned to you as soon as possible, following the completion of our checks.

How do I contact Link?

If you need any help with the above, please call Link on 0371 664 0321.

Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. We are open between 09:00 – 17:30, Monday to Friday excluding public holidays in England and Wales.

Please note that Link Asset Services cannot provide any financial, legal or tax advice and calls may be recorded and monitored for security and training purposes.



Link Asset Services

Corporate Shareholders

Verification of your name and address

Under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Link Asset Services ("Link") are obliged to obtain evidence of identity and place of residence, where either shares are transferred via Link as part of a larger transaction or payment for shares is made to or by Link, amounting to the sterling equivalent (at that time) of €15,000, or more. This also applies to multiple applications where monies have been drawn from the same bank account.

What do I need to do?

Please send us two different documents to verify your name and your address from the list below:

- List A – will be used to verify your name
- List B – will be used to verify your address.

Alternatively, if your shareholding is an FCA Regulated entity, please just provide confirmation of your FCA Registered Number. Providing the name and address of your shareholding on the Company's share register, matches that of the registered name and address on the FCA register, this will satisfy Link's Anti-Money Laundering requirements and no other documents will be required for your identity.

List A	List B
Acceptable documents for evidence of identity	Evidence of address (no more than 3 months old)
☐ Certificate of Incorporation (or equivalent)	☐ Bank, Building Society, Credit Union statement or passbook
☐ Certificate of Trade (or equivalent)	☐ Water, Gas, Electricity or other utility bill
☐ Memorandum of Association or Articles of Association (or equivalent)	☐ Local Authority Business Rates bill
	☐ Customs & Excise VAT notification
	☐ Most recent Inland Revenue tax notification

Please note that we cannot accept mobile telephone bills or a credit card bill as evidence.

The documents should either be originals or certified in true ink copies (please see over the page for certification guidance) and should be sent by post to:

Link Asset Services
Corporate Actions
The Registry
34 Beckenham Road
Beckenham
Kent BR3 4TU

Please also provide your daytime telephone number and / or email address with your documents so that we can contact you if we have any queries.

What do joint investors need to provide?

For joint or multiple shareholdings, we need the first named investor to supply two documents, one from List A and one from List B as explained above. The second, third or fourth named investor should supply one document from List A only.

What if I am authorised to act on behalf of the shareholder?

If you are acting under a Power of Attorney, please supply an original or certified copy of the Power of Attorney in English, along with the evidence documentation for the shareholder from List A and one from List B as explained above.

Do I need to send original documents?

We can accept both original and certified in true ink copy documents. However we cannot accept faxed documents or copies of documents printed from the internet. Any copy document provided to Link must be certified as a true copy of the original.

What are Link's requirements for copy documents?

Where certified copy documents are required these may be certified by any of the following:	
UK Jurisdiction	All Offshore Jurisdictions
• Registered Chartered Accountant • Bank/building society official • Legal secretary (members and fellows of ILSPA) • Member of Parliament • Police officer (must include their badge number on the documents) • Solicitor/Lawyer/Barrister • FCA listed individual • Notary public • Qualified Doctor or Dentist • UK school teacher / university lecturer • Post Office Official Identification documents for a non-UK national can be certified by: ○ An embassy, consulate or high commission of the country of issue ○ A Lawyer or attorney	• An embassy, consulate or high commission of the country of issue of the document • A member of the judiciary, senior civil servant or serving police officer or customs officer • A lawyer or notary public who is a member of a recognised professional body • An actuary, accountant or tax advisor who is a member of a recognised professional body • A director, officer or manager of a regulated financial institution operating in the UK, Jersey, Guernsey, Isle of Man or a comparable jurisdiction Identification documents for a non-Crown Dependencies national can be certified by: ○ An embassy, consulate or high commission of the country of issue ○ A Lawyer or attorney Other Jurisdictions: Local Compliance does not distinguish between types of certifiers in higher risk jurisdictions, but do require that independent checks are made on the certifier.



Please note that the documents cannot be self-certified (i.e. by yourself for your own investment) or by anyone that is Related, Living at the same address or with a personal or professional relationship.

The certification of documentary evidence of both Name ID and separately Address must contain the following wording:

“I hereby certify this document is a complete, accurate and true copy of the original document which I have seen”.

The certifier must state on the first page of all copy documents:

- His/her full name printed in Capitals
- Position or capacity
- Address
- A telephone number or email at which they can be contacted
- The date
- The certifier must sign and date the copy documents

What happens next?

