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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 10-K**

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(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 001-36485**

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**ARDELYX, INC.**

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

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**DELAWARE**  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

**26-1303944**  
(I.R.S. EMPLOYER  
IDENTIFICATION NO.)

**34175 ARDENWOOD BLVD., SUITE 200, FREMONT, CALIFORNIA 94555**  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE)

**(510) 745-1700**  
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

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

Title of Each Class:	Name of Each Exchange on Which Registered:
Common Stock, par value \$0.0001 per share	The Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: None

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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 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 (§232.405 of this chapter) 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 (§229.405) is not contained herein, and will not be contained, to the best of 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 definition of "large accelerated filer", "accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a small reporting company)

Small reporting company

Emerging growth company

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

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

The aggregate market value of the Registrant's common stock held by non-affiliates of the Registrant as of the last business day of the Registrant's most recently completed second fiscal quarter, June 30, 2017, based on the last reported sales price of the Registrant's common stock of \$5.10 per share was \$168,628,611.

The number of shares of Registrant's Common Stock outstanding as of March 8, 2018, was 47,603,568.

**DOCUMENTS INCORPORATED BY REFERENCE:**

Portions of the Registrant's Definitive Proxy Statement for its 2018 Annual Meeting of Stockholders, which will be filed with the Commission within 120 days of December 31, 2017, the close of the Registrant's 2017 fiscal year, are incorporated by reference into Part III of this Report.

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**ARDELYX, INC.**  
**FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2017**  
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## NOTE REGARDING FORWARD-LOOKING STATEMENTS

Unless the context requires otherwise, in this Annual Report on Form 10-K the terms “Ardelyx”, “we,” “us,” “our” and “the Company” refer to Ardelyx, Inc.

This Annual Report on Form 10-K contains forward-looking statements that involve risks and uncertainties. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “aim,” “anticipate,” “assume,” “believe,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “target,” “will,” “would,” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology. These forward-looking statements include, but are not limited to, statements about:

- our expectation regarding the timing of our filing of a New Drug Application with the U.S. Federal Food and Drug Administration requesting approval to market tenapanor for patients with irritable bowel syndrome with constipation, or IBS-C;
- our expectation regarding the timing of receipt of results from our second Phase 3 clinical trial evaluating tenapanor for the treatment of hyperphosphatemia in patients with end-stage renal disease, or ESRD, on dialysis;
- our expectations regarding our plans for and our participation in the commercialization of tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis, including our expectations regarding our plans to build our own sales and marketing organization to market and sell tenapanor for such indication;
- our plans to seek one or more collaboration partners to commercialize tenapanor for IBS-C;
- our expectations regarding the potential market size and the size of the patient populations for our product candidates;
- our plans with respect to our pre-clinical programs;
- our ability to identify and validate targets and novel drug candidates using our proprietary drug discovery and design platform including the Ardelyx Primary Enterocyte and Colonocyte Culture System;
- the implementation of our business model and strategic plans for our business, product candidates and technology;
- estimates of our expenses, future revenue, capital requirements, our needs for additional financing and our ability to obtain additional capital;
- our expectations regarding the time during which we will be an emerging growth company under the Jumpstart Our Business Startups Act of 2012;
- our financial performance; and
- developments and projections relating to our competitors and our industry.

Factors that could cause actual results or conditions to differ from those anticipated by these and other forward-looking statements include those more fully described in the “ITEM 1A. RISK FACTORS” section and elsewhere in this Annual Report on Form 10-K. Except as required by law, we assume no obligation to update any forward-looking statement publicly, or to revise any forward-looking statement to reflect events or developments occurring after the date of this Annual Report on Form 10-K, even if new information becomes available in the future. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in any such forward-looking statement.

## **ITEM 1. BUSINESS**

### *Company overview*

We are a specialized biopharmaceutical company focused on developing first-in-class, disruptive medicines for the treatment of renal diseases. Our primary therapeutic focus is on treating people with renal diseases, which affect both the heart and the kidneys. This includes patients with end-stage renal disease, or ESRD, who suffer from elevated serum phosphorus, or hyperphosphatemia; patients with chronic kidney disease, or CKD, and/or heart failure patients with elevated serum potassium, or hyperkalemia. We have also developed a number of programs directed toward treating gastrointestinal, or GI, disorders, including the treatment of irritable bowel syndrome with constipation, or IBS-C.

Our portfolio is led by the development of tenapanor, a first-in-class inhibitor of NHE3. In our renal pipeline, tenapanor is being evaluated in a second Phase 3 trial for the treatment of hyperphosphatemia in patients with ESRD who are on dialysis. This registration trial follows a successful first Phase 3 trial completed in 2017, which achieved statistical significance for the primary endpoint. We are also advancing a small molecule potassium secretagogue program, RDX013, for the potential treatment of hyperkalemia. We believe that both tenapanor and RDX013 have the potential to provide treatment options that are differentiated significantly from binders, the current standards of care in both of these markets. We believe our small molecule approach to treating these conditions could significantly reduce the pill burden for patients, leading to higher compliance, and offer completely new mechanisms of action that interact with receptors in the gut, potentially allowing improved efficacy in some patients.

In addition to the development for renal diseases, we have developed tenapanor for the treatment of patients with IBS-C. In 2017, we completed the T3MPO program for this indication, including two Phase 3 studies, both of which achieved statistical significance for the primary endpoint, and a long-term safety extension study. We believe that data from the T3MPO program collectively demonstrated the ability of tenapanor to provide sustained relief of constipation and reduced abdominal pain with a generally favorable tolerability profile. Based on the results of the T3MPO clinical program in IBS-C, we are preparing to submit our first New Drug Application, or NDA, to the United States Food and Drug Administration, or FDA, in the second half of 2018 for tenapanor for the treatment of IBS-C.

### *Our Commercial Strategy*

We aim to build a multi-product company that commercializes its renal products in the United States. Our strategy is to leverage ex-U.S. collaborations with established industry leaders to efficiently bring our renal medicines to patients outside the United States. Additionally, our goal is to bring tenapanor for IBS-C to market by leveraging domestic and ex-U.S. collaborations.

In November 2017, we entered into a license agreement that provides Kyowa Hakko Kirin Co., Ltd., or KHK, with exclusive rights to develop and commercialize tenapanor for the treatment of cardiorenal diseases, including hyperphosphatemia, in Japan. Under the terms of the license agreement, we received a \$30 million upfront payment and are eligible to receive up to \$130 million in development and commercialization milestones based upon currency exchange rates as of the effective date of the license agreement, as well as high-teen royalties on net sales throughout the term of the agreement.

In December 2017, we entered into a license agreement with Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd., or Fosun Pharma, providing Fosun Pharma with the exclusive rights to develop and commercialize tenapanor in China for the treatment of patients with hyperphosphatemia related to CKD and patients with IBS-C. Under the terms of the agreement, we received an upfront payment of \$12 million and are eligible to receive additional milestones of up to \$113 million, as well as tiered royalties on net sales ranging from the mid-teens to 20%.

## **OUR PROPRIETARY DRUG DISCOVERY AND DESIGN PLATFORM**

In line with our overall strategy and transition to focus solely on our renal pipeline, we have shifted our research focus to support our preclinical and clinical development candidates including tenapanor and RDX013, as well as other potential renal opportunities. We intend to continue to utilize our unique discovery and design platform to help

elucidate first-in-class mechanisms of action, as with tenapanor, and to inform preclinical experiments to help advance our product candidates. We also use our platform to further support the potential commercialization of our programs, which is valuable to us and future partners. We believe that our platform, and early pipeline, represent additional collaborative opportunities, market potential and downstream value-creation.

Using our platform, we have been able to discover targets found in the GI tract that regulate important processes in the body and design products candidates that act upon those targets to take advantage of the gut's ability to communicate with other organs. Our platform integrates two critical concepts: (i) our proprietary chemistry capabilities that enable us to design and optimize gut-restricted compounds that can provide a higher margin of safety than systemically absorbed compounds, and (ii) our stem cell-based translational technology called the Ardelyx Primary Enterocyte and Colonocyte Culture System, or APECCS, that enables us to discover targets in the GI tract which control health and disease processes, to optimize drug candidates and to understand their mechanisms of action. Our platform can be applied across the entire GI tract, allowing for the broadest evaluation of disease targets to develop medicines optimized for specific diseases. The predictive ability of our platform enables us to better assess, at a very early stage, the potential for small molecule compounds to treat specific diseases.

## **OUR PRODUCT PIPELINE**

### ***Tenapanor: A New Approach for Treating Hyperphosphatemia in ESRD Patients on Dialysis***

The lead product candidate in our renal portfolio is tenapanor for the treatment of hyperphosphatemia, or high levels of blood phosphorus, in ESRD patients on dialysis. Hyperphosphatemia is a significant problem among dialysis patients worldwide.

CKD is the progressive deterioration of renal function that can occur over several months or years. The symptoms of worsening kidney function are nonspecific, and can include having less energy, reduced appetite, dry itchy skin, swollen feet and ankles or generally just not feeling well. If the deterioration continues and is not halted by changes in lifestyle or with the assistance of pharmacological intervention, the disease will likely cause significant cardiovascular morbidity, and can progress to ESRD, the final stage of CKD, where kidney function will be lost entirely.

Current management of ESRD includes hemodialysis and peritoneal dialysis as a means to filter toxins from the blood once kidneys have failed. Unless this intervention occurs, kidney failure results in the accumulation of waste products that may ultimately cause death. Hemodialysis, the most common form of dialysis, generally requires a patient to visit a dialysis center at least three times per week for a three- to five-hour session, significantly reducing quality of life.

Phosphorus, a vital element required for most cellular processes, is present in almost every food in the Western diet, and, in individuals with normal kidney function, any excess dietary phosphorus is efficiently removed by the kidneys and excreted in urine. In adults with functioning kidneys, normal serum phosphorus levels are 2.5 to 4.5 mg/dL. With kidney failure, elevated phosphorus becomes harmful and is diagnosed as hyperphosphatemia when serum phosphorus levels are greater than 5.0 mg/dL. Although patients with ESRD rely on dialysis to eliminate harmful agents, phosphorus is not readily removed by the procedure and other means of managing phosphorus levels must be employed.

In ESRD patients, excess levels of phosphorus have been shown to lead to an increase in cardiovascular disease risk, as well as increases in serum FGF-23, an important regulator of phosphate and vitamin D metabolism. Highly elevated levels of FGF23 is an independent risk factor for adverse cardiac clinical outcomes as well as the development of secondary hyperparathyroidism, or SHPT, marked by elevated parathyroid hormone. SHPT is associated with renal osteodystrophy, a condition of abnormal bone growth characterized by brittle bones.

Since dialysis is unable to efficiently eliminate excess phosphorus, ESRD patients are put on restrictive low phosphorus diets and are currently prescribed medications called phosphate binders, the only interventions currently marketed for the treatment of hyperphosphatemia. Phosphate binders act by binding dietary phosphorus and commonly need to be taken with meals and snacks. They include calcium, iron or lanthanum, a rare-earth metal, which bind to and precipitate with dietary phosphate in the GI tract. The goal of these phosphate binders is for patients to eliminate,

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through their stool, the precipitated phosphorus that comes from the food they ingest. Phosphate binders have a number of limitations, including:

- systemic excess absorption of calcium, iron or lanthanum, resulting in side effects and other unintended consequences for ESRD patients, and
- significant challenges with patient compliance because of the large quantity and/or mass of the binders that must be taken each day.

Safety and tolerability have also been significant concerns with many approved phosphate binders, with side effects that include long-term vascular calcification with calcium-based binders and iron-overload with iron-based binders. The more common side effects of certain approved phosphate binders include GI-related adverse events such as nausea, vomiting, diarrhea, and dyspepsia as well as hypercalcemia for calcium-based binders and discolored feces for iron-based binders.

ESRD patients, who generally are severely restricted in their fluid intake, are prescribed as many as 12 or more phosphate binder pills per day, among other medications. The amount of phosphorus a binder can remove is limited by its binding capacity, and therefore, increasing the dose, and hence the pill burden, of the binder is the only way to increase the amount of phosphorus being bound and excreted. As a result of pill burden and mass, as well as a number of side effects, prescribed phosphate binder doses are intolerable for many patients, leading to a lack of treatment adherence and compliance.

We are developing tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis, as we believe it has the potential to address certain of the key limitations of current treatments and offer a completely new mechanism of action. If approved, tenapanor would be the first small molecule/non-binder approach to treating hyperphosphatemia, with a unique mechanism of action that acts by inhibiting, or blocking, the NHE3 transporter in the GI tract to reduce the absorption of dietary sodium. When tenapanor blocks the NHE3 sodium transporter in the GI tract, it reduces the absorption of dietary sodium, resulting in an increase in protons within the cells. This increase in protons causes a selective reduction in phosphate uptake by tightening junctions or pores that are involved in the regulation of phosphate homeostasis, which then limits the amount of dietary phosphate that can pass from the gut into the blood. We have not observed this impact on other ions, nutrients or macromolecules in our clinical trials. We have submitted a manuscript for publication of this mechanism in a scientific peer-reviewed journal.

This unique mechanism of action allows tenapanor to be active in many patients at a dose of 10mg to 30mg twice daily as opposed to the multiple gram quantities per day required of the phosphate binders. Over the course of a week, the amount of tenapanor required would be less than 500mg, or a total of 14 small pills, whereas the amount of phosphate binder required, based on package inserts, would be 10 to 30 grams, or up to 64 large pills, depending on the phosphate binder. We believe this significant pill burden advantage will result in better adherence and compliance which could lead to more consistent efficacy in ESRD patients on dialysis.

Tenapanor has been specifically designed to work exclusively within the GI tract, thereby significantly reducing the amount of drug that is absorbed into the bloodstream and the potential side effects that could occur. In human studies of orally-administered tenapanor, the drug was detected in the blood in less than 1% in thousands of collected serum samples, and even in those, at very low levels (< 1.5 ng/mL). We have evaluated tenapanor across 20 clinical studies in over 2,500 individuals to date.

### *Clinical data supporting tenapanor in hyperphosphatemia*

In February 2017, we announced data from our first Phase 3 clinical trial evaluating tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis.

The Phase 3 trial was an eight-week, double-blind, randomized trial, with a four-week placebo-controlled randomized withdrawal period. We enrolled a total of 219 ESRD patients with hyperphosphatemia who are on dialysis. Enrolled patients were randomized evenly into three arms, in which all groups received tenapanor for eight weeks.

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Tenapanor was administered at doses of 3 mg or 10 mg twice-daily and in a dose-titration arm starting at 30 mg twice-daily with the option to down-titrate once a week during the first four weeks to 20, 15, 10 and 3 mg twice-daily, based on GI tolerability. After the end of the eight-week treatment period, patients were re-randomized 1:1 to either remain on their current tenapanor dose or switch to placebo for a four-week, placebo-controlled, randomized withdrawal period.

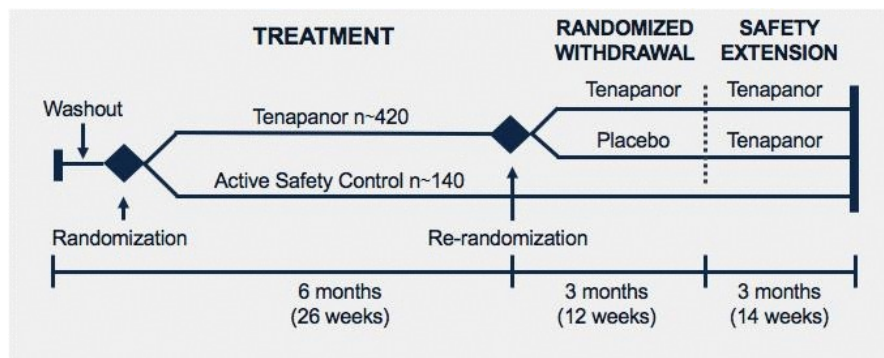
The primary endpoint of the trial was the difference in change in serum phosphorus between the pooled tenapanor-treated patients and placebo-treated patients from the end of the eight-week treatment period to the end of the four-week randomized withdrawal period, in the responder population. The responder population, which was reviewed by the FDA, is defined as patients who demonstrate a greater than or equal to 1.2 mg/dL decrease in serum phosphorus from baseline during the initial eight-week treatment period.

The study demonstrated a statistically significant difference in serum phosphorus levels from the end of the eight-week treatment period to the end of the four-week randomized withdrawal period between the tenapanor-treated group and the placebo-treated group in the responder patient population (mean -1.01 mg/dL, median of -1.3 mg/dL) and met its primary endpoint (95% confidence interval, -1.44, -0.21, LSmean -0.82 mg/dL,  $p=0.01$ ). The responder population ( $n=80$  out of 164) had a mean reduction in serum phosphorus from baseline to the end of the eight-week treatment period of 2.56 mg/dL, with a reduction of up to 5.7 mg/dL. Notably, in this group, 33% of patients had a reduction in serum phosphorus of greater than 3 mg/dL.

Tenapanor was well-tolerated in the trial. In the eight-week treatment period, the only adverse event that affected more than five percent of patients treated with tenapanor was diarrhea (39%), a patient-reported side effect of loosened stool or increased frequency in bowel movements regardless of magnitude. In the four-week randomized withdrawal period, there was a diarrhea rate of 1.2% for patients treated with tenapanor compared with 2.4% on placebo. Treatment discontinuations due to diarrhea for patients on tenapanor was 7.8% ( $n=17$ ). There were no discontinuations due to diarrhea in the randomized withdrawal period.

In order to fully assess GI tolerability, patients used an eDiary to record the frequency of daily bowel habits, as well as stool form using the Bristol Stool Form Scale, or BSFS. During the eight-week treatment period, there was an average 0.4 per day increase in bowel movement frequency from baseline, and during the four-week randomized withdrawal period, there was an average 0.29 per day increase as compared to placebo. Average bowel movement frequency was within the normal range in all groups. During the eight-week treatment period, there was an average 0.87 point increase in BSFS from a baseline score of 4.2, out of a maximum of seven, where seven is liquid stool. During the four-week randomized withdrawal period, there was an average 0.7 point difference in BSFS between placebo (4.4) and tenapanor treatment (5.1).

We have initiated a second Phase 3 study of tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis. The study's design, shown in the figure, will include a 26-week open-label treatment period, with a 12-week randomized withdrawal period followed by an additional 14-week safety extension. Results from this study are expected in 2019. We currently intend to build our own sales and marketing organization to market and sell tenapanor for hyperphosphatemia in the United States.



*The hyperphosphatemia market*

Phosphate binders are the only drugs marketed for the treatment of hyperphosphatemia in ESRD patients. The various types of phosphate binders commercialized in the United States include the following:

- Calcium carbonate (many over-the-counter brands including Tums and Caltrate)
- Calcium acetate (several prescription brands including PhosLo and Phoslyra)
- Lanthanum carbonate (Fosrenol marketed by Shire)
- Sevelamer hydrochloride (Renagel, marketed by Sanofi)
- Sevelamer carbonate (Renvela, marketed by Sanofi)
- Sucroferric oxyhydroxide (Velphoro, marketed by Vifor Fresenius)
- Ferric citrate (Auryxia, marketed by Keryx)

The hydrochloride form of sevelamer, Renagel, was launched in the United States by Genzyme Corporation in 1998 prior to its acquisition by Sanofi, and the carbonate form, Renvela, was launched in 2008. Sanofi reported €922 million (\$1.05 billion) in worldwide sales of sevelamer during 2016 and €802 million (\$0.98 billion) in 2017. Generic sevelamer carbonate has been approved in certain jurisdictions in Europe since 2015 and in the U.S. market since June 2017.

In addition to the currently marketed phosphate binders, we are aware of at least two other binders in development, including fergagate (Alpharen), an iron-based binder in Phase 3 studies being developed by Opko Health, Inc., and PT20, an iron-based binder in Phase 3 being developed by Shield Therapeutics.

According to the most recent data available from the U.S. Renal Data System, in 2015 there were 444,337 patients on hemodialysis in the United States. Additionally, according to the European ERA-EDTA Registry 2015 Annual Report and a study in 2014 by the Japanese Society for Dialysis Therapy, there were approximately 317,000 patients on hemodialysis in Europe and about 255,000 in Japan. We estimate, based on phosphate binder utilization, the only approved therapies for hyperphosphatemia, that there are approximately 310,000, 250,000 and 260,000 ESRD patients with hyperphosphatemia in the United States, countries in Europe and Japan, respectively, resulting in approximately 820,000 ESRD patients with hyperphosphatemia in such countries.

Because many ESRD patients with hyperphosphatemia are unable to lower serum phosphorus levels to below 5.5 mg/dL with currently marketed phosphate binders, we believe there is a significant medical need for new agents with



new mechanisms, demonstrated efficacy, a strong safety profile, and significantly lower pill burden. We believe that tenapanor, if approved, has the potential to have the lowest pill burden and mass among any currently marketed hyperphosphatemia products, with milligram rather than gram quantities. In addition, we may evaluate whether tenapanor has the potential to be used in combination with phosphate binders for those patients who cannot achieve adequate phosphate control with a single agent.

Our intention is to build a United States-focused, highly efficient, specialized sales and marketing organization focused on nephrology. The nephrology market is a concentrated market strongly influenced by key opinion leaders. There were 10,083 nephrologists in the United States in 2015 and 6,620 dialysis facilities in the United States that offer in-center dialysis. Based on the experience of our management team, we believe that a specialty salesforce is appropriate for this marketplace. We believe that tenapanor for the treatment of hyperphosphatemia could represent a market opportunity of between \$500 million and \$700 million in the United States.

As a first-in-class treatment, and as the first non-binder option with a well-tolerated safety profile, we believe tenapanor could address the significant pill burden challenges and intolerability that patients experience with today's binder treatments. After the second Phase 3 study readout, if successful, we intend to submit a New Drug Application to the FDA in 2019 and would plan for a potential launch 2020.

To bring tenapanor to patients outside the United States, we intend to establish strategic collaborations with industry leading pharmaceutical companies with established commercial infrastructures. In 2017, we entered into two collaboration partnerships, and the revenues recorded from those collaboration partnerships in 2017 accounted for more than 10% of total revenues recorded during the year ended December 31, 2017.

*License agreement with KHK*

In November 2017, we entered into a license agreement ("KHK License Agreement") with KHK under which we granted KHK an exclusive license to develop and commercialize tenapanor in Japan for the treatment of cardiorenal diseases and conditions, excluding cancer ("KHK Field"). We retained the rights to tenapanor outside of Japan, and also retained the rights to tenapanor in Japan for indications other than those in the KHK Field. Pursuant to the KHK License Agreement, KHK is responsible for all of the development and commercialization costs for tenapanor in the KHK Field in Japan.

Under the KHK License Agreement, we are responsible for supplying the tenapanor drug product for KHK's use in development and during commercialization until KHK has assumed such responsibility. Additionally, we are responsible for supplying the tenapanor drug substance for KHK's use in development and commercialization throughout the term of the KHK License Agreement, provided that KHK may exercise an option to manufacture the tenapanor drug substance under certain conditions.

Under the terms of the KHK License Agreement, we have received a \$30.0 million upfront payment and are eligible to receive up to an additional \$130.0 million in development and commercialization milestones, based upon currency exchange rates as of the effective date of KHK License Agreement.

We are also eligible to receive royalties based on aggregate annual net sales of the licensed products at a high teen percentage, subject to certain single digit reductions under certain circumstances described in the KHK License Agreement.

The KHK License Agreement will continue until all of KHK's applicable payment obligations under the KHK License Agreement have been performed or have expired, or the agreement is earlier terminated. Under the terms of the KHK License Agreement, we and KHK each have the right to terminate the agreement for material breach by the other party. In addition, KHK may terminate the agreement for convenience; for certain safety reasons or if certain primary endpoints under an applicable development plan are not met despite KHK's commercially reasonable efforts and KHK reasonably determines that it cannot obtain regulatory approval. KHK may also terminate the agreement if certain pivotal clinical trials conducted by us do not meet their primary endpoints. We may terminate the KHK License Agreement if KHK challenges any patents licensed to KHK under the agreement.

*License agreement with Fosun*

In December 2017, we entered into a license agreement (the “Fosun License Agreement”) with Fosun Pharma under which we granted Fosun Pharma an exclusive license to develop and commercialize tenapanor in China for the treatment, diagnosis or prevention of (i) irritable bowel syndrome with constipation and chronic idiopathic constipation, (ii) hyperphosphatemia related to chronic kidney disease and (iii) other diseases or conditions for which we obtain marketing approval in either the US or China (collectively, “Fosun Field”). The Fosun Field excludes the treatment of cancer. We retained the rights to tenapanor outside of China, and also retained the rights to tenapanor in China for indications other than those in the Field. Pursuant to the terms of the Fosun License Agreement, Fosun Pharma is responsible for all of the development and commercialization costs for tenapanor in the Fosun Field in China.

Under the terms of the Fosun License Agreement, we are responsible for supplying the tenapanor drug product for Fosun Pharma’s use in development and during commercialization until Fosun Pharma has assumed such responsibility. Additionally, we are responsible for supplying the tenapanor drug substance for Fosun Pharma’s use in development and commercialization throughout the term of the Fosun License Agreement.

Under the terms of the Fosun License Agreement, we received an upfront payment of \$12 million and are eligible to receive additional milestones of up to \$113 million in the aggregate, as well as tiered royalty payments on aggregate net sales ranging from the mid-teen percent to twenty percent, subject to certain reductions under certain circumstances, as described in the Fosun License Agreement.

The Fosun License Agreement will continue until all of Fosun Pharma’s applicable payment obligations under the License Agreement have been performed or have expired, or the agreement is earlier terminated. Under the terms of the Fosun License Agreement, we and Fosun Pharma each have the right to terminate the agreement for material breach by the other party or in the event of insolvency by the other party. In addition, Fosun Pharma may terminate the agreement for convenience and we may terminate the agreement if Fosun Pharma challenges any patents licensed to it under the agreement.

**RDX013 Program: Small Molecule for Treating Hyperkalemia**

RDX013 is our novel, small molecule program for the potential treatment of hyperkalemia. Our RDX013 approach works by tapping into the GI tract’s natural ability to secrete potassium into the lumen of the gut to reduce serum potassium levels. This mechanism differs significantly from the potassium binders currently on or approaching the market. For a potassium binder to work, it must be present when dietary potassium is ingested so that the agent can bind the potassium and prevent its absorption in the gut. This results in the need for large quantities of binder in order to bind the large amounts of potassium in the diets of most individuals. In contrast, we observed in our preclinical models that a small amount of RDX013 could cause potassium to be secreted into the lumen of the gut. In this way, we believe that RDX013 may have the potential to lower serum potassium whether or not potassium is present in the diet and could result in a very low pill burden, potentially allowing better patient compliance, longer-term use and potentially better efficacy than potassium binders. As described below, certain medications commonly administered to patients with CKD and/or heart failure can also cause hyperkalemia. With the successful development of an effective potassium secretagogue to treat hyperkalemia in a small, convenient pill format, we believe our RDX013 approach may allow nephrologists and cardiologists with an opportunity to treat hyperkalemia chronically without reducing the dose of these medications.

Hyperkalemia is generally defined as the presence of blood potassium levels greater than 5.0 mEq/L. Normal levels are 3.5 to 5.0 mEq/L. When hyperkalemia is severe, above 7.0 mEq/L, there is a significantly increased risk of death because of the potential for heart conduction problems.

Hyperkalemia can be caused by a variety of issues. Kidney disease can result in the elevation of potassium in the blood. Certain drugs such as the common hypertension medications known as RAAS inhibitors, which inhibit the renin-angiotensin-aldosterone system, can cause hyperkalemia. As a result, the dosage of RAAS inhibitors must often be significantly reduced in patients whose potassium levels are elevated (such as in those with CKD and heart failure). Because of the risk of hyperkalemia, several published guidelines have suggested that physicians should reduce and

possibly discontinue RAAS inhibitors in order to manage the risk of hyperkalemia in CKD and heart failure patients. The alternative medications used to control hypertension, including diuretics and calcium channel blockers, are less effective than RAAS inhibitors, particularly in patients with failing kidneys and severe hypertension. According to the 2015 publication Market Dynamix: Hyperkalemia, released by Spherix Global Insights, U.S. cardiologists reported that of the patients who would benefit from RAAS inhibition, up to 38% of patients with heart failure and up to 55% of patients with both heart failure and CKD are being administered a sub-optimal dose or none at all. Nephrologists reported that at least one-third of patients who would benefit from RAAS inhibition receive a sub-optimal dose or none at all. We believe there is clearly a strong medical need for new medications that control hyperkalemia in order to allow for optimal use of RAAS inhibitors to control hypertension in these patient populations.

#### *The hyperkalemia market*

Of the people with CKD and/or heart failure in the United States, we estimate that there are approximately 2.1 million people who also have occurrences of hyperkalemia. According to a retrospective study conducted in 2005 of a national cohort of 246,000 patients cared for in the Veterans Health Administration, about 21% and 42% of patients with CKD Stage 3b and Stage 4, respectively, had a hyperkalemic event during a 12-month period, suggesting that hyperkalemia affects about 900,000 individuals with CKD Stage 3b or Stage 4 in the United States. According to the United States Renal Data System 2014 Atlas of CKD & ESRD, over 50% of CKD Stage 3b and Stage 4 patients are prescribed RAAS inhibitors to control hypertension and to slow the course of CKD.

Additionally, the number of adults in the U.S. living with heart failure is about 6.5 million, based on data collected in the National Health and Nutrition Examination Survey, which is taken in stages over multiple years. Our proprietary research suggests that up to 16%, or approximately 1,000,000, of these patients had hyperkalemia during a 12-month period. Over half of heart failure patients are prescribed RAAS inhibitors. Our proprietary research also suggests that up to 200,000 patients with ESRD in the U.S. could benefit from an agent that treats hyperkalemia.

We are aware of at least two drugs approaching or on the market for the treatment of hyperkalemia. Veltassa (patiromer FOS), an oral, polymer-based potassium binder, was approved for marketing by the FDA in October 2015 and was commercially launched by Relypsa, which was acquired by Galenica AG for \$1.5 billion in September 2016. However, according to a 2017 survey of more than 200 nephrologists and cardiologists, conducted by Spherix Global Insights, about half of those surveyed note that, even with Veltassa available, there remains a high unmet need for new treatments for hyperkalemia.

Additionally, ZS Pharma submitted an NDA in June 2015 for ZS-9, a sodium zirconium cyclosilicate-based oral potassium binder. ZS Pharma was acquired by AstraZeneca in December 2015 for \$2.7 billion.

We believe that, unlike these agents which require large amounts of drug for the desired effect, RDX013 may have the potential to lower serum potassium whether or not potassium is present in the diet and could result in very low pill burden, allowing better compliance, longer-term use and potentially better efficacy than potassium binders.

If we are successful in developing RDX013 and obtaining marketing authorization from the FDA, we would expect to leverage the renal sales and marketing organization that we intend to build to support commercialization in the United States of tenapanor for treating hyperphosphatemia in dialysis patients.

#### **Tenapanor: NHE3 Inhibitor for Treating IBS-C**

In addition to its development for hyperphosphatemia, we have completed development of tenapanor for the treatment of IBS-C and are pursuing strategic collaborations to bring it to market in this indication. We have completed two Phase 3 clinical trials in patients with IBS-C (T3MPO-1 and T3MPO-2) along with a long-term safety study (T3MPO-3) and expect to submit an NDA to the FDA in the second half of 2018.

IBS-C is a GI disorder in which abdominal pain or discomfort is associated with constipation, and which significantly impacts the health and quality of life of affected patients. A study published in the American Journal of Gastroenterology in 2015, showed that over 50% of IBS-C patients rated their pain, constipation and straining as being

“extremely bothersome.” In the same study, GI symptoms led to an average 4.9 days of “disrupted productivity” and 0.8 days of missed work per month. There is no specific test or biomarker for IBS-C and therefore its presence is diagnosed by symptoms and by eliminating other disorders. IBS-C is very similar to chronic constipation and is clinically distinguished by a significant abdominal pain component.

Tenapanor is a minimally-systemic small molecule that acts locally in the GI tract to inhibit the sodium transporter NHE3 and reduce sodium uptake from the gut. Part of its mechanism to treat constipation caused by IBS-C is an osmotic effect in the intestines – water follows salt and stool is gently loosened by the body’s own fluids. In addition to this mechanism, data from nonclinical studies, which were presented in November 2017 at the American Society of Nephrology Annual Meeting, suggest that tenapanor reduced abdominal pain caused by IBS-C through the inhibition of TRPV-1 dependent signaling. TRPV-1, better known as the “hot chili pepper receptor,” is a well-established pain target known for transmitting painful stimuli from a variety of sources including heat, protons and inflammatory molecules. Using an established rodent model of IBS-like colonic hypersensitivity, preclinical data showed that tenapanor treatment reduced visceral hypersensitivity (pain in the internal organs) and normalized colonic sensory neuronal excitability and TRPV-1 currents. Treatment with tenapanor also increased stool excretion and stool water content. In these nonclinical studies, tenapanor had a superior effect on visceral hypersensitivity than placebo or PEG, a well-known laxative not known to have an analgesic effect.

#### *Phase 3 clinical data supporting tenapanor in IBS-C*

At the end of 2017, we completed our Phase 3 program, the T3MPO program, for tenapanor for the treatment of IBS-C. This included two Phase 3 studies, T3MPO-1 and T3MPO-2, and a long-term safety extension study, T3MPO-3. In the discussion below, statistical significance is denoted by p-values. The p-value is the probability that the reported result was achieved purely by chance (e.g., a p-value <0.001 means that there is a less than a 0.1% probability that the observed change was purely due to chance). Generally, a p-value less than 0.05 is considered statistically significant.

In May 2017, we reported data from the first Phase 3 study, T3MPO-1. T3MPO-1 was a 12-week, double-blind, placebo-controlled, multi-center, randomized trial with a four-week, randomized withdrawal period conducted in a total of 610 patients meeting the ROME III criteria for the diagnosis of IBS-C. Patients were randomized one to one to receive either 50 mg of tenapanor or placebo twice-daily. The trial included a two-week screening period, during which patients with active disease, based on bowel movement frequency and abdominal pain score recorded in a daily phone diary, were randomized into the trial.

The study achieved statistical significance for the primary endpoint and seven of eight secondary endpoints. The primary endpoint, the combined responder rate for six of 12 weeks, showed that a greater proportion of tenapanor-treated patients compared to placebo-treated patients (27.0% vs 18.7%,  $p=0.02$ ) had at least a 30% reduction in abdominal pain and an increase of one or more complete spontaneous bowel movements, or CSBM, in the same week for at least six of the 12 weeks of the treatment period. The CSBM responder rate in the six of 12 weeks (defined as having an increase of at least one CSBM from baseline during a week for six of 12 weeks) did not reach statistical significance (33.9% vs. 29.4%,  $p=0.27$ ); however, the abdominal pain responder rate in the six of 12 weeks (defined as having at least a 30% decrease in abdominal pain from baseline during a week for six of 12 weeks) did achieve statistical significance (44.0% vs. 33.1%,  $p=0.008$ ). In the nine of 12 treatment weeks, the study achieved statistical significance for the combined responder rate (13.7% vs. 3.3%,  $p<0.001$ ), in which patients must have had an increase of at least one CSBM from baseline and at least three CSBMs during a week for nine of 12 weeks as well as a 30% or greater reduction in abdominal pain for nine of the 12 weeks. In addition, for the nine of 12 weeks, the study achieved statistical significance for the individual CSBM responder rate (16.9% vs. 5%,  $p<0.001$ ) and the abdominal pain responder rate (30.3% vs. 19.4%,  $p=0.003$ ).

Tenapanor was well-tolerated in the study. The only adverse events observed in more than two percent of patients treated with tenapanor, as compared with placebo, were diarrhea (14.6% vs 1.7%) and nausea (2.6% vs 1.7%). The placebo adjusted discontinuation rate due to diarrhea was 5.3%.

In October 2017, we reported results from the second Phase 3 study of tenapanor for the treatment of IBS-C, T3MPO-2, a 26-week, double-blind, placebo-controlled, multi-center, randomized trial in 593 patients. Patients were

randomized one to one to receive either 50 mg of tenapanor or placebo twice-daily. The trial included a two-week screening period, during which patients with active disease, based on bowel movement frequency and abdominal pain score recorded in a daily phone diary, were randomized into the trial.

The study achieved statistical significance for the primary endpoint and all secondary endpoints evaluated for the topline results and demonstrated the ability to normalize bowel movements. The primary endpoint, the combined responder rate for six of 12 weeks, showed that a greater proportion of tenapanor-treated patients compared to placebo-treated patients (36.5% vs. 23.7%,  $p < 0.001$ ) had at least a 30% reduction in abdominal pain and an increase of one or more CSBMs in the same week for at least six of the 12 weeks of the treatment period. The study achieved statistical significance for the CSBM and abdominal pain responder rates in the six of 12 weeks (47.4% vs. 33.3%,  $p < 0.001$ ; 49.8% vs. 38.3%,  $p = 0.004$ ). In the nine of 12 treatment weeks, the study achieved statistical significance for the combined responder rate (18.4% vs. 5.3%,  $p < 0.001$ ), in which patients must have had an increase of at least one bowel movement from baseline and at least three per week and a 30% reduction in abdominal pain for nine of the 12 weeks. In addition, for the nine of 12 weeks, the study achieved statistical significant for the individual CSBM responder rate (22.2% vs. 6.0%,  $p < 0.001$ ) and the abdominal pain responder rate (35.8% vs. 26.7%,  $p = 0.015$ ). The study also achieved statistical significance for all three durable responder endpoints, the combined responder rate (18.1% vs. 5.0%,  $p < 0.001$ ), CSBM responder rate (21.2% vs. 5.7%,  $p < 0.001$ ) and abdominal pain responder rate (34.8% vs. 26.7%,  $p = 0.028$ ), which are identical to the nine of 12-week responder endpoints, except the response must also occur in three of the last four treatment period weeks.

Tenapanor was well-tolerated in the T3MPO-2 study. The only adverse events observed in more than two percent of patients in the tenapanor-treated group that were also greater than placebo were diarrhea (16.0% vs. 3.7%), flatulence (3.1% vs. 1.0%), nasopharyngitis (4.4% vs. 3.7%) and abdominal distension (3.4% vs. 0.3%). The placebo adjusted discontinuation rate due to diarrhea was 5.8%.

Patients who completed T3MPO-1 and T3MPO-2 were eligible to enter T3MPO-3, our open-label, long-term safety trial where patients could continue to receive tenapanor for up to one year. In late 2017, we completed T3MPO-3 and have reported results that tenapanor had a mean compliance rate of approximately 98%, and that tenapanor was well-tolerated among the 240 patients treated. Of patients treated, 9.2% reported experiencing diarrhea, with 1.7% of patients discontinuing treatment due to diarrhea. The overall discontinuation rate in the study was 2.1%.

Based on the positive results from the T3MPO program, we are preparing to submit an NDA to the FDA to request marketing approval of tenapanor for the treatment of IBS-C in the United States.

To support the global commercialization of tenapanor for IBS-C, we are pursuing strategic collaborations to bring tenapanor to patients. In December 2017, we entered into a license agreement to provide Fosun Pharma with the exclusive rights to develop and commercialize tenapanor in China for the treatment of patients with IBS-C and hyperphosphatemia related to chronic kidney disease.

#### *The IBS-C market*

Numerous treatments exist for the constipation component of IBS-C, many of which are over-the-counter. There are three prescription products marketed for IBS-C: (i) Linzess (linaclotide), marketed by Ironwood Pharmaceuticals and Allergan, (ii) Amitiza (lubiprostone), marketed by Takeda and Sucampo, a wholly-owned subsidiary of Mallinckrodt, and (iii) Trulance (plecanatide), marketed by Synergy Pharmaceuticals.

We believe that tenapanor may offer a significant benefit over currently marketed drugs like Amitiza, Linzess and Trulance in part because of the profile demonstrated in our Phase 3 program, which showed best-in-class efficacy results for the 9-of-12 week combined responder rates. Within the United States, there are approximately 11 million patients that suffer that suffer from IBS-C. There is significant unmet need for prescription medications, where, according a 2015 American Gastroenterological Association report, only 1 in 4 treated patients are very satisfied with the current FDA approved treatments in IBS-C.

### **Other GI Programs**

In addition to tenapanor for IBS-C, we have an early GI pipeline comprised of RDX8940, a minimally absorbed, oral TGR5 agonist for which we submitted an investigational new drug application, or IND, in late 2016; RDX011, our second-generation NHE3 inhibitor; and our RDX023 program for the development of gut-biased farnesoid X receptor, or FXR, agonists. While we are not currently actively developing these programs, they represent potential collaboration opportunities to support their continued development.

### **INTELLECTUAL PROPERTY**

Our commercial success depends in part on our ability to obtain and maintain proprietary protection for our drug candidates, manufacturing and process discoveries, and other know-how, to operate without infringing the proprietary rights of others and to prevent others from infringing our proprietary rights. Our policy is to seek to protect our intellectual property by, among other methods, filing U.S. and foreign patent applications related to our proprietary technology and inventions that are important to the development and operation of our business. We also rely on trade secrets and careful monitoring of our proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

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 our product candidates will be protectable or remain protected by enforceable patents. We cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of our issued patents will provide sufficient proprietary protection from competitors. Any patents that we hold may be challenged, circumvented or invalidated by third parties. If third parties prepare and file patent applications in the United States that also claim technology or therapeutics to which we have rights, we may have to participate in interference proceedings in the U.S. Patent and Trademark Office, or USPTO, to determine priority of invention, which would result in substantial costs to us even if the eventual outcome is favorable to us.

The term of individual patents depends upon the legal term of the patents in countries in which they are obtained. In most countries, including the United States, the patent term is generally 20 years from the earliest date of filing a non-provisional patent application in the applicable country. In the United States, a patent's term may, in certain cases, be lengthened by patent term adjustment, which compensates a patentee for administrative delays by the USPTO in examining and granting a patent, or may be shortened if a patent is terminally disclaimed over a commonly owned patent or a patent naming a common inventor and having an earlier expiration date.

In addition, in the United States, the Hatch-Waxman Act permits a patent term extension of up to five years beyond the expiration of a U.S. patent as partial compensation for the patent term lost during the FDA regulatory review process occurring while the patent is in force. A patent extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval, and only one patent applicable to each regulatory review period may be extended and only those claims covering the approved drug, a method for using it or a method for manufacturing it may be extended. Similar provisions are available in the European Union and certain other foreign jurisdictions to extend the term of a patent that covers an approved drug.

We may rely, in some circumstances, on trade secrets to protect our technology. Although we take steps to protect our proprietary information and trade secrets, including through contractual means with our employees and consultants, third parties may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets or disclose our technology. Thus, we may not be able to meaningfully protect our trade secrets. It is our policy to require our employees, consultants, outside scientific collaboration partners, 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 concerning the business or financial affairs 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, and which are related to our current or planned

business or research and development or made during the normal working hours, on our premises or using our equipment or proprietary information, are our exclusive property.

#### ***NHE3 patents***

Our NHE3 patent portfolio is wholly owned by us. This portfolio includes four issued U.S. patents, two issued Japanese patents, two issued Korean patents and one issued patent in each of the following territories: Australia, China, the European Union, Mexico, and Israel. These issued patents cover the composition and methods of using tenapanor and are predicted, without extension or adjustment, to expire in 2029. We have related national patent applications pending in Europe, China, India, Israel and a number of other countries. Any patents issuing from these patent applications are also predicted without extension or adjustment to expire in 2029.

Additional U.S. and international patent applications are pending covering additional methods of using tenapanor, and composition of matter and methods of using compounds that we believe may be follow on compounds to tenapanor.

#### ***Other program patents***

We have patent applications pending in the United States and internationally that cover the compositions and methods of using our TGR5 agonists, our FXR agonists and compounds in our RDX013 program.

### **MANUFACTURING**

To date, we have relied upon third-party contract manufacturing organizations, or CMOs, to manufacture both the active pharmaceutical ingredient and final drug product dosage forms of our potential drug candidates used as clinical trial material. We expect that we will continue to rely upon CMOs for the manufacture of our clinical trial materials and for our commercial product requirements, when and if regulatory approval is received. Our license agreements with KHK and Fosun Pharma require us to supply active pharmaceutical ingredient and final drug product dosage forms of tenapanor for their use in the development of tenapanor in each of their respective territories, and we are further obligated to continue to supply active pharmaceutical ingredient to support their commercialization of tenapanor in each of their territories. We expect that we will use CMOs to satisfy our supply obligations to our collaboration partners.

### **GOVERNMENT REGULATION/FDA**

The FDA and comparable regulatory authorities in state and local jurisdictions and in other countries impose substantial and burdensome requirements upon companies involved in the clinical development, manufacture, marketing and distribution of drugs. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion, distribution, post-approval monitoring and reporting, sampling, and export and import of our product candidates.

In the United States, the FDA regulates drug products under the Federal Food, Drug, and Cosmetic Act, or FDCA, and the FDA's implementing regulations. If we fail to comply with applicable FDA or other requirements at any time during the drug development process, the approval process or after approval, we may become subject to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, license suspension or revocation, withdrawal of an approval, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties or criminal prosecution. Any FDA enforcement action could have a material adverse effect on us. FDA approval is required before any new unapproved drug or dosage form, including a new use of a previously approved drug, can be marketed in the United States.

The process required by the FDA before a drug may be marketed in the United States generally involves:

- completion of extensive preclinical laboratory tests, preclinical animal studies and formulation studies, some performed in accordance with the FDA's current Good Laboratory Practice, or GLP, regulations;
- submission to the FDA of an Investigational New Drug, or IND, application which must become effective before human clinical trials in the United States may begin;
- approval by an independent institutional review board, or IRB, or ethics committee at each clinical trial site before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with Good Clinical Practice, or GCP, regulations to establish the safety and efficacy of the drug candidate for each proposed indication;
- submission to the FDA of a new drug application, or NDA;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current Good Manufacturing Practice, or cGMP, regulations;
- satisfactory completion of a potential review by an FDA advisory committee, if applicable; and
- FDA review and approval of the NDA prior to any commercial marketing, sale or commercial shipment of the drug.

The preclinical and clinical testing and approval process requires substantial time, effort and financial resources, and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all. Nonclinical tests include laboratory evaluation of product chemistry, formulation, stability and toxicity, as well as animal studies to assess the characteristics and potential safety and efficacy of the product. The results of preclinical tests, together with manufacturing information, analytical data and a proposed clinical trial protocol and other information, are submitted as part of an IND to the FDA. Some preclinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions relating to the IND and places the clinical trial on a clinical hold, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. A separate submission to an existing IND must also be made for each successive clinical trial conducted during product development.

Clinical trials involve the administration of the investigational drug to human subjects under the supervision of qualified investigators. Clinical trials are conducted under protocols detailing, among other things, the objectives of the clinical trial, the parameters to be used in monitoring safety and the effectiveness criteria to be used. Each protocol must be submitted to the FDA as part of the IND.

An independent IRB or ethics committee for each medical center proposing to conduct a clinical trial must also review and approve a plan for any clinical trial before it can begin at that center and the IRB must monitor the clinical trial until it is completed. The FDA, the IRB, or the sponsor may suspend or discontinue a clinical trial at any time on various grounds, including a finding that the subjects are being exposed to an unacceptable health risk. Clinical testing also must satisfy extensive GCP requirements, including the requirements for informed consent.

All clinical research performed in the United States in support of an NDA must be authorized in advance by the FDA under the IND regulations and procedures described above. However, a sponsor who wishes to conduct a clinical trial outside the United States may, but need not, obtain FDA authorization to conduct the clinical trial under an IND. If a foreign clinical trial is not conducted under an IND, the sponsor may submit data from the clinical trial to the FDA in



support of an NDA so long as the clinical trial is conducted in compliance with GCP and if the FDA is able to validate the data from the study through an onsite inspection, if necessary. GCP includes review and approval by an independent ethics committee, such as an IRB, and obtaining and documenting the freely given informed consent of the subject before study initiation. If the applicant seeks approval of an NDA solely on the basis of foreign data, the FDA will only accept such data if they are applicable to the U.S. population and U.S. medical practice, the studies have been performed by clinical investigators of recognized competence, and the data may be considered valid without the need for an on-site inspection by the FDA, or if the FDA considers such an inspection to be necessary, the FDA is able to validate the data through an on-site inspection or through other appropriate means.

### ***Clinical trials***

The clinical investigation of a new drug is typically conducted in three or four phases, which may overlap or be combined, and generally proceed as follows.

- *Phase 1:* Clinical trials are initially conducted in a limited population of subjects to test the drug candidate for safety, dose tolerance, absorption, metabolism, distribution and excretion in healthy humans or, on occasion, in patients with severe problems or life-threatening diseases to gain an early indication of its effectiveness.
- *Phase 2:* Clinical trials are generally conducted in a limited patient population to evaluate dosage tolerance and appropriate dosage, identify possible adverse effects and safety risks, and evaluate preliminarily the efficacy of the drug for specific targeted indications in patients with the disease or condition under study.
- *Phase 3:* Clinical trials are typically conducted when Phase 2 clinical trials demonstrate that a dose range of the product candidate is effective and has an acceptable safety profile. Phase 3 clinical trials are commonly referred to as “pivotal” studies, which typically denotes a study which presents the data that the FDA or other relevant regulatory agency will use to determine whether or not to approve a drug. Phase 3 clinical trials are generally undertaken with large numbers of patients, such as groups of several hundred to several thousand, to further evaluate dosage, to provide substantial evidence of clinical efficacy and to further test for safety in an expanded and diverse patient population at multiple, geographically-dispersed clinical trial sites.
- *Phase 4:* In some cases, the FDA may condition approval of an NDA for a product candidate on the sponsor’s agreement to conduct additional clinical trials after NDA approval. In other cases, a sponsor may voluntarily conduct additional clinical trials post approval to gain more information about the drug. Such post approval trials are typically referred to as Phase 4 clinical trials.

Concurrent with clinical trials, companies usually complete additional nonclinical studies and must also develop additional information about the chemistry and physical characteristics of the drug and finalize a process for manufacturing the drug in commercial quantities in accordance with GMP requirements. The manufacturing process must be capable of consistently producing quality batches of the drug candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final drug product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the drug candidate does not undergo unacceptable deterioration over its shelf life.

The FDA, the IRB or the clinical trial sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects are being exposed to an unacceptable health risk.

Additionally, some clinical trials are overseen by an independent group of qualified experts organized by the clinical trial sponsor, known as a data safety monitoring board or committee. This group provides authorization for whether or not a trial may move forward at designated check points based on access to certain data from the study. We may also suspend or terminate a clinical trial based on evolving business objectives and/or competitive climate.

### *New drug applications*

The results of preclinical studies and of the clinical trials, together with other detailed information, including extensive manufacturing information and information on the composition of the drug, are submitted to the FDA in the form of an NDA requesting approval to market the drug for one or more specified indications. The FDA reviews an NDA to determine, among other things, whether a drug is safe and effective for its intended use.

Under the Prescription Drug User Fee Act, the FDA has a goal of responding to standard review NDAs of new molecular entities within ten months after the 60-day filing review period, or six months after the 60-day filing review period for priority review NDAs, but this timeframe is often extended by FDA requests for additional information or clarification. The FDA may refer the application to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations.

Before approving an application, the FDA will inspect the facility or the facilities at which the finished drug product, and sometimes the active pharmaceutical ingredient, or API, is manufactured, and will not approve the drug unless cGMP compliance is satisfactory. The FDA may also inspect the sites at which the clinical trials were conducted to assess their compliance, and will not approve the drug unless compliance with cGCP requirements is satisfactory.

After the FDA evaluates the NDA and conducts inspections of manufacturing facilities where the drug product and/or its API will be produced, it may issue an approval letter or a Complete Response Letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications. A Complete Response Letter indicates that the review cycle of the application is complete and the application is not ready for approval. A Complete Response Letter may require additional clinical data and/or an additional pivotal Phase 3 clinical trial(s), and/or other significant, expensive and time-consuming requirements related to clinical trials, preclinical studies or manufacturing. Even if such additional information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. The FDA could also approve the NDA with a Risk Evaluation and Mitigation Strategy, or REMS, to mitigate risks, which could include medication guides, physician communication plans, or elements to assure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. The FDA also may condition approval on, among other things, changes to proposed labeling, development of adequate controls and specifications, or a commitment to conduct one or more post-market studies or clinical trials. Such post-market testing may include Phase 4 clinical trials and surveillance to further assess and monitor the product's safety and effectiveness after commercialization. The FDA has the authority to prevent or limit further marketing of a drug based on the results of these post-marketing programs. Once the FDA approves an NDA, or supplement thereto, the FDA may withdraw the approval if ongoing regulatory requirements are not met or if safety problems are identified after the drug reaches the market.

Drugs may be marketed only for the FDA approved indications and in accordance with the provisions of the approved labeling. Further, if there are any modifications to the drug, including changes in indications, labeling, or manufacturing processes or facilities, the applicant may be required to submit and obtain FDA approval of a new NDA or NDA supplement, which may require the applicant to develop additional data or conduct additional preclinical studies and clinical trials.

The testing and approval processes require substantial time, effort and financial resources, and each may take several years to complete. The FDA may not grant approval on a timely basis, or at all. Even if we believe a clinical trial has demonstrated safety and efficacy of one of our drug candidates for the proposed indication, the results may not be satisfactory to the FDA. Nonclinical and clinical data may be interpreted by the FDA in different ways, which could delay, limit or prevent regulatory approval. We may encounter difficulties or unanticipated costs in our efforts to secure necessary governmental approvals which could delay or preclude us from marketing drugs. The FDA may limit the indications for use or place other conditions on any approvals that could restrict the commercial application of the drugs. After approval, certain changes to the approved drug, such as adding new indications, manufacturing changes, or additional labeling claims are subject to further FDA review and approval. Depending on the nature of the change proposed, an NDA supplement must be filed and approved before the change may be implemented.

### ***Other regulatory requirements***

Any drugs manufactured or distributed by us or our collaboration partners pursuant to FDA approvals would be subject to continuing regulation by the FDA, including recordkeeping requirements and reporting of adverse experiences associated with the drug. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic announced and unannounced inspections by the FDA and certain state agencies for compliance with ongoing regulatory requirements, including cGMP, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Failure to comply with the statutory and regulatory requirements can subject a manufacturer to possible legal or regulatory action, such as warning letters, suspension of manufacturing, seizure of product, injunctive action or possible civil penalties. We cannot be certain that we or our present or future third-party manufacturers or suppliers will be able to comply with the cGMP regulations and other ongoing FDA regulatory requirements. If we or our present or future third-party manufacturers or suppliers are not able to comply with these requirements, the FDA may, among other things, halt our clinical trials, require us to recall a drug from distribution or withdraw approval of the NDA for that drug.

The FDA closely regulates the post-approval marketing and promotion of drugs, including standards and regulations for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the Internet. A company can make only those claims relating to safety and efficacy that are approved by the FDA. Failure to comply with these requirements can result in, among other things, adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties. Physicians may prescribe legally available drugs for uses that are not described in the product's labeling and that differ from those tested by us and approved by the FDA. Such off-label uses are common across medical specialties. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, impose stringent restrictions on manufacturers' communications regarding off-label use.

### ***Hatch-Waxman Act***

Section 505 of the FDCA describes three types of marketing applications that may be submitted to the FDA to request marketing authorization for a new drug. A Section 505(b)(1) NDA is an application that contains full reports of investigations of safety and efficacy. A 505(b)(2) NDA is an application that contains full reports of investigations of safety and efficacy but where at least some of the information required for approval comes from investigations that were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted. This regulatory pathway enables the applicant to rely, in part, on the FDA's prior findings of safety and efficacy for an existing product, or published literature, in support of its application. Section 505(j) establishes an abbreviated approval process for a generic version of approved drug products through the submission of an Abbreviated New Drug Application, or ANDA. An ANDA provides for marketing of a generic drug product that has the same active ingredients, dosage form, strength, route of administration, labeling, performance characteristics and intended use, among other things, to a previously approved product. ANDAs are termed "abbreviated" because they are generally not required to include nonclinical (animal) and clinical (human) data to establish safety and efficacy. Instead, generic applicants must scientifically demonstrate that their product is bioequivalent to, or performs in the same manner as, the innovator drug through in vitro, in vivo, or other testing. The generic version must deliver the same amount of active ingredients into a subject's bloodstream in the same amount of time as the innovator drug and can often be substituted by pharmacists under prescriptions written for the reference listed drug. In seeking approval for a drug through an NDA, applicants are required to list with the FDA each patent with claims that cover the applicant's drug or a method of using the drug. Upon approval of a drug, each of the patents listed in the application for the drug is then published in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book. Drugs listed in the Orange Book can, in turn, be cited by potential competitors in support of approval of an ANDA or 505(b)(2) NDA.

Upon submission of an ANDA or a 505(b)(2) NDA, an applicant must certify to the FDA that (1) no patent information on the drug product that is the subject of the application has been submitted to the FDA; (2) such patent has expired; (3) the date on which such patent expires; or (4) such patent is invalid or will not be infringed upon by the manufacture, use or sale of the drug product for which the application is submitted. Generally, the ANDA or

505(b)(2) NDA cannot be approved until all listed patents have expired, except where the ANDA or 505(b)(2) NDA applicant challenges a listed patent through the last type of certification, also known as a paragraph IV certification. If the applicant does not challenge the listed patents or indicates that it is not seeking approval of a patented method of use, the ANDA or 505(b)(2) NDA application will not be approved until all of the listed patents claiming the referenced product have expired.

If the ANDA or 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must send notice of the Paragraph IV certification to the NDA and patent holders once the application has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement lawsuit in response to the notice of the paragraph IV certification. If the paragraph IV certification is challenged by an NDA holder or the patent owner(s) asserts a patent challenge to the paragraph IV certification, the FDA may not approve that application until the earlier of 30 months from the receipt of the notice of the paragraph IV certification, the expiration of the patent, when the infringement case concerning each such patent was favorably decided in the applicant's favor or settled, or such shorter or longer period as may be ordered by a court. This prohibition is generally referred to as the 30-month stay. In instances where an ANDA or 505(b)(2) NDA applicant files a paragraph IV certification, the NDA holder or patent owner(s) regularly take action to trigger the 30-month stay, recognizing that the related patent litigation may take many months or years to resolve. Thus, approval of an ANDA or 505(b)(2) NDA could be delayed for a significant period of time depending on the patent certification the applicant makes and the reference drug sponsor's decision to initiate patent litigation.

The Hatch-Waxman Act establishes periods of regulatory exclusivity for certain approved drug products, during which the FDA cannot approve (or in some cases accept) an ANDA or 505(b)(2) application that relies on the branded reference drug. For example, the holder of an NDA, including a 505(b)(2) NDA, may obtain five years of exclusivity upon approval of a new drug containing new chemical entities, or NCEs, that have not been previously approved by the FDA. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the therapeutic activity of the drug substance. During the exclusivity period, the FDA may not accept for review an ANDA or a 505(b)(2) NDA submitted by another company that contains the previously approved active moiety. However, an ANDA or 505(b)(2) NDA may be submitted after four years if it contains a certification of patent invalidity or non-infringement.

The Hatch-Waxman Act also provides three years of marketing exclusivity to the holder of an NDA (including a 505(b)(2) NDA) for a particular condition of approval, or change to a marketed product, such as a new formulation for a previously approved product, if one or more new clinical studies (other than bioavailability or bioequivalence studies) was essential to the approval of the application and was conducted/sponsored by the applicant. This three-year exclusivity period protects against FDA approval of ANDAs and 505(b)(2) NDAs for the condition of the new drug's approval. As a general matter, the three-year exclusivity does not prohibit the FDA from approving ANDAs or 505(b)(2) NDAs for generic versions of the original, unmodified drug product. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA; however, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the preclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and efficacy.

#### ***Fraud and abuse laws***

In the United States, the research, manufacturing, distribution, sale and promotion of drug products and medical devices are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare & Medicaid Services, or CMS, other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice, state Attorneys General, and other state and local government agencies. These laws include but are not limited to, the Anti-Kickback Statute, the federal False Claims Act, the federal Physician Payments Sunshine Act, and other state and federal laws and regulations.

The Anti-Kickback Statute makes it illegal for any person, including a prescription drug manufacturer (or a party acting on its behalf) to knowingly and willfully solicit, receive, offer, or pay any remuneration that is intended to induce the referral of business, including the purchase, order, or prescription of a particular drug, for which payment may be made under a federal healthcare program, such as Medicare or Medicaid. Violations of this law are punishable

by up to five years in prison, criminal fines, administrative civil money penalties, and exclusion from participation in federal healthcare programs. In addition, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. Moreover, the Affordable Care Act provides 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 False Claims Act.

The federal False Claims Act prohibits anyone from knowingly presenting, or causing to be presented, for payment to federal programs (including Medicare and Medicaid) claims for items or services, including drugs, that are false or fraudulent, claims for items or services not provided as claimed, or claims for medically unnecessary items or services. Although we would not submit claims directly to payors, manufacturers can be held liable under these laws if they are deemed to “cause” the submission of false or fraudulent claims by, for example, providing inaccurate billing or coding information to customers or promoting a product off-label. In addition, our future activities relating to the reporting of wholesaler or estimated retail prices for our products, the reporting of prices used to calculate Medicaid rebate information and other information affecting federal, state, and third-party reimbursement for our products, and the sale and marketing of our products, are subject to scrutiny under this law. For example, pharmaceutical companies have been prosecuted under the federal False Claims Act in connection with their off-label promotion of drugs. Penalties for a False Claims Act violation include three times the actual damages sustained by the government, plus mandatory civil penalties of between \$11,181 and \$22,363 for each separate false claim, the potential for exclusion from participation in federal healthcare programs, and, although the federal False Claims Act is a civil statute, conduct that results in a False Claims Act violation may also implicate various federal criminal statutes. If the government were to allege that we were, or convict us of, violating these false claims laws, we could be subject to a substantial fine and may suffer a decline in our stock price. In addition, private individuals have the ability to bring actions under the federal False Claims Act and certain states have enacted laws modeled after the federal False Claims Act.

In addition to the laws described above, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively known as the Affordable Care Act, also imposed new reporting requirements on drug manufacturers for payments made to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Failure to submit required information may result in civil monetary penalties of up to an aggregate of \$165,786 per year (or up to an aggregate of \$1.105 million per year for “knowing failures”), for all payments, transfers of value or ownership or investment interests that are not timely, accurately and completely reported in an annual submission. Manufacturers must submit reports by the 90th day of each subsequent calendar year.

Many states have also adopted laws similar to the federal laws discussed above. Some of these state prohibitions apply to the referral of patients for healthcare services reimbursed by any insurer, not just federal healthcare programs such as Medicare and Medicaid. There has also been a recent trend of increased regulation of payments made to physicians and other healthcare providers. Certain states mandate implementation of compliance programs, impose restrictions on drug manufacturers’ marketing practices and/or require the tracking and reporting of pricing and marketing information as well as gifts, compensation and other remuneration to physicians. Many of these laws contain ambiguities as to what is required to comply with such laws, which may affect our sales, marketing, and other promotional activities by imposing administrative and compliance burdens on us. In addition, given the lack of clarity with respect to these laws and their implementation, our reporting actions could be subject to the penalty provisions of the pertinent state and perhaps federal, authorities.

Because we intend to commercialize products that could be reimbursed under a federal healthcare program and other governmental healthcare programs, we plan to develop a comprehensive compliance program that establishes internal controls to facilitate adherence to the rules and program requirements to which we will or may become subject. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Due to the breadth of these laws, the absence of guidance in the form of regulations or court decisions, and the potential for additional legal or regulatory change in this area, it is possible that our future sales and marketing practices and/or our future relationships with physicians and other healthcare providers might be challenged under such laws. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management’s attention from the operation of our business.

### ***Third-party coverage and reimbursement***

Sales of pharmaceutical products depend in significant part on the availability of coverage and adequate reimbursement by third-party payors, such as state and federal governments, including Medicare and Medicaid, and commercial managed care providers. In the United States, no uniform policy of coverage and reimbursement for drug products exists among third-party payors. Accordingly, decisions regarding the extent of coverage and amount of reimbursement to be provided for our product candidates, if approved, will be made on a payor by payor basis. As a result, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our product candidates to each payor separately, with no assurance that coverage and adequate reimbursement will be obtained. Third-party payors may limit coverage to specific drug products on an approved list, or formulary, which might not include all of the FDA-approved drugs for a particular indication. A decision by a third-party payor not to cover our product candidates could reduce physician utilization of our products once approved and have a material adverse effect on our future sales, results of operations and financial condition. Moreover, a payor's decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development.

In addition, in July 2010, CMS released its final rule to implement a bundled prospective payment system for the treatment of ESRD patients as required by the Medicare Improvements for Patients and Providers Act, or MIPPA. The bundled payment includes all renal dialysis services furnished for outpatient maintenance dialysis, including ESRD-related drugs and biologicals. The final rule delayed the inclusion of oral medications without intravenous equivalents in the bundled payment until January 1, 2014 and in April 2014, due to subsequent legislative amendments, CMS provided that such inclusion will remain delayed until January 1, 2025. Unless additional Congressional action is taken, beginning in 2025 ESRD-related drugs will be included in the bundle and separate Medicare reimbursement will no longer be available for such drugs, as it is today under Medicare Part D. While it is too early to project the full impact that bundling may have on drugs for the treatment of hyperphosphatemia, the impact could potentially cause dramatic price reductions for tenapanor, if approved.

### ***Healthcare reform***

In March 2010, Congress passed and President Obama signed into law, the Patient Protection and Affordable Care Act, a healthcare reform measure, often called, the Affordable Care Act. The Affordable Care Act substantially changes the way healthcare is financed by both governmental and private insurers, and significantly impacts the pharmaceutical industry.

The Affordable Care Act contains a number of provisions, including those governing enrollment in federal healthcare programs, reimbursement changes and fraud and abuse measures, which have impacted existing government healthcare programs and have resulted in the development of new programs, including Medicare payment for performance initiatives and improvements to the physician quality reporting system and feedback program.

Additionally, the Affordable Care Act:

- increases the minimum level of Medicaid rebates payable by manufacturers of brand-name drugs from 15.1% to 23.1%;
- requires collection of rebates for drugs paid by Medicaid managed care organizations;
- expands eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for certain individuals with income at or below 133% of the federal poverty level, thereby potentially increasing a manufacturer's Medicaid rebate liability;
- expands access to commercial health insurance coverage through new state-based health insurance marketplaces, or exchanges;

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- requires manufacturers to participate in a coverage gap discount program, under which they must agree to offer 50 percent point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D, beginning January 2011; and
- imposes a non-deductible annual fee on pharmaceutical manufacturers or importers who sell "branded prescription drugs" to specified federal government programs.

Since its enactment, there have been judicial and Congressional challenges to certain aspects of the Affordable Care Act. We expect that the new presidential administration and U.S. Congress will likely continue to seek to modify, repeal, or otherwise invalidate all or certain provisions of, the Affordable Care Act. There is still uncertainty with respect to the impact President Trump's administration and the U.S. Congress may have, if any, and any changes will likely take time to unfold, and could have an impact on coverage and reimbursement for healthcare items and services covered by plans that were authorized by the Affordable Care Act.

In addition, other legislative changes have been proposed and adopted in the United States since the Affordable Care Act was enacted. For example, in August 2011, the Budget Control Act of 2011, among other things, included aggregate reductions to Medicare payments to providers of 2 percent per fiscal year, which went into effect on April 1, 2013, and, due to subsequent legislative amendments, will remain in effect through 2025 unless additional Congressional action is taken. In January 2013, the American Taxpayer Relief Act, among other things, further reduced Medicare payments to several providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Additionally, individual states have also become increasingly active in passing legislation and implementing regulations designed to control pharmaceutical product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access, and to encourage importation from other countries and bulk purchasing. Recently, there has also been heightened governmental scrutiny over the manner in which drug manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed bills designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. These new laws and the regulations and policies implementing them, as well as other healthcare reform measures that may be adopted in the future, may have a material adverse effect on our industry generally and on our ability to successfully develop and commercialize our products.

### ***Other regulations***

We are also subject to numerous federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances. We may incur significant costs to comply with such laws and regulations now or in the future.

### **EMPLOYEES**

As of December 31, 2017, we had 75 full-time employees, including a total of 15 employees with Ph.D. degrees. Within our workforce, 54 employees are engaged in research and development and the remaining 21 in general management and administration, including finance, legal, and business development. None of our employees are represented by labor unions or covered by collective bargaining agreements. We believe that we maintain good relations with our employees.

### **RESEARCH AND DEVELOPMENT**

Our research and development costs were \$75.5 million, \$94.2 million and \$39.9 million in the years ended December 31, 2017, 2016 and 2015, respectively. See "ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" for additional detail regarding our research and development activities.

## CORPORATE INFORMATION

We were incorporated in Delaware on October 17, 2007, under the name Nteryx and changed our name to Ardelyx, Inc. in June 2008. We operate in only one business segment, which is the research, development and commercialization of biopharmaceutical products. See Note 1 to our financial statements included in this Annual Report on Form 10-K. Our principal offices are located at 34175 Ardenwood Blvd., Suite 200, Fremont, CA 94555, and our telephone number is (510) 745-1700. Our website address is [www.ardelyx.com](http://www.ardelyx.com).

We file electronically with the Securities and Exchange Commission, or SEC, our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended. We make available on our website at [www.ardelyx.com](http://www.ardelyx.com), free of charge, copies of these reports, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The public may read or copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street NE, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that website is [www.sec.gov](http://www.sec.gov).

### ITEM 1A. RISK FACTORS

*Our business involves significant risks, some of which are described below. You should carefully consider these risks, as well as other information in this Annual Report on Form 10-K, including our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations, cash flows, the trading price of our common stock and our growth prospects. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.*

#### **Risks Related to Our Limited Operating History, Financial Condition and Capital Requirements**

*We have a limited operating history, have incurred significant losses since our inception and we will incur losses in the future, which makes it difficult to assess our future viability.*

We are a clinical-stage biopharmaceutical company with a limited operating history. Biopharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. To date, we have focused substantially all of our efforts on our research and development activities, including developing tenapanor and developing our proprietary drug discovery and design platform. To date, we have not commercialized any products or generated any revenue from the sale of products.

We are not profitable and have incurred losses in each year since our inception in October 2007, and we do not know whether or when we will become profitable. We have only a limited operating history upon which to evaluate our business and prospects. We continue to incur significant research, development and other expenses related to our ongoing operations. As of December 31, 2017, we had an accumulated deficit of \$278.2 million.