Please send us the documents we have asked for as above within the required timescales. Failure to provide the necessary evidence of identity and address in the agreed timescales may result in Link being unable to proceed with your account for the Offer for Subscription.

All original documents will be returned to you as soon as possible, following the completion of our checks.

How do I contact Link?

If you need any help with the above, please call Link on 0371 664 0321.

Calls are charged at the standard geographic rate and will vary by provider. Calls outside the United Kingdom will be charged at the applicable international rate. We are open between 09:00 – 17:30, Monday to Friday excluding public holidays in England and Wales.

Please note that Link Asset Services cannot provide any financial, legal or tax advice and calls may be recorded and monitored for security and training purposes.

8. CONFIRMATION OF VERIFICATION OF IDENTITY

If you enclose with your completed Application Form a confirmation of verification of identity in the prescribed form and completed by a suitable person or institution (a “**Verification of Identity**”), the Receiving Agent may decide not to request the identity documents required in Box 7 of this Application Form.

The Verification of Identity may only be signed by a person or institution (such as a governmental approved bank, stockbroker or investment firm, financial services firm or an established law firm or accountancy firm) which is itself subject in its own country to operation of “know your customer” and anti-money laundering regulations no less stringent than those which prevail in the United Kingdom. Acceptable countries include Australia, Austria, Belgium, Bulgaria, Canada, Cayman Islands, Cyprus, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland and the United States.

9. CONTACT DETAILS

To ensure the efficient and timely processing of this Application Form please enter below the contact details of a person that the Receiving Agent may contact with all enquiries concerning this application. Ordinarily this contact person should be the first person signing in Box 6. If no details are entered here and the Receiving Agent requires further information, any delay in obtaining that additional information may result in your application being rejected or revoked.

Contact name:	
Contact address:	
Email address:	
Telephone no:	
Fax no:	



NOTES ON HOW TO COMPLETE THE APPLICATION FORM FOR THE OFFER

Applications should be returned so as to be received by no later than 11:00 am on 12 April 2018.

If you have any questions relating to this document, and the completion and return of the Application Form, please telephone Link Asset Services on 0371 664 0321. Calls are charged at the standard geographic rate and will vary by provider. Calls from outside the United Kingdom will be charged at the applicable international rate. Lines are open between 9:00 am – 5:30 pm, Monday to Friday excluding public holidays in England and Wales. Different charges may apply to calls from mobile telephones and calls may be recorded and randomly monitored for security and training purposes. The helpline cannot provide advice on the merits of the Offer nor give any financial, legal or tax advice.

A. APPLICATION

Fill in Box 1 with the total subscription amount for which your application is made, in US Dollars only. The amount being subscribed must be for a minimum of US\$1,000 and thereafter in multiples of US\$1,000. However, the Company may, in its absolute discretion, determine to accept applications in other amounts: (i) from authorised persons; (ii) from persons (including Directors) having a pre-existing connection with the Company; or (iii) where such application amount is equal to the maximum investment allowance permitted into a New ISA under current rules.

B. APPLICANT DETAILS (INDIVIDUALS)

Fill in (in block capitals) the full name(s) and address of the applicant. Applications may only be made by persons aged 18 or over as at the date that the application is made. In the case of joint applicants only the first named may bear a designation reference and the address given for the first named applicant will be entered as the registered address for the register of members and used for all future correspondence. A maximum of four joint applicants is permitted. All applicants named must sign the Application Form at Box 6.1.

C. APPLICANT DETAILS (CORPORATE)

Fill in (in block capitals) the full company name, registered number and company address. All applicants named must sign the Application Form at Box 6.2.

D. PAYMENT DETAILS / CREST SETTLEMENT

The Company will apply for the C Shares issued pursuant to the Offer in uncertificated form to be enabled for CREST transfer and settlement with effect from the date of Initial Admission (the “**Settlement Date**”). Accordingly, settlement of transactions in the C Shares will normally take place within the CREST system.

The Application Forms contain details of the information which the Company’s Registrar, Link Asset Services, will require from you in order to settle your application within CREST, if you so choose. If you do not provide any CREST details or if you provide insufficient CREST details for Link Asset Services to match to your CREST account, Link Asset Services will deliver your C Shares in certificated form provided payment has been made in terms satisfactory to the Company.

The right is reserved to issue your C Shares in certificated form should the Company, having consulted with Link Asset Services, consider this to be necessary or desirable. This right is only likely to be exercised in the event of any interruption, failure or breakdown of CREST or any part of CREST or on the part of the facilities and/or system operated by Link Asset Services in connection with CREST.

The person named for registration purposes in your Application Form (which term shall include the holder of the relevant CREST account) must be: (a) the person procured by you to subscribe for or acquire the relevant C Shares; or (b) yourself; or (c) a nominee of any such person or yourself, as the case may be. Neither Link Asset Services nor the Company will be responsible for any liability to stamp duty or stamp duty reserve tax resulting from a failure to observe this requirement. You will need to input the DVP instructions into the CREST system in accordance with your application. The input returned by Link Asset Services of a matching or acceptance instruction to your CREST input will then allow the delivery of your C Shares to your CREST account against payment of the Issue Price through the CREST system upon the Settlement Date.

By returning your Application Form you agree that you will do all things necessary to ensure that you or your settlement agent/custodian's CREST account allows for the delivery and acceptance of C Shares to be made prior to 8:00 am on 16 April 2018 against payment of the Issue Price. Failure by you to do so will result in you being charged interest at the rate of 2 percentage points above the then published bank base rate of a clearing bank selected by Link Asset Services.

To ensure that you fulfil this requirement it is essential that you or your settlement agent/custodian follow the CREST matching criteria set out below:

Trade Date: 13 April 2018

Settlement Date: 16 April 2018

Company: BioPharma Credit Plc

Security Description: redeemable C shares of US\$0.01

SEDOL: BDRNW62

ISIN: GB00BDRNW621

Should you wish to settle on a "delivery versus payment" basis, you will need to input your instructions to Link Asset Services' Participant account RA06 to settle by no later than 11:00 am on 16 April 2018.

You must also ensure that you or your settlement agent/custodian has a sufficient "debit cap" within the CREST system to facilitate settlement in addition to your/its own daily trading and settlement requirements.

In the event of late CREST settlement, the Company, after having consulted with Link Asset Services, reserves the right to deliver C Shares outside CREST in certificated form provided payment has been made in terms satisfactory to the Company and all other conditions in relation to the Offer have been satisfied.

Payment may be made by either bank transfer or cheque or banker's draft. If payment is made by bank transfer, such payment must be for the exact amount shown in Box 1 of your Application Form and the details of such payment must be included in Box 4.1. Where an electronic transfer of a sum exceeding the US Dollar equivalent of GBP 15,000 is being made by CHAPS, the investor should also supply their bank statement to show from where the sources of the funds have been sent. If your investment is the US Dollar equivalent of GBP 50,000 or more, the investor must also provide a certified copy of their passport and a recent bank statement. No receipt in respect of electronic payments or acknowledgement of Applications will be issued.

If payment is by cheque or banker's draft, such payment must accompany your Application Form and be for the exact amount shown in Box 1 of your Application Form. Your cheque or banker's draft must be drawn on your personal account where you have sole or joint title to the funds and should be made payable to **Link Market Services Ltd re: BioPharma CHQ A/C** and crossed "A/C Payee". If you use a banker's draft or a building society cheque you should ensure that the bank or building society issuing the payment enters the name, address and account number of the person whose account is being debited on the reverse of the banker's draft or cheque and adds its stamp. Your cheque or banker's draft must be drawn in US Dollars on an account at a bank branch in the United Kingdom and must bear a United Kingdom bank sort code number in the top right hand corner. Third party cheques may not be accepted with the exception of building society cheques or bankers' drafts where the building society or bank has confirmed the name of the account holder by stamping or endorsing the back of cheque/banker's draft.

E. CREST DETAILS

If you wish your C Shares to be deposited in a CREST Account in the name of the applicant(s) given in Boxes 2 or 3, enter in Box 5 the details of that CREST Account. Where it is requested that C Shares be deposited into a CREST Account please note that payment for such C Shares must be made prior to the day such C Shares might be allotted and issued. It is not possible for an applicant to request that C Shares be deposited in their CREST Account on an against payment basis. Any Application Form received containing such a request will be rejected.

F. SIGNATURE

All applicant(s) named in Boxes 2 or 3 must sign Box 6 (where applicable) and insert the date. The Application Form may be signed by another person on behalf of each applicant if that person



is duly authorised to do so under a power of attorney. The power of attorney (or a copy duly certified by a solicitor or a bank) must be enclosed for inspection (which originals will be returned by post at the addressee's risk). A corporation should sign under the hand of a duly authorised official whose representative capacity should be stated and a copy of a notice issued by the corporation authorising such person to sign should accompany the Application Form.