We expect that our operating losses will substantially increase for the foreseeable future as we prepare for the potential commercialization of, and incur manufacturing and development costs for, tenapanor, including costs associated with completing the ongoing Phase 3 development of tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis, preparing the new drug application, or NDA, for submission to the U.S. Food and Drug Administration, or FDA, to request marketing authorization for tenapanor for the treatment of patients with IBS-C, and continuing our discovery and research activities.

Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. Further, the net losses we incur may fluctuate significantly from quarter to quarter and year to year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance.



We have substantial net operating loss and tax credit carryforwards for Federal and California income tax purposes. Such net operating losses and tax credits carryforwards may be reduced as a result of certain intercompany restructuring transactions. In addition, the future utilization of such net operating loss and tax credit carryforwards and credits will be subject to limitations, pursuant to Internal Revenue Code Sections 382 and 383, as a result of ownership changes that have occurred previously and additional limitations may be applicable as a result of ownership changes that could occur in the future.

***We have never generated any revenue from product sales and may never be profitable.***

We have no products approved for sale and have never generated any revenue from product sales. Our ability to generate revenue from product sales and achieve profitability depends on our ability to successfully complete the development of and obtain the regulatory and marketing approvals necessary to commercialize tenapanor for one or more indications, either on our own, or with one or more collaboration partners. We do not anticipate generating revenue from product sales for the foreseeable future. Our ability to generate future revenue from product sales or pursuant to milestone payments depends heavily on many factors, including but not limited to:

- the successful completion of nonclinical and clinical development of tenapanor;
- obtaining regulatory approvals for tenapanor, either on our own, or with one or more collaboration partners;
- our ability to successfully commercialize tenapanor, either on our own, or with one or more collaboration partners;
- developing a sustainable and scalable manufacturing process for tenapanor and establishing and maintaining supply and manufacturing relationships with third parties that can provide an adequate (in amount and quality) supply of product to support the market demand for tenapanor, if approved;
- obtaining market acceptance of tenapanor, if approved, as a viable treatment option for the indications for which it is approved;
- addressing any competing technological and market developments;
- identifying, assessing, acquiring, in-licensing and/or developing new product candidates;
- negotiating favorable terms in any collaboration partnership, licensing or other arrangements into which we may enter;
- maintaining, protecting, and expanding our portfolio of intellectual property rights, including patents, trade secrets, and know-how, and our ability to develop, manufacture and commercialize our product candidates and products without infringing intellectual property rights of others; and
- attracting, hiring, and retaining qualified personnel.

In cases where we are successful in obtaining regulatory approvals to market tenapanor for one or more indications, our revenue will be dependent, in part, upon the size of the markets in the territories for which regulatory approval is granted, the accepted price for the product, the ability to get reimbursement at any price and whether we are commercializing the product or the product is being commercialized by a collaboration partner, and in such case, whether we have royalty and/or co-promotion rights for that territory. If the number of patients suitable for tenapanor is not as significant as we estimate, the indications approved by regulatory authorities are narrower than we expect, or the reasonably accepted population for treatment is narrowed by competition, physician choice or treatment guidelines, we may not generate significant revenue from the sale of tenapanor, even if approved. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our failure to generate revenue from product

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sales would likely depress our market value and could impair our ability to raise capital, expand our business, discover or develop other product candidates or continue our operations. A decline in the value of our common stock could cause our stockholders to lose all or part of their investment.

***We will require substantial additional financing to achieve our goals, and the inability to access this necessary capital when needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our pre-commercialization efforts for tenapanor and our other product development and platform development activities.***

Since our inception, most of our resources have been dedicated to our research and development activities, including developing our clinical product candidate tenapanor and developing our proprietary drug discovery and design platform. We believe that we will continue to expend substantial resources for the foreseeable future, including costs associated with completing the clinical program for tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis, research and development, conducting preclinical studies and clinical trials for our other programs, obtaining regulatory approvals, developing and maintaining scalable manufacturing processes for our product candidates and sales and marketing. Because the outcome of any clinical trial and/or regulatory approval process is highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully complete the development, regulatory approval process and commercialization or co-promotion of any of our product candidates. Our future funding requirements will depend on many factors, including, but not limited to:

- the progress, timing, scope, results and costs of our Phase 3 clinical trial programs evaluating tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis, the submission of an NDA with the FDA to request marketing authorization for tenapanor for the treatment of IBS-C, as well as our decision whether or not to pursue other indications for tenapanor;
- our ability to successfully commercialize tenapanor, either alone or with one or more collaboration partners;
- the manufacturing costs of our product candidates, and the availability of one or more suppliers for our product candidates at reasonable costs, both for clinical and commercial supply;
- the selling and marketing costs associated with tenapanor, including the cost and timing of building our sales and marketing capabilities, should we elect to do so;
- our ability to maintain our existing collaboration partnerships and to establish additional collaboration partnerships, in-license/out-license, joint ventures or other similar arrangements and the financial terms of such agreements;
- the timing, receipt, and amount of sales of, or royalties on, tenapanor, if any;
- the sales price and the availability of adequate third-party reimbursement for tenapanor, if approved;
- the cash requirements of any future acquisitions or discovery of product candidates;
- the number and scope of preclinical and discovery programs that we decide to pursue or initiate, and any clinical trials we decide to pursue for other product candidates;
- the time and cost necessary to respond to technological and market developments; and
- the costs of filing, prosecuting, maintaining, defending and enforcing any patent claims and other intellectual property rights, including litigation costs and the outcome of such litigation, including costs of defending any claims of infringement brought by others in connection with the development, manufacture or commercialization of tenapanor or any of our product candidates.

Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available to us on a timely basis, we may be required to delay, limit, reduce or terminate our research activities, preclinical and clinical trials for our product candidates and our establishment and maintenance of sales and marketing capabilities or other activities that may be necessary to commercialize tenapanor, either alone or with collaboration partners. Additionally, our inability to access capital on a timely basis and on terms that are acceptable to us may force us to restructure certain aspects of our business or identify and complete one or more strategic collaborations or other transactions in order to fund the development or commercialization of tenapanor or certain of our product candidates through the use of alternative structures.

#### **Risks Related to Our Business**

***We are substantially dependent on the success of our lead product candidate, tenapanor, which may not be successful in further nonclinical studies or clinical trials, receive regulatory approval or be successfully commercialized.***

To date, we have invested a significant amount of our efforts and financial resources in the research and development of tenapanor, which is currently our lead product candidate. The clinical and commercial success of tenapanor will depend on a number of factors, including the following:

- our ability to, in a timely manner and under terms that are acceptable to us, establish a collaborative relationship for the commercialization of tenapanor for the treatment of IBS-C in the United States;
- the ability of the third-party manufacturers we contract with to successfully execute and scale up the manufacturing processes for tenapanor, which has not yet been demonstrated, and to manufacture supplies of tenapanor and to develop, validate and maintain commercially viable manufacturing processes that are compliant with cGMP, requirements;
- whether the FDA or foreign regulatory authorities require additional nonclinical and/or clinical studies, which could delay the commercialization of tenapanor;
- whether the FDA or foreign regulatory authorities require us to conduct clinical trials in addition to those anticipated prior to approval to market tenapanor;
- whether we will be required to conduct clinical trials in addition to those anticipated to obtain adequate commercial pricing;
- the prevalence and severity of adverse side effects of tenapanor;
- whether tenapanor's safety and efficacy profile is satisfactory to the FDA and foreign regulatory authorities to gain marketing approval;
- the timely receipt of necessary marketing approvals from the FDA and foreign regulatory authorities;
- our ability, either alone, or with a collaboration partner, to successfully commercialize tenapanor, if approved for marketing and sale by the FDA or foreign regulatory authorities, including educating physicians and patients about the benefits, administration and use of tenapanor;
- achieving and maintaining compliance with all regulatory requirements applicable to tenapanor;
- acceptance of tenapanor as safe, effective and well-tolerated by patients and the medical community;
- our ability, alone or with collaboration partners, to manage the complex pricing and reimbursement negotiations associated with marketing the same product at different doses for separate indications, if

tenapanor is approved for marketing and sale by the FDA or foreign regulatory authorities for both IBS-C and hyperphosphatemia in dialysis patients;

- the availability, perceived advantages, relative cost, relative safety and relative efficacy of tenapanor compared to alternative and competing treatments;
- obtaining and sustaining an adequate level of coverage and reimbursement for tenapanor by third-party payors;
- enforcing intellectual property rights in and to tenapanor;
- avoiding third-party interference, opposition, derivation or similar proceedings with respect to our patent rights, and avoiding other challenges to our patent rights and patent infringement claims; and
- a continued acceptable safety and tolerability profile of tenapanor following approval.

As tenapanor is a first-in-class drug, there is a higher likelihood that approval may not be attained as compared to a class of drugs with approved products. While tenapanor met the primary endpoint in two Phase 3 clinical studies evaluating tenapanor for the treatment of patients with IBS-C, there can be no assurance that our NDA that we plan to submit for this indication, once submitted, will be accepted by FDA or that we will receive marketing authorization from FDA. Although tenapanor met the primary endpoint in the first Phase 3 clinical trial for the treatment of hyperphosphatemia in ESRD patients on dialysis, there can be no assurances that the second Phase 3 trial of tenapanor in this indication will achieve the primary endpoint, or that tenapanor will receive regulatory approval for this indication. Further, it may not be possible or practicable to demonstrate, or if approved, to market tenapanor on the basis of certain of the benefits we believe tenapanor possesses. For example, the reduction of serum phosphorus is currently an approvable endpoint in ESRD patients on dialysis, but not for the broader CKD patient population in the United States. If the number of patients in the market for tenapanor or the price that the market can bear is not as significant as we estimate, we may not generate sufficient revenue from sales of tenapanor, if approved. Accordingly, there can be no assurance that tenapanor will ever be successfully commercialized or that we will ever generate income from sales of tenapanor. If we are not successful in completing the development of, obtaining approval for, and commercializing tenapanor, or are significantly delayed in doing so, our business will be materially harmed.

***Clinical drug development involves a lengthy and expensive process with an uncertain outcome, and we may encounter substantial delays in our Phase 3 clinical study of tenapanor for the treatment of hyperphosphatemia. Furthermore, results of earlier studies and trials may not be predictive of future trial results.***

Before obtaining marketing approval from regulatory authorities for the sale of our product candidates, we must conduct extensive clinical studies to demonstrate the safety and efficacy of the product candidates in humans. 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. The results of preclinical and clinical studies of our product candidates may not be predictive of the results of later-stage clinical trials. An unexpected adverse event profile, or the results of drug-drug interaction studies, may present challenges for the future development and commercialization of a product candidate for a particular condition despite receipt of positive efficacy data in a clinical study. Although tenapanor met the primary endpoint in the first Phase 3 clinical trial for the treatment of hyperphosphatemia in ESRD patients on dialysis, there can be no assurances that the second Phase 3 trial results of tenapanor in that indication will show the desired safety and efficacy. A number of companies in the pharmaceutical, biopharmaceutical and biotechnology industries have suffered significant setbacks in advanced clinical trials for similar indications that we are pursuing due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier studies, and we cannot be certain that we will not face similar setbacks. Even if our Phase 3 program for tenapanor for the treatment of hyperphosphatemia is completed, and despite the completion of our Phase 3 program for tenapanor for IBS-C, the results for one or both indications may not be sufficient to obtain regulatory approval for tenapanor, or if such regulatory approval is obtained, the content of the

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label approved by regulatory authorities may materially and adversely impact our ability to commercialize the product for the approved indication.

We do not know whether our second Phase 3 clinical trial for tenapanor for the treatment of hyperphosphatemia will enroll an adequate number of patients on time or be completed on schedule, if at all. Clinical trials can be delayed or terminated for a variety of reasons, including delay or failure to:

- reach 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;
- obtain institutional review board, or IRB, approval at each site;
- recruit suitable patients in a timely manner to participate in our trials;
- have patients complete a trial or return for post-treatment follow-up;
- ensure that clinical sites observe trial protocol, comply with good clinical practices, or GCPs, or continue to participate in a trial;
- address any patient safety concerns that arise during the course of a trial;
- address any conflicts with new or existing laws or regulations; or
- initiate or add a sufficient number of clinical trial sites.

Patient enrollment is a significant factor in the timing of clinical trials and is affected by many factors, including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, competing clinical trials and clinicians' and patients' perceptions as to the potential advantages of the drug being studied in relation to other available therapies, including any new drugs or treatments that may be approved for the indications we are investigating.

We could also encounter delays if our Phase 3 clinical trial is suspended or terminated by us, by the IRBs of the institutions in which the trial is being conducted, or by the FDA or other regulatory authorities. Such authorities may suspend or terminate a clinical trial due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

Further, if there are delays in the completion of, or termination of, the Phase 3 clinical trial for tenapanor for the treatment of hyperphosphatemia, the commercial prospects of tenapanor for such indication may be harmed, and our ability to generate revenue from product sales of tenapanor for such indication will be delayed. In addition, any delays in completing the clinical trial will increase costs, slow down our approval process for tenapanor for hyperphosphatemia and jeopardize the ability to commence product sales and generate revenue from product sales for this indication. Any of these occurrences may significantly harm our business, financial condition and prospects. In addition, many of the factors that may cause, or lead to, a delay in the completion of the Phase 3 clinical trial may also ultimately lead to the denial of regulatory approval.

***Even if we successfully obtain regulatory approval for tenapanor, it may never achieve market acceptance, sufficient third-party coverage or reimbursement, or commercial success, which will depend, in part, upon the degree of acceptance among physicians, patients, patient advocacy groups, health care payors and the medical community.***

Even if tenapanor obtains FDA or other regulatory approvals, and is ultimately commercialized for one or more indications, it may not achieve market acceptance among physicians, patients, third-party payors, patient advocacy groups, and the medical community. Market acceptance of tenapanor, in the event that marketing approval is obtained, depends on a number of factors, including:

- with respect to tenapanor for IBS-C in the United States, our ability to obtain a collaboration partner for commercialization and the strength of such collaboration partner's marketing and distribution organizations;
- the efficacy demonstrated in clinical trials;
- the prevalence and severity of any side effects and overall safety and tolerability profile of the product;
- the clinical indications for which it is approved;
- advantages over new or traditional or existing therapies, including recently approved therapies or therapies that the physician community anticipate will be approved;
- acceptance by physicians, major operators of clinics and patients of tenapanor as a safe, effective and well-tolerated treatment;
- relative convenience and ease of administration of tenapanor;
- the potential and perceived advantages of tenapanor over current treatment options or alternative treatments, including future alternative treatments;
- the cost of treatment in relation to alternative treatments and willingness to pay for tenapanor, if approved, on the part of physicians and patients;
- the availability of alternative products and their ability to meet market demand; and
- the quality of our relationships with patient advocacy groups; and

Any failure by us to obtain a collaboration partner for the commercialization of tenapanor in the United States for IBS-C and any failure of tenapanor to achieve market acceptance, sufficient third-party coverage or reimbursement, or commercial success, should it receive regulatory approval, would adversely affect our results of operations.

***We currently have no sales organization. If we are unable to establish sales capabilities on our own or through third parties, we may not be able to commercialize tenapanor or any of our other product candidates.***

We currently do not have a sales organization. In order to commercialize or co-promote tenapanor or any of our other product candidates, we must enter collaborative relationships with one or more third parties, or build internal marketing, sales, distribution, managerial and other non-technical capabilities. There can be no assurances that we will be successful in establishing collaborative relationships in a timely manner or on terms that are acceptable to us. If tenapanor receives regulatory approval and we have not entered collaborative relationships for the commercialization of tenapanor in the United States, we would have to establish appropriate sales organizations with technical expertise supporting distribution capabilities to commercialize the product candidate, which will be expensive and time consuming, or delay the commercial launch of tenapanor for such indication. As a company, we have no prior experience in the marketing, sale and distribution of pharmaceutical products and there are significant risks involved in

building and managing a sales organization, including our ability to secure the capital necessary to fund such efforts on acceptable terms, hire, retain, and incentivize qualified individuals, generate sufficient sales leads, provide adequate training to sales and marketing personnel, comply with regulatory requirements applicable to the marketing and sale of drug products and effectively manage a geographically dispersed sales and marketing team.

If we are unable to enter collaborative relationships a timely manner, or on acceptable terms, and/or we fail or are delayed in the development of our internal sales, marketing and distribution capabilities, we may choose to delay the commercialization of our products and/or the commercialization of our products could be adversely impacted, and we may not be able to successfully commercialize our product candidates.

***We may not be successful in our efforts to develop our product candidates that are at an early stage of development, or expand our pipeline of product candidates, as a result of numerous factors, which may include the inability to access capital necessary to fund such efforts on acceptable terms.***

A key element of our strategy has been focused on the expansion of our pipeline of product candidates utilizing our proprietary drug discovery and design platform and to advance such product candidates through clinical development. In December 2016, we filed an IND to commence clinical development of RDX8940 in the United States. In August 2017, we completed a comprehensive strategic review of our operations, assessing several core areas, to optimally position the company to advance towards delivering on multiple significant opportunities with our late-stage portfolio and execute on our strategic objectives. This review resulted in the prioritization of resources to focus on the upcoming milestones for the late-stage programs, a delay in the development of a number of earlier-stage programs, including RDX8940, and a reduction in workforce. RDX8940 and those product candidates that are in the discovery and lead identification stages of preclinical development will require substantial preclinical and clinical development, testing and regulatory approval prior to commercialization, and we may not be able to access the capital necessary to fund such efforts on acceptable terms. Our inability to access capital in a timely manner or on acceptable terms to fund our early stage product candidates may force us to consider certain restructuring activities to enable the funding of those early assets through the use of alternative structures. In addition, of the large number of drugs in development, only a small percentage of such drugs successfully complete the FDA regulatory approval process and are commercialized. Accordingly, even if we are able to continue to fund our research and early stage development programs, there can be no assurance that any product candidates will reach the clinic or be successfully developed or commercialized.

Research programs to identify product candidates require substantial technical, financial and human resources, whether or not any product candidates are ultimately identified. Although our research and development efforts to date have resulted in several development programs, we may not be able to develop product candidates that are safe, effective and well-tolerated. Our research programs may initially show promise in identifying potential product candidates, and we may select candidates for development, yet we may fail to advance product candidates to clinical development for many reasons, including the following:

- we may be unable to access sufficient capital on acceptable terms to fund the development of all of our assets and as a result we may be forced to delay or terminate the development of certain product candidates, or to consider restructuring efforts to secure alternate funding for those assets;
- the research methodology used and our drug discovery and design platform may not be successful in identifying potential product candidates;
- competitors may develop alternatives that render our product candidates obsolete or less attractive;
- product candidates we develop may nevertheless be covered by third parties' patents or other exclusive rights;
- the market for a product candidate may change during our program so that the continued development of that product candidate is no longer reasonable;

- a product candidate may on further study be shown to have harmful side effects or other characteristics that indicate it is unlikely to be effective, well-tolerated or otherwise does not meet applicable regulatory or commercial criteria;
- a product candidate may not be capable of being produced in commercial quantities at an acceptable cost, or at all; and
- a product candidate may not be accepted as safe, effective and well-tolerated by patients, the medical community or third-party payors, if applicable.

Even if we are successful in continuing to expand our pipeline, through our own research and development efforts, the potential product candidates that we identify or for which we acquire rights may not be suitable for clinical development, including as a result of being shown to have harmful side effects or other characteristics that indicate that they are unlikely to receive marketing approval and achieve market acceptance. If we do not successfully develop and commercialize a product pipeline, we may not be able to generate revenue from product sales in future periods or ever achieve profitability.

***Our proprietary drug discovery and design platform, and, in particular, APECCS, is a new approach to the discovery, design and development of new product candidates and may not result in any products of commercial value.***

We have developed a proprietary drug discovery and design platform to enable the identification, screening, testing, design and development of new product candidates, and have developed APECCS as a component of this platform. We utilize APECCS in the design of our small molecules and to identify new and potentially novel targets in the GI tract. However, there can be no assurance that APECCS will be able to identify new targets in the GI tract or that any of these potential targets or other aspects of our proprietary drug discovery and design platform will yield product candidates that could enter clinical development and, ultimately, be commercially valuable.

***We rely on third parties to conduct some of our nonclinical studies and all of our clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may be unable to obtain regulatory approval for or commercialize our product candidates.***

We do not have the ability to independently conduct clinical trials and, in some cases, nonclinical studies. We rely on medical institutions, clinical investigators, contract laboratories, and other third parties, such as CROs, to conduct clinical trials on our product candidates. The third parties with whom we contract for execution of the clinical trials play a significant role in the conduct of these trials and the subsequent collection and analysis of data. However, these third parties are not our employees, and except for contractual duties and obligations, we control only certain aspects of their activities and have limited ability to control the amount or timing of resources that they devote to our programs. Although we rely, and will continue to rely, on these third parties to conduct some of our nonclinical studies and all of our clinical trials, we remain responsible for ensuring that each of our studies and clinical trials is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on third parties does not relieve us of our regulatory responsibilities. We, and these third parties are required to comply with current GLPs for nonclinical studies, and good clinical practices, or GCPs, for clinical studies. GLPs and GCPs are regulations and guidelines enforced by the FDA, the Competent Authorities of the Member States of the European Economic Area, or EEA, and comparable foreign regulatory authorities for all of our products in nonclinical and clinical development, respectively. Regulatory authorities enforce GCPs through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our third-party contractors fail to comply with applicable regulatory requirements, including GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, the European Medicines Agency, or EMA, or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. There can be no assurance that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.



***Our product candidates may cause undesirable side effects or have other properties that could delay our clinical trials, or delay or prevent regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following regulatory approval, if any. If tenapanor or any of our other product candidates receives marketing approval and we or others later identify undesirable side effects caused by the product candidate, the ability to market the product candidates could be compromised.***

Undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials, result in the delay or denial of regulatory approval by the FDA or other comparable foreign regulatory authorities or limit the commercial profile of an approved label. To date, patients treated with tenapanor have experienced drug-related side effects including diarrhea, nausea, vomiting, flatulence, abdominal discomfort, abdominal pain, abdominal distention and changes in electrolytes. In the event that trials conducted by us with tenapanor or trials we conduct with our other product candidates, reveal an unacceptable severity and prevalence of these or other side effects, such trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development of or deny approval of tenapanor, or any such other product candidate, for any or all targeted indications. Additionally, despite a positive efficacy profile, the prevalence and/or severity of these or other side effects could cause us to cease further development of a product candidate for a particular indication, or entirely. The drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in potential product liability claims. Any of these occurrences may harm our business, financial condition and prospects significantly.

In addition, in the event that any of our product candidates receives regulatory approval and we or others later identify undesirable side effects caused by one of our products, a number of potentially significant negative consequences could occur, including:

- regulatory authorities may withdraw their approval of the product or seize the product;
- we, or a collaboration partner, may be required to recall the product;
- additional restrictions may be imposed on the marketing of the particular product or the manufacturing processes for the product or any component thereof, including the imposition of a Risk Evaluation and Mitigation Strategies, or REMS, plan that may require creation of a Medication Guide outlining the risks of such side effects for distribution to patients, as well as elements to assure safe use of the product, such as a patient registry and training and certification of prescribers;
- we, or a collaboration partner, may be subject to fines, injunctions or the imposition of civil or criminal penalties;
- regulatory authorities may require the addition of labeling statements, such as a “black box” warning or a contraindication;
- we could be sued and held liable for harm caused to patients;
- the product may become less competitive; and
- our reputation may suffer

Any of the foregoing events could prevent us, or a collaboration partner, from achieving or maintaining market acceptance of a particular product candidate, if approved, and could result in the loss of significant revenue to us, which would materially and adversely affect our results of operations and business.

***We face substantial competition and our competitors may discover, develop or commercialize products faster or more successfully than us.***

The biotechnology and pharmaceutical industries are highly competitive, and we face significant competition from companies in the biotechnology, pharmaceutical and other related markets that are researching and marketing products designed to address diseases that we are currently developing products to treat. If approved for marketing by the FDA or other regulatory agencies, tenapanor, as well as our other product candidates, would compete against existing treatments.

For example, tenapanor will, if approved, compete directly with phosphate binders for the treatment of hyperphosphatemia in ESRD patients on dialysis. The various types of phosphate binders commercialized in the United States include the following:

- Calcium carbonate (many over-the-counter brands including Tums and Caltrate)
- Calcium acetate (several prescription brands including PhosLo and Phoslyra)
- Lanthanum carbonate (Fosrenol marketed by Shire)
- Sevelamer hydrochloride (Renagel, marketed by Sanofi)
- Sevelamer carbonate (Renvela, marketed by Sanofi)
- Sucroferic oxyhydroxide (Velphoro, marketed by Vifor Fresenius)
- Ferric citrate (Auryxia, marketed by Keryx)

The hydrochloride form of sevelamer, Renagel, was launched in the United States by Genzyme Corporation in 1998 prior to its acquisition by Sanofi, and the carbonate form, Renvela, was launched in 2008. Sanofi booked €802 million (\$0.98 billion) in worldwide sales of sevelamer during 2017. Generic sevelamer carbonate has been approved in certain jurisdictions in Europe since 2015 and in the U.S. market since June 2017. In addition to the currently marketed phosphate binders, we are aware of at least two other binders in development, including fermagate (Alpharen), an iron-based binder in Phase 3 being developed by Opko Health, Inc., and PT20, an iron-based binder in Phase 3 being developed by Shield Therapeutics.

Numerous treatments exist for constipation and the constipation component of IBS-C, many of which are over-the-counter. These include psyllium husk (such as Metamucil), methylcellulose (such as Citrucel), calcium polycarbophil (such as FiberCon), lactulose (such as Cephulac), polyethylene glycol (such as MiraLax), sennosides (such as Exlax), bisacodyl (such as Dulcolax), docusate sodium (such as Colace), magnesium hydroxide (such as Milk of Magnesia), saline enemas (such as Fleet) and sorbitol. These agents are generally inexpensive and work well to temporarily relieve constipation.

We are also aware of three prescription products marketed for IBS-C: (i) Linzess (linaclotide), marketed by Ironwood Pharmaceuticals and Allergan, (ii) Amitiza (lubiprostone), marketed by Takeda and Sucampo, a wholly-owned subsidiary of Mallinckrodt, and (iii) Trulance (plecanatide), marketed by Synergy Pharmaceuticals.

It is possible that our competitors will develop and market drugs or other treatments that are less expensive and more effective than our product candidates, or that will render our product candidates obsolete. It is also possible that our competitors will commercialize competing drugs or treatments before we, or our collaboration partners, can launch any products developed from our product candidates. We also anticipate that we will face increased competition in the future as new companies enter into our target markets.

Many of our competitors have materially greater name recognition and financial, manufacturing, marketing, research and drug development resources than we do. Additional mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors. Large pharmaceutical companies in particular have extensive expertise in preclinical and clinical testing and in obtaining regulatory approvals for drugs. In addition, academic institutions, government agencies, and other public and private organizations conducting research may seek patent protection with respect to potentially competitive products or technologies. These organizations may also establish exclusive collaboration partnerships or licensing relationships with our competitors.

***We may experience difficulties in managing our current activities and growth given our level of managerial, operational, financial and other resources.***

On August 7, 2017, our Board of Directors approved a restructuring plan, pursuant to which we reduced our workforce by 29%, resulting in 75 remaining employees. We will need to manage our operations and clinical trials, and continue our development and pre-commercial activities for our product candidates with this reduced workforce. Our management and personnel, and systems currently in place may not be adequate to support our current activities or future growth. Our need to effectively execute our business strategy requires that we:

- manage our clinical trials effectively, including the Phase 3 trial of tenapanor which is being conducted at multiple trial sites;
- manage our internal research and development efforts effectively while carrying out our contractual obligations to licensors, contractors, collaborators, government agencies and other third parties;
- continue to improve our operational, financial and management controls, reporting systems and procedures; and
- retain and motivate our remaining employees and potentially identify, recruit, and integrate additional employees.

If we are unable to maintain or expand our managerial, operational, financial and other resources to the extent required to manage our development and pre-commercialization activities, our business will be materially adversely affected.

***We rely completely on third parties to manufacture our nonclinical and clinical drug supplies, and we intend to rely on third parties to produce commercial supplies of tenapanor, if approved. Our business would be harmed if those third parties fail to obtain approval of the FDA, Competent Authorities of the Member States of the EEA or comparable regulatory authorities, fail to provide us with sufficient quantities of drug product, or fail to do so at acceptable quality levels or prices.***

We do not currently have, nor do we plan to acquire, the infrastructure or capability internally to manufacture tenapanor or any of our other product candidates on a commercial scale, or to manufacture our drug supplies for use in the conduct of our nonclinical and clinical studies. The facilities used by our contract manufacturers to manufacture any drug products must be approved by the FDA pursuant to inspections that will be conducted after an NDA is submitted to the FDA. We do not control the manufacturing process of our product candidates, and we are completely dependent on our contract manufacturing partners for compliance with the regulatory requirements, known as cGMPs, for manufacture of both active drug substances and finished drug products.

If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA or others, they will not be able to secure and/or maintain regulatory approval for their manufacturing facilities. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our product candidates or if it withdraws any

such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved.

We rely on our manufacturers to purchase from third-party suppliers the materials necessary to produce our product candidates for our clinical studies. There are a limited number of suppliers for raw materials that we use to manufacture our drugs, and there may be a need to identify alternate suppliers to prevent a possible disruption of the manufacture of the materials necessary to produce our product candidates for our clinical studies, and, if approved, ultimately for commercial sale. We do not have any control over the process or timing of the acquisition of these raw materials by our manufacturers. Although we generally do not begin a clinical study unless we believe we have on hand, or will be able to manufacture, a sufficient supply of a product candidate to complete such study, any significant delay or discontinuity in the supply of a product candidate, or the raw material components thereof, for an ongoing clinical study due to the need to replace a third-party manufacturer could considerably delay completion of our clinical studies, product testing, and potential regulatory approval of our product candidates, which could harm our business and results of operations.

***Third-party payor coverage and reimbursement status of newly-approved products is uncertain. Failure to obtain or maintain adequate coverage and reimbursement for our products, if approved, could limit our ability to market those products and decrease our ability to generate revenue.***

The pricing, coverage and reimbursement of our product candidates, if approved, must be adequate to support a commercial infrastructure. The availability and adequacy of coverage and reimbursement by governmental and private payors are essential for most patients to be able to afford treatments such as ours, assuming approval. Sales of our product candidates will depend substantially, both domestically and abroad, on the extent to which the costs of our product candidates will be paid for by health maintenance, managed care, pharmacy benefit, and similar healthcare management organizations, or reimbursed by government authorities, private health insurers, and other third-party payors. If coverage and reimbursement are not available, or are available only to limited levels, we may not be able to successfully commercialize our product candidates. Even if coverage is provided, the approved reimbursement amount may not be high enough to allow us to establish or maintain pricing sufficient to realize a return on our investment.

There is significant uncertainty related to the insurance coverage and reimbursement of newly approved products. In the United States, the principal decisions about coverage and reimbursement for new drugs are typically made by the Centers for Medicare & Medicaid Services, or CMS, an agency within the U.S.

Department of Health and Human Services responsible for administering the Medicare program, as CMS decides whether and to what extent a new drug will be covered and reimbursed under Medicare. Private payors tend to follow the coverage reimbursement policies established by CMS to a substantial degree. It is difficult to predict what CMS will decide with respect to reimbursement for products such as ours.

In July 2010, CMS released its final rule to implement a bundled prospective payment system for the treatment of ESRD patients as required by the Medicare Improvements for Patients and Providers Act, or MIPPA. The bundled payment covers a bundle of items and services routinely required for dialysis treatments furnished to Medicare beneficiaries in Medicare-certified ESRD facilities or at their home, including the cost of certain routine drugs. The final rule delayed the inclusion of oral medications without intravenous equivalents in the bundled payment until January 1, 2014 and in April 2014, President Obama signed the Protecting Access to Medicare Act of 2014, which further extended this implementation date to January 1, 2024. Additionally, section 204 of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, or ABLE, provides that payment for oral-only ESRD drugs cannot be made under the ESRD Prospective Payment System prior to January 1, 2025. As a result of the recent legislation, beginning in 2025, ESRD-related drugs may be included in the bundle and separate Medicare reimbursement will no longer be available for such drugs, as it is today under Medicare Part D. While it is too early to project the full impact that bundling may have on the industry, the impact could potentially cause dramatic price reductions for tenapanor, if approved. We may be unable to sell tenapanor, if approved, to dialysis providers on a profitable basis if third-party payors reduce their current levels of payment, or if our costs of production increase faster than increases in reimbursement levels.

Outside the United States, international operations are generally subject to extensive governmental price controls and other market regulations, and we believe the increasing emphasis on cost-containment initiatives in Europe, Canada, Japan, China and other countries has and will continue to put pressure on the pricing and usage of our product candidates. In many countries, the prices of medical products are subject to varying price control mechanisms as part of national health systems. Other countries allow companies to fix their own prices for medicinal products, but monitor and control company profits. Additional foreign price controls or other changes in pricing regulation could restrict the amount that we are able to charge for our product candidates. Accordingly, in markets outside the United States, the reimbursement for our products may be reduced compared with the United States and may be insufficient to generate commercially reasonable revenue and profits.

Moreover, increasing efforts by governmental and third-party payors in the United States and abroad to cap or reduce healthcare costs may cause such organizations to limit both coverage and the level of reimbursement for newly approved products and, as a result, these caps may not cover or provide adequate payment for our product candidates. We expect to experience pricing pressures in connection with the sale of any of our product candidates due to the trend toward managed healthcare, the increasing influence of health maintenance organizations, and additional legislative changes. The downward pressure on healthcare costs in general, particularly prescription drugs and surgical procedures and other treatments, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products.

***If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.***

We face an inherent risk of product liability as a result of the clinical testing of our product candidates and will face an even greater risk if we commercialize any products. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our product candidates;
- injury to our reputation;
- withdrawal of clinical trial participants;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- regulatory investigations, product recalls or withdrawals, or labeling, marketing or promotional restrictions;
- loss of revenue; and
- the inability to commercialize or co-promote our product candidates.

Our inability to obtain and maintain sufficient product liability insurance at an acceptable cost and scope of coverage to protect against potential product liability claims could prevent or inhibit the commercialization of any

products we develop. We currently carry product liability insurance covering use in our clinical trials in the amount of \$10.0 million in the aggregate. Although we maintain such insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. Our insurance policies also have various exclusions and deductibles, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses.

***We are highly dependent on the services of our President and Chief Executive Officer, Michael Raab, our Chief Operating Officer, Reginald Seeto, MBBS, and our Chief Development Officer, David Rosenbaum, Ph.D. If we are not able to retain these members of our management team, or recruit additional management, clinical and scientific personnel, our business will suffer.***

Our success depends in part on our continued ability to attract, retain and motivate highly qualified personnel. In particular, we are highly dependent upon Michael Raab, our President and Chief Executive Officer, Reginald Seeto, MBBS, our Chief Operating Officer and David Rosenbaum, Ph.D., our Chief Development Officer. The loss of services of any of these individuals could delay or impair the successful development of our product pipeline, completion of our planned clinical trials or the commercialization of our product candidates. Although we have entered into employment agreements with our senior management team, including Mr. Raab and Drs. Seeto and Rosenbaum, these agreements are terminable at will with or without notice and, therefore, we may not be able to retain their services as expected. Although we have not historically experienced unique difficulties attracting and retaining qualified employees, we could experience such problems in the future. For example, competition for qualified personnel in the biotechnology and pharmaceuticals field is intense due to the limited number of individuals who possess the skills and experience required by our industry. In addition to the competition for personnel, the San Francisco Bay area in particular is characterized by a high cost of living. As such, we could have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment and retention efforts.

***Our internal computer systems, or those of our CROs or other contractors or consultants, may fail or suffer data security breaches, which could adversely affect our business.***

Our business is increasingly dependent on critical, complex and interdependent information technology systems to support business processes as well as internal and external communications. Despite the implementation of security measures, the size and complexity of our internal computer systems, and those of our CROs and other contractors, make them vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our programs. For example, the loss of clinical trial data from completed or ongoing clinical trials for any of our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. In addition, our systems are potentially vulnerable to data security breaches, whether by employees or others, which may expose sensitive data to unauthorized persons. Such data security breaches could lead to the loss of trade secrets or other intellectual property, or could lead to the public exposure of personal information of our employees, clinical trial patients, customers, and others. Such disruptions and breaches of security could expose us to liability and have a material adverse effect on the operating results and financial condition of our business.

***We incur significant costs as a result of operating as a public company, and our management will devote substantial time to new compliance initiatives. We may fail to comply with the rules that apply to public companies, including Section 404 of the Sarbanes-Oxley Act of 2002, which could result in sanctions or other penalties that would harm our business.***

We incur significant legal, accounting and other expenses as a public company, including costs resulting from public company reporting obligations under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and regulations regarding corporate governance practices. The listing requirements of The Nasdaq Global Market require that we satisfy certain corporate governance requirements relating to director independence, distributing annual and

interim reports, stockholder meetings, approvals and voting, soliciting proxies, conflicts of interest and a code of conduct. Our management and other personnel will need to devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations will increase our legal and financial compliance costs and will make some activities more time consuming and costly. Any changes we make to comply with these obligations may not be sufficient to allow us to satisfy our obligations as a public company on a timely basis, or at all. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms.

We are subject to Section 404 of The Sarbanes-Oxley Act of 2002, or Section 404, and the related rules of the Securities and Exchange Commission, or SEC, which generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. Section 404 requires an annual management assessment of the effectiveness of our internal control over financial reporting. However, for so long as we remain an emerging growth company as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404. Once we are no longer an emerging growth company or, if prior to such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal controls over financial reporting. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year following the fifth anniversary of the completion of our IPO (December 31, 2019), (2) the last day of the fiscal year in which we have total annual gross revenue of at least \$1.0 billion, (3) the last day of the fiscal year in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior June 30th, and (4) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

During the course of our review and testing of our internal controls, we may identify deficiencies and be unable to remediate them before we must provide the required reports. Furthermore, if we have a material weakness in our internal controls over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We or our independent registered public accounting firm may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting, which could harm our operating results, cause investors to lose confidence in our reported financial information and cause the trading price of our stock to fall. In addition, as a public company we are required to file accurate and timely quarterly and annual reports with the SEC under the Exchange Act. Any failure to report our financial results on an accurate and timely basis could result in sanctions, lawsuits, delisting of our shares from The Nasdaq Global Market or other adverse consequences that would materially harm our business.

***We have formed in the past, and may form in the future, collaboration partnerships, joint ventures and/or licensing arrangements, and we may not realize the benefits of such collaborations.***

We have current collaboration partnerships for the commercialization of tenapanor in certain foreign countries, and we currently expect to form additional collaboration partnerships, create joint ventures or enter into additional licensing arrangements with third parties in the United States and abroad that we believe will complement or augment our existing business. In particular, we have formed collaboration partnerships with Kyowa Hakko Kirin Co., Ltd. for commercialization of tenapanor for hyperphosphatemia in Japan and with Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd. for commercialization of tenapanor for hyperphosphatemia and IBS-C in China and related territories. We also expect to form one or more additional collaboration partnerships in connection with the commercialization of tenapanor, if approved. We face significant competition in seeking appropriate collaboration partners, and the negotiation process to secure appropriate terms is time-consuming and complex. Any delays in identifying suitable additional collaboration partners and entering into agreements to develop our product candidates could also delay the commercialization of our product candidates, which may reduce their competitiveness even if they reach the market. Moreover, we may not be successful in our efforts to establish such additional collaboration partnerships for tenapanor for IBS-C commercialization or for any future product candidates and programs on terms that

are acceptable to us, or at all. With respect to tenapanor, this may be because third parties may not view tenapanor for the treatment of IBS-C as having sufficient potential to be successfully commercialized. If we are unable to establish a collaboration partnership for the commercialization of IBS-C in the United States, the commercialization of tenapanor for IBS-C, if approved, could be materially and adversely impacted, which could have a material adverse effect on our business, results of operations, financial condition and prospects. Additionally, we may not be successful in our efforts to establish collaboration partnerships for our other product candidates because our product candidates and programs may be deemed to be at too early of a stage of development for collaborative effort, our research and development pipeline may be viewed as insufficient, and/or third parties may not view such other product candidates and programs as having sufficient potential for commercialization, including the likelihood of an adequate safety and efficacy profile. There is no guarantee that our current collaboration partnerships or any such arrangements we enter into in the future will be successful, or that any collaboration partner will commit sufficient resources to the development, regulatory approval, and commercialization effort for such products, or that such alliances will result in us achieving revenues that justify such transactions.

***We may engage in strategic transactions that could impact our liquidity, increase our expenses and present significant distractions to our management.***

We may consider strategic transactions, such as acquisitions of companies, asset purchases, and or in-licensing of products, product candidates or technologies. In addition, if we are unable to access capital on a timely basis and on terms that are acceptable to us, we may be forced to restructure certain aspects of our business or identify and complete one or more strategic collaborations or other transactions in order to fund the development or commercialization of tenapanor or certain of our product candidates through the use of alternative structures. Additional potential transactions that we may consider include a variety of different business arrangements, including spin-offs, spin outs, collaboration partnerships, joint ventures, restructurings, divestitures, business combinations and investments. Any such transaction may require us to incur non-recurring or other charges, may increase our near- and long-term expenditures and may pose significant integration challenges or disrupt our management or business, which could adversely affect our operations and financial results. For example, these transactions may entail numerous operational and financial risks, including:

- up-front, milestone and royalty payments, equity investments and financial support of new research and development candidates including increase of personnel, all of which may be substantial;
- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention in order to develop acquired products, product candidates or technologies;
- incurrence of substantial debt or dilutive issuances of equity securities to pay for acquisitions;
- higher-than-expected acquisition and integration costs;
- write-downs of assets or goodwill or impairment charges;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.



Accordingly, although there can be no assurance that we will undertake or successfully complete any transactions of the nature described above, any transactions that we do complete may be subject to the foregoing or other risks and could have a material adverse effect on our business, results of operations, financial condition and prospects.

***If we seek and obtain approval to commercialize our product candidates outside of the United States, or otherwise engage in business outside of the United States, a variety of risks associated with international operations could materially adversely affect our business.***

In addition to Japan and China, we or our collaboration partners may decide to seek marketing approval for certain of our product candidates outside the United States or otherwise engage in business outside the United States, including entering into contractual agreements with third-parties. We expect that we will be subject to additional risks related to entering these international business markets and relationships, including:

- different regulatory requirements for drug approvals in foreign countries;
- differing United States and foreign drug import and export rules;
- reduced protection for intellectual property rights in foreign countries;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- different reimbursement systems, and different competitive drugs;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad;
- potential liability resulting from development work conducted by these distributors; and
- business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters.

***Our business involves the use of hazardous materials and we and third-parties with whom we contract must comply with environmental laws and regulations, which can be expensive and restrict how we do business.***

Our research and development activities involve the controlled storage, use and disposal of hazardous materials, including the components of our product candidates and other hazardous compounds. We and manufacturers and suppliers with whom we may contract are subject to laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. In some cases, these hazardous materials and various wastes resulting from their use are stored at our and our manufacturers' facilities pending their use and disposal. We cannot eliminate the risk of contamination, which could cause an interruption of our commercialization efforts, research and

development efforts and business operations, environmental damage resulting in costly clean-up and liabilities under applicable laws and regulations governing the use, storage, handling and disposal of these materials and specified waste products. We cannot guarantee that the safety procedures utilized by third-party manufacturers and suppliers with whom we may contract will comply with the standards prescribed by laws and regulations or will eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources and state or federal or other applicable authorities may curtail our use of certain materials and/or interrupt our business operations. Furthermore, environmental laws and regulations are complex, change frequently and have tended to become more stringent. We cannot predict the impact of such changes and cannot be certain of our future compliance. We do not currently carry biological or hazardous waste insurance coverage.

***We may be adversely affected by the global economic environment.***

Our ability to attract and retain collaboration partners or customers, invest in and grow our business and meet our financial obligations depends on our operating and financial performance, which, in turn, is subject to numerous factors, including the prevailing economic conditions and financial, business and other factors beyond our control, such as the rate of unemployment, the number of uninsured persons in the United States, presidential elections, other political influences and inflationary pressures. Our results of operations could be adversely affected by general conditions in the global economy and in the global financial markets. The 2008 global financial crisis caused extreme volatility and disruptions in the capital and credit markets. We cannot anticipate all the ways in which the global economic climate and global financial market conditions could adversely impact our business in the future.

We are exposed to risks associated with reduced profitability and the potential financial instability of our collaboration partners or customers, many of which may be adversely affected by volatile conditions in the financial markets. For example, unemployment and underemployment, and the resultant loss of insurance, may decrease the demand for healthcare services and pharmaceuticals. If fewer patients are seeking medical care because they do not have insurance coverage, our collaboration partners or customers may experience reductions in revenues, profitability and/or cash flow that could lead them to reduce their support of our programs or financing activities. If collaboration partners or customers are not successful in generating sufficient revenue or are precluded from securing financing, they may not be able to pay, or may delay payment of, accounts receivable that are owed to us. In addition, volatility in the financial markets could cause significant fluctuations in the interest rate and currency markets. We currently do not hedge for these risks. The foregoing events, in turn, could adversely affect our financial condition and liquidity. In addition, if economic challenges in the United States result in widespread and prolonged unemployment, either regionally or on a national basis, or if certain provisions of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively known as the Affordable Care Act, are repealed, a substantial number of people may become uninsured or underinsured. To the extent economic challenges result in fewer individuals pursuing or being able to afford our product candidates once commercialized, our business, results of operations, financial condition and cash flows could be adversely affected.

***We may be adversely affected by earthquakes or other natural disasters and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.***

Our corporate headquarters and other facilities are located in the San Francisco Bay Area, which in the past has experienced severe earthquakes. We do not carry earthquake insurance. Earthquakes or other natural disasters could severely disrupt our operations, and have a material adverse effect on our business, results of operations, financial condition and prospects.

If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, such as our enterprise financial systems or manufacturing resource planning and enterprise quality systems, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. The disaster recovery and business continuity plans we have in place currently are limited and are unlikely to prove adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our

disaster recovery and business continuity plans, which, particularly when taken together with our lack of earthquake insurance, could have a material adverse effect on our business.

#### **Risks Related to Government Regulation**

***The regulatory approval processes of the FDA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable. If we are ultimately unable to obtain regulatory approval for our product candidates, our business will be substantially harmed.***

The research, testing, manufacturing, labeling, approval, selling, import, export, marketing and distribution of drug products are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, which regulations differ from country to country. Neither we nor any of our collaboration partners is permitted to market any drug product in the United States until we receive marketing approval from the FDA. We have not submitted an application or obtained marketing approval for any of our product candidates anywhere in the world. Obtaining regulatory approval of a NDA can be a lengthy, expensive and uncertain process. In addition, failure to comply with FDA and other applicable United States and foreign regulatory requirements may subject us to administrative or judicially imposed sanctions or other actions, including:

- warning letters;
- civil and criminal penalties;
- injunctions;
- withdrawal of regulatory approval of products;
- product seizure or detention;
- product recalls;
- total or partial suspension of production; and
- refusal to approve pending NDAs or supplements to approved NDAs.

Prior to obtaining approval to commercialize a drug candidate in the United States or abroad, we or our collaboration partners must demonstrate with substantial evidence from well-controlled clinical trials, and to the satisfaction of the FDA or other foreign regulatory agencies, that such drug candidates are safe and effective for their intended uses. The number of nonclinical studies and clinical trials that will be required for FDA approval varies depending on the drug candidate, the disease or condition that the drug candidate is designed to address, and the regulations applicable to any particular drug candidate. Results from nonclinical studies and clinical trials can be interpreted in different ways. Even if we believe the nonclinical or clinical data for our drug candidates are promising, such data may not be sufficient to support approval by the FDA and other regulatory authorities. Administering drug candidates to humans may produce undesirable side effects, which could interrupt, delay or halt clinical trials and result in the FDA or other regulatory authorities denying approval of a drug candidate for any or all targeted indications.

The time required to obtain approval by the FDA and comparable foreign authorities is unpredictable, typically takes many years following the commencement of clinical studies, and depends upon numerous factors. The FDA and comparable foreign authorities have substantial discretion in the approval process and we may encounter matters with the FDA or such comparable authorities that requires us to expend additional time and resources and delay or prevent the approval of our product candidates. For example, the FDA may require us to conduct additional studies or trials for drug product either prior to or post-approval, such as additional drug-drug interaction studies or safety or efficacy studies or trials, or it may object to elements of our clinical development program such as the number of subjects in our current clinical trials from the United States. 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, which may cause delays in the approval or result in a decision not to approve an application for regulatory approval. Despite the time and expense exerted, failure can occur at any stage.

Applications for our product candidates could fail to receive regulatory approval for many reasons, including but not limited to the following:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our, or our collaboration partners', clinical studies;
- the population studied in the clinical program may not be sufficiently broad or representative to assure safety in the full population for which approval is sought;
- the FDA or comparable foreign regulatory authorities may disagree with the interpretation of data from preclinical studies or clinical studies;
- the data collected from clinical studies of our product candidates may not be sufficient to support the submission of a NDA or other submission or to obtain regulatory approval in the United States or elsewhere;
- we or our collaboration partners may be unable to demonstrate to the FDA or comparable foreign regulatory authorities that a product candidate's risk-benefit ratio for its proposed indication is acceptable;
- the FDA or comparable foreign regulatory authorities may fail to approve the manufacturing processes, test procedures and specifications, or facilities of third-party manufacturers responsible for clinical and commercial supplies; and
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient for approval.

This lengthy approval process, as well as the unpredictability of the results of clinical studies, may result in our failure and/or that of our collaboration partners to obtain regulatory approval to market any of our product candidates, which would significantly harm our business, results of operations, and prospects. Additionally, if the FDA requires that we conduct additional clinical studies, places limitations in our label, delays approval to market our product candidates or limits the use of our products, our business and results of operations may be harmed.

In addition, even 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 not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

***Even if we receive regulatory approval for a product candidate, we will be subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense. Additionally, any product candidates, if approved, could be subject to labeling and other restrictions and market withdrawal, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with our products.***

Even if a drug is approved by the FDA or foreign regulatory authorities, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and

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other post-marketing information and reports, registration, as well as continued compliance with cGMPs and GCP regulations for any clinical trials that we conduct post-approval. As such, we and our third-party contract manufacturers will be subject to continual review and periodic inspections to assess compliance with regulatory requirements. Accordingly, we and others with whom we work must continue to expend time, money, and effort in all areas of regulatory compliance, including manufacturing, production, and quality control. Regulatory authorities may also impose significant restrictions on a product's indicated uses or marketing or impose ongoing requirements for potentially costly post-marketing studies. Furthermore, any new legislation addressing drug safety issues could result in delays or increased costs to assure compliance.

We will also be required to report certain adverse reactions and production problems, if any, to the FDA, and to comply with requirements concerning advertising and promotion for our products. Promotional communications with respect to prescription drugs are subject to a variety of legal and regulatory restrictions and must be consistent with the information in the product's approved label. As such, we may not promote our products for indications or uses for which they do not have FDA approval.

Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- warning letters, fines or holds on clinical trials;
- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market or voluntary or mandatory product recalls;
- injunctions or the imposition of civil or criminal penalties;
- suspension or revocation of existing regulatory approvals;
- suspension of any of our ongoing clinical trials;
- refusal to approve pending applications or supplements to approved applications submitted by us;
- restrictions on our or our contract manufacturers' operations; or
- product seizure or detention, or refusal to permit the import or export of products.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response, and could generate negative publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to commercialize our product candidates. If regulatory sanctions are applied or if regulatory approval is withdrawn, the value of our company and our operating results will be adversely affected.

In addition, the FDA's policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained, which would adversely affect our business, prospects and ability to achieve or sustain profitability.

We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. For example, certain policies of the Trump administration may impact our business and industry. Namely, the Trump administration has taken several executive actions, including the issuance of a number of Executive Orders, that could impose significant burdens on, or otherwise materially delay, the FDA's ability to engage in routine regulatory and oversight activities such as

implementing statutes through rulemaking, issuance of guidance, and review and approval of marketing applications. It is difficult to predict how these Executive Orders will be implemented, and the extent to which they will impact the FDA's ability to exercise its regulatory authority. If these executive actions impose constraints on FDA's ability to engage in oversight and implementation activities in the normal course, our business may be negatively impacted.

***We and our contract manufacturers are subject to significant regulation with respect to manufacturing our product candidates. The manufacturing facilities on which we rely may not continue to meet regulatory requirements or may not be able to meet supply demands.***

All entities involved in the preparation of product candidates for clinical studies or commercial sale, including our existing contract manufacturers for our product candidates are subject to extensive regulation. Components of a finished therapeutic product approved for commercial sale or used in late-stage clinical studies must be manufactured in accordance with cGMP regulations. These regulations govern manufacturing processes and procedures (including record keeping) and the implementation and operation of quality systems to control and assure the quality of investigational products and products approved for sale. Poor control of production processes can lead to the introduction of contaminants or to inadvertent changes in the properties or stability of our product candidates that may not be detectable in final product testing. We or our contract manufacturers must supply all necessary documentation in support of an NDA or comparable regulatory filing on a timely basis and must adhere to cGMP regulations enforced by the FDA and other regulatory agencies through their facilities inspection programs. The facilities and quality systems of some or all of our third-party contractors must pass a pre-approval inspection for compliance with the applicable regulations as a condition of regulatory approval of our product candidates. In addition, the regulatory authorities may, at any time, audit or inspect a manufacturing facility involved with the preparation of our product candidates or our other potential products or the associated quality systems for compliance with the regulations applicable to the activities being conducted. Although we oversee the contract manufacturers, we cannot control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with the regulatory requirements. If these facilities do not pass a pre-approval plant inspection, regulatory approval of the products may not be granted or may be substantially delayed until any violations are corrected to the satisfaction of the regulatory authority, if ever. In addition, we have no control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel.

The regulatory authorities also may, at any time following approval of a product for sale, audit the manufacturing facilities of our third-party contractors. If any such inspection or audit identifies a failure to comply with applicable regulations or if a violation of our product specifications or applicable regulations occurs independent of such an inspection or audit, we or the relevant regulatory authority may require remedial measures that may be costly and/or time consuming for us or a third party to implement, and that may include the temporary or permanent suspension of a clinical study or commercial sales or the temporary or permanent suspension of production or closure of a facility. Any such remedial measures imposed upon us or third parties with whom we contract could materially harm our business.

If we or any of our third-party manufacturers fail to maintain regulatory compliance, the FDA or other applicable regulatory authority can impose regulatory sanctions including, among other things, refusal to approve a pending application for a new drug product, withdrawal of an approval, or suspension of production. As a result, our business, financial condition, and results of operations may be materially harmed.

Additionally, if supply from one approved manufacturer is interrupted, an alternative manufacturer would need to be qualified through an NDA, a supplemental NDA or equivalent foreign regulatory filing, which could result in further delay. The regulatory agencies may also require additional studies if a new manufacturer is relied upon for commercial production. Switching manufacturers may involve substantial costs and is likely to result in a delay in our desired clinical and commercial timelines.

These factors could cause us to incur higher costs and could cause the delay or termination of clinical studies, regulatory submissions, required approvals, or commercialization of our product candidates. Furthermore, if our suppliers fail to meet contractual requirements and we are unable to secure one or more replacement suppliers capable of production at a substantially equivalent cost, our clinical studies may be delayed or we could lose potential revenue.

***If we fail to comply or are found to have failed to comply with FDA and other regulations related to the promotion of our products for unapproved uses, we could be subject to criminal penalties, substantial fines or other sanctions and damage awards.***

The regulations relating to the promotion of products for unapproved uses are complex and subject to substantial interpretation by the FDA and other government agencies. If tenapanor or our other product candidates receive marketing approval, we and our collaboration partners, if any, will be restricted from marketing the product outside of its approved labeling, also referred to as off-label promotion. However, physicians may nevertheless prescribe an approved product to their patients in a manner that is inconsistent with the approved label, which is an off-label use. We intend to implement compliance and training programs designed to ensure that our sales and marketing practices comply with applicable regulations regarding off-label promotion. Notwithstanding these programs, the FDA or other government agencies may allege or find that our practices constitute prohibited promotion of our product candidates for unapproved uses. We also cannot be sure that our employees will comply with company policies and applicable regulations regarding the promotion of products for unapproved uses.

Over the past several years, a significant number of pharmaceutical and biotechnology companies have been the target of inquiries and investigations by various federal and state regulatory, investigative, prosecutorial and administrative entities in connection with the promotion of products for unapproved uses and other sales practices, including the Department of Justice and various U.S. Attorneys' Offices, the Office of Inspector General of the Department of Health and Human Services, the FDA, the Federal Trade Commission and various state Attorneys General offices. These investigations have alleged violations of various federal and state laws and regulations, including claims asserting antitrust violations, violations of the Food, Drug and Cosmetic Act, the False Claims Act, the Prescription Drug Marketing Act, anti-kickback laws, and other alleged violations in connection with the promotion of products for unapproved uses, pricing and Medicare and/or Medicaid reimbursement. Many of these investigations originate as "qui tam" actions under the False Claims Act. Under the False Claims Act, any individual can bring a claim on behalf of the government alleging that a person or entity has presented a false claim, or caused a false claim to be submitted, to the government for payment. The person bringing a qui tam suit is entitled to a share of any recovery or settlement. Qui tam suits, also commonly referred to as "whistleblower suits," are often brought by current or former employees. In a qui tam suit, the government must decide whether to intervene and prosecute the case. If it declines, the individual may pursue the case alone.

If the FDA or any other governmental agency initiates an enforcement action against us or if we are the subject of a qui tam suit and it is determined that we violated prohibitions relating to the promotion of products for unapproved uses, we could be subject to substantial civil or criminal fines or damage awards and other sanctions such as consent decrees and corporate integrity agreements pursuant to which our activities would be subject to ongoing scrutiny and monitoring to ensure compliance with applicable laws and regulations. Any such fines, awards or other sanctions would have an adverse effect on our revenue, business, financial prospects and reputation.

***If approved, tenapanor and our other product candidates may cause or contribute to adverse medical events that we are required to report to regulatory agencies and if we fail to do so we could be subject to sanctions that would materially harm our business.***

Some participants in clinical studies of tenapanor have reported adverse effects after being treated with tenapanor, including diarrhea, nausea, flatulence, abdominal discomfort, abdominal pain, abdominal distention and changes in electrolytes. If we are successful in commercializing any products, FDA and foreign regulatory agency regulations require that we report certain information about adverse medical events if those products may have caused or contributed to those adverse events. The timing of our obligation to report would be triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events we become aware of within the prescribed timeframe. We may also fail to appreciate that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA or a foreign regulatory agency could take action, including criminal prosecution, the imposition of civil monetary penalties, seizure of our products or delay in approval or clearance of future products.

***Our employees, independent contractors, principal investigators, CROs, collaboration partners, consultants and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.***

We are exposed to the risk that our employees, independent contractors, principal investigators, CROs, collaboration partners, consultants and vendors may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or unauthorized activities that violate: (1) FDA regulations, including those laws that require the reporting of true, complete and accurate information to the FDA; (2) manufacturing standards; (3) federal and state healthcare fraud and abuse laws and regulations; or (4) laws that require the reporting of true and accurate financial information and data. Specifically, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. These activities also include the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with such laws or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgements, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, individual imprisonment, other sanctions, contractual damages, reputational harm, diminished profits and future earnings, and curtailment of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

***Failure to obtain regulatory approvals in foreign jurisdictions would prevent us from marketing our products internationally.***

In order to market any product in the EEA (which is composed of the 28 Member States of the European Union plus Norway, Iceland and Liechtenstein), and many other foreign jurisdictions, separate regulatory approvals are required. In the EEA, medicinal products can only be commercialized after obtaining a Marketing Authorization, or MA. Before granting the MA, the EMA or the competent authorities of the Member States of the EEA make an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety and efficacy.

The approval procedures vary among countries and can involve additional clinical testing, and the time required to obtain approval may differ from that required to obtain FDA approval. Clinical trials conducted in one country may not be accepted by regulatory authorities in other countries. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one or more foreign regulatory authorities does not ensure approval by regulatory authorities in other foreign countries or by the FDA. However, a failure or delay in obtaining regulatory approval in one country may have a negative effect on the regulatory process in others. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not be able to file for regulatory approvals or to do so on a timely basis, and even if we do file we may not receive necessary approvals to commercialize our products in any market.

***We and our collaboration partners may be subject to healthcare laws, regulation and enforcement; our failure or the failure of any such collaboration partners to comply with these laws could have a material adverse effect on our results of operations and financial conditions.***

Although we do not currently have any products on the market, once we begin commercializing our products, we and our collaboration partners may be subject to additional healthcare statutory and regulatory requirements and



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enforcement by the federal government and the states and foreign governments in which we conduct our business. The laws that may affect our ability to operate as a commercial organization include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent;
- federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, which governs the conduct of certain electronic healthcare transactions and protects the security and privacy of protected health information;
- the federal physician sunshine requirements under the Affordable Care Act, which requires manufacturers of drugs, devices, biologics, and medical supplies to report annually to the CMS information related to payments and other transfers of value to physicians, other healthcare providers, and teaching hospitals, and ownership and investment interests held by physicians and other healthcare providers and their immediate family members;
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers;
- state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources;
- state laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or pricing information and marketing expenditures; and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways, thus complicating compliance efforts; and
- European and other foreign law equivalents of each of the laws, including reporting requirements detailing interactions with and payments to healthcare providers.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities could be subject to challenge under one or more of such laws. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Further, the Affordable Care Act, among other things, amends the intent requirement of the federal anti-kickback and criminal health care fraud statutes. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the Affordable Care Act provides 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 false claims statutes. Any action against us for violation of these laws, even if we successfully defend

against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, the curtailment or restructuring of our operations, the exclusion from participation in federal and state healthcare programs and imprisonment, any of which could adversely affect our ability to market our products and adversely impact our financial results.

***Legislative or regulatory healthcare reforms in the United States may make it more difficult and costly for us to obtain regulatory clearance or approval of our product candidates and to produce, market and distribute our products after clearance or approval is obtained.***

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory clearance or approval, manufacture, and marketing of regulated products or the reimbursement thereof. In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of our product candidates. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require:

- additional clinical trials to be conducted prior to obtaining approval;
- changes to manufacturing methods;
- recall, replacement, or discontinuance of one or more of our products; and
- additional record keeping.

Each of these would likely entail substantial time and cost and could materially harm our business and our financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any future products would harm our business, financial condition and results of operations.

In addition, the full impact of recent healthcare reform and other changes in the healthcare industry and in healthcare spending is currently unknown, and may adversely affect our business model. In the United States, the Affordable Care Act was enacted in 2010 with a goal of reducing the cost of healthcare and substantially changing the way healthcare is financed by both government and private insurers. The Affordable Care Act, among other things, increased the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program and extended the rebate program to individuals enrolled in Medicaid managed care organizations, established annual fees and taxes on manufacturers of certain branded prescription drugs, and created a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D.

We currently expect that federal and state legislatures within the United States and foreign governments will continue to consider changes to existing healthcare legislation, and we currently expect that the current Presidential Administration and U.S. Congress will seek to modify, or repeal all, or certain provisions of, the Affordable Care Act. There is still uncertainty with respect to any regulatory changes, and such regulatory changes could have an impact on coverage and reimbursement for healthcare items and services covered by plans that were otherwise authorized by the Affordable Care Act. However, we cannot predict the reform initiatives that may be adopted in the future or whether initiatives that have been adopted will be repealed or modified. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect the demand for any drug products for which we may obtain regulatory approval, our ability to set a price that we believe is fair for our products, our ability to obtain coverage and reimbursement approval for a product, our ability to generate revenues and achieve or maintain profitability, and the level of taxes that we are required to pay.

Other legislative changes have been proposed and adopted in the United States since the Affordable Care Act was enacted. These new laws, among other things, included aggregate reductions of Medicare payments to providers of 2% per fiscal year that will remain in effect through 2025 unless additional action is taken by Congress, additional specific reductions in Medicare payments to several types of providers, including hospitals, imaging centers and cancer treatment centers, and an increase in the statute of limitations period for the government to recover overpayments to providers from three to five years. Additionally, individual states have become increasingly active in passing legislation and implementing regulations designed to control pharmaceutical product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access, and to encourage importation from other countries and bulk purchasing. Recently, there has also been heightened governmental scrutiny over the manner in which drug manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed bills designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products.

#### **Risks Related to Intellectual Property**

*We may become subject to claims alleging infringement of third parties' patents or proprietary rights and/or claims seeking to invalidate our patents, which would be costly, time consuming and, if successfully asserted against us, delay or prevent the development and commercialization of tenapanor or our other product candidates, or prevent or delay the continued use of our drug discovery and development platform, including APECCS.*

There have been many lawsuits and other proceedings asserting infringement or misappropriation of patents and other intellectual property rights in the pharmaceutical and biotechnology industries. There can be no assurances that we will not be subject to claims alleging that the manufacture, use or sale of tenapanor or any other product candidates, or that the use of our drug discovery and development platform, including APECCS, infringes existing or future third-party patents, or that such claims, if any, will not be successful. Because patent applications can take many years to issue and may be confidential for 18 months or more after filing, and because pending patent claims can be revised before issuance, there may be applications now pending which may later result in issued patents that may be infringed by the manufacture, use or sale of tenapanor or other product candidates or by the use of APECCS. Moreover, we may face patent infringement claims from non-practicing entities that have no relevant product revenue and against whom our own patent portfolio may thus have no deterrent effect. We may be unaware of one or more issued patents that would be infringed by the manufacture, sale or use of tenapanor or our other product candidates, or by the use of APECCS.

We may be subject to third-party patent infringement claims in the future against us or our that would cause us to incur substantial expenses and, if successful against us, could cause us to pay substantial damages, including treble damages and attorney's fees if we are found to be willfully infringing a third party's patents. We may be required to indemnify future collaboration partners against such claims. We are not aware of any threatened or pending claims related to these matters, but in the future litigation may be necessary to defend against such claims. If a patent infringement suit were brought against us we could be forced to stop or delay research, development, manufacturing or sales of the product or product candidate that is the subject of the suit. In addition, if a patent infringement suit were brought against us regarding the use of APECCS, we could be forced to stop our use of APECCS or modify our processes to avoid infringement, which may not be possible at a reasonable cost, if at all, and which could result in substantial delay in our use of APECCS for the discovery of new product candidates or potential targets. As a result of patent infringement claims, or in order to avoid potential claims, we may choose to seek, or be required to seek, a license from the third party and would most likely be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we were able to obtain a license, we may be unable to maintain such licenses and the rights may be nonexclusive, which would give our competitors access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or forced to redesign it, or to cease our use of APECCS or some other aspect of our business operations if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms, or unable to maintain such licenses when granted. Even if we are successful in defending against such claims, such litigation can be expensive and time consuming to litigate and would divert management's attention from our core business. Any of these events could harm our business significantly.

In addition to infringement claims against us, if third parties prepare and file patent applications in the United States that also claim technology similar or identical to ours, we may have to participate in interference or derivation proceedings in the United States Patent and Trademark Office, or the USPTO, to determine which party is entitled to a patent on the disputed invention. We may also become involved in similar opposition proceedings in the European Patent Office or similar offices in other jurisdictions regarding our intellectual property rights with respect to our products and technology. Since patent applications are confidential for a period of time after filing, we cannot be certain that we were the first to file any patent application related to our product candidates.

***If our intellectual property related to our product candidates is not adequate or if we are not able to protect our trade secrets or our confidential information, we may not be able to compete effectively in our market.***

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our product candidates, our drug discovery and development platform and our development programs. Any disclosure to or misappropriation by third parties of our confidential or proprietary information could enable competitors to quickly duplicate or surpass our technological achievements, thus eroding our competitive position in our market.

The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. The patent applications that we own or license may fail to result in issued patents in the United States or in foreign countries. Additionally, our research and development efforts may result in product candidates for which patent protection is limited or not available. Even if patents do successfully issue, third parties may challenge the validity, enforceability or scope thereof, which may result in such patents being narrowed, invalidated or held unenforceable. For example, U.S. patents can be challenged by any person before the new USPTO Patent Trial and Appeals Board at any time before one year after that person is served an infringement complaint based on the patents. Patents granted by the European Patent Office may be similarly opposed by any person within nine months from the publication of the grant. Similar proceedings are available in other jurisdictions, and in the United States, Europe and other jurisdictions third parties can raise questions of validity with a patent office even before a patent has granted. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property or prevent others from designing around our claims. For example, a third party may develop a competitive product that provides therapeutic benefits similar to one or more of our product candidates but has a sufficiently different composition to fall outside the scope of our patent protection. If the breadth or strength of protection provided by the patents and patent applications we hold or pursue with respect to our product candidates is successfully challenged, then our ability to commercialize such product candidates could be negatively affected, and we may face unexpected competition that could have a material adverse impact on our business. Further, if we encounter delays in our clinical trials, the period of time during which we or our collaboration partners could market tenapanor or other product candidates under patent protection would be reduced.

Even where laws provide protection, costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and the outcome of such litigation would be uncertain. If we or one of our collaboration partners were to initiate legal proceedings against a third party to enforce a patent covering the product candidate, the defendant could counterclaim that our patent is invalid and/or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to validity, for example, we cannot be certain that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability against our intellectual property related to a product candidate, we would lose at least part, and perhaps all, of the patent protection on such product candidate. Such a loss of patent protection would have a material adverse impact on our business. Moreover, our competitors could counterclaim that we infringe their intellectual property, and some of our competitors have substantially greater intellectual property portfolios than we do.

We also rely on trade secret protection and confidentiality agreements to protect proprietary know-how that may not be patentable, processes for which patents may be difficult to obtain and/or enforce and any other elements of our drug discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we require all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology, to assign their inventions to us, and endeavor to execute confidentiality agreements with all such parties, we cannot be certain that we have executed such agreements with all parties who may have helped to develop our intellectual property or who had access to our proprietary information, nor can we be certain that our agreements will not be breached by such consultants, advisors or third parties, or by our former employees. The breach of such agreements by individuals or entities who are actively involved in the discovery and design of our potential drug candidates, or in the development of our discovery and design platform, including APECCS, could require us to pursue legal action to protect our trade secrets and confidential information, which would be expensive, and the outcome of which would be unpredictable. If we are not successful in prohibiting the continued breach of such agreements, our business could be negatively impacted. We cannot guarantee that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques.

Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. If we are unable to prevent material disclosure of the intellectual property related to our technologies to third parties, we will not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, results of operations and financial condition.