G. IDENTITY INFORMATION

Applicants need only consider Box 7 of the Application Form if the confirmation of verification of identity referred to in Box 8 cannot be provided. Notwithstanding that the confirmation of verification of identity referred to in Box 8 has been completed and signed, the Receiving Agent reserves the right to request of you the identity documents listed in Box 7 and/or to seek verification of identity of each applicant and payor (if necessary) from you or their bankers or from another reputable institution, agency or professional adviser in the applicable country of residence. If satisfactory evidence of identity has not been obtained within a reasonable time your application might be rejected or revoked. Where certified copies of documents are requested in Box 7, such copy documents should be certified by a senior signatory of a firm which is either a governmental approved bank, a stockbroker or investment firm, a financial services firm or an established law firm or accountancy firm which is itself subject to regulation in the conduct of its business in its own country of operation, and the name of the firm should be clearly identified on each document certified.

H. CONFIRMATION OF VERIFICATION OF IDENTITY

Applications will be subject to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. You must provide the verification of identity documents listed in Box 7 of the Application Form unless you provide a Verification of Identity as described in Box 8 of the Application Form, completed by a firm acceptable to the Receiving Agent. In order to ensure your application is processed timely and efficiently, all applicants are strongly advised to enclose with their completed Application Form a Verification of Identity completed by an appropriate firm.

I. CONTACT DETAILS

To ensure the efficient and timely processing of your Application Form, please provide contact details of a person the Receiving Agent may contact with all enquiries concerning your application. Ordinarily this contact person should be the first person signing in Box 6. If no details are entered here and the Receiving Agent requires further information, any delay in obtaining that additional information may result in your application being rejected or revoked.

J. INSTRUCTIONS FOR DELIVERY FOR COMPLETED APPLICATION FORMS

Completed Application Forms should be returned, by post or by hand (during normal business hours), to Link Asset Services, Corporate Actions, The Registry, 34 Beckenham Road, Beckenham BR3 4TU, so as to be received by no later than 11:00 am on 12 April 2018, together in each case with payment in full in respect of the application. If you post your Application Form, you are recommended to use first class post and to allow at least two days for delivery. Application Forms received after this date may be returned.

APPENDIX 2 – TAX RESIDENCY SELF CERTIFICATION FORM FOR INDIVIDUAL HOLDERS

Tax Residency Self-Certification Form (Individuals)	
Company that shares are held in: *	BioPharma Credit plc
Investor code *	
Name: *	
Registered Address: * <i>If your address has changed, then you will need to notify us separately. See the notes for guidance.</i>	
Tax Residence Address <i>Only if different to your registered address above</i>	
Date of Birth * (DD/MM/YYYY)	
Country/Countries of Residence for Tax Purposes	
Country of residence for tax purposes	Tax Identification Number <i>In the UK this would be your NI number</i>
1 *	1 *
2	2
3	3
4	4
US Citizen Please mark the box ONLY if you are a US Citizen (see definition below) ☐	
Declarations and Signature I acknowledge that the information contained in this form and information regarding my shares may be reported to the local tax authority and exchanged with tax authorities of another country or countries in which I may be tax resident where those countries have entered into Agreements to exchange Financial Account information. I undertake to advise the Company within 30 days of any change in circumstances which causes the information contained herein to become incorrect and to provide the Company with a suitably updated Declaration within 30 days of such change in circumstances. I certify that I am the shareholder (or I am authorised to sign for the shareholder**). If this relates to a joint holding, I also acknowledge that as a joint holder I may be reported to the relevant tax authority if all the other holders do not provide a Tax Residency Self-Certification. I declare that all statements made in this declaration are, to the best of my knowledge and belief, correct and complete.	
Signature: *	
Print Name: *	
Date: *	
Daytime telephone number / email address***	

* Mandatory field

** If signing under a power of attorney, please also attach a certified copy of the power of attorney.

*** We will only contact you if there is a question around the completion of the self- certification form.

“US Citizen”

- All US citizens. An individual is a citizen if that person was born in the United States or if the individual has been naturalized as a US citizen.
- You can also be a US citizen, even if born outside the United States if one or both of your parents are US citizens.



NOTES ON SELF-CERTIFICATION FOR INDIVIDUAL HOLDERS

The law requires that Financial Institutions collect, retain and report certain information about their account holders, including the account holders tax residency.

Please complete the form above and provide any additional information requested.

If your declared country/countries of residence for tax purposes is not the same as that of the Financial Institution and is either the US or is on the OECD list of countries which have agreed to exchange information (<http://www.oecd.org/tax/transparency/AEOI-commitments.pdf>), the Financial Institution will be obliged to share this information with its local tax authority who may then share it with other relevant local tax authorities.