***If we do not obtain patent term extension in the United States under the Hatch-Waxman Act and in foreign countries under similar legislation, thereby potentially extending the term of marketing exclusivity for our product candidates, our business may be materially harmed.***

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, if any, one of the U.S. patents covering each of such approved product(s) or the use thereof may be eligible for up to five years of patent term restoration under the Hatch-Waxman Act. The Hatch-Waxman Act allows a maximum of one patent to be extended per FDA approved product. Patent term extension also may be available in certain foreign countries upon regulatory approval of our product candidates. Nevertheless, we may not be granted patent term extension either in the United States or in any foreign country because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the term of extension, as well as the scope of patent protection during any such extension, afforded by the governmental authority could be less than we request.

If we are unable to obtain patent term extension or restoration, or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially.

***Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.***

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involve both technological and legal complexity.

Therefore, obtaining and enforcing biopharmaceutical patents is costly, time consuming and inherently uncertain. In addition, the United States has recently enacted and is currently implementing wide-ranging patent reform legislation, including the Leahy-Smith America Invents Act signed into law on September 16, 2011. That Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted and new venues and opportunities for competitors to challenge patent portfolios. Because of that Act, the

U.S. patent system is now a “first to file” system, which may make it more difficult to obtain patent protection for inventions and increase the uncertainties and costs surrounding the prosecution of our or our collaboration partners’ patent applications and the enforcement or defense of our or our collaboration partners’ issued patents, all of which could materially adversely affect our business, results of operations and financial condition. The United States Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents once obtained. Depending on future actions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

***Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.***

The USPTO and various foreign patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions to maintain patent applications and issued patents. Noncompliance with these requirements can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

***We may not be able to enforce our intellectual property rights throughout the world.***

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of some countries, particularly developing countries, do not favor the enforcement of patents and other intellectual property protection, especially those relating to life sciences. This could make it difficult for us to stop the infringement of our patents or the misappropriation of our other intellectual property rights. For example, many foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties.

Proceedings to enforce our patent rights in foreign jurisdictions, whether or not successful, could result in substantial costs and divert our efforts and attention from other aspects of our business. Furthermore, while we intend to protect our intellectual property rights in our expected significant markets, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our products. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain and enforce adequate intellectual property protection for our technology.

***We may be subject to claims that we or our employees have misappropriated the intellectual property, including know-how or trade secrets, of a third party, or claiming ownership of what we regard as our own intellectual property.***

Many of our employees, consultants and contractors were previously employed at or engaged by other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Some of these employees, consultants and contractors, executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees, consultants and contractors do not use the intellectual property and other proprietary information or know-how or trade secrets of others in their work for us, and do not perform work for us that is in conflict with their obligations to another employer or any other entity, we may be subject to claims that we or these employees, consultants and contractors have used or disclosed such intellectual property, including know-how, trade secrets or other proprietary information. In addition, an employee, advisor or consultant who performs work for us may have obligations to a third party that are in conflict with their obligations to us, and as a result such third party may claim an ownership interest in the intellectual property arising out of work performed for us. We are not aware of any threatened or pending claims related to these matters, but in the

future litigation may be necessary to defend against such claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel, or access to consultants and contractors. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while we typically require our employees, consultants and contractors who may be involved in the development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact develops intellectual property that we regard as our own, which may result in claims by or against us related to the ownership of such intellectual property. If we fail in prosecuting or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and be a distraction to our management and scientific personnel.

#### **Risks Related to Our Common Stock**

***Our stock price may be volatile and our stockholders may not be able to resell shares of our common stock at or above the price they paid.***

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. These factors include those discussed in this “Risk Factors” section and others such as:

- results from, or any delays in, clinical trial programs relating to our product candidates, including the ongoing Phase 3 clinical trial for tenapanor for hyperphosphatemia;
- the success of our efforts to establish a collaboration partnership for the commercialization of tenapanor for IBS-C in the United States;
- our ability, alone or with collaboration partners, to commercialize or obtain regulatory approval for tenapanor, or delays in commercializing or obtaining regulatory approval;
- announcements of regulatory approval, a complete response letter or a refuse to file letter to tenapanor, or specific label restrictions or patient populations for its use, or changes or delays in the regulatory review process;
- announcements relating to our current or future collaboration partnerships;
- announcements of therapeutic innovations or new products by us or our competitors;
- adverse actions taken by regulatory agencies with respect to our clinical trials, manufacturing supply chain or sales and marketing activities;
- changes or developments in laws or regulations applicable to our product candidates;
- the success of our testing and clinical trials;
- failure to meet any of our projected timelines or goals with regard to the clinical development of any of our product candidates, including the Phase 3 clinical trial for tenapanor for hyperphosphatemia;
- failure to meet any of our projected timelines with regard to the filing of the NDA for tenapanor for IBS-C;
- the success of our efforts to acquire or license or discover additional product candidates;

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- any intellectual property infringement actions in which we may become involved;
- the success of our efforts to obtain adequate intellectual property protection for our product candidates;
- announcements concerning our competitors or the pharmaceutical industry in general;
- achievement of expected product sales and profitability;
- manufacture, supply or distribution shortages;
- actual or anticipated fluctuations in our operating results;
- FDA or other U.S. or foreign regulatory actions affecting us or our industry or other healthcare reform measures in the United States;
- changes in financial estimates or recommendations by securities analysts;
- trading volume of our common stock;
- sales of our common stock by us, our executive officers and directors or our stockholders in the future;
- general economic and market conditions and overall fluctuations in the United States equity markets; and
- the loss of any of our key scientific or management personnel.

In addition, the stock markets in general, and the markets for pharmaceutical, biopharmaceutical and biotechnology stocks in particular, have experienced extreme volatility that may have been unrelated to the operating performance of the issuer. These broad market fluctuations may adversely affect the trading price or liquidity of our common stock. In the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the issuer. If any of our stockholders were to bring such a lawsuit against us, we could incur substantial costs defending the lawsuit and the attention of our management would be diverted from the operation of our business, which could seriously harm our financial position. Any adverse determination in litigation could also subject us to significant liabilities.

***One of our stockholders owns a significant percentage of our stock and, together with our management, will be able to exert significant control over matters subject to stockholder approval.***

As of December 31, 2017, entities affiliated with New Enterprise Associates, or NEA, a venture capital fund associated with one of our directors, collectively beneficially owned approximately 29.6% of our common stock, and NEA together with our executive officers and directors beneficially owned approximately 34.5% of our capital stock, including outstanding restricted stock units that will vest within 60 days of December 31, 2017, and warrants and stock options exercisable for shares of our common stock within 60 days of December 31, 2017. Therefore, these stockholders may be able to determine all matters requiring stockholder approval, and the entities affiliated with NEA alone will have significant ability to influence decisions through their ownership position. For example, these stockholders may be able to influence or control elections of directors, amendments to 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 certain stockholders may feel are in their best interest as one of our stockholders.



***If we sell shares of our common stock in future financings, stockholders may experience immediate dilution and, as a result, our stock price may decline.***

We may from time to time issue additional shares of common stock at a discount from the current trading price of our common stock. As a result, our stockholders would experience immediate dilution upon the purchase of any shares of our common stock sold at such discount. In addition, as opportunities present themselves, we may enter into financing or similar arrangements in the future, including the issuance of debt securities, preferred stock or common stock. If we issue common stock or securities convertible into common stock, our common stockholders would experience additional dilution and, as a result, our stock price may decline.

***Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.***

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market, the trading price of our common stock could decline. As of December 31, 2017, we had 47,534,979 shares of common stock outstanding. Of those shares, approximately 14.4 million were held by current directors, executive officers and other affiliates, or may otherwise be subject to Rule 144 under the Securities Act of 1933, or the Securities Act.

As of December 31, 2017, approximately 0.7 million shares of common stock issuable upon vesting of outstanding restricted stock units and approximately 4.0 million shares of common stock issuable upon exercise of outstanding options were eligible for sale in the public market to the extent permitted by the provisions of the applicable vesting schedules, and Rule 144 and Rule 701 under the Securities Act. In addition, as of December 31, 2017, approximately 2.2 million shares of common stock issuable upon exercise of outstanding warrants were eligible for sale in the public market. If these additional shares of common stock are issued and sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

As of December 31, 2017, the holders of approximately 5.6 million shares of our outstanding common stock are entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

***Provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable and may lead to entrenchment of management.***

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could significantly reduce the value of our shares to a potential acquirer or delay or prevent changes in control or changes in our management without the consent of our board of directors. The provisions in our charter documents include the following:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- the required approval of at least two-thirds of the shares entitled to vote to remove a director for cause, and the prohibition on removal of directors without cause;

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- the ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the ability of our board of directors to alter our bylaws without obtaining stockholder approval;
- the required approval of at least two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our amended and restated certificate of incorporation regarding the election and removal of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by the chairman of the board of directors, the chief executive officer, the president or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

In addition, these provisions would apply even if we were to receive an offer that some stockholders may consider beneficial.

We are also subject to the anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law. Under Section 203, 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 exceptions, the board of directors has approved the transaction.

***Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.***

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, our amended and restated bylaws and our indemnification agreements that we have entered into with our directors and officers provide that:

- We will indemnify our directors and officers for serving us in those capacities or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person 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 registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

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- We will not be obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnitees, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification.
- The rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our amended and restated bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

***We do not currently intend to pay dividends on our common stock, and, consequently, our stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.***

We do not currently intend to pay any cash dividends on our common stock for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Additionally, the terms of our loan and security agreements could restrict our ability to pay dividends. Therefore, our stockholders are not likely to receive any dividends on our common stock for the foreseeable future. Since we do not intend to pay dividends, our stockholders' ability to receive a return on their investment will depend on any future appreciation in the market value of our common stock. There is no guarantee that our common stock will appreciate or even maintain the price at which our holders have purchased it.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our headquarters is currently located in Fremont, California, and consists of 61,784 square feet, plus a further 10,716 square feet beginning in September 2019, of leased office and laboratory space under a lease that currently expires in September 2021. In addition, we lease 3,814 square feet of office space in Boston, Massachusetts, under a lease that currently expires in June 2018. We believe that our existing 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**

From time to time, we may be involved in legal proceedings arising in the ordinary course of business. We believe that as of December 31, 2017, there is no litigation pending that would reasonably be expected to have a material adverse effect on our results of operations and financial condition.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Price Range of Common Stock

Our common stock commenced trading on The Nasdaq Global Market under the symbol "ARDX" on June 19, 2014. Prior to that date, there was no public trading market for our common stock.

The following table sets forth, for the periods indicated, the high and low reported sales prices of our common stock as reported on The Nasdaq Global Market:

	High	Low
<b>2017:</b>		
First Quarter	\$ 15.40	\$ 10.95
Second Quarter	\$ 14.10	\$ 4.05
Third Quarter	\$ 6.20	\$ 4.28
Fourth Quarter	\$ 8.65	\$ 4.75
	High	Low
<b>2016:</b>		
First Quarter	\$ 17.90	\$ 6.84
Second Quarter	\$ 9.81	\$ 6.36
Third Quarter	\$ 13.29	\$ 8.42
Fourth Quarter	\$ 16.30	\$ 10.55

As of December 31, 2017, there were 40 holders of record of our common stock. The last reported sale price of the common stock on March 8, 2018, on The Nasdaq Global Market was \$5.55 per share.

#### Dividends

We have never declared or paid cash dividends on our capital stock. We currently intend to retain any future earnings to finance the growth and development of our business.

#### Recent Sales of Unregistered Securities

None.

#### Use of Proceeds

Not applicable.

#### Issuer Purchases of Equity Securities

Not applicable.

#### Stock Price Performance Graph

The following stock performance graph compares our total stock return with the total return for (i) the Nasdaq Composite Index (depicted in the graph as "IXIC") and the (ii) the Nasdaq Biotechnology Index (depicted in the graph as "NBI") for the period from June 19, 2014 (the date our common stock commenced trading on The Nasdaq Global Market) through December 31, 2017. The figures represented below assume an investment of \$100 in our common stock at the closing price of \$14.11 on June 19, 2014 and in the Nasdaq Composite Index and the Nasdaq Biotechnology Index

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on June 19, 2014 and the reinvestment of dividends into shares of common stock. The comparisons in the table are required by the Securities and Exchange Commission, or SEC, and are not intended to forecast or be indicative of possible future performance of our common stock. This graph shall not be deemed “soliciting material” or be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any of our filings under the Securities Act whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.



<b>\$100 invested in stock or index</b>	<b>Ticker</b>	<b>6/19/2014</b>	<b>12/31/2014</b>	<b>12/31/2015</b>	<b>12/31/2016</b>	<b>12/31/2017</b>
Ardelyx, Inc	ARDX	\$ 100.00	\$ 133.88	\$ 128.42	\$ 100.64	\$ 46.78
Nasdaq Composite Index	IXIC	\$ 100.00	\$ 108.64	\$ 114.87	\$ 123.49	\$ 158.36
Nasdaq Biotechnology Index	NBI	\$ 100.00	\$ 121.38	\$ 135.24	\$ 105.92	\$ 128.22

**ITEM 6. SELECTED FINANCIAL DATA**

The data set forth below is not necessarily indicative of the results of future operations and should be read in conjunction with the financial statements and the notes included elsewhere in this annual report on Form 10-K and also

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with “ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS” and our financial statements and the related notes included in this Annual Report on Form 10-K.

Statement of Operations Data:	Year Ended December 31,				
	2017	2016	2015	2014	2013
	(in thousands, except share and per share amounts)				
<b>Revenue:</b>					
Licensing revenue	\$ 42,000	\$ —	\$ 21,611	\$ 18,394	\$ 8,063
Collaborative development revenue	—	—	2,415	13,229	20,865
Total revenue	42,000	—	24,026	31,623	28,928
Cost of revenue	8,400	—	—	—	—
Gross profit	33,600	—	24,026	31,623	28,928
<b>Operating expenses:</b>					
Research and development	75,484	94,161	39,885	25,900	28,093
General and administrative	23,231	18,734	13,530	7,287	3,700
Total operating expenses	98,715	112,895	53,415	33,187	31,793
Loss from operations	(65,115)	(112,895)	(29,389)	(1,564)	(2,865)
Other income (expense), net	1,955	508	(261)	10	(52)
Change in fair value of preferred stock warrant liability	—	—	—	(1,593)	(3,506)
Loss before provision for income taxes	(63,160)	(112,387)	(29,650)	(3,147)	(6,423)
Provision for (benefit from) income taxes	1,179	—	(29)	67	141
Net loss	\$ (64,339)	\$ (112,387)	\$ (29,621)	\$ (3,214)	\$ (6,564)
Net loss per common share, basic and diluted	\$ (1.36)	\$ (2.80)	\$ (1.29)	\$ (0.31)	\$ (5.82)
Shares used in computing net loss per share - basic and diluted	47,435,331	40,118,522	22,892,640	10,248,337	1,127,948
	As of December 31,				
<b>Balance Sheet Data:</b>	2017	2016	2015	2014	2013
	(in thousands)				
Cash, cash equivalents and short-term investments	\$ 133,976	\$ 200,823	\$ 107,004	\$ 107,286	\$ 34,435
Total assets	157,903	213,131	116,946	113,414	42,904
Deferred revenue	—	—	—	47,053	40,298
Convertible preferred stock warrant liability	—	—	—	—	6,456
Convertible preferred stock	—	—	—	—	56,155
Accumulated deficit	(278,214)	(213,875)	(101,488)	(71,867)	(68,653)
Total stockholders' equity (deficit)	139,312	193,151	108,901	60,682	(63,479)

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*You should read the following discussion and analysis of our financial condition and results of operations together with the section of this report entitled "Selected Financial Data" and our financial statements and related notes included elsewhere in this report. This discussion and other parts of this report contain forward-looking statements that involve risk and uncertainties, such as statements of our plans, objectives, expectations and intentions. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section of this report entitled "Risk Factors."*

### **OVERVIEW**

We are a specialized biopharmaceutical company focused on developing first-in-class, disruptive medicines for the treatment of renal diseases, which affect both the heart and the kidneys. This includes patients with end-stage renal disease, or ESRD, who suffer from elevated serum phosphorus, or hyperphosphatemia; and chronic kidney disease, or CKD, and/or heart failure patients with elevated serum potassium, or hyperkalemia. We have also developed a number of programs directed toward treating gastrointestinal, or GI, disorders, including the treatment of irritable bowel syndrome with constipation, or IBS-C.

Our portfolio is led by the development of tenapanor, a first-in-class inhibitor of NHE3. In our renal pipeline, tenapanor is being evaluated in a second Phase 3 trial for the treatment of hyperphosphatemia in patients with ESRD who are on dialysis. We are also advancing a small molecule potassium secretagogue program, RDX013, for the potential treatment of hyperkalemia.

We have also developed tenapanor for the treatment of people with irritable bowel syndrome with constipation, or IBS-C. In 2017, we completed the T3MPO program for this indication, including two Phase 3 studies, both of which achieved statistical significance for the primary endpoint, and a long-term safety extension study. Based on the results of the T3MPO clinical program in IBS-C, we currently plan to submit our first New Drug Application, or NDA, to the United States Food and Drug Administration, or FDA, in the second half of 2018 for tenapanor for the treatment of IBS-C.

We have developed a proprietary drug discovery and design platform to discover targets found in the GI tract that regulate processes in the body and design products candidates that act upon those targets to take advantage of the gut's ability to communicate with other organs.

Since commencing operations in October 2007, substantially all our efforts have been dedicated to our research and development activities, including developing our clinical product candidate tenapanor and developing our proprietary drug discovery and design platform. We have not generated any revenues from product sales and have no products approved for commercialization. As of December 31, 2017, we had an accumulated deficit of \$278.2 million.

We expect to incur operating losses for the foreseeable future as we prepare for the commercialization of tenapanor, including costs associated with completing the on-going Phase 3 development program for tenapanor for the treatment of hyperphosphatemia in patients with ESRD on dialysis. To date, we have funded our operations from the sale and issuance of common stock, convertible preferred stock, funds from our former collaboration partnerships with AstraZeneca AB, or AstraZeneca, and Sanofi SA, or Sanofi, and funds from our recent license agreements with Kyowa Hakko Kirin Co., Ltd., or KHK, and Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd., or Fosun Pharma.

In June 2015, we sold and issued 7,242,992 shares of common stock and warrants to purchase 2,172,899 shares of common stock at an exercise price of \$13.91 per share in a private placement transaction in which we raised approximately \$77.8 million in gross proceeds. We received \$74.3 million in net proceeds, after deducting issuance costs.

In January 2016, we completed an underwritten public offering of 8,625,000 shares of common stock at an offering price of \$10.00 per share for gross proceeds of \$86.3 million. This offering was completed under our shelf

registration statement filed on July 13, 2015, and we received net proceeds from the offering of approximately \$80.8 million, after deducting the underwriters' discounts and commissions and offering expenses.

In July 2016, we sold and issued an aggregate of 12,600,230 shares of common stock in a private placement transaction at an offering price of \$8.73 per share for gross proceeds of \$110.0 million. We received net proceeds from the offering of approximately \$109.8 million, after deducting offering expenses.

## **FINANCIAL OPERATIONS OVERVIEW**

### ***Revenue***

We have not generated any revenue from product sales. Prior to 2017, our revenue to date had been generated from non-refundable license payments and reimbursements for research and development expenses under license agreements with AstraZeneca and Sanofi, both of which were terminated in 2015. We recognized revenue from upfront payments ratably over the term of our estimated period of performance under those agreements, which we recorded as licensing revenue. Reimbursements from AstraZeneca for development costs incurred under our license and collaboration agreement with them were classified as collaborative development revenue. There has been no recognition of collaborative development revenue since the termination of the AstraZeneca agreement in 2015.

In 2017, we executed license agreements with KHK and Fosun Pharma for the development, commercialization and distribution of tenapanor for certain uses in Japan and China, respectively. Under the terms of the KHK and Fosun Pharma license agreements, the Company received an aggregate of \$30.0 million and \$12.0 million, respectively, in up-front license fees. These amounts were recorded as revenue when the contracts were executed. These agreements also contain milestone payments, which will be recorded as revenue when we achieve the underlying milestone. See "ITEM 1. BUSINESS—OUR PRODUCT PIPELINE—TENAPANOR: A NEW APPROACH FOR TREATING HYPERPHOSPHATEMIA IN ESRD PATIENTS ON DIALYSIS" for additional detail regarding the KHK and Fosun Pharma license agreements.

### ***Cost of Revenue***

Cost of revenue currently represents license payments due to AstraZeneca, who under the terms of a termination agreement entered into in 2015 are entitled to (i) future royalties at a royalty rate of 10% of net sales of tenapanor or other NHE3 products by us or our licensees, and (ii) 20% of non-royalty revenue received from a new collaboration partner should we elect to license, or otherwise provide rights to develop and commercialize tenapanor or another NHE3 inhibitor, up to a maximum of \$75.0 million in aggregate for (i) and (ii). We recognize these expenses as cost of revenue when we recognize the revenue that generates our liability for these license payments.

### ***Research and Development Expenses***

We recognize all research and development expenses as they are incurred to support the discovery, development and manufacturing of our product candidates. Research and development expenses consist of the following:

- external research and development expenses incurred under agreements with consultants, third-party contract research organizations and investigative sites where a substantial portion of our clinical studies are conducted, and with contract manufacturing organizations where our clinical supplies are produced;
- expenses associated with supplies and materials consumed in connection with our research operations;
- employee-related expenses, which include salaries, benefits, travel and stock-based compensation;
- other costs associated with regulatory, clinical and non-clinical development activities; and



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- facilities and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities, depreciation and amortization expense, information technology expense and expenses for supplies.

We expect to continue to make substantial investments in research and development activities as we progress the development of tenapanor, as well as our other product candidates, advance our research programs into the preclinical stage and continue our early stage research including further development of our proprietary drug discovery and design platform. The process of conducting preclinical studies and clinical trials necessary to obtain regulatory approval is costly and time consuming. We may never succeed in achieving marketing approval for any of our product candidates, including tenapanor. Additionally, if marketing approval is received for tenapanor for the treatment of IBS-C, we may not be successful in securing one or more collaboration partners to commercialize tenapanor in the United States and other territories. The probability of success of each of the product candidates may be affected by numerous factors, including preclinical data, clinical data, market acceptance, sufficient third-party coverage or reimbursement, our ability to access capital on acceptable terms, our ability to enter into collaboration partnerships on acceptable terms, competition, manufacturing capability and commercial viability.

We anticipate that we will make determinations as to which programs to pursue and how much funding to direct to each program on an ongoing basis in response to the scientific and clinical success of each product candidate, ongoing assessment as to each product candidate's commercial potential, and our ability to access capital on acceptable terms. We will need to raise additional capital and will seek additional collaboration partnerships in the future in order to complete the development and commercialization of tenapanor. If we are unable to access capital on a timely basis and on terms that are acceptable to us, we may be forced to restructure certain aspects of our business or identify and complete one or more strategic collaborations or other transactions in order to fund the development or commercialization of tenapanor or certain of our product candidates through the use of alternative structures.

### ***General and Administrative***

General and administrative expenses consist primarily of salaries and related costs, including stock-based compensation. Other general and administrative expenses include facility related costs and professional fees for legal, accounting, investor relations and other consulting services.

We anticipate that our selling, general and administrative expenses will increase substantially in the future primarily because of (i) increased pre-commercial activities and personnel costs to support the potential launch of tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis and (ii) expenses related to costs of operating as a public company and preparing for future integrated audits.

### ***Income Taxes***

We recorded a foreign income tax charge of \$1.2 million in the year ended December 31, 2017, due to a withholding tax in China on our license revenue from Fosun Pharma. All other income tax charges and benefits in the three years ended December 31, 2017, have not been material, primarily due to the net loss in each year.

Our deferred assets continue to be subject to full valuation allowance for the tax years ended December 31, 2017 and 2016. A valuation allowance is recorded when it is more likely than not that all or some portion of the deferred income tax assets will not be realized. We regularly assess the need for a valuation allowance against our deferred income tax assets by considering both positive and negative evidence related to whether it is more likely than not that our deferred income tax assets will be realized. In evaluating our ability to recover our deferred income tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred income tax liabilities, future tax rates, projected future taxable income, tax-planning strategies, and results of recent operations.

## CRITICAL ACCOUNTING POLICES AND ESTIMATES

A detailed discussion of our significant accounting policies can be found in Note 1 of the Notes to Consolidated Financial Statements in Part II, Item 8, and the impact and risks associated with our accounting policies are discussed throughout this Annual Report on Form 10-K and in the footnotes to the financial statements. Critical accounting policies are those that require significant judgment and/or estimates by management at the time that financial statements are prepared such that materially different results might have been reported if other assumptions had been made. We consider certain accounting policies related to revenue recognition, accrued liabilities, and use of estimates to be critical policies. These estimates form the basis for making judgments about the carrying values of assets and liabilities. We base our estimates and judgments on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates.

We believe the following policies to be the most critical to an understanding of our financial condition and results of operations because they require us to make estimates, assumptions and judgments about matters that are inherently uncertain.

### ***Revenue Recognition***

#### *Research Activities*

Revenue from research activities conducted under collaboration partnership agreements are recognized as the services are provided and when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed or determinable, and collectability is reasonably assured. Revenue generated from research and license agreements typically includes up-front signing or license fees, cost reimbursements, research services, milestone payments, and royalties on licensees' product sales.

#### *Multiple-Element Arrangements*

For revenue agreements with multiple-element arrangements, such as license and development agreements, we allocate revenue to each non-contingent unit of accounting based on the relative selling price of each unit. When applying the relative selling price method, we determine the selling price for each deliverable using vendor-specific objective evidence or third-party evidence. If neither exists, we use the best estimate of selling price for that deliverable. Revenue allocated is then recognized when the four basic revenue recognition criteria are met for each unit. Our obligations under the agreements may include the transfer of intellectual property rights in the form of licenses, obligations to provide research and development services and obligations to participate on certain development committees with the collaboration partner. We make judgments that affect the period over which we recognize revenue. On a quarterly basis, we review our estimated period of performance for our license revenue based on the progress under the arrangement and account for the impact of any changes in estimated periods of performance, on a prospective basis, if applicable given the facts and circumstances of the agreement.

#### *Cost Reimbursement*

We recognize cost reimbursement revenue under collaboration partnership agreements as the related research and development costs for services are rendered. Deferred revenue represents the portion of research or license payments received that have not been earned.

#### *Milestone*

A milestone is considered substantive when the consideration earned from the achievement of the milestone (i) is commensurate with either our performance to achieve the milestone or the enhancement of value of the item delivered as a result of a specific outcome resulting from our performance to achieve the milestone, (ii) relates solely to past performance and (iii) is reasonable relative to all deliverables and payment terms in the arrangement. Such payments that are contingent upon the achievement of a substantive milestone are recognized entirely as revenue in the period in which the milestone is achieved. To the extent that non-substantive milestones are achieved and we have

remaining performance obligations, milestones are deferred and recognized as revenue over the estimated remaining period of performance. If there were no remaining performance obligations, we recognize the revenue in the period it is earned.

#### ***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 our 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 estimate the fair value of stock options and Employee Stock Purchase Plan, or ESPP, shares using the Black-Scholes valuation model. The Black-Scholes model requires the input of highly subjective assumptions which determine the fair value of stock-based awards. These assumptions include:

*Expected Term*—We have very limited historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for our stock-option grants. As such, the expected term is estimated using the simplified method whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option.

*Expected Volatility*— Since January 1, 2017, we have used the historic volatility of our own stock over the retrospective period corresponding to the expected remaining term of the options, or the period since our shares

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were first quoted on The Nasdaq Global Market, if that is shorter, to compute our expected stock price volatility. Prior to December 31, 2016, our stock had not been publicly traded for a sufficient period to enable us to use our own historic volatility, so the expected volatility was calculated based on the average volatility for comparable publicly traded biopharmaceutical companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on their similar size, stage in the life cycle, and financial leverage of the Company.

*Risk-Free Interest Rate*—The risk-free interest rate assumption is based on the zero-coupon U.S. Treasury instruments on the date of grant with a maturity date consistent with the expected term of our stock option grants.

*Expected Dividend*—To date, we have not declared or paid any cash dividends and do not have any plans to do so in the future. Therefore, we use an expected dividend yield of zero.

As required, we review our valuation assumptions at each grant date and, as a result, we are likely to change our valuation assumptions used to value employee stock-based awards granted in future periods. Employee and director stock-based compensation costs are to be recognized over the vesting period of the award, and we have elected to use the straight-line attribution method. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We estimate forfeitures based on historical experience.

Restricted stock units, or RSUs, are measured at the fair value of our common stock on the date of grant and expensed over the period of vesting using the straight-line attribution approach.

## RESULTS OF OPERATIONS

### Comparison of the Years Ended December 31, 2017 and 2016

#### *Revenue*

	Year Ended December 31,	
	2017	2016
	(in thousands)	
Licensing revenue	\$42,000	\$ —
Dollar change from prior year	42,000	
Percent change from prior year	N/A	

Licensing revenue for the year ended December 31, 2017, was \$42.0 million, an increase of \$42.0 million compared to the year ended December 31, 2016, when we generated no licensing revenue. Licensing revenue for 2017 was related to the recognition of revenue from upfront payments under our KHK and Fosun Pharma agreements.

#### *Cost of revenue*

	Year Ended December 31,	
	2017	2016
	(in thousands)	
Cost of revenue	\$ 8,400	\$ —
Dollar change from prior year	8,400	
Percent change from prior year	N/A	

Cost of revenue for the year ended December 31, 2017, was \$8.4 million, an increase of \$8.4 million compared to the year ended December 31, 2016, when we generated no revenue and therefore incurred no related costs. Cost of revenue represents license payments due to AstraZeneca, which under the terms of a termination agreement entered into in 2015 are entitled to (i) future royalties at a royalty rate of 10% of net sales of tenapanor or other NHE3 products by us or our licensees, and (ii) 20% of non-royalty revenue received from a new collaboration partner should we elect to

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license, or otherwise provide rights to develop and commercialize tenapanor or another NHE3 inhibitor, with the maximum amount due AstraZeneca for royalties and non-royalty revenue not to exceed \$75.0 million in aggregate for (i) and (ii).

**Research and Development**

	<b>Year Ended December 31,</b>	
	<b>2017</b>	<b>2016</b>
	<b>(in thousands)</b>	
Research and development	\$ 75,484	\$ 94,161
Dollar change from prior year	(18,677)	
Percent change from prior year	(20)%	

Research and development expenses were \$75.5 million for the year ended December 31, 2017, a decrease of \$18.7 million, or 20%, compared to \$94.2 million for the year ended December 31, 2016. The decrease consisted of a \$23.8 million decrease in our external program costs, partially offset by a \$5.1 million increase in our internal program costs.

The decrease in our external program costs of \$23.8 million was primarily due to a decrease of \$22.3 million in expenses incurred for clinical development activities related to the completion of our T3MPO Phase 3 clinical program for tenapanor, our first Phase 3 clinical trial evaluating tenapanor for the treatment of hyperphosphatemia patients with ESRD on dialysis and a decrease in manufacturing development activities related to tenapanor. In addition, expenses incurred for clinical development activities, clinical manufacturing and process development activities associated with RDX8940 decreased by \$3.2 million. These decreases were offset by an increase of \$1.7 million in expenses incurred primarily for clinical development activities associated with RDX7675, including costs associated with the termination of that program.

The increase in our internal costs of \$5.1 million was primarily due to an increase in salaries and related costs, including stock-based compensation, facilities-related costs, principally related to supporting the growth of our development team and severance costs relating to our reduction in workforce in the third quarter 2017.

**General and Administrative**

	<b>Year Ended December 31,</b>	
	<b>2017</b>	<b>2016</b>
	<b>(in thousands)</b>	
General and administrative	\$ 23,231	\$ 18,734
Dollar change from prior year	4,497	
Percent change from prior year	24 %	

General and administrative expenses were \$23.2 million for the year ended December 31, 2017, an increase of \$4.5 million, or 24%, compared to \$18.7 million for the year ended December 31, 2016. The increase was primarily due to increases in salaries and related costs, including stock-based compensation and facilities costs including depreciation expense, due to an increase in headcount and an expansion of facilities late in 2016, increased legal fees, and severance costs due to the refocusing of resources towards late-stage programs and subsequent reduction in the workforce in the third quarter of 2017, offset by reductions in certain professional services.

**Comparison of the Years Ended December 31, 2016 and 2015****Revenue**

	Year Ended December 31,	
	2016	2015
	(in thousands)	
Licensing revenue	\$ —	\$ 21,611
Dollar change from prior year	(21,611)	
Percent change from prior year	(100)%	

Licensing revenue for the year ended December 31, 2016 was zero, a decrease of \$21.6 million, or 100%, compared to \$21.6 million for the year ended December 31, 2015. Licensing revenue for 2015 was related to the recognition of revenue from upfront and milestone payments under the AstraZeneca agreement. Because the AstraZeneca agreement was terminated in June 2015, there has been no further recognition of revenue related to the upfront and milestone payments under such agreement since that time.

	Year Ended December 31,	
	2016	2015
	(in thousands)	
Collaborative development revenue	\$ —	\$ 2,415
Dollar change from prior year	(2,415)	
Percent change from prior year	(100)%	

Collaborative development revenue consists of our development expenses that were reimbursable to us by AstraZeneca under the AstraZeneca agreement. Collaborative development revenue for the year ended December 31, 2016 was zero, a decrease of \$2.4 million, or 100%, compared to \$2.4 million for the year ended December 31, 2015. The decrease was due the termination of our collaboration with AstraZeneca in 2015 and the related cessation of reimbursement of research and development expenses.

**Research and Development**

	Year Ended December 31,	
	2016	2015
	(in thousands)	
Research and development	\$ 94,161	\$ 39,885
Dollar change from prior year	54,276	
Percent change from prior year	136 %	

Research and development expenses were \$94.2 million for the year ended December 31, 2016, an increase of \$54.3 million, or 136%, compared to \$39.9 million for the year ended December 31, 2015. The increase consisted of a \$44.1 million increase in our external program costs and a \$10.2 million increase in our internal program costs. The increase in external program costs of \$44.1 million was primarily due to expenses incurred for clinical development activities associated with tenapanor including the commencement of two Phase 3 clinical trials in IBS-C, a long-term safety trial, and one Phase 3 clinical trial in hyperphosphatemia, as well as clinical manufacturing and process development activities associated with tenapanor, RDX7675 and RDX8940.

The increase in our internal costs of \$10.2 million was primarily due to an increase in personnel, facility and other costs, primarily related to an increase in research and development headcount to support the growth of our development activities.

**General and Administrative**

	<b>Year Ended December 31,</b>	
	<b>2016</b>	<b>2015</b>
	<b>(in thousands)</b>	
General and administrative	\$ 18,734	\$ 13,530
Dollar change from prior year	5,204	
Percent change from prior year	38 %	

General and administrative expenses were \$18.7 million for the year ended December 31, 2016, an increase of \$5.2 million, or 38%, compared to \$13.5 million for the year ended December 31, 2015. The increase was primarily due to increases of \$2.7 million in personnel and other costs including stock-based compensation, as a result of an increase in headcount, \$1.4 million in professional fees and \$1.1 million in market research and pre-commercialization activities.

**LIQUIDITY AND CAPITAL RESOURCES**

	<b>December 31,</b>	
	<b>2017</b>	<b>2016</b>
	<b>(in thousands)</b>	
Cash and cash equivalents	75,383	74,598
Short-term investments	58,593	126,225
Total liquid funds	\$ 133,976	\$ 200,823

As of December 31, 2017, we had cash, cash equivalents and short-term investments totaling \$134.0 million.

On July 13, 2015, we filed a shelf registration statement on Form S-3 (File No. 333-205631) with the SEC, under which we may sell an aggregate of up to \$200.0 million of common stock, preferred stock, debt securities, warrants, purchase contracts and/or units. The S-3 shelf registration statement included a prospectus covering the offering, issuance and sale of up to \$50.0 million of shares of common stock from time to time in “at the market,” or “ATM offerings” pursuant to a Controlled Equity Offering Sales Agreement, or Sales Agreement, entered into with Cantor Fitzgerald & Co. on July 13, 2015. No shares of common stock have been sold to date in ATM offerings, and on February 6, 2017 we gave notice to Cantor Fitzgerald & Co. of our termination of the Sales Agreement, effective February 16, 2017.

In January 2016, we completed an underwritten public offering of 8,625,000 shares of common stock at an offering price of \$10.00 per share for gross proceeds of \$86.3 million. This offering was completed under our shelf registration statement filed on July 13, 2015, and we received net proceeds from the offering of approximately \$80.8 million, after deducting the underwriters’ discounts and commissions and offering expenses.

In July 2016, we sold and issued an aggregate of 12,600,230 shares of common stock in a private placement transaction at an offering price of \$8.73 per share for gross proceeds of \$110.0 million. We received net proceeds from the offering of approximately \$109.8 million, after deducting offering expenses.

In November and December 2017, we executed license agreements with KHK and Fosun Pharma for the development, commercialization and distribution of tenapanor for certain indications in Japan and China, respectively, under which we were entitled to an aggregate of \$30.0 million and \$12.0 million, respectively, in up-front license fees. The \$30.0 million was collected by December 31, 2017 and the remaining \$12.0 million, less \$1.2 million of withholding taxes, was collected in January 2018. We accrued a liability of \$8.4 million to AstraZeneca in accordance with the terms of our termination agreement with AstraZeneca entered into in 2015, of which \$6.0 million was paid by December 31, 2017 and the remainder of which was paid in February 2018.

Our primary uses of cash are to fund operating expenses, primarily research and development expenditures. Cash used to fund operating expenses is impacted by the timing of when we pay these expenses, as reflected in the change in our outstanding accounts payable and accrued expenses.

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We believe that our existing capital resources as of December 31, 2017, combined with the upfront payment from Fosun Pharma received in January 2018, will be sufficient to meet our projected operating requirements for at least the 12-month period following the filing date of this Annual Report on Form 10-K. 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. Further, our operating plan can change, and we may require significant additional capital to fund our operations, including to support the development, commercialization and manufacturing efforts for tenapanor. We may seek to obtain such additional capital through debt financings, credit facilities, additional equity offerings and/or strategic collaborations. We currently have no credit facility or committed sources of capital, and there can be no assurances that such sources of capital will be available to us when needed or on acceptable terms. Because of the numerous risks and uncertainties associated with the development and commercialization of our product candidates, and the extent to which we may enter into additional collaboration partnerships with third-parties to participate in their development and commercialization, we are unable to estimate the amounts of increased capital outlays and operating expenditures associated with our current and anticipated clinical studies, manufacturing requirements and commercial plans. Our future funding requirements will depend on many factors, including the following:

- the progress, timing, scope, results and costs of our clinical trial programs evaluating tenapanor for the treatment of hyperphosphatemia in ESRD patients on dialysis and the submission of an NDA to the FDA to request marketing authorization for tenapanor in patients with IBS-C, as well as our decision whether or not to pursue other indications for tenapanor;
- our ability to successfully commercialize tenapanor, either alone or with one or more collaboration partners;
- the manufacturing costs of tenapanor, and the availability of one or more suppliers for tenapanor at reasonable costs;
- the selling and marketing costs associated with tenapanor, including the cost and timing of building our sales and marketing capabilities;
- our ability to maintain our existing collaboration partnerships and to establish additional collaboration partnerships, in-license/out-license, joint ventures or other similar arrangements and the financial terms of such agreements;
- the timing, receipt, and amount of sales of, or royalties on, tenapanor, if any;
- the sales price and the availability of adequate third-party reimbursement for tenapanor;
- the cash requirements of any future acquisitions or discovery of product candidates;
- the number and scope of research programs that we decide to pursue or initiate, and any clinical trials we decide to pursue for other product candidates;
- the time and cost necessary to respond to technological and market developments; and
- the costs of filing, prosecuting, maintaining, defending and enforcing any patent claims and other intellectual property rights, including litigation costs and the outcome of such litigation, including costs of defending any claims of infringement brought by others in connection with the development, manufacture or commercialization of tenapanor or any of our product candidates.



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The following table summarizes our cash flows for the periods indicated:

	Year Ended December 31,		
	2017	2016	2015
	(in thousands)		
Cash used in operating activities	\$ (65,190)	\$ (92,534)	\$ (71,840)
Cash provided by (used in) investing activities	65,290	(131,076)	(3,454)
Cash provided by financing activities	685	191,204	75,012
Net increase (decrease) in cash and cash equivalents	\$ 785	\$ (32,406)	\$ (282)

#### ***Cash Flows from Operating Activities***

Net cash used in operating activities during the year ended December 31, 2017, was approximately \$65.2 million. The net loss of \$64.3 million was adjusted for (i) non-cash charges of \$3.2 million for depreciation and amortization and \$9.6 million for stock-based compensation, (ii) an increase of \$10.8 million in accounts receivable, solely related to the Fosun Pharma license up front fee after withholding taxes, (iii) an increase of \$2.1 million in prepaid expenses, primarily advances to vendors for clinical development and manufacturing activities, and (iv) a decrease in accounts payable and accrued liabilities of \$0.7 million primarily due to expenses incurred for the clinical manufacturing, process development, and clinical development activities for tenapanor and RDX7675.

Net cash used in operating activities during the year ended December 31, 2016, was approximately \$92.5 million. The net loss of \$112.4 million was adjusted for (i) an increase of accounts payable and accrued liabilities of \$11.2 million primarily due to expenses incurred for the clinical manufacturing, process development, and clinical development activities for tenapanor, RDX7675 and RDX8940, (ii) non-cash charges of \$1.8 million for depreciation and amortization and \$5.3 million for stock-based compensation and (iii) pre-payments of \$1.6 million to vendors for clinical development and manufacturing activities.

Net cash used in operating activities during the year ended December 31, 2015, was approximately \$71.8 million. The net loss of \$29.6 million was adjusted for (i) the recognition of deferred revenues of \$47.1 million related to upfront payments from AstraZeneca, (ii) an increase of accounts payable and accrued liabilities of \$2.3 million due to expenses incurred for the clinical manufacturing, process development, and clinical development activities for tenapanor, RDX7675 and RDX8940, (iii) non-cash charges of \$1.3 million for depreciation and amortization and \$2.6 million for stock-based compensation, (iv) advance payments of \$4.1 million to vendors for clinical development and manufacturing activities, and (v) a decrease accounts receivable of \$2.6 million due to the termination of our collaboration with AstraZeneca.

#### ***Cash Flows from Investing Activities***

Net cash provided by investing activities was \$65.3 million for the year ended December 31, 2017, primarily due to maturities and sales, less purchases, of short-term investments of \$67.7 million. This was offset by the acquisition of property and equipment of \$2.4 million related to the purchase of laboratory equipment and leasehold improvements.

Net cash used by investing activities was \$131.1 million for the year ended December 31, 2016, and was primarily due to purchases of marketable securities of \$133.8 million and acquisition of property and equipment of \$4.9 million related to the expansion of our laboratory and related equipment. These uses of cash were partially offset by maturities of short-term investments of \$7.6 million.

Net cash used in investing activities for the years ended December 31, 2015, was related to our acquisition of property and equipment of \$3.5 million, primarily related to expansion of our laboratory and related equipment.

#### ***Cash Flows from Financing Activities***

Net cash provided by financing activities for the year ended December 31, 2017, was \$0.7 million, due to proceeds from issuance of common stock under stock plans.

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Net cash provided by financing activities for the year ended December 31, 2016, was \$191.2 million and was primarily due to net proceeds of \$190.6 million from public and private offerings of our common stock.

Net cash provided by financing activities for the year ended December 31, 2015, was \$75.0 million and was primarily due to net proceeds of \$74.3 million from a private offering of our common stock.

**CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS**

Contractual Obligation:	Payments Due by Period (in thousands)				Total
	Less than 1 year	1 to 3 Years	3 to 5 Years	More Than 5 Years	
Operating leases (1)	\$ 1,615	\$ 3,739	\$ 1,440	\$ —	\$ 6,794
Total contractual obligations	\$ 1,615	\$ 3,739	\$ 1,440	\$ —	\$ 6,794

(1) Operating leases include total future minimum payments under non-cancelable operating lease agreements.

**OFF-BALANCE SHEET ARRANGEMENTS**

As of December 31, 2017, we did not have any off-balance sheet arrangements as defined in Item 303(a)(4) of Regulation S-K as promulgated by the SEC.

**RECENT ACCOUNTING PRONOUNCEMENTS**

Refer to Note 2 in the notes to our consolidated financial statements in Part I, Item 8 of this Annual Report on Form 10-K, for a discussion of new accounting pronouncements.

**JOBS ACT ACCOUNTING ELECTION**

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards, and, therefore, are subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. In addition, as an emerging growth company, we have reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK*****Interest Rate Risk***

We are exposed to market risks in the ordinary course of our business. These risks primarily include risk related to interest rate sensitivities. We had cash, cash equivalents and short-term investments of \$134.0 million as of December 31, 2017, which consist of bank deposits and money market funds, as well as high quality fixed income instruments including corporate bonds, commercial paper, and asset-backed securities collateralized by non-mortgage consumer receivables. The credit rating of our short-term investments must be rated A-1/P-1, or better by Standard and Poor’s and Moody’s Investors Service. The credit rating of our long-term securities must be rated at least A- by Standard & Poor’s or A3 by Moody’s. Asset-backed securities must be rated AAA/Aaa. Money Market funds must be rated AAAM/Aaa. Such interest-earning instruments carry a degree of interest rate risk. However, because our investments are high quality and primarily short-term in duration, we believe that our exposure to interest rate risk is not significant and a 10% movement in market interest rates would not have a significant impact on the total value of our portfolio. We do not enter into investments for trading or speculative purposes.

***Foreign Currency Exchange Risk***

Certain expenditures and receipts related to our international activities are payable in foreign currencies. As a result, factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets will affect our financial results. We recognized net foreign currency exchange gains of \$0.5 million for the year ended December 31, 2017, compared to losses of \$0.1 million for the year ended December 31, 2016. For most contracts payable in a foreign currency, we have generally purchased the total expected payable amount of foreign currency at the execution of the contract. Because we only have \$6.2 million in foreign currency cash holdings, all in stable European currencies, we do not expect that the impact of currency fluctuations will be material in the future.

**ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**ARDELYX, INC.  
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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**Report of Independent Registered Public Accounting Firm**

To the Stockholders and the Board of Directors of Ardelyx, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Ardelyx, Inc. (the Company) as of December 31, 2017 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, 2017, and the related notes (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, 2017 and 2016, 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.

**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 Public Company Accounting Oversight Board (United States) (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. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

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 2009.

Redwood City, California  
March 14, 2018

**ARDELYX, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share and per share amounts)

	<b>December 31,</b>	
	<b>2017</b>	<b>2016</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 75,383	\$ 74,598
Short-term investments	58,593	126,225
Accounts receivable	10,796	—
Prepaid expenses and other current assets	4,940	3,169
Total current assets	<u>149,712</u>	<u>203,992</u>
Property and equipment, net	8,032	8,991
Other assets	159	148
Total assets	<u>\$ 157,903</u>	<u>\$ 213,131</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 3,933	\$ 5,635
Accrued compensation and benefits	3,229	3,161
Accrued and other liabilities	10,709	10,405
Total current liabilities	<u>17,871</u>	<u>19,201</u>
Other long-term liabilities	720	779
Total liabilities	<u>18,591</u>	<u>19,980</u>
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 5,000,000 shares authorized; no shares issued and outstanding as of December 31, 2017 and December 31, 2016	—	—
Common stock, \$0.0001 par value; 300,000,000 shares authorized; 47,534,979 and 47,309,422 shares issued and outstanding as of December 31, 2017 and December 31, 2016, respectively	5	5
Additional paid-in capital	417,568	407,092
Accumulated deficit	(278,214)	(213,875)
Accumulated other comprehensive loss	(47)	(71)
Total stockholders' equity	<u>139,312</u>	<u>193,151</u>
Total liabilities and stockholders' equity	<u>\$ 157,903</u>	<u>\$ 213,131</u>

See accompanying notes.

**ARDELYX, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
**(in thousands, except share and per share amounts)**

	<b>Year Ended December 31,</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>
<b>Revenue:</b>			
Licensing revenue	\$ 42,000	\$ —	\$ 21,611
Collaborative development revenue	—	—	2,415
Total revenue	42,000	—	24,026
Cost of revenue	8,400	—	—
Gross profit	33,600	—	24,026
<b>Operating expenses:</b>			
Research and development	75,484	94,161	39,885
General and administrative	23,231	18,734	13,530
Total operating expenses	98,715	112,895	53,415
Loss from operations	(65,115)	(112,895)	(29,389)
Other income (expense), net	1,955	508	(261)
Loss before provision for income taxes	(63,160)	(112,387)	(29,650)
Provision for (benefit from) income taxes	1,179	—	(29)
Net loss	\$ (64,339)	\$ (112,387)	\$ (29,621)
Net loss per common share, basic and diluted	\$ (1.36)	\$ (2.80)	\$ (1.29)
Shares used in computing net loss per share - basic and diluted	47,435,331	40,118,522	22,892,640
<b>Comprehensive Loss:</b>			
Net loss	\$ (64,339)	\$ (112,387)	\$ (29,621)
Unrealized gain (loss) on available-for-sale securities, net of tax	24	(71)	—
Comprehensive loss	\$ (64,315)	\$ (112,458)	\$ (29,621)

See accompanying notes.

**ARDELYX, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
<b>Balance as of December 31, 2014</b>	18,589,245	\$ 2	\$ 132,547	\$ (71,867)	\$ —	\$ 60,682
Issuance of common stock and warrants in connection with the private placement, net of expenses of \$3,449	7,242,992	1	74,322	—	—	74,323
Issuance of common stock upon exercise of options	77,784	—	111	—	—	111
Issuance of common stock under employee stock purchase plan	41,580	—	548	—	—	548
Issuance of common stock for services	13,285	—	194	—	—	194
Stock-based compensation	—	—	2,634	—	—	2,634
Other	—	—	30	—	—	30
Net loss	—	—	—	(29,621)	—	(29,621)
<b>Balance as of December 31, 2015</b>	25,964,886	\$ 3	\$ 210,386	\$ (101,488)	\$ —	\$ 108,901
Issuance of common stock in connection with PIPE, net of expenses of \$263	12,600,230	1	109,735	—	—	109,736
Issuance of common stock in connection with public offering, net of expenses of \$5,413	8,625,000	1	80,836	—	—	80,837
Issuance of common stock under employee stock purchase plan	69,054	—	576	—	—	576
Issuance of common stock for services	20,118	—	187	—	—	187
Issuance of common stock upon exercise of options	25,134	—	55	—	—	55
Issuance of common stock upon vesting of restricted stock units	5,000	—	—	—	—	—
Stock-based compensation	—	—	5,317	—	—	5,317
Other comprehensive loss	—	—	—	—	(71)	(71)
Net loss	—	—	—	(112,387)	—	(112,387)
<b>Balance as of December 31, 2016</b>	47,309,422	\$ 5	\$ 407,092	\$ (213,875)	\$ (71)	\$ 193,151
Issuance of common stock under employee stock purchase plan	99,343	—	623	—	—	623
Issuance of common stock for services	46,858	—	201	—	—	201
Issuance of common stock upon exercise of options	35,759	—	62	—	—	62
Issuance of common stock upon vesting of restricted stock units	43,597	—	—	—	—	—
Stock-based compensation	—	—	9,590	—	—	9,590
Other comprehensive income	—	—	—	—	24	24
Net loss	—	—	—	(64,339)	—	(64,339)
<b>Balance as of December 31, 2017</b>	47,534,979	\$ 5	\$ 417,568	\$ (278,214)	\$ (47)	\$ 139,312

See accompanying notes.



**ARDELYX, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Year Ended December 31,		
	2017	2016	2015
<b>Operating activities</b>			
Net loss	\$ (64,339)	\$ (112,387)	\$ (29,621)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation expense	2,639	1,295	829
Amortization of deferred financing costs	375	346	351
Amortization of deferred compensation for services	192	194	107
Amortization of premium on investment securities	11	(86)	—
Stock-based compensation	9,590	5,317	2,634
Loss from disposal of fixed assets	—	—	65
Changes in operating assets and liabilities:			
Accounts receivable	(10,796)	—	2,584
Prepaid expenses and other assets	(2,148)	1,562	(4,083)
Accounts payable	(1,027)	2,148	(371)
Accrued compensation and benefits	68	795	718
Accrued and other liabilities	245	8,282	2,000
Deferred revenue	—	—	(47,053)
Net cash used in operating activities	<u>(65,190)</u>	<u>(92,534)</u>	<u>(71,840)</u>
<b>Investing activities</b>			
Proceeds from maturities of investments	133,701	7,600	—
Sales and redemptions of investments	17,957	—	—
Purchases of investments	(84,013)	(133,810)	—
Purchases of property and equipment	(2,355)	(4,866)	(3,454)
Net cash provided by (used in) investing activities	<u>65,290</u>	<u>(131,076)</u>	<u>(3,454)</u>
<b>Financing activities</b>			
Proceeds from issuance of common stock, net of issuance costs	—	190,573	74,323
Proceeds from issuance of common stock under stock plans	685	631	659
Other	—	—	30
Net cash provided by financing activities	<u>685</u>	<u>191,204</u>	<u>75,012</u>
<b>Net increase (decrease) in cash and cash equivalents</b>	<u>785</u>	<u>(32,406)</u>	<u>(282)</u>
<b>Cash and cash equivalents at beginning of period</b>	<u>74,598</u>	<u>107,004</u>	<u>107,286</u>
<b>Cash and cash equivalents at end of period</b>	<u>\$ 75,383</u>	<u>\$ 74,598</u>	<u>\$ 107,004</u>
<b>Supplementary disclosure of cash flow information:</b>			
Income taxes paid	\$ 3	\$ —	\$ 69
<b>Supplementary disclosure of non-cash financing information:</b>			
Acquisition of property and equipment included in accounts payable and accrued liabilities	\$ 55	\$ 730	\$ —
Services settled through the issuance of common stock	\$ 201	\$ 187	\$ 194

See accompanying notes.

**ARDELYX, INC.**  
**NOTES CONSOLIDATED TO FINANCIAL STATEMENTS**

**1. ORGANIZATION AND BASIS OF PRESENTATION**

Ardelyx, Inc., or “the Company,” is a specialized biopharmaceutical company focused on developing first-in-class, disruptive medicines for the treatment of renal diseases, which affect both the heart and the kidneys. Tenapanor, a first-in-class inhibitor of NHE3, is being evaluated in a second Phase 3 trial for the treatment of hyperphosphatemia in patients with ESRD who are on dialysis. The Company is also advancing a small molecule potassium secretagogue program, RDX013, for the potential treatment of hyperkalemia as well as tenapanor for the treatment of people with irritable bowel syndrome with constipation, or IBS-C, for which the Company is preparing to submit a New Drug Application (“NDA”) to the United States Food and Drug Administration (“FDA”) in the second half of 2018.

The Company operates in only one business segment, which is the development of biopharmaceutical products.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of Presentation***

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

***Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of Ardelyx and its wholly-owned subsidiary, Ardelyx Cayman Islands, which was placed into voluntary liquidation in December 2017. Intercompany transactions and balances have been eliminated in consolidation.

***Use of Estimates***

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. On an ongoing basis, management evaluates its estimates, including those related to recognition of revenue, clinical trial accruals, contract manufacturing accruals, fair value of assets and liabilities, income taxes and stock-based compensation. Management bases its estimates on historical experience and on various other market-specific and relevant assumptions that management believes to be reasonable under the circumstances. Actual results could differ from those estimates.

***Liquidity***

The Company has never been profitable on an annual basis and, as of December 31, 2017, the Company has an accumulated deficit of \$278.2 million. The Company has incurred net losses of approximately \$64.3 million, \$112.4 million and \$29.6 million in the years ended December 31, 2017, 2016 and 2015, respectively. The Company expects to continue to incur net operating losses for the foreseeable future, as the Company continues the development of, seeks regulatory approval for, and if approved, begins to commercialize and manufacture tenapanor, either directly by the Company or through one or more of its collaboration partners. The Company will need additional funding to support its future operating activities and adequate funding may not be available to the Company on acceptable terms, or at all. The Company’s failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on the business, results of operations, and financial condition. The Company will need to generate significant revenues to achieve profitability and may never do so.

### ***Cash and Cash Equivalents***

The Company considers all highly liquid investments purchased with an original maturity date of 90 days or less on the date of purchase to be cash equivalents.

### ***Short-Term Investments***

Short-term investments consist of debt securities classified as available-for-sale and have maturities greater than 90 days, but less than one year, from the date of acquisition. Short-term investments are carried at fair value based upon quoted market prices. Unrealized gains and losses on available-for-sale securities are excluded from earnings and are reported as a component of accumulated other comprehensive loss. The cost of available-for-sale securities sold is based on the specific-identification method.

### ***Concentration of Credit Risk***

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The Company is exposed to credit risks in the event of default by the counterparties to the extent of the amount recorded in its consolidated balance sheet. Cash, cash equivalents and short-term investments are invested through banks and other financial institutions in the United States.

### ***Accounts Receivable***

An allowance for doubtful accounts will be recorded based on a combination of historical experience, aging analysis, and information on specific accounts. Account balances will be written off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. No provision was made for doubtful accounts as of December 31, 2017 or 2016.

### ***Property and Equipment***

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets, generally three to five years. Leasehold improvements are amortized over the lesser of the estimated useful lives or the related remaining lease term.

### ***Impairment of Long-Lived Assets***

The carrying value of long-lived assets, including property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss is recognized when the total of estimated future undiscounted cash flows, expected to result from the use of the asset and its eventual disposition, are less than its carrying amount. Impairment, if any, would be assessed using discounted cash flows or other appropriate measures of fair value. Through December 31, 2017, there have been no such impairment losses.

### ***Income Taxes***

The Company uses the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and the 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. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

### ***Revenue Recognition***

Revenue from research activities made under collaboration partnership agreements is recognized as the services are provided and when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed or determinable, and collectability is reasonably assured. Revenue generated from research and licensing agreements typically includes up-front signing or license fees, cost reimbursements, research services, minimum sublicense fees, milestone payments, and royalties on future licensees' product sales.

For revenue agreements with multiple-element arrangements, such as license and development agreements, the Company allocates revenue to each unit of accounting based on the relative selling price of each unit. When applying the relative selling price method, the Company determines the selling price for each deliverable using vendor-specific objective evidence or third-party evidence. If neither exists, the Company uses its best estimate of selling price for that deliverable. Revenue allocated is then recognized when the four basic revenue recognition criteria are met for each deliverable.

The Company recognizes revenue from upfront payments under license agreements on contract execution if the license payment is a separate unit of accounting and the Company has no continuing performance obligations under the license, as is the case with the Company's license agreements with KHK and Fosun Pharma. If the license is not a separate unit of accounting, the Company recognizes revenue from upfront payments ratably over the term of its estimated period of performance under the agreement which is recorded as licensing revenue. Reimbursements for development costs incurred under the contract with AstraZeneca, until it was terminated, were classified as collaborative development revenue. The Company recognizes cost reimbursement revenue under collaboration partnership agreements as the related research and development costs for services are rendered. Deferred revenue represents the portion of research or license payments received which has not been earned.

Revenues from milestones, if they are nonrefundable and deemed substantive, are recognized upon successful accomplishment of the milestones. To the extent that non-substantive milestones are achieved and the Company has remaining performance obligations, milestones are deferred and recognized as revenue over the estimated remaining period of performance. The Company will recognize revenue associated with the non-substantive milestones upon achievement of the milestone if there are no undelivered units and it has no remaining performance obligations. The Company will account for sales-based milestones as royalties that will be recognized as revenue upon achievement of the milestone.

Revenue subject to governmental withholding taxes is recognized on a gross basis with the withholding taxes recorded as a component of income tax expense.

### ***Research and Development Costs***

Research and development costs are charged to expense as incurred and consist of costs incurred to further the Company's research and development activities including salaries and related employee benefits, costs associated with clinical trials, costs related to pre-commercialization manufacturing activities such as manufacturing process validation activities and the manufacturing of clinical drug supply, nonclinical research and development activities, regulatory activities, research-related overhead expenses and fees paid to external service providers and contract research and manufacturing organizations that conduct certain research and development activities on behalf of the Company.

### ***Accrued Research and Development Expenses***

As part of the process of preparing our financial statements, the Company is required to estimate its accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with its personnel to identify services that have been performed on its behalf and estimating the level of service performed and the associated cost incurred for the service when the Company has not yet been invoiced or otherwise notified of the actual cost. The majority of the Company's service providers invoice the Company monthly in arrears for services performed or when contractual milestones are met. The Company makes estimates of its accrued expenses as of each balance sheet date in its financial statements based on facts and circumstances known to the Company at that time. The Company periodically

confirms the accuracy of its estimates with the service providers and make adjustments if necessary. Examples of estimated accrued research and development expenses include fees paid to:

- contract research organizations (“CROs”) in connection with clinical studies;
- investigative sites in connection with clinical studies;
- vendors related to product manufacturing, development and distribution of clinical supplies; and
- vendors in connection with preclinical development activities.

The Company records expenses related to clinical studies and manufacturing development activities based on its estimates of the services received and efforts expended pursuant to contracts with multiple CROs and manufacturing vendors that conduct and manage these activities on its 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 the Company’s 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, the Company estimates 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 the Company’s estimate, the Company will adjust the accrued or prepaid expense balance accordingly. To date, there have been no material differences from the Company’s estimates to the amounts actually incurred.

#### ***Stock-Based Compensation***

The Company recognizes compensation expense for all stock-based payment awards made to employees and directors based on estimated fair values. For employee stock options, the Company determines the grant date fair value of the awards using the Black-Scholes option-pricing model and generally recognizes the fair value as stock-based compensation expense on a straight-line basis over the vesting period of the respective awards. For restricted stock, the compensation cost for these awards is based on the closing price of the Company’s common stock on the date of grant and recognized as compensation expense on a straight-line basis over the requisite service period. Stock-based compensation expense is based on the value of the portion of stock-based payment awards that is ultimately expected to vest. As such, the Company’s stock-based compensation is reduced for the estimated forfeitures at the date of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The Company accounts for equity instruments issued to nonemployees based on their fair values on the measurement dates using the Black-Scholes option-pricing model. The estimated fair values of the options granted to nonemployees are remeasured as they vest. As a result, the noncash charge to operations for nonemployee options with vesting conditions is affected each reporting period by changes in the fair value of the Company’s common stock.

#### ***Comprehensive Loss***

Comprehensive loss is composed of two components: net loss and other comprehensive income (loss). Other comprehensive income (loss) refers to gains and losses that under U.S. GAAP are recorded as an element of stockholders’ equity, but are excluded from net loss.

#### ***Net Loss per Share***

Basic net loss per common share is calculated by dividing the net loss by the weighted-average number of common shares outstanding during the period, without consideration of potential common shares. Diluted net loss per common share in the periods presented is the same as basic net loss per common share, since the effects of potentially dilutive securities are antidilutive due to the net loss for all periods presented.

### ***Recent Accounting Pronouncements***

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2014-09, *Revenue from Contracts with Customers* (“ASU 2014-09”), which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. ASU 2014-09 will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. In July 2015, the FASB voted to approve a deferral of the effective date of this ASU by one year, and to permit entities to adopt up to one year earlier if they choose. Therefore, the new standard becomes effective for the Company on January 1, 2018, with early application permitted for periods beginning on or after January 1, 2017. The standard permits the use of two transition methods on adoption, either retrospectively to each prior period presented (full retrospective method), or retrospectively with the cumulative effect of initially applying the standard as an adjustment to the opening balance of retained earnings of the annual reporting period that includes the date of initial application (modified retrospective method). Since the issuance of ASU 2014-09, the FASB has issued several amendments which clarify certain points in the new Topic 606 - *Revenue from Contracts with Customers*, including ASU 2016-08 (“Principal versus Agent Considerations—Reporting Revenue Gross versus Net”), ASU 2016-10 (“Identifying Performance Obligations and Licensing”), ASU 2016-11 (“Rescission of SEC Guidance Because of Accounting Standards Updates 2014-09 and 2014-16 Pursuant to Staff Announcements at the March 3, 2016 EITF Meeting”) and ASU 2016-12 (“Narrow-Scope Improvements and Practical Expedients”). The Company plans to adopt all these standards using the modified retrospective method on January 1, 2018, and will modify its accounting policies to reflect the requirements of these standards. The Company expects to record an increase in current assets of \$5.0 million related to the first milestone under the Company’s license with Kyowa Hakko Kirin Co., Ltd. (“KHK”), which the Company believes is not materially at risk, an increase in current liabilities of \$1.0 million related to the corresponding payment to AstraZeneca AB (“AstraZeneca”), in accordance with the Company’s termination agreement and a related decrease in its accumulated deficit of approximately \$4.0 million when it adopts the new standards on January 1, 2018, as Topic 606 permits revenue from certain milestones to be recognized earlier than Topic 605, the U.S. GAAP that is being superseded.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which replaces most current lease guidance when it becomes effective. This standard update intends to increase the transparency and improve comparability by requiring entities to recognize assets and liabilities on the balance sheet for all leases, with certain exceptions. The new standard states that a lessee will recognize a lease liability for the obligation to make lease payments and a right-of-use asset for the right to use the underlying asset for the lease term. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the consolidated statements of operations. The new guidance will be effective for the Company starting in the first quarter of fiscal 2019. Early adoption is permitted. The Company plans to adopt the new guidance effective January 1, 2019, and is currently evaluating the effect that this guidance will have on its consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes: Intra-Entity Transfers of Assets Other Than Inventory* (ASU 2016-16). This update is to improve the accounting for the income tax consequences of intra-entity transfers of assets other than inventory. ASU 2016-16 amends the guidance to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. Consequently, the amendments in this update eliminate the exception for an intra-entity transfer of an asset other than inventory. The amendments in this update do not include new disclosure requirements; however, existing disclosure requirements might be applicable when accounting for the current and deferred income taxes for an intra-entity transfer of an asset other than inventory. ASU 2016-16 is effective for the Company’s interim and annual reporting periods during the year ending December 31, 2018, and all annual and interim reporting periods thereafter. Early adoption is permitted. The adoption of ASU 2016-16 is not expected to have a material effect on the Company’s consolidated financial statements.

In May 2017, FASB issued ASU No. 2017-09, *Compensation-Stock Compensation (Topic 718) - Scope of Modification Accounting* (ASU 2017-09). The amendments included in this update provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting. The amendments in this update will be applied prospectively to an award modified on or after the adoption date. The amendments in ASU 2017-09 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. The adoption of this standard is not expected to have a material impact on the Company’s consolidated financial statements.

The Company has reviewed all other significant newly-issued accounting pronouncements and concluded that they either are not applicable to the Company's operations or that no material effect is expected on its consolidated financial statements as a result of future adoption.

### 3. CASH, CASH EQUIVALENTS AND INVESTMENTS

Securities classified as cash, cash equivalents and short-term investments as of December 31, 2017 and December 31, 2016 are summarized below (in thousands). Estimated fair value is based on quoted market prices for these investments.

	December 31, 2017			
	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Cash and cash equivalents:				
Cash	\$ 5,882	\$ —	\$ —	\$ 5,882
Money market funds	68,651	—	—	68,651
Commercial paper	850	—	—	850
Total cash and cash equivalents	<u>75,383</u>	<u>—</u>	<u>—</u>	<u>75,383</u>
Short-term investments				
U.S. treasury securities	3,994	—	(1)	3,993
Corporate bonds	26,853	—	(26)	26,827
Commercial paper	19,584	—	(14)	19,570
Asset-backed securities	8,209	—	(6)	8,203
Total short-term investments	<u>58,640</u>	<u>—</u>	<u>(47)</u>	<u>58,593</u>
Total cash equivalents and investments	<u>\$ 134,023</u>	<u>\$ —</u>	<u>\$ (47)</u>	<u>\$ 133,976</u>

	December 31, 2016			
	Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Cash and cash equivalents:				
Cash	\$ 3,638	\$ —	\$ —	\$ 3,638
Money market funds	68,561	—	—	68,561
Commercial paper	2,399	—	—	2,399
Total cash and cash equivalents	<u>74,598</u>	<u>—</u>	<u>—</u>	<u>74,598</u>
Short-term investments				
Corporate bonds	58,464	2	(56)	58,410
Commercial paper	62,946	5	(20)	62,931
Asset-backed securities	4,886	—	(2)	4,884
Total short-term investments	<u>126,296</u>	<u>7</u>	<u>(78)</u>	<u>126,225</u>
Total cash equivalents and investments	<u>\$ 200,894</u>	<u>\$ 7</u>	<u>\$ (78)</u>	<u>\$ 200,823</u>

Cash equivalents consist of money market funds and other debt securities with original maturities of three months or less at the time of purchase, and the carrying amount is a reasonable approximation of fair value. The Company invests its cash in high quality securities of financial and commercial institutions. These securities are carried at fair value, which is based on readily available market information, with unrealized gains and losses included in "accumulated other comprehensive income (loss)" within stockholders' equity on the Company's consolidated balance sheets. The Company uses the specific identification method to determine the amount of realized gains or losses on sales of marketable securities. Realized gains or losses to date have been insignificant and are included in "other income, net" in the consolidated statements of operations.

All available-for-sale securities held as of December 31, 2017 and 2016, had contractual maturities of less than one year. The Company's available-for-sale securities are subject to a periodic impairment review. The Company considers a debt security to be impaired when its fair value is less than its carrying cost, in which case the Company would further review the investment to determine whether it is other-than-temporarily impaired. When the Company

evaluates an investment for other-than-temporary impairment, the Company reviews factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and any changes thereto, intent to sell, and whether it is more likely than not the Company will be required to sell the investment before the recovery of its cost basis. If an investment is other-than-temporarily impaired, the Company writes it down through the statement of operations to its fair value and establishes that value as a new cost basis for the investment. The Company did not identify any of its available-for-sale securities as other-than-temporarily impaired in any of the periods presented. As of December 31, 2017 and 2016, no investment was in a continuous unrealized loss position for more than one year, the unrealized losses were not due to a change in credit risk, and the Company believes that is more likely than not the investments will be held until maturity or a forecasted recovery of fair value.

#### 4. FAIR VALUE MEASUREMENTS

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The three-level hierarchy for the inputs to valuation techniques is briefly summarized as follows:

- Level 1 – Valuations are based on quoted prices in active markets for identical assets or liabilities. Examples of assets and liabilities utilizing Level 1 inputs are certain money market funds, U.S. Treasuries and trading securities with quoted prices on active markets.
- Level 2 – Valuations based on inputs other than the quoted prices in active markets that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Examples of assets and liabilities utilizing Level 2 inputs are corporate bonds, commercial paper, certificates of deposit and over-the-counter derivatives.
- Level 3 – Valuations based on unobservable inputs in which there is little or no market data, which require the Company to develop its own assumptions.