Failure to validly complete and return this form will result in you being reported onwards to the relevant local tax authority. Additionally, if this form has been issued in conjunction with an application for a new holding, then your application may be adversely impacted.

Definitions of terms used in this form can be found below.

If your registered address (or name) has changed, then you must advise us separately. Any details you enter in the "Tax Residence Address" will be used for tax purposes only and will not be used to update your registered details.

If any of the information about your tax residency changes, you are required to provide the Company with a new, updated, self-certification form within 30 days of such change in circumstances.

JOINT HOLDERS (IF RELEVANT)

All joint holders are treated as separate holders for these tax purposes and every joint holder is required to give an Individual Tax Residency Self-Certification. If any one or more is reportable, the value of the whole shareholding will be reported for all joint shareholder(s).

If we do not receive the self-certification from each joint shareholder, then the whole holding will be treated as undocumented and all holders (including those who have completed the self-certification form) will be reported to the relevant tax authorities.

If you have any remaining questions about how to complete this form or about how to determine your tax residency status you should contact your tax adviser.

DEFINITIONS

The OECD Common Reporting Standard for Automatic Exchange of Financial Account Information ("The Common Reporting Standard") <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/> contains definitions for the terms used within it. However, the following definitions are for general guidance only to help you in completing this form.

"Account Holder"

The Account Holder is either the person(s) whose name(s) appears on the share register of a Financial Institution. Or where Link holds the shares on your behalf, the person whose name appears on the register of entitlement that Link maintains.

"Country/Countries of residence for tax purposes"

You are required to list the country or countries in which you are resident for tax purposes, together with the tax reference number which has been allocated to you, often referred to as a **tax identification number (TIN)**. Special circumstances (such as studying abroad, working overseas, or extended travel) may cause you to be resident elsewhere or resident in more than one country at the same time (dual residency). The country/countries in which you might be obliged to submit a tax return are likely to be your country/countries of tax residence. If you are a US citizen or hold a US passport or green card, you will also be considered tax resident in the US even if you live outside the US.

"Tax Identification Number or TIN"

The number used to identify the shareholder in the country of residence for tax purposes.

Different countries (or jurisdictions) have different terminology for this and could include such as a National Insurance number, social security number or resident registration number. Some

jurisdictions that do issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes so that a TIN is not required to be completed by a shareholder resident in such jurisdictions. Some jurisdictions do not issue a TIN or do not issue a TIN to all residents.

“US Citizen”

- All US citizens. An individual is a citizen if that person was born in the United States or if the individual has been naturalized as a US citizen.
- You can also be a US citizen, even if born outside the United States if one or both of your parents are US citizens.

If you have any questions about these definitions or require further details about how to complete this form then please contact your tax adviser.

NOTHING IN THIS DOCUMENT CAN BE CONSIDERED TO BE TAX ADVICE.

QUESTIONS & ANSWERS

Why are you writing to me and asking for a “Tax Residency Self Certification”?

The governments of more than 90 countries around the world have agreed to exchange tax related information. These governments have passed similar sets of laws to enable the Automatic Exchange of Information (“AEOI”). The full list of countries involved can be seen at: www.oecd.org/tax/transparency/AEOI-commitments.pdf

Additionally, the United States has over 100 similar agreements with many countries referred to as the ‘Foreign Account Tax Compliance Act’.

The legislation can vary slightly from jurisdiction to jurisdiction, but at a high level, it requires Financial Institutions to:

- Identify existing Holders that may be resident (for tax purposes) in other participating jurisdictions. Then contact any such Holders and request that they complete a “Tax Residency Self Certification” form.
- Obtain a “Tax Residency Self Certification” form for all new Holders.
- Identify holders who move from one jurisdiction to another and request that they complete a “Tax Residency Self Certification” form.

1.

- Identify Holders who have payments sent to a different jurisdiction.
- Submit a return to the Financial Institution’s “local” tax authority on an annual basis. As an example for a company incorporated in the UK, then the local tax authority would be HM Revenue & Customs (HMRC).
- Follow up on any non-responders at least annually for at least 3 years.

2.

The “local” tax authority will pass information onto the tax authority in the relevant jurisdiction. As an example the tax authority in the US is the Inland Revenue Service (“IRS”), so HMRC will exchange information with IRS.

Where can I find out more information about the legislation?

The legislation is quite complex and you may wish to speak to your tax adviser.