The following table sets forth the fair value of the Company’s financial assets measured on a recurring basis by level within the fair value hierarchy:

	December 31, 2017			
	Total	Level 1	Level 2	Level 3
Assets:				
Money market funds	\$ 68,651	\$ 68,651	\$ —	\$ —
U.S. treasury securities	3,993	3,993	—	—
Corporate bonds	26,827	—	26,827	—
Commercial paper	20,420	—	20,420	—
Asset-backed securities	8,203	—	8,203	—
Total	<u>\$ 128,094</u>	<u>\$ 72,644</u>	<u>\$ 55,450</u>	<u>\$ —</u>



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	December 31, 2016			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Money market funds	\$ 68,561	\$ 68,561	\$ —	\$ —
Corporate bonds	58,410	—	58,410	—
Commercial paper	65,330	—	65,330	—
Asset-backed securities	4,884	—	4,884	—
Total	<u>\$ 197,185</u>	<u>\$ 68,561</u>	<u>\$ 128,624</u>	<u>\$ —</u>

Where quoted prices are available in an active market, securities are classified as Level 1. The Company classifies money market funds, U.S. treasury securities and U.S. government-sponsored agency bonds as Level 1. When quoted market prices are not available for the specific security, then the Company estimates fair value by using benchmark yields, reported trades, broker/dealer quotes and issuer spreads. The Company classifies corporate bonds, commercial paper and asset-backed securities as Level 2. In certain cases, where there is limited activity or less transparency around inputs to valuation, securities are classified as Level 3. There were no transfers between Level 1 and Level 2 during the periods presented.

The carrying amounts reflected in the balance sheets for cash equivalents, short-term investments, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued expenses approximate their fair values at both December 31, 2017 and December 31, 2016, due to their short-term nature.

**5. PROPERTY AND EQUIPMENT**

Property and equipment consist of the following:

	December 31,	
	2017	2016
	(in thousands)	
Laboratory equipment	\$ 6,857	\$ 5,487
Office equipment and furniture	815	824
Leasehold improvements	7,949	7,783
Property and equipment, gross	15,621	14,094
Less: accumulated depreciation	(7,589)	(5,103)
Total property and equipment, net	<u>\$ 8,032</u>	<u>\$ 8,991</u>

Depreciation expense totaled \$2.6 million, \$1.3 million and \$0.8 million for the years ended December 31, 2017, 2016 and 2015, respectively.

**6. ACCRUED AND OTHER LIABILITIES**

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

	December 31,	
	2017	2016
Accrued clinical and non-clinical expenses	\$ 5,447	\$ 6,694
Accrued contract manufacturing	3,980	2,705
Accrued professional and consulting services	530	322
Other	752	684
	<u>\$ 10,709</u>	<u>\$ 10,405</u>

## 7. COLLABORATION AND LICENSING AGREEMENTS

### ***KHK***

In November 2017, the Company entered into an exclusive license agreement with KHK (the “KHK Agreement”) for the development, commercialization and distribution of tenapanor in Japan. Under the terms of the KHK Agreement, the Company received an aggregate of \$30.0 million in up-front license fees which was recognized as revenue when the agreement was executed.

In addition, the Company may be entitled to receive up to \$130 million in additional development and commercialization milestones based upon currency exchange rates as of the effective date of license agreement, as well as reimbursement of cost plus a reasonable overhead for the supply of product and high-teen royalties on net sales throughout the term of the agreement.

### ***Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd. (“Fosun Pharma”)***

In December 2017, the Company entered into an exclusive license agreement with Fosun Pharma (the “Fosun Agreement”) for the development, commercialization and distribution of tenapanor in China. Under the terms of the Fosun Agreement, the Company will receive an aggregate of \$12.0 million in up-front license fees which was recognized as revenue when the agreement was executed.

In addition, the Company may be entitled to additional milestones of up to \$113 million, as well as reimbursement of cost plus a reasonable overhead for the supply of product and tiered royalties on net sales ranging from the mid-teens to 20%.

### ***AstraZeneca***

In October 2012, the Company entered into a collaboration partnership with AstraZeneca for the worldwide development and commercialization of tenapanor. Under the terms of the AstraZeneca collaboration partnership agreement, or the AstraZeneca Agreement, the Company received an aggregate of \$75 million in up-front license and milestone fees. The amounts were recorded as deferred revenue when received and were recognized as revenue on a straight-line basis over the remaining estimated period of performance under the AstraZeneca Agreement.

In June 2015, the Company entered into a termination agreement with AstraZeneca (the “Termination Agreement”) pursuant to which all licenses granted to AstraZeneca to the Company’s portfolio of NHE3 inhibitors, including the Company’s lead product candidate, tenapanor, were terminated, except for the limited purpose of allowing AstraZeneca to satisfy its obligations under the Termination Agreement. As the AstraZeneca Agreement was terminated in June 2015, the Company recognized the remaining deferred revenue balance of \$43.1 million during the three months ended June 30, 2015. In the three months ended June 30, 2015, the Company recorded a \$15.0 million payment for the return of the licenses as well as a \$10.0 million payment for reimbursement of research and development expenses and the acceleration of the transfer of information and materials as a reduction in licensing revenue in the consolidated statements of operations. There has been no recognition of licensing revenue or collaborative development revenue since the termination of the AstraZeneca Agreement in 2015.

The Company remains liable to pay AstraZeneca license fees for (i) future royalties at a royalty rate of 10% of net sales of tenapanor or other NHE3 products by us or our licensees, and (ii) 20% of non-royalty revenue received from a new collaboration partner should we elect to license, or otherwise provide rights to develop and commercialize tenapanor or another NHE3 inhibitor, up to a maximum of \$75.0 million in aggregate for (i) and (ii). We recognized \$8.4 million, being 20% of the combined license revenue recognized under the KHK Agreement and Fosun Agreement, as cost of revenue in the year ended December 31, 2017.

## **8. EQUITY INCENTIVE PLANS**

### ***2008 Plan***

The Company granted options under its 2008 Stock Incentive Plan (the “2008 Plan”) until June 2014 when it was terminated as to future awards, although it continues to govern the terms of options that remain outstanding under the 2008 Plan. The 2008 Plan provided for the granting of incentive and non-qualified stock options, and stock purchase rights to employees, directors and consultants at the discretion of the Board of Directors. Stock options granted generally vest over a period of four years from the date of grant. In connection with the Board of Directors and stockholders’ approval of the 2014 Plan, all remaining shares available for future award under the 2008 Plan were transferred to 2014 Plan, and the 2008 Plan was terminated.

### ***2014 Plan***

The 2014 Equity Incentive Award Plan (the “2014 Plan”) became effective on June 18, 2014. Under the 2014 Plan, 1,419,328 shares of common stock were initially reserved for issuance pursuant to a variety of stock-based compensation awards, including stock options, stock appreciation rights, or SARs, restricted stock awards, service-based restricted stock unit (“RSU”) awards, performance-based restricted stock unit (“PRSU”) awards, deferred stock awards, deferred stock unit awards, dividend equivalent awards, stock payment awards and performance awards. In addition, 35,221 shares that had been available for future awards under the 2008 Plan as of June 18, 2014, were added to the initial reserve available under the 2014 Plan, bringing the total reserve upon the effective date of the 2014 Plan to 1,454,549. The number of shares initially reserved for issuance or transfer pursuant to awards under the 2014 Plan will be increased by (i) the number of shares represented by awards outstanding under 2008 Plan on June 18, 2014, that are either forfeited or lapse unexercised or that are repurchased for the original purchase price thereof, up to a maximum of 1,153,279 shares, and (ii) if approved by the Administrator of the 2014 Plan, an annual increase on the first day of each fiscal year ending in 2024 equal to the lesser of (A) four percent (4.0%) of the shares of stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of stock as determined by our board of directors; provided, however, that no more than 10,683,053 shares of stock may be issued upon the exercise of incentive stock options. Effective January 1, 2018, the 2014 Plan share reserve was increased by 1,901,399 shares.

### ***2016 Plan***

In November 2016, the Company’s board of directors approved the 2016 Employment Commencement Incentive Plan (the “Inducement Plan”) under which 1,000,000 shares were reserved. As of December 31, 2017, no shares of the Company’s common stock were subject to inducement grants that were issued pursuant to the Inducement Plan.

**Stock Plan Activity**

The following table summarizes activity under the 2008 Plan and the 2014 Plan, including grants issued to nonemployees, in the three years ended December 31, 2017:

	Shares Available for Grant	Options Issued and Outstanding		Weighted Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value (in thousands)
		Number of Shares	Weighted-Average Exercise Price per Share		
<b>Balance at</b>					
December 31, 2014	1,265,282	1,007,724	\$ 5.51		
Options authorized	743,569	—	\$ —		
Options granted	(379,709)	379,709	\$ 19.60		
Options exercised	—	(77,784)	\$ 1.42		
Options canceled	28,563	(28,563)	\$ 12.41		
Issuance of common stock for services and restricted stock units	(23,285)	—	—		
<b>Balance at</b>					
December 31, 2015	1,634,420	1,281,086	\$ 9.78		
Options authorized	1,038,595	—	\$ —		
Options granted	(1,524,014)	1,524,014	\$ 11.42		
Options exercised	—	(25,134)	\$ 2.19		
Options canceled	67,743	(67,743)	\$ 16.67		
Issuance of common stock for services and restricted stock units, net of 5,000 forfeitures	(189,507)	—	\$ —		
<b>Balance at</b>					
December 31, 2016	1,027,237	2,712,223	\$ 10.60		
Options authorized	1,892,376	—	\$ —		
Options granted	(1,723,906)	1,723,906	\$ 11.73		
Options exercised	—	(35,759)	\$ 1.70		
Options canceled	445,029	(445,029)	\$ 14.15		
Issuance of common stock for services and restricted stock units, net of 79,850 forfeitures	(601,008)	—	\$ —		
<b>Balance at</b>					
December 31, 2017	1,039,728	3,955,341	\$ 10.78	7.67	\$ 4,393
<b>Vested and expected to vest at</b>					
December 31, 2017		3,840,963	\$ 10.74	7.63	\$ 4,363
<b>Exercisable at</b>					
December 31, 2017		1,978,711	\$ 9.74	6.55	\$ 3,767

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The aggregate intrinsic value represents the difference between the total pre-tax value (i.e., the difference between the Company's stock price and the exercise price) of stock options outstanding as of December 31, 2017, based on the Company's common stock closing price of \$6.60 per share, which would have been received by the option holders had all their in-the-money options been exercised as of that date.

The intrinsic value of options exercised during the years ended December 31, 2017, 2016 and 2015, was \$0.3 million, \$0.3 million and \$1.1 million, respectively.

The weighted-average grant-date estimated fair value of options granted during the years ended December 31, 2017, 2016 and 2015 was \$8.19, \$7.69 and \$12.91 per share, respectively. The estimated grant date fair value of employee stock options was calculated using the Black-Scholes option-pricing model, based on the following weighted-average assumptions:

	Year Ended December 31,		
	2017	2016	2015
Expected term (years)	5.93	5.99	5.89
Expected volatility	82 %	77 %	75 %
Risk-free interest rate	2.08 %	1.62 %	1.64 %
Dividend yield	— %	— %	— %

*Expected Term*—The Company has very limited historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for its stock-option grants. As such, the expected term was estimated using the simplified method whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option.

*Expected Volatility*—Since January 1, 2017, the Company has used the historic volatility of its own stock over the retrospective period corresponding to the expected remaining term of the options, or the period since its shares were first quoted on The Nasdaq Global Market, if that is shorter, to compute its expected stock price volatility. Prior to December 31, 2016, the expected stock price volatility was calculated based on the average historical volatility for *comparable* publicly traded pharmaceutical companies. The Company selected companies with comparable characteristics, including enterprise value, risk profiles, position within the industry, and with historical share price information sufficient to meet the expected life of the Company's stock-based awards.

*Risk-Free Interest Rate*—The risk-free interest rate assumption is based on the zero-coupon U.S. Treasury instruments on the date of grant with a maturity date consistent with the expected term of the Company's stock option grants.

*Dividend Yield*—To date, the Company has not declared or paid any cash dividends and does not have any plans to do so in the future. Therefore, the Company used an expected dividend yield of zero.

**Restricted Stock Units**

The following table summarizes restricted stock unit activity under the 2014 Plan in the three years ended December 31, 2017:

	Number of Service- Based RSUs	Weighted-Average Grant Date Fair Value Per Share	Number of Performance- Based RSUs	Weighted- Average Grant Date Fair Value Per Share
Non-vested restricted stock units at December 31, 2014	—	\$ —	—	\$ —
Granted	10,000	\$ 18.04	—	\$ —
Non-vested restricted stock units at December 31, 2015	10,000	\$ 18.04	—	\$ —
Granted	174,389	\$ 14.34	—	\$ —
Vested	(5,000)	\$ 18.04	—	\$ —
Forfeited	(5,000)	\$ 18.04	—	\$ —
Non-vested restricted stock units at December 31, 2016	174,389	\$ 14.34	—	\$ —
Granted	472,135	\$ 4.70	161,865	\$ 13.90
Vested	(43,597)	\$ 14.34	—	\$ —
Forfeited	(61,865)	\$ 13.36	(17,985)	\$ 13.90
Non-vested restricted stock units at December 31, 2017	541,062	\$ 6.04	143,880	\$ 13.90

RSUs are generally subject to forfeiture if employment terminates prior to the release of vesting restrictions. The related compensation expense, which is based on the grant date fair value of the Company's common stock multiplied by the number of units granted, is recognized ratably over the period during which the vesting restrictions lapse.

In January 2017, the Company granted PRSU awards to senior management which vest upon the achievement of certain performance conditions, subject to each employee's continued service relationship with the Company. None of the PRSUs vested during the year ended December 31, 2017. When achievement of the performance conditions is considered probable, the related compensation expense, which is based on the grant date fair value of the Company's common stock multiplied by the number of units granted, is recognized ratably over the estimated vesting period. The Company recognized \$1.0 million of related expense during the year ended December 31, 2017.

The total estimated fair value of RSUs vested during the years ended December 31, 2017, 2016 and 2015 was \$0.4 million, \$0.1 million and nil, respectively.

**Issuance of Common Stock for Services**

During the years ended December 31, 2017, 2016 and 2015, the Company issued 46,858, 20,118 and 13,285 shares of common stock under the 2014 Plan in exchange for services performed, respectively, valued at \$0.2 million, \$0.2 million and \$0.2 million, respectively, based on the fair value of the common stock on the date of grant.

**Employee Stock Purchase Plan**

The Company adopted the 2014 Employee Stock Purchase Plan ("ESPP") and initially reserved 202,762 shares of common stock as of its effective date of June 18, 2014. If approved by the Administrator of the ESPP, on the first day of each calendar year, ending in 2024, the number of shares in the reserve will increase by an amount equal to the lesser of (i) one percent (1.0%) of the shares of common stock outstanding on the last day of the immediately preceding fiscal year and (ii) such number of shares of common stock as determined by the board of directors; provided, however, no more than 2,230,374 shares of our common stock may be issued under the ESPP.

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The following table summarizes ESPP activity in the three years ended December 31, 2017:

	<u>Shares Available for Grant</u>	<u>Number of Shares Purchased</u>	<u>Purchase Price per Share</u>	<u>Gross Proceeds (in thousands)</u>
Balance at December 31, 2014	202,762	—		
Shares authorized	185,892	—		
Shares purchased	<u>(41,580)</u>	<u>41,580</u>	\$ 13.25	\$ 551
Balance at December 31, 2015	347,074	41,580		
Shares purchased	<u>(69,054)</u>	<u>69,054</u>	\$ 8.34	\$ 576
Balance at December 31, 2016	278,020	110,634		
Shares purchased	<u>(99,343)</u>	<u>99,343</u>	\$ 6.27	\$ 623
Balance at December 31, 2017	<u>178,677</u>	<u>209,977</u>		

The following table illustrates the weighted-average assumptions for the Black-Scholes option-pricing model used in determining the fair value of ESPP purchase rights granted to employees:

	<u>Year Ended December 31,</u>		
	<u>2017</u>	<u>2016</u>	<u>2015</u>
Expected term (years)	0.5	0.5	0.5
Expected volatility	80 %	76 %	97 %
Risk-free interest rate	0.97 %	0.48 %	0.16 %
Dividend yield	— %	— %	— %

***Stock-based Compensation***

Total stock-based compensation recognized was as follows (in thousands):

	<u>Year Ended December 31,</u>		
	<u>2017</u>	<u>2016</u>	<u>2015</u>
	<u>(in thousands)</u>		
Research and development	\$ 4,585	\$ 2,786	\$ 1,327
General and administrative	5,005	2,531	1,307
Total stock-based compensation	<u>\$ 9,590</u>	<u>\$ 5,317</u>	<u>\$ 2,634</u>

As of December 31, 2017, the Company had \$14.5 million, \$2.5 million, \$0.9 million and \$0.1 million of total unrecognized compensation expense, net of estimated forfeitures, related to stock options, RSUs, PRSUs and ESPP, respectively, that will be recognized over an average vesting period of 2.43 years, 1.55 years, 0.83 years and 0.16 years, respectively.

**9. WARRANTS**

***Offering of Common Stock and Warrants***

In June 2015, the Company sold and issued an aggregate of 7,242,992 shares of its common stock and warrants to purchase 2,172,899 shares of common stock for aggregate gross proceeds of approximately \$77.8 million or net proceeds, after deducting issuance costs, of approximately \$74.3 million. The purchase price for the common stock was \$10.70 per share and the purchase price for the warrants was \$0.125 per warrant. The warrants are exercisable for an exercise price of \$13.91 per share at any time prior to the earlier of (i) 5 years from the date of issuance or (ii) certain changes in control of the Company. The Company has determined that the warrants should be classified as equity. In July 2015, the Company filed a registration statement with the SEC with respect to the common stock and warrants.

Other than with respect to warrants issued to holders affiliated with New Enterprise Associates, the warrants contain limitations that prevent each holder of warrants from acquiring shares upon exercise of the warrants that would

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cause the number of shares beneficially owned by it and its affiliates to exceed 9.99% of the total number of shares of the Company's common stock then issued and outstanding. In addition, upon certain changes in control of the Company, each holder of a warrant can elect to receive, subject to certain limitations and assumptions, securities in a successor entity. None of the warrants issued in June 2015 have been exercised during each of the years ended December 31, 2015, 2016 and 2017.

**10. INCOME TAXES**

The components of the provision for income taxes for the year ended December 31, 2017, 2016 and 2015, are as follows (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>
<b>Current:</b>			
Federal	\$ —	\$ —	\$ (7)
State	5	—	(22)
Foreign	1,204	—	—
Total current	<u>1,209</u>	<u>—</u>	<u>(29)</u>
<b>Deferred:</b>			
Federal	(30)	—	—
State	—	—	—
Foreign	—	—	—
Total deferred	<u>(30)</u>	<u>—</u>	<u>—</u>
Provision for (benefit from) income taxes	<u>\$ 1,179</u>	<u>\$ —</u>	<u>\$ (29)</u>

The following is a reconciliation of the statutory federal income tax rate to the Company's effective tax rate:

	<b>December 31,</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>
Income tax at the federal statutory rate	35.0 %	35.0 %	35.0 %
State taxes, net of federal benefit	0.5	0.3	(3.8)
Net impact related to foreign subsidiary	(1.2)	—	—
Change in valuation allowance	19.9	(36.2)	(30.7)
Impact of tax reform rate change	(56.4)	—	—
Tax credits	1.0	0.3	1.3
Other	(0.7)	0.6	(1.7)
Income tax provision	<u>(1.9)%</u>	<u>—%</u>	<u>0.1 %</u>



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Deferred income taxes reflect the tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets are as follows as of December 31, 2017 and 2016 (in thousands):

	December 31,	
	2017	2016
	(in thousands)	
Deferred tax assets:		
Fixed assets and intangibles	\$ 30,804	\$ —
Net operating loss carryforwards	22,355	68,639
Research credits	5,209	2,643
Stock-based compensation	3,159	2,583
Other	754	1,558
Gross deferred tax assets	62,281	75,423
Valuation allowance	(61,911)	(74,520)
Deferred tax assets net of valuation allowance	370	903
Deferred tax liabilities	(370)	(903)
Net deferred tax assets	\$ —	\$ —

The Company assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets. A significant piece of objective negative evidence evaluated was the cumulative loss incurred over the three-year periods ended December 31, 2017, 2016 and December 31, 2015. Such objective evidence limits the ability to consider other subjective evidence, such as the Company's projections for future growth. On the basis of this evaluation, as of December 31, 2017 and 2016, a full valuation allowance has been recorded against Company's net deferred tax asset. The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

Realization of deferred tax assets is dependent on future taxable income, if any, the timing and the amount of which are uncertain. The valuation allowance decreased by approximately \$12.6 million during the year ended December 31, 2017, and increased by approximately \$40.7 million and \$9.1 million during the years ended December 31, 2016 and 2015, respectively. The decrease in the valuation allowance in the year ended December 31, 2017 primarily relates to the re-measurement of the deferred tax assets and liabilities due to the U.S. government's enactment of comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act ("TCJA") on December 22, 2017, as discussed below.

The TCJA makes broad and complex changes to the U.S. tax code, including, but not limited to, reducing the U.S. federal corporate tax rate from 35% to 21%, effective January 1, 2018. The Company is able to determine a reasonable estimate of certain effects of the TCJA and has therefore recognized the provisional tax impacts related to the revaluation of deferred tax assets and liabilities. As a result, the Company has recorded a decrease related to net deferred tax assets of \$35.6 million, with an offsetting change in valuation allowance of \$35.6 million for the year ended December 31, 2017. The Securities and Exchange Commission has provided accounting and reporting guidance that allows the Company to report provisional amounts within a measurement period of up to one year from the date of enactment due to the complexities inherent in adopting the TCJA. The ultimate impact may differ from provisional amounts, possibly materially, due to, among other things, additional analysis, changes in interpretations and assumptions the Company has made, additional regulatory guidance that may be issued, and actions the Company may take as a result of the TCJA.

At December 31, 2017, the Company had net operating loss carryforwards for federal income tax purposes of approximately \$149.4 million that expire beginning in 2030 if not utilized, federal research and development tax credit carryforwards of approximately \$4.4 million that expire beginning in 2027 if not utilized, and foreign tax credit carryforwards of approximately \$1.2 million that expire in 2027 if not utilized. In addition, the Company had net operating loss carryforwards for California income tax purposes of approximately \$88.3 million that expire beginning in

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2030 if not utilized, and state research and development tax credit carryforwards of approximately \$4.6 million which can be carried forward indefinitely. The Company had other state net operating losses of approximately \$1.9 million that begin to expire in 2025. The Company had approximately \$0.1 million of minimum tax credit carryovers for California income tax purposes. The minimum tax credits have no expiration date.

The future utilization of net operating loss and tax credit carryforwards and credits may be subject to an annual limitation, pursuant to Internal Revenue Code Sections 382 and 383, as a result of ownership changes that may have occurred previously or that could occur in the future. The Company has previously completed a study in order to assess whether any ownership changes had arisen through December 31, 2014. As a result of the study, it was determined that the Company experienced an ownership change, as defined in Section 382, during May 2008. As a result of the analysis, it was determined that approximately \$1.0 million of net operating losses and \$49,000 of credit carryovers generated through May 2008 would expire prior to being utilized. No other ownership changes were identified through December 31, 2014. The Company is currently updating its Section 382 analysis but this analysis was not completed by year end. Preliminarily, it appears that there may be an additional ownership change in January 2016 which would impose further annual limitations on the utilization of operating loss and credit carryforwards. Due to the existence of the valuation allowance, limitations under Section 382 and 383 will not impact the Company's effective tax rate.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	<b>December 31,</b>		
	<b>2017</b>	<b>2016</b>	<b>2015</b>
	<b>(in thousands)</b>		
Balance at beginning of year	\$ 3,892	\$ 3,298	\$ 2,815
Additions (subtractions) based on tax positions related to prior year	16,103	45	(58)
Additions based on tax positions related to current year	739	549	541
Balance at end of year	<u>\$ 20,734</u>	<u>\$ 3,892</u>	<u>\$ 3,298</u>

The unrecognized tax benefits, if recognized and in absence of full valuation allowance, would impact the income tax provision by \$8.6 million, \$3.5 million and \$2.9 million as of December 31, 2017, 2016 and 2015, respectively.

The Company has elected to include interest and penalties as a component of tax expense. During the years ended December 31, 2017, 2016 and 2015, the Company did not recognize accrued interest and penalties related to unrecognized tax benefits. Although the timing and outcome of an income tax audit is highly uncertain, the Company does not anticipate that the amount of existing unrecognized tax benefits will change significantly during the next 12 months.

The Company files income tax returns in the U.S. federal, California, Maryland, Massachusetts, New Hampshire, New Jersey and Oregon tax jurisdictions. Due to the Company's net operating loss and tax credit carryforwards, the income tax returns remain open to U.S. federal and California state tax examinations. The Company is not currently under examination in any tax jurisdiction.

## 11. GEOGRAPHIC INFORMATION AND CONCENTRATIONS

Revenue by geographic areas for the years ended December 31, 2017, 2016 and 2015, are as follows (in thousands):

	Year Ended December 31,		
	2017	2016	2015
United States	\$ —	\$ —	\$ —
International:			
Asia Pacific (1)	42,000	—	—
Europe (2)	—	—	24,026
Total revenue	<u>\$ 42,000</u>	<u>\$ —</u>	<u>\$ 24,026</u>

(1) Revenues from Asia Pacific in 2017 included \$30.0 million from Japan in accordance with the KHK Agreement and \$12.0 million from China in accordance with the Fosun Agreement.

(2) Revenues from Europe in 2015 comprised \$24.0 million from Sweden in accordance with the AstraZeneca Agreement.

Revenues are attributed to geographical areas based on the domicile of the Company's collaboration partners.

Revenues recorded in the years ended December 31, 2017, 2016 and 2015, were wholly from collaboration partnerships. Collaboration partnerships accounting for more than 10% of total revenues during the years ended December 31, 2017, 2016 and 2015, are as follows:

	Year Ended December 31,		
	2017	2016	2015
KHK	71 %	—	—
Fosun Pharma	29 %	—	—
AstraZeneca	—	—	100 %

## 12. NET LOSS PER SHARE

Basic net loss per share is calculated by dividing net loss by the weighted-average number of common shares outstanding during the period, less shares subject to repurchase, and excludes any dilutive effects of stock-based awards and warrants. Diluted net loss per common share is computed giving effect to all potential dilutive common shares, including common stock issuable upon exercise of stock options, and unvested restricted common stock and stock units. As the Company had net losses for the years ended December 31, 2017, 2016 and 2015, all potential common shares were determined to be anti-dilutive. The following table sets forth the computation of net loss per common share (in thousands, except share and per share amounts):

	Year Ended December 31,		
	2017	2016	2015
<b>Numerator:</b>			
Net loss	<u>\$ (64,339)</u>	<u>\$ (112,387)</u>	<u>\$ (29,621)</u>
<b>Denominator:</b>			
Weighted average number of shares outstanding—basic and diluted	47,435,331	40,118,522	22,892,640
Net loss per share - basic and diluted	<u>\$ (1.36)</u>	<u>\$ (2.80)</u>	<u>\$ (1.29)</u>

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For the years ended December 31, 2017, 2016 and 2015, the total numbers of securities that could potentially dilute net income per share in the future that were not considered in the diluted net loss per share calculations because the effect would have been anti-dilutive were as follows:

	Year Ended December 31,		
	2017	2016	2015
Options to purchase common stock	3,977,160	2,464,089	1,241,741
Warrants to purchase common stock	2,172,899	2,172,899	1,268,021
Restricted stock units	323,819	87,079	603
Performance-based restricted stock units	148,216	—	—
ESPP shares issuable	60,524	37,227	21,077
Total	<u>6,682,618</u>	<u>4,761,294</u>	<u>2,531,442</u>

The number of potential common shares that would have been included in diluted income per share were it not for the anti-dilutive effect caused by the net loss, computed by converting these securities using the treasury stock method during the years ended December 31, 2017, 2016 and 2015, was approximately 1.0 million, 0.8 million and 1.0 million, respectively.

### 13. COMMITMENTS AND CONTINGENCIES

#### *Leases*

The Company has a lease agreement for a facility in Fremont, California that was amended in December 2012 to extend the lease agreement to September 2016. In September 2014, the Company signed the second amendment to its facility lease agreement in Fremont, California to add space and to extend the lease term through September 2019. In addition, the amended lease agreement provides for a tenant improvement allowance of up to \$0.6 million. In May 2016, the Company signed a third amendment to its facility lease agreement in Fremont, California to add space and to extend the lease term through September 2021 (the “Third Amendment”). The Third Amendment provides for a tenant improvement allowance of up to \$0.4 million and the extended lease has rent escalation clauses throughout the lease term. It also provides a lease extension option for five years on the entire premises at the higher of (i) a 3% annual escalation of the then-current base rent and (ii) the then-current fair market value for comparable premises.

Rent increases, including the impact of a rent holiday and leasehold improvement allowance from the landlord, will be recognized as deferred rent and amortized on a straight-line basis over the term of the lease. Under the terms of the lease agreement, the Company provided the lessor with a security deposit in the amount of \$0.1 million. The lessor shall be entitled to draw on the security deposit in the event of any uncured default by the Company under the terms of the lease.

The future minimum payments under noncancelable operating leases at December 31, 2017, are as follows (in thousands):

Year Ended December 31,	Amounts
2018	\$ 1,615
2019	1,713
2020	2,026
2021	1,440
Thereafter	—
Total	<u>\$ 6,794</u>

Rent expense under operating leases was \$1.7 million, \$1.3 million and \$0.9 million for the years ended December 31, 2017, 2016 and 2015, respectively.

### ***Guarantees and Indemnifications***

The Company indemnifies each of its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at our request in such capacity, as permitted under Delaware law and in accordance with our certificate of incorporation and bylaws. The term of the indemnification period lasts as long as an officer or director may be subject to any proceeding arising out of acts or omissions of such officer or director in such capacity.

The maximum amount of potential future indemnification is unlimited; however, the Company currently holds director and officer liability insurance. This insurance allows the transfer of risk associated with our exposure and may enable the Company to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations for any period presented.

### ***Legal Proceedings and Claims***

From time to time the Company may be involved in claims arising in connection with its business. Based on information currently available, the Company believes that the amount, or range, of reasonably possible losses in connection with any pending actions against it in excess of established reserves, in the aggregate, not to be material to its consolidated financial condition or cash flows. However, losses may be material to the Company's operating results for any particular future period, depending on the level of income or loss for such period.

## **14. SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)**

Selected quarterly financial results from operations for the years ended December 31, 2017 and 2016 are as follows (in thousands, except per share amounts):

	2017 Quarter End			
	March 31	June 30	September 30	December 31
Total revenue	\$ —	\$ —	\$ —	\$ 42,000
Gross profit	—	—	—	33,600
Operating expenses	28,434	26,418	21,225	22,638
Net income (loss)	(28,008)	(25,721)	(20,724)	10,114
Net income (loss) per share - basic	\$ (0.59)	\$ (0.54)	\$ (0.44)	\$ 0.21
Net income (loss) per share - diluted	\$ (0.59)	\$ (0.54)	\$ (0.44)	\$ 0.21

	2016 Quarter End			
	March 31	June 30	September 30	December 31
Total revenue	\$ —	\$ —	\$ —	\$ —
Operating expenses	23,529	28,690	29,200	31,476
Net loss	(23,467)	(28,613)	(29,031)	(31,276)
Net loss per share - basic and diluted	\$ (0.70)	\$ (0.83)	\$ (0.65)	\$ (0.66)

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

***Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures***

As of December 31, 2017, management, with the participation of our Chief Executive Officer and Chief 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 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 Chief Executive Officer and the Chief 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 and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2017, the design and operation of our disclosure controls and procedures were effective at a reasonable assurance level.

***Management's Annual 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 a process designed by, or under the supervision of, our CEO and CFO, 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 financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that accurately and fairly reflect in reasonable detail the transactions and dispositions of the assets of our company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance 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 assurances regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material adverse effect on our financial statements.

Our management assessed our internal control over financial reporting as of December 31, 2017, the end the period covered by this Annual Report on Form 10-K. Management based its assessment on criteria established in "Internal Control—Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on management's assessment of our internal control over financial reporting, management concluded that, as of December 31, 2017, our internal control over financial reporting was effective.

Internal control over financial reporting has inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known

features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

***Attestation Report of the Registered Public Accounting Firm***

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm due to an exemption established by the JOBS Act for “emerging growth companies.”

***Changes in Internal Control over Financial Reporting***

There were no changes in our internal controls over financial reporting during the quarter ended December 31, 2017, identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

On March 14, 2018, the Company appointed Jan M. Lundberg, Ph.D., as a member of its board of directors (the “Board”), effective March 23, 2018, to serve in Class I until the 2018 Annual Meeting of Stockholders and until his successor is duly elected and qualified, or until his earlier death, resignation or removal. In connection with Dr. Lundberg’s appointment, the Board increased the authorized number of members of the Board from seven to eight members. Following the effective date of Dr. Lundberg’s appointment, Class I will consist of William Bertand, Jr., Annalisa Jenkins and Dr. Lundberg.

Dr. Lundberg was also appointed to serve as a member of the Compensation Committee of the Board effective March 23, 2018. Following the effective date of Dr. Lundberg’s appointment, the Compensation Committee will consist of David Mott, as chairman, Richard Rodgers, Robert Bazemore and Dr. Lundberg.

The Board has determined that Dr. Lundberg is independent as defined in Listing Rule 5605 of The Nasdaq Stock Market LLC for purposes of serving on the Board and the Compensation Committee. Pursuant to the Company’s compensation program for its non-employee directors, (the “Director Compensation Program”), Dr. Lundberg will receive an option to purchase 30,000 shares of the Company’s common stock. Dr. Lundberg’s options will have a per share exercise price equal to the last reporting sale price reported by The Nasdaq Stock Market on the date of grant, and the option will vest over three years in substantially equal installments on each monthly anniversary of the grant date so long as Dr. Lundberg remains on the Board through each such vesting date. In addition, Dr. Lundberg will be entitled to receive annual cash retainers in the amount of \$40,000 per year for his service on the Board and \$7,500 per year for his service on our Compensation Committee any other compensation provided pursuant to the Director Compensation Program.

The Company intends to enter into its standard form of indemnification agreement with Dr. Lundberg.

### **PART III**

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item will be contained in our definitive proxy statement to be filed with the Securities and Exchange Commission on Schedule 14A in connection with our 2018 Annual Meeting of Stockholders (the “Proxy Statement”), which will be filed not later than 120 days after the end of our fiscal year ended December 31, 2017, under the headings “Executive Officers,” “Election of Directors,” “Corporate Governance,” and “Section 16(a) Beneficial Ownership Reporting Compliance,” and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics that applies to our officers, directors and employees which is available on our website at [www.ardelyx.com](http://www.ardelyx.com). The Code of Business Conduct and Ethics is intended to qualify as a “code of ethics” within the meaning of Section 406 of the Sarbanes-Oxley Act of 2002 and Item 406 of Regulation S-K. In addition, we intend to promptly disclose (1) the nature of any amendment to our Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions and (2) the nature of any waiver, including an implicit waiver, from a provision of our code of ethics that is granted to one of these specified officers, the name of such person who is granted the waiver and the date of the waiver on our website in the future.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item regarding executive compensation will be incorporated by reference to the information set forth in the sections titled “Executive Compensation” in our Proxy Statement.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item regarding security ownership of certain beneficial owners and management will be incorporated by reference to the information set forth in the section titled “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” in our Proxy Statement.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item regarding certain relationships and related transactions and director independence will be incorporated by reference to the information set forth in the sections titled “Certain Relationships and Related Party Transactions” and “Election of Directors”, respectively, in our Proxy Statement.