The web site of your local tax authority will contain more information e.g. HMRC for the UK; the IRS for the US; Jersey Income Tax Department for Jersey, etc.

Additionally, the web site of The Organisation for Economic Co-operation and Development (OECD) gives further information.

What happens if I do not complete the form?

In the annual report that the Financial Institution sends to their local tax authority you will be shown as ‘Undocumented’.



The local tax authority will collate the responses from all of its financial institutions and pass that information onto the relevant local tax authority for the jurisdictions identified.

Link is not able to comment on what action the tax authority for the jurisdiction will take.

What if I am a Tax Resident in 2 or more countries?

The self-certification form allows for up to 4 tax residencies to be recorded.

I do not pay tax or I do not know which country I am tax resident in

Please refer to your local tax authority or tax adviser.

I do not have a tax identification number

Please refer to your local tax authority or tax adviser.

Note that different countries call their tax identification numbers using alternative terminology. As an example in the UK it would be a National Insurance number.

I have already completed a W8 or W9 form. Do I still need to complete a “Tax Residency Self Certification”?

Yes. The US legislation governing W8/W9 forms overlaps with US FATCA legislation.

What is classed as my Tax Residence Address?

Please refer to your local tax authority or tax adviser.

In addition, you may wish to consider: Where you are a citizen with a passport; Your residential home address in a country and unrestricted right of entry back into that country once you depart.

Joint Holders

When there are multiple holders on an account, then every joint holder must complete a Tax Residency Self Certification and every joint holder will receive a letter in their own right. The letter will be sent to the registered address recorded for the holding.

Joint holders are treated as separate holders for these tax purposes. If any one of the joint holders is reportable, the value of the whole shareholding will be reported for all of the joint shareholder(s).

If we do not receive a validly completed self certification for each joint shareholder, the whole shareholding will be treated as “undocumented” and all shareholders (including those who have completed the self-certification form) will be reported to the relevant tax authorities.

Can I use the Self Certification Form to advise of a Change of Name?

No. You must advise Link Asset Services separately.

For more information, see www.linkassetservices.com

Can I use the Self Certification Form to advise of the death of a holder, or registration of a power of Attorney?

No. You must advise Link Asset Services separately. For more information, see www.linkassetservices.com

How do I contact Link Asset Services, to advise of a change of address or any other changes to my account?

Share Holder Portal: www.linkassetservices.com

Telephone: +44 (0) 371 664 0300

Calls outside the United Kingdom will be charged at the applicable international rate. We are open between 09:00 – 17:30, Monday to Friday excluding public holidays in England and Wales.

Address: The Registry
34 Beckenham Road
Beckenham, Kent, BR3 4TU

I would like future dividends paid into a different bank account

Contact Link Asset Services. For more information, see www.linkassetservices.com

I have given a different address for tax purposes, will the registered address of my shareholding be altered?

No. The details on the Self Certification form are for tax purposes only. If you want to alter any of the registered details relating to your investment then you need to inform Link Asset Services. For more information, see www.linkassetservices.com

I have recently sold all of the shares, do I still need to complete a Self-Certification form?

Yes. Your account will be reportable in the current year, but will be cease to be reportable in subsequent years.



APPENDIX 3 – TAX RESIDENCY SELF CERTIFICATION FORM FOR CORPORATE HOLDERS

Instructions for completion

The law requires BioPharma Credit plc (the “Company”) to collect, retain and report certain information about their shareholders, including their tax residence. For this purpose, the shareholder (hereafter called the organisation) is the organisation whose name appears on the share register and may not necessarily be the same as the underlying person or organisation who is entitled to dividends or the sale proceeds of the shares, for example where shares are held by a nominee. For further information, please see HMRC’s Quick Guide: Automatic Exchange of Information – information for account holders:

<https://www.gov.uk/government/publications/exchange-of-information-account-holders>

- To enable the Company to comply with its obligation to report to the local tax authority, which may then share it with other tax authorities, your organisation is required to provide complete and accurate information on this form. It must provide details of any natural person(s) who is the controlling person(s) of the organisation.
- Please validly complete the sections below as directed and provide any additional information requested.
- If you do not have all the information about the controlling person(s) then please complete as much information as possible (including at least a current mailing address) and we may contact the controlling person(s) direct.
Failure to complete this form will result in your organisation or controlling persons being reported to the relevant tax authority as uncertified.
- Definitions of terms used in this form can be found in the Notes.
- **If you have any remaining questions about how to complete this form or about how to determine your tax residency status you should contact your tax adviser.**

Please note:

If your address (or name) has changed from that shown on the form, then you must advise us separately. Any details you enter in the “Tax Residency Address” will be used for tax purposes only and will not be used to update your registered details.

If any of the information about your tax residency changes, you are required to provide the Company with a new, updated, self-certification form within 30 days of such change in circumstances.

Tax Residency Self Certification Form (Corporates)	
Name of Company in which shares are held:	BioPharma Credit plc
Investor code (e.g. 00000999999) This can be found on your share certificate or tax voucher	
Full Name of Holder:	
Full Address of Holder:	

Part 1 – Identification of Organisation

1A. Please provide the Registered Office address (if different from above)	
House Name / Number:	
Street / Road:	
Town /City Name:	
County:	
Country:	
Postal or ZIP Code:	
1B. Tax Residence	
Please specify the jurisdiction(s) in which your Organisation is resident for tax purposes and give the Tax Identification Number.	
Country of residence for tax purposes	Tax Identification Number (see Definition)
1	1
2	2
3	3
4	4
Please note that if your organisation is a branch you should consider and complete this for the branch and not the legal entity.	



Part 2 – Entity Type.

Please provide the organisation's status by ticking ONE box from (a) to (g) below:	
(a) Financial Institution – Investment entity	
(i) An investment entity located in a Non-Participating Jurisdiction and managed by another Financial Institution; (if ticking this box, then please also complete Part 3 below)	☐
(ii) Other investment entity (this includes non-reporting Financial Entities)	☐
(b) Financial Institution – Other Depository Institution, Custodial Institution or Specified Insurance Company	
(c) Active NFE – corporation that is publicly traded or a related entity of a publicly traded corporation	
(d) Active NFE – an International Organisation	
(e) Active NFE – Governmental entity including Central Bank	
(f) Active NFE – Other than (c)-(e)	
(g) Passive NFE (Note: if ticking this box please complete Part 3 below)	

Part 3 – Controlling Persons of Organisation

If you have ticked boxes 2(a)(i) or 2(g) above, also complete the following table for each Controlling Person		
If there are no natural person(s) who exercise control of the organisation then the Controlling Person will be the natural person(s) who hold the position of senior managing official (see the definition of Controlling Person in the Notes).		
Name:		
Residential Address:		
Date of birth: (dd/mm/yyyy)		
Country(ies) of tax residence	TIN (Please complete for each jurisdiction of tax residence)	Please mark the box ONLY if you are a US Citizen (see definition)
1	1	☐
2	2	
3	3	
4	4	

Name:		
Residential Address:		
Date of birth: (dd/mm/yyyy)		
Country(ies) of tax residence	TIN (Please complete for each jurisdiction of tax residence)	Please mark the box ONLY if you are a US Citizen (see definition)
1	1	☐
2	2	
3	3	
4	4	

Name:		
Residential Address:		
Date of birth: (dd/mm/yyyy)		
Country(ies) of tax residence	TIN (Please complete for each jurisdiction of tax residence)	Please mark the box ONLY if you are a US Citizen (see definition)
1	1	☐
2	2	
3	3	
4	4	

Name:		
Residential Address:		
Date of birth: (dd/mm/yyyy)		
Country(ies) of tax residence	TIN (Please complete for each jurisdiction of tax residence)	Please mark the box ONLY if you are a US Citizen (see definition)
1	1	☐
2	2	
3	3	
4	4	



Part 3A – Controlling person types

You must select one number from the table below for each Controlling Person to indicate the type of Controlling Person

CP Type	Description of Controlling Person	CP1	CP2	CP3	CP4
801	CP of legal person – ownership				
802	CP of legal person – other means				
803	CP of legal person – senior managing official				
804	CP of legal arrangement – trust – settlor				
805	CP of legal arrangement – trust – trustee				
806	CP of legal arrangement – trust – protector				
807	CP of legal arrangement – trust – beneficiary				
808	CP of legal arrangement – trust – other				
809	CP of legal arrangement – other – settlor-equivalent				
810	CP of legal arrangement – other – trustee-equivalent				
811	CP of legal arrangement – other – protector-equivalent				
812	CP of legal arrangement – other – beneficiary-equivalent				
813	CP of legal arrangement – other – other-equivalent				

Part 4 – Declarations and Signature

I acknowledge that the information contained in this form and information regarding the Organisation and its shareholding may be reported to the local tax authority and exchanged with tax authorities of another country or countries in which the Organisation may be tax resident where those countries have entered into Agreements to exchange financial account information.

I undertake to provide the Company with a suitably updated self-certification within 30 days of any change in circumstances, including changes to the circumstances of any Controlling Person, which causes the information contained herein to become incorrect.

I confirm that I have completed the attached details of Controlling Persons section which forms an integral part of this Declaration and have let the relevant people know that The Company may be writing directly to them in the near future seeking further information which they are obliged to provide.

I certify that I am authorised to sign for the shareholder to which this form relates.

I declare that all statements made in this self-certification (including the details of Controlling Persons section) are, to the best of my knowledge and belief, correct and complete.

Print Name:			
Signature:			
Capacity in which signing:			
Date:		*Daytime telephone number	

* We will only make contact with you by phone if there is a question around the completion of the self- certification form.



Notes – Definitions

These definitions are from the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information (“The Common Reporting Standard” or “CRS”)

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

If you have any questions about these definitions or require further detail then please contact your tax adviser. NOTHING IN THIS DOCUMENT CAN BE CONSIDERED TO BE TAX ADVICE.

“Active NFE”

Any one or more of the following:

- a) less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- h) the NFE meets all of the following requirements:
 - i. it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - ii. it is exempt from income tax in its jurisdiction of residence;
 - iii. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - iv. the applicable laws of the NFE’s jurisdiction of residence or the NFE’s formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE’s charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

- v. the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision

“Controlling Persons”

The term “controlling person” means a natural person who exercises control over an entity. This definition shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations (as adopted in February 2012). In the case of a company, this includes such a person owning, directly or indirectly, 25% or more of the shares of the company. Where those natural persons meet the definition of a controlling person, including ownership through one or more intermediate companies, they should be included in the list of controlling persons provided. If the company official completing the controlling person's details cannot provide complete and accurate details they should attempt to obtain them, or state that fact and subsequently the *Financial Institution* or its agent will write requesting them.

In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other person exercising ultimate effective control over the trust. In the case of a legal arrangement other than a trust, such term means person in equivalent or similar positions.

“Control”

“Control” over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means.

Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of a trust, the Controlling Person means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary (ies) or class (es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust. In the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

“Country/Countries of residence for tax purposes”

The organisation is required to list the country or countries in which it is resident for tax purposes, together with the tax reference number which has been allocated to you, often referred to as a tax identification number (TIN).

“Custodial Institution”

The term “Custodial Institution” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December

(or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

“Depository Institution”

The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

“Entity”

The term “Entity” means a legal person or a legal arrangement, such as a corporation organisation, partnership, trust or foundation.



“Financial Institution”

The term “Financial Institution” means a “Custodial Institution”, a “Depository Institution”, an “Investment Entity”, or a “Specified Insurance Company”.

“Investment Entity”

- a) The term “Investment Entity” means any Entity: That primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
- i. Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - ii. Individual and collective portfolio management; or
 - iii. Otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- b) If the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described above the gross income of the Entity is primarily attributable to investing, reinvesting, or trading in Financial Assets.

An Entity is treated as primarily conducting as a business one or more of the activities described above, or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity’s gross income attributable to the relevant activities equals or exceeds 50% of the Entity’s gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE because it meets any of the criteria in subparagraphs (d) through (g) of the definition of Active NFE. This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

“NFE”

Means any Entity that is not a Financial Institution

“Participating CRS jurisdiction”

For a list of Participating CRS jurisdictions, visit the OECD’s dedicated website for the CRS at:

<http://www.oecd.org/tax/transparency/AEOI-commitments.pdf>

“Passive NFE”

A “Passive NFE” means any NFE that is not an Active NFE.

“Related Entity”

An entity is a Related Entity of another entity if either entity controls the other entity, or two entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an entity.

“Reportable Jurisdiction”

A Reportable Jurisdiction is a jurisdiction with which an obligation to provide financial account information is in place.

“Specified Insurance Company”

The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract.

“Tax Identification Number” The number used to identify the shareholder in the country of residence for tax purposes. This could be the unique taxpayer reference number or company registration number or code. Some jurisdictions do not issue a TIN or do not issue a TIN to all residents. Depending on the country or jurisdiction these can include functional equivalent references such as a national insurance number, social security number or resident registration number. Some jurisdictions that do issue TINs have domestic law that does not require the collection of the TIN for domestic reporting purposes so that a TIN is not required to be completed by a shareholder resident in such jurisdictions.

“US Citizen”

- All US citizens. An individual is a citizen if that person was born in the United States or if the individual has been naturalized as a US citizen.
- You can also be a US citizen, even if born outside the United States if one or both of your parents are US citizens.