#### **ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item regarding principal accountant fees and services will be incorporated by reference to the information set forth in the section titled “Principal Accountant Fees and Services” in our Proxy Statement.



**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this report:

1. Financial Statements

See Index to Financial Statements at Item 8 herein.

2. Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

See the Exhibit Index immediately following this page.

**ITEM 16. FORM 10-K SUMMARY**

None.

**Exhibit Index**

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
3.1	<a href="#">Amended and Restated Certificate of Incorporation</a>	8-K	6/24/2014	3.1	
3.2	<a href="#">Amended and Restated Bylaws</a>	8-K	6/24/2014	3.2	
4.1	Reference is made to Exhibits 3.1 and 3.2				
4.2	<a href="#">Form of Common Stock Certificate</a>	S-1/A	6/18/2014	4.2	
4.3	<a href="#">Form of Warrant issued pursuant to the Securities Purchase Agreement by and among Ardelyx, Inc. and the purchasers signatory thereto, dated June 2, 2015</a>	S-3	7/13/2015	4.3	
10.1	<a href="#">Termination Agreement, dated June 2, 2015, by and between AstraZeneca AB and Ardelyx, Inc.</a>	10-Q	8/12/2015	10.1	
10.2	<a href="#">Amendment No. 1 to Termination Agreement and to Manufacturing and Supply Agreement, dated November 2, 2015 by and between AstraZeneca AB and Ardelyx, Inc.</a>	10-K	3/4/2016	10.1(d)	
10.3	<a href="#">Amended and Restated Investor's Rights Agreement dated June 23, 2011, by and among Ardelyx, Inc. and the investors listed therein</a>	S-1	5/19/2014	10.3	
10.4(a)	<a href="#">Lease, dated August 8, 2008, by and between 34175 Ardenwood Venture, LLC and Ardelyx, Inc.</a>	S-1	5/19/2014	10.4(a)	
10.4(b)	<a href="#">First Amendment to Lease, dated December 20, 2012, by and between 34175 Ardenwood Venture, LLC and Ardelyx, Inc.</a>	S-1	5/19/2014	10.4(b)	
10.4(c)	<a href="#">Second Amendment to Lease, dated September 5, 2014, by and between Ardelyx, Inc. and 34175 Ardenwood Venture, LLC</a>	8-K	9/9/2014	10.1	
10.4(d)	<a href="#">Third Amendment to Lease, dated April 28, 2016, by and between Ardelyx, Inc. and 34175 Ardenwood Venture, LLC</a>	10-Q	8/8/2016	10.3	
10.5(a)#	<a href="#">Ardelyx, Inc. 2008 Stock Incentive Plan, as amended</a>	S-1	5/19/2014	10.5(a)	
10.5(b)#	<a href="#">Form of Stock Option Grant Notice and Stock Option Agreement under the 2008 Stock Incentive Plan, as amended</a>	S-1	5/19/2014	10.5(b)	
10.5(c)#	<a href="#">Form of Restricted Stock Purchase Grant Notice and Restricted Stock Purchase Agreement under the 2008 Stock Incentive Plan, as amended</a>	S-1	5/19/2014	10.5(c)	
10.6(a)#	<a href="#">Ardelyx, Inc. 2014 Equity Incentive Award Plan</a>	S-8	7/14/2014	99.3	
10.6(b)#	<a href="#">Form of Stock Option Grant Notice and Stock Option Agreement under the 2014 Equity Incentive Award Plan</a>	S-1/A	6/9/2014	10.6(b)	
10.6(c)#	<a href="#">Form of Restricted Stock Award Agreement and Restricted Stock Unit Award Grant Notice under the 2014 Equity Incentive Award Plan</a>	S-1/A	6/9/2014	10.6(c)	
10.7#	<a href="#">Form of Indemnification Agreement for directors and officers</a>	S-1/A	6/9/2014	10.7	
10.8#	<a href="#">Amended and Restated Executive Employment Agreement, dated June 6, 2014, by and between Ardelyx, Inc. and Michael Raab</a>	S-1/A	6/9/2014	10.8	
10.9#	<a href="#">Amended and Restated Change in Control Severance Agreement, dated June 6, 2014, by and between Ardelyx, Inc. and Mark Kaufmann</a>	S-1/A	6/9/2014	10.15	

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Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
10.10#	<a href="#">Amended and Restated Change in Control Severance Agreement, dated June 6, 2014, by and between Ardelyx, Inc. and Elizabeth Grammer, Esq.</a>	S-1/A	6/9/2014	10.16	
10.11#	<a href="#">Amended and Restated Change in Control Severance Agreement, dated June 6, 2014, by and between Ardelyx, Inc. and Jeffrey Jacobs, Ph.D.</a>	S-1/A	6/9/2014	10.17	
10.12#	<a href="#">Amended and Restated Change in Control Severance Agreement, dated June 6, 2014, by and between Ardelyx, Inc. and David Rosenbaum, Ph.D.</a>	S-1/A	6/9/2014	10.19	
10.13#	<a href="#">Offer Letter, dated August 11, 2011, by and between Ardelyx, Inc. and Mark Kaufmann</a>	S-1/A	6/9/2014	10.10	
10.14#	<a href="#">Offer Letter, dated May 2, 2008, by and between Ardelyx, Inc. and Jeff Jacobs, Ph.D.</a>	S-1/A	6/9/2014	10.12	
10.15#	<a href="#">Offer Letter, dated December 28, 2009, by and between Ardelyx, Inc. and David Rosenbaum, Ph.D.</a>	S-1/A	6/9/2014	10.13	
10.16#	<a href="#">Offer Letter, dated November 21, 2012, by and between Ardelyx, Inc. and Elizabeth Grammer, Esq.</a>	S-1/A	6/9/2014	10.14	
10.19#	<a href="#">Offer Letter, dated November 21, 2014, by and between Ardelyx, Inc. and Jeremy S. Caldwell, Ph.D.</a>	10-K	3/5/2015	10.22	
10.20#	<a href="#">Change in Control Severance Agreement, dated December 19, 2014, by and between Ardelyx, Inc. and Jeremy S. Caldwell, Ph.D.</a>	10-K	3/4/2016	10.23	
10.21#	<a href="#">Offer Letter, dated December 12, 2015, by and between Ardelyx, Inc. and Paul Korner, MD, MBA</a>	10-K	3/4/2016	10.21	
10.22#	<a href="#">Ardelyx, Inc. 2014 Employee Stock Purchase Plan</a>	S-8	7/14/2014	99.6	
10.23(a)#	<a href="#">Non-Employee Director Compensation Program</a>	S-1/A	6/9/2014	10.21	
10.23(b)#	<a href="#">Description of amendments to Non-Employee Director Compensation Program</a>	8-K	3/9/2017	N/A	
10.24	<a href="#">Securities Purchase Agreement by and among Ardelyx, Inc. and the purchasers signatory thereto, dated June 2, 2015</a>	10-Q	8/12/2015	10.2	
10.25	<a href="#">Registration Rights Agreement by and among Ardelyx, Inc. and the investors signatory thereto, dated June 2, 2015</a>	S-3	7/13/2015	99.1	
10.26	<a href="#">Securities Purchase Agreement by and among Ardelyx, Inc. and the purchasers signatory thereto, dated July 14, 2016</a>	10-Q	8/8/2016	10.1	
10.27	<a href="#">Registration Rights Agreement by and among Ardelyx, Inc. and the investors signatory thereto, dated July 14, 2016</a>	10-Q	8/8/2016	10.2	
10.28(a)#	<a href="#">Ardelyx, Inc. 2016 Employment Commencement Incentive Plan</a>	S-8	11/10/2016	99.1	
10.28(b)#	<a href="#">Form of Stock Option Grant Notice and Stock Option Agreement under the 2016 Employment Commencement Incentive Plan</a>	S-8	11/10/2016	99.2	
10.28(c)#	<a href="#">Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2016 Employment Commencement Incentive Plan</a>	S-8	11/10/2016	99.3	
10.28(d)#	<a href="#">Form of Restricted Stock Award Grant Notice and Restricted Stock Award Agreement under the 2016 Employment Commencement Incentive Plan</a>	S-8	11/10/16	99.4	

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Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
10.29#	<a href="#">Change in Control Severance Agreement, dated January 4, 2016, by and between Ardelyx, Inc. and Paul Komer, MD, MBA</a>	10-K	2/17/2017	10.29	
10.30#	<a href="#">Offer Letter, dated October 1, 2016, by and between Ardelyx, Inc. and Reginald Kim Seeto, MB.BS; B.Sc.</a>	10-K	2/17/2017	10.30	
10.31#	<a href="#">Change in Control Severance Agreement, dated October 22, 2016, by and between Ardelyx, Inc. and Reginald Kim Seeto, MB.BS; B.Sc.</a>	10-K	2/17/2017	10.31	
10.32#	<a href="#">Offer Letter, dated November 15, 2016, by and between Ardelyx, Inc. and Bryan Shaw</a>	10-K	2/17/2017	10.32	
10.33#	<a href="#">Change in Control Severance Agreement, dated December 6, 2016, by and between Ardelyx, Inc. and Bryan Shaw</a>	10-K	2/17/2017	10.33	
10.34#	<a href="#">Transition and Separation Agreement dated August 21, 2017, by and between the Company and Dr. Paul Komer</a>	10-Q	11/7/2017	10.1	
10.35††	<a href="#">License Agreement, dated November 27, 2017, by and between Kyowa Hakko Kirin Co., Ltd. and Ardelyx, Inc.</a>				X
10.36††	<a href="#">License Agreement, dated December 11, 2017, by and between Shanghai Fosun Pharmaceutical Industrial Development Co. Ltd. and Ardelyx, Inc.</a>				X
12.1	<a href="#">Statement of Computation of Ratio of Earnings to Fixed Charges</a>				X
21.1	<a href="#">Subsidiaries of the Registrant</a>				X
23.1	<a href="#">Consent of Independent Registered Public Accounting Firm</a>				X
31.1	<a href="#">Certification of Principal Executive Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended</a>				X
31.2	<a href="#">Certification of Principal Financial Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended</a>				X
32.1	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C §1350</a>				X
101.INS	XBRL Instance Document				X
101.SCH	XBRL Taxonomy Extension Schema Document				X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				X

† Confidential treatment granted as to portions of this Exhibit. The confidential portions of this Exhibit have been omitted and are marked by asterisks.

†† Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the Securities and Exchange Commission.

# Indicates management contract or compensatory plan.

## SIGNATURES

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

**Ardelyx, Inc.**

Date: March 14, 2018

By: /s/ Michael Raab

**Michael Raab**  
**President Chief Executive Officer and Director**  
**(Principal Executive Officer)**

## POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Michael Raab and Mark Kaufmann, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his or her true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this annual report on Form 10-K and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

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.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael Raab</u> Michael Raab	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 14, 2018
<u>/s/ Mark Kaufmann</u> Mark Kaufmann	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 14, 2018
<u>/s/ David Mott</u> David Mott	Chairman of the Board of Directors	March 14, 2018
<u>/s/ Robert Bazemore</u> Robert Bazemore	Director	March 14, 2018
<u>/s/ William Bertrand, Jr.</u> William Bertrand, Jr.	Director	March 14, 2018
<u>/s/ Annalisa Jenkins, MBBS, FRCP</u> Annalisa Jenkins, MBBS, FRCP	Director	March 14, 2018
<u>/s/ Gordon Ringold, Ph.D.</u> Gordon Ringold, Ph.D.	Director	March 14, 2018
<u>/s/ Richard Rodgers</u> Richard Rodgers	Director	March 14, 2018

[\*\*\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

**Confidential**

**LICENSE AGREEMENT**

**BY AND BETWEEN**

**KYOWA HAKKO KIRIN CO., LTD.**

**AND**

**ARDELYX, INC.**

**November 27, 2017**

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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**EXHIBITS**

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Exhibit C:	Additional Patents
Exhibit D:	Initial Delivery of Development Data and Regulatory Documentation
Exhibit E:	Development API Supply
Exhibit F:	Development Product Supply

**LICENSE AGREEMENT**

This License Agreement (the “**Agreement**”) is entered into as of the November 27, 2017 (the “**Effective Date**”) by and between Kyowa Hakko Kirin Co., Ltd., a Japanese corporation with a place of business at 1-9-2 Otemachi, Chiyoda-ku, Tokyo 100-0004, Japan (“**KHK**”) and **Ardelyx, Inc.**, a Delaware corporation having its principal place of business at 34175 Ardenwood Boulevard, Fremont, California United States of America 94555 (“**Ardelyx**”). Ardelyx and KHK are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

**WHEREAS**, KHK is a pharmaceutical company engaged in the research, development and commercialization of products useful in the amelioration, treatment or prevention of human diseases and conditions;

**WHEREAS**, Ardelyx is a biotechnology company developing a certain proprietary compound known as tenapanor, having the structure set forth on **Exhibit A** for use in the treatment of human diseases and disorders;

**WHEREAS**, KHK and Ardelyx desire to establish a license agreement for the further development and commercialization of tenapanor (or its back-up compound(s)), with the objective of providing pharmaceutical products to patients derived from application of the expertise of each of Ardelyx and KHK.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I.  
DEFINITIONS AND CONSTRUCTION**

The following terms shall have the following meanings as used in this Agreement:

**Section 1.01** “**Additional Indication**” shall have the meaning assigned in Section 2.07(a).

**Section 1.02** “**Additional Patents**” means the Patents listed in **Exhibit C**, and any Patents issuing after the Effective Date in the Territory claiming priority to any such Patents listed on **Exhibit C**.

**Section 1.03** “**Affiliate**” means with respect to either Party, any Person controlling, controlled by or under common control with such Party, from time to time and for so long as such control exists. For purposes of this definition of Affiliate, “control” (and, with correlative meanings, the terms “controlled by” and “under common control with”) means (a) direct or indirect ownership of more than fifty percent (50%) of the stock or shares having the right to vote for the election of directors of a Person or (b) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

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**Section 1.04** “**Annual Net Sales**” means the Net Sales made during any given Calendar Year.

**Section 1.05** “**Anti-Corruption Laws**” means the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, as amended, and any other applicable anti-corruption laws and laws for the prevention of fraud, racketeering, money laundering or terrorism.

**Section 1.06** “**Applicable Laws**” means all applicable statutes, ordinances, codes, executive or governmental orders, laws, rules and regulations of any jurisdiction where either Party operates or does business, including without limitation, any rules, regulations, guidelines or other requirements of Regulatory Health Authorities, that may be in effect from time to time.

**Section 1.07** “**Ardelyx [\*\*\*] Know-How**” means Know-How that [\*\*\*]; provided, that, (i) such Know-How is used by [\*\*\*] a Licensed Compound or a Licensed Product, (ii) such Know-How is [\*\*\*] for a Licensed Product or Licensed Compound, or (iii) such Know-How [\*\*\*] a Licensed Product in the Field. Ardelyx [\*\*\*] Know-How specifically excludes any Excluded Know-How.

**Section 1.08** “**Ardelyx [\*\*\*] Patents**” means all Patents that [\*\*\*] (i) inventions that [\*\*\*] of a Licensed Compound or a Licensed Product, (ii) [\*\*\*] for a Licensed Product or Licensed Compound (collectively (i) and (ii) “**Ardelyx [\*\*\*]**”), or (iii) is [\*\*\*] a Licensed Product in the Field (“**Ardelyx [\*\*\*] Use Patents**”). Ardelyx [\*\*\*] Patents specifically excludes Excluded Patents.

**Section 1.09** **Ardelyx [\*\*\*] Technology**” means Ardelyx [\*\*\*] Know-How and Ardelyx [\*\*\*] Patents.

**Section 1.10** “**Ardelyx Controlled Patents**” shall have the meaning assigned in Section 8.02(a).

**Section 1.11** “**Ardelyx Development Data**” means Development Data that (i) Ardelyx or its Affiliates Control as of the Effective Date, or (ii) that comes into the Control of Ardelyx or its Affiliates after the Effective Date, and in the case of each of (i) and (ii), that is necessary or useful to Exploit any Licensed Compound or Licensed Product pursuant to the rights granted to KHK under this Agreement.

**Section 1.12** “**Ardelyx Sole Invention Patent**” means any Patent claiming Sole Program Know-How owned solely by Ardelyx or its Affiliates.

**Section 1.13** **Ardelyx Sole Invention Process and Formulation Patents**” means all Ardelyx Sole Invention Patents which claim the Manufacture or formulation of a Licensed Compound or a Licensed Product.

**Section 1.14** “**Ardelyx Sole Invention Use Patents**” means all Ardelyx Sole Invention Patents which claim methods for using a Licensed Product in the Field.

**Section 1.15** “**Ardelyx Trademark**” shall have the meaning assigned in Section 8.05(a).

**Section 1.16 “Backup Licensed Compounds”** means (i) any compound, other than the Lead Licensed Compound, that is claimed by the Compound Patent(s) and (ii) any [\*\*\*] of any such compound described in (i) that Ardelyx or its Affiliates may Develop during the Term.

**Section 1.17 “Bankruptcy Code”** means Title 11, United States Code, as amended, or analogous provisions of Applicable Laws outside the United States.

**Section 1.18 “Breaching Party”** shall have the meaning assigned in Section 11.02(a).

**Section 1.19 “Business Day”** means any day other than (a) a Saturday or a Sunday or (b) a day on which commercial banking institutions are authorized or required by Applicable Laws to be closed in New York City, New York or in Japan.

**Section 1.20 “Calendar Quarter”** means each successive period of three (3) consecutive calendar months commencing on 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October.

**Section 1.21 “Calendar Year”** means each successive period of twelve (12) consecutive calendar months commencing on 1<sup>st</sup> January.

**Section 1.22 “Clinical Trials”** means any clinical study of a pharmaceutical product on human subjects to assess the dosing, safety and/or efficacy of such pharmaceutical product, including but not limited to phase 1 clinical trials, phase 2 clinical trials and phase 3 clinical trials and, if imposed by the Regulatory Authorities as a condition to Regulatory Approval, phase 4 clinical trials. For the avoidance of doubt, post-marketing surveillance clinical studies are not Clinical Trials.

**Section 1.23 “Combination Product”** means a product in form suitable for human or animal applications containing a Licensed Compound as an active ingredient and containing one or more other active ingredients, that is sold either as a fixed dose or as separate doses in a single package; provided, that if any other active ingredient is Controlled by Ardelyx and is not a Licensed Compound, it is understood that KHK is not being granted any license under any Intellectual Property Rights to Exploit such other active ingredient.

**Section 1.24 “Commercialization”** means all activities undertaken relating to the import, marketing, promotion, pricing and reimbursement, detailing, medical education and medical liaison activities, shipping, handling, offering for sale and selling, customer service and support of a Licensed Product, advertising, education, planning, marketing, promotion, distribution, market and product support, and post-marketing surveillance.

**Section 1.25 “Commercialization Plan”** shall have the meaning assigned in Section 3.05.

**Section 1.26 “Commercialize”** means the conduct of Commercialization activities.

**Section 1.27 “Commercially Reasonable Efforts”** means the efforts and resources typically used by pharmaceutical companies to perform the obligations at issue, which efforts shall not be less than those efforts made or resources expended by the performing Party with respect to other products owned by it or to which it has similar rights, which product is at a similar stage of

development or product life and is of similar market and commercial potential, taking into account [\*\*\*] efficacy, safety, the competitiveness of the market place, the proprietary position of the products, the regulatory structure involved, the profitability of the applicable products [\*\*\*].

**Section 1.28** “[\*\*\*]” shall have the meaning assigned in [\*\*\*].

**Section 1.29** “**Comparable Licensed Product**” shall have the meaning assigned in Section 6.05.

**Section 1.30** “**Compound Patents**” means the Patents listed in **Exhibit B**, and any Patents issuing after the Effective Date in the Territory claiming priority to any such Patents listed on **Exhibit B**.

**Section 1.31** “**Confidential Information**” means nonpublic information and materials (including Information) of a Party that is disclosed or furnished in connection with this Agreement (whether oral or in writing or in any other form) by or on behalf of such Party to the other Party, its Affiliates or any of its designees before, on or after the Effective Date. Except as otherwise expressly provided in this Agreement. Ardelyx Development Data shall be the Confidential Information solely of Ardelyx and KHK Development Data shall be the Confidential Information solely of KHK. Joint Know-How and the terms and conditions of this Agreement shall be the Confidential Information jointly of the Parties.

**Section 1.32** “**Control**” means, with respect to an item of Know-How, Patent or other Intellectual Property Rights, the ability and authority of a Party or its Affiliates, whether arising by ownership, possession, or pursuant to a license or sublicense, to grant licenses, sublicenses, or other rights to the other Party under or to such item of Know-How, Patent or Intellectual Property Rights as provided for in this Agreement without breaching the terms of any agreement between such Party and any Third Party.

**Section 1.33** “**Cost of Goods**” means amounts [\*\*\*], as the case may be, in all cases recorded in accordance with GAAP, wherein any estimates of the components of cost of goods that are adjusted in accordance with GAAP after invoicing KHK shall be provided in the following invoice with appropriate explanation as to the reason for the adjustment of estimates.

**Section 1.34** “**Develop**” means the conduct of Development activities.

**Section 1.35** “**Development**” means all activities relating to obtaining Regulatory Approval of a Licensed Product, Licensed Product line extensions, alternative delivery systems and new indications therefor, and all activities relating to developing the ability to Manufacture the same. This includes, for example, (a) nonclinical testing, toxicology, formulation, clinical studies, and regulatory affairs, (b) manufacturing process development for finished forms of Licensed Products, CMC drug product development and manufacturing and quality assurance technical support activities prior to the First Commercial Sale of a Licensed Product anywhere in the Territory and (c) the conduct of advisory boards with relevant experts, e.g. clinical experts or payer representatives. Development shall [\*\*\*]. For the avoidance of doubt, Development in the Territory includes all activities relating to obtaining Regulatory Approval of the Licensed Product in the Field in the Territory, such as nonclinical and clinical studies and any CMC drug product development that may be necessary for the Territory, as well as conducting *in vitro*, *in vivo* or *in*

*silico* studies for the purposes of determining which indication to pursue or of supporting Commercialization of the Licensed Product in the Field in the Territory.

**Section 1.36** “**Development API Supply**” shall have the meaning assigned in Section 5.01(a).

**Section 1.37** “**Development Data**” means any and all research data, pharmacology data, chemistry, manufacturing and control data, nonclinical data, clinical data and all other documentation (including raw data).

**Section 1.38** “**Development Plan**” shall have the meaning assigned in Section 3.04.

**Section 1.39** “**Development Product Supply**” shall have the meaning assigned in Section 5.01(a).

**Section 1.40** “[\*\*\*]” shall have the meaning assigned in [\*\*\*].

**Section 1.41** “**Distributor**” shall have the meaning assigned in Section 2.03.

**Section 1.42** “**Drug Approval Application**” means an application for Regulatory Approval required before commercial sale or use of a Licensed Product as a drug in a regulatory jurisdiction.

**Section 1.43** “**Effective Date**” shall have the meaning assigned in the first paragraph of this Agreement.

**Section 1.44** “**Excluded Know-How**” means Know-How related to Ardelyx’s proprietary platform technology known as Ardelyx Primary Enterocyte and Colonocyte Culture System.

**Section 1.45** “**Excluded Patents**” means any Patents claiming aspects of Ardelyx’s proprietary platform technology known as Ardelyx Primary Enterocyte and Colonocyte Culture System.

**Section 1.46** “**Exploit**” means to Develop, Manufacture, have Manufactured, Commercialize a product or process.

**Section 1.47** “**Exploitation**” means the act of Exploiting a product or process.

**Section 1.48** “**FDA**” means the United States Food and Drug Administration or any successor thereto.

**Section 1.49** “**FFDCA**” means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et seq., as amended from time to time.

**Section 1.50** “**Field**” means the treatment of any cardiorenal diseases and conditions, but excluding cancer.

**Section 1.51 “Filing”** means, with respect to a submission to a Regulatory Health Authority, the date that such submission is confirmed to have been received by the relevant Regulatory Health Authority.

**Section 1.52 “First Commercial Sale”** means, with respect to any Licensed Product, the first *bona fide* arm’s length sale for monetary value by KHK, its Affiliates, or its Sublicensees to a Third Party of such Licensed Product in the Territory; provided, however, that in no event shall any sale or distribution of a Licensed Product for use in a Clinical Trial or any sampling or similar uses or any sales prior to receipt of all Regulatory Approvals necessary to commence regular commercial sales be deemed a First Commercial Sale.

**Section 1.53 “FTE”** means a full time equivalent person year of eighteen hundred and eighty (1,880) hours of scientific, technical or operational work (excluding administrative services).

**Section 1.54 “GAAP”** means United States Generally Accepted Accounting Principles, consistently applied.

**Section 1.55 “GCP” or “Good Clinical Practices”** means the current standards, practices and procedures for clinical trials for pharmaceuticals, as set forth in the United States Code of Federal Regulations, ICH guidelines and applicable regulations, laws or rules as promulgated thereunder, as amended from time to time, and such comparable standards, practices and procedures promulgated by any Regulatory Authority in the Territory.

**Section 1.56 “Generic Product”** means with respect to a Licensed Product in the Territory a product (a) that is sold in the Territory by a Third Party who is not a Sublicensee or a Distributor selling such product under authorization from KHK or its Affiliates, (b) that has received Regulatory Approval necessary for sale in the Territory, (c) that [\*\*\*] and (d) that contains as the active ingredient the same compound (or, solely for products that are described by subsection (c)(ii), an equivalent salt thereof), as is contained in such Licensed Product.

**Section 1.57 “GLP” or “Good Laboratory Practices”** means good laboratory practices required under the regulations set forth in 21 C.F.R. Part 58, as in effect during the Term, and the requirements thereunder imposed by the FDA, and the equivalent practices promulgated by any Regulatory Authority in any jurisdiction.

**Section 1.58 “GMP” or “Good Manufacturing Practices”** means the current good manufacturing practices required under the applicable regulations set forth in 21 C.F.R. Subchapter C (Drugs) and Subchapter H (Medical Devices), including without limitation Parts 210–211, 808, 812, and 820, and the requirements thereunder imposed by the FDA, the EU/PIC guidelines (and the corresponding national laws and regulations), and the laws, regulations, guidelines, guidance, pharmaceutical industry standards and requirements in force that apply to the Manufacture of each Licensed Compound or Licensed Product in any jurisdiction, all as amended from time to time.

**Section 1.59 “Government Official”** means any Person employed by or acting on behalf of a Governmental Body, government-controlled entity or public international organization.



**Section 1.60 “Governmental Body”** means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal); or (d) self-regulatory organization (including the NASDAQ Global Market and the NASDAQ Global Select Market).

**Section 1.61 “IND”** means an Investigational New Drug application or the equivalent filed with or submitted to the relevant Regulatory Health Authority, including, for example, the FDA, for authorization to commence human clinical trials.

**Section 1.62 “Indirect Taxes”** means value added taxes, sales taxes, consumption taxes and other similar taxes.

**Section 1.63 “Information”** means (a) Development Data necessary or useful to Exploit the Licensed Compounds and/or Licensed Products, and (b) Know-How, other than Development Data, necessary or useful to Exploit the Licensed Compounds and/or Licensed Products.

**Section 1.64 “Initial Delivery of Development Data and Regulatory Documentation”** shall have the meaning assigned in Section 2.04(a).

**Section 1.65 “Initial Indication”** means [\*\*\*].

**Section 1.66 “Intellectual Property Rights”** or “IPR” means Patents, Trademarks, service marks, Know-How, trade names, registered designs, design rights, copyrights (including rights in computer software), domain names, database rights and any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights.

**Section 1.67 “Joint Know-How”** shall have the meaning assigned in Section 8.01(a).

**Section 1.68 “Joint Patent”** means any Patent claiming any invention within the Joint Know-How.

**Section 1.69 “Joint Project Team”** means the committee described in Section 3.08.

**Section 1.70 “Joint Technology”** means collectively, Joint Patents and Joint Know-How.

**Section 1.71 “KHK [\*\*\*] Know-How”** means Know-How (a) that [\*\*\*]; provided, that, (i) such Know-How is used by [\*\*\*] a Licensed Compound or a Licensed Product, (ii) such Know-How is [\*\*\*] for a Licensed Product or Licensed Compound, or (ii) such Know-How [\*\*\*] a Licensed Product.

**Section 1.72 “KHK [\*\*\*] Patents”** means all Patents (a) that [\*\*\*]; provided, that, such Patents claim (i) inventions that [\*\*\*] a Licensed Compound or a Licensed Product, (ii) [\*\*\*] for

a Licensed Product or Licensed Compound (collectively, “**KHK [\*\*\*]**”), or (iii) is [\*\*\*] a Licensed Product (“**KHK [\*\*\*] Patents**”).

**Section 1.73 “KHK [\*\*\*] Technology”** means KHK [\*\*\*] Know-How and KHK [\*\*\*] Patents.

**Section 1.74 “KHK Development Data”** means any Development Data that comes into and under the Control of KHK or its Affiliates after the Effective Date that is necessary or useful to Exploit any Licensed Compound and/or Licensed Product outside the Territory or within the Territory and outside the Field.

**Section 1.75 “KHK Sole Invention Patent”** means any Patent claiming Sole Program Know-How owned solely by KHK.

**Section 1.76 “KHK Triggered Termination”** shall have the meaning assigned in Section 11.03.

**Section 1.77 “Know-How”** means all inventions, discoveries, data, information (including scientific, technical or regulatory information), trade secrets, processes, means, methods, practices, formulae, instructions, procedures, techniques, materials, technology, results, analyses, designs, drawings, computer programs, apparatuses, specifications, technical assistance, laboratory, nonclinical and clinical data (including laboratory notes and notebooks), and other material or know-how, in written, electronic or any other form, whether or not confidential, proprietary or patentable, including without limitation: development technology; biology, chemistry, pharmacology, toxicology, drug stability, Manufacturing and formulation, test procedures, synthesis, purification and isolation techniques, quality control data and information, methodologies and techniques; information regarding clinical and nonclinical safety and efficacy studies, including study designs and protocols, marketing studies, absorption, distribution, metabolism and excretion studies; assays and biological methodology.

**Section 1.78 “Knowledge”** means the good faith understanding of the officers of Ardelyx and its Affiliates, [\*\*\*]. For clarity, for purposes of the representations and warranties set forth in Section 9.01(b), “**Knowledge**” will not include obligations to conduct any special searches or analyses such as, but not limited to, any analysis of Ardelyx’s freedom to operate with respect to Patents relevant to Licensed Compounds or Licensed Products.

**Section 1.79 “Lead Licensed Compound”** means the compound of Ardelyx, known as tenapanor, having the structure set forth on **Exhibit A**, and any [\*\*\*] of such compound.

**Section 1.80 “Lead Licensed Product”** means a Licensed Product containing the Lead Licensed Compound as an active ingredient.

**Section 1.81 “Licensed Compounds”** means the Lead Licensed Compound and any and all Backup Licensed Compounds.

**Section 1.82 “Licensed Know-How”** means (a) Know-How that Ardelyx or its Affiliates Control as of the Effective Date and (b) Sole Program Know-How owned by Ardelyx; provided that, such Know-How is necessary or useful to Exploit any Licensed Compound and/or Licensed

Product pursuant to the terms and conditions of this Agreement. Licensed Know-How specifically excludes the Ardelyx [\*\*\*] Know-How and the Excluded Know-How.

**Section 1.83 “Licensed Patents”** means (a) the Compound Patents, (b) the Additional Patents, and (c) all Ardelyx Sole Invention Patents; provided that in the case of (b) and (c) above, such Patents claim any inventions necessary or useful for the Exploitation of the Licensed Compounds and/or Licensed Products pursuant to the terms and conditions of this Agreement. Licensed Patents exclude Ardelyx [\*\*\*] Patents and the Excluded Patents.

**Section 1.84 “Licensed Product”** means any and all pharmaceutical preparations, compositions and formulations in forms suitable for human applications containing a Licensed Compound as an active ingredient.

**Section 1.85 “Licensed Technology”** means all Licensed Patents and Licensed Know-How.

**Section 1.86 “Losses”** means any and all direct or indirect liabilities, claims, actions, damages, losses or expenses, including interest, penalties, and reasonable lawyers’ fees and disbursements. In calculating Losses, the legal duty to mitigate on the part of the Party suffering the Loss shall be taken into account.

**Section 1.87 “Manufacture” or “Manufacturing”** means activities in connection with the synthesis, manufacture, processing, formulating, testing (including, without limitation quality control, quality assurance, lot release testing, and development of any relevant analytical methods), bulk packaging or storage and delivery of Licensed Compound or Licensed Product.

**Section 1.88 “Manufacturing Option”** shall have the meaning assigned in Section 5.04.

**Section 1.89 “Material Anti-Corruption Law Violation”** means a violation of an Anti-Corruption Law relating to the subject matter of this Agreement which would, if it were publicly known, be reasonably expected to have a material adverse effect on the Party committing such violation or on the reputation of the other Party because of its relationship with the Party committing such violation.

**Section 1.90 “Materials”** means compounds, compositions of matter, intermediates or assays necessary or useful for the Development, Manufacture or Commercialization of Licensed Compounds or Licensed Products.

**Section 1.91 “Net Sales”** means the gross amount invoiced by a Party, its Affiliate and Sublicensees for sales of Licensed Products to a Third Party (including Distributors but excluding, for the avoidance of doubt, Sublicensees) less deductions for the following:

- (a) customary trade, quantity discounts, including cash, settlement discounts, or chargebacks actually granted, allowed, or incurred in the ordinary course of business in connection with the sale of the Licensed Products;
- (b) credits to customers, not in excess of the selling price of the Licensed Products, on account of defects, rejection, recalls, or return of the Licensed Products;

(c) Distributors' fees, rebates, or allowances actually granted or allowed, including without limitation government and managed care rebates;

(d) Indirect Taxes and excise taxes or customs duties paid by the selling entity and any other governmental charges imposed upon the sale; importation, use or distribution of the Licensed Products; and

(e) transportation costs, distribution expenses, special packaging and related insurance charges actually incurred.

**Section 1.92** "NHE-3" means [\*\*\*].

**Section 1.93** "Non-Breaching Party" shall have the meaning assigned in Section 11.02(a).

**Section 1.94** "Other Ingredients" shall have the meaning assigned in Section 6.05.

**Section 1.95** "Party Representatives" shall have the meaning assigned in Section 9.04(a).

**Section 1.96** "Patent" means (a) all national, regional and international patents and patent applications, including provisional patent applications, (b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from any of these, including divisionals, continuations, continuations-in-part, provisionals, converted provisionals, and continued prosecution applications, (c) any and all patents that have issued or in the future issue from the foregoing patent applications ((a) and (b)), including utility models, petty patents and design patents and certificates of invention, (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications ((a), (b) and (c)), and (e) any similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any such foregoing patent applications and patents.

**Section 1.97** "Payments" shall have the meaning assigned in Section 6.08.

**Section 1.98** "Person" means any individual, sole proprietorship, corporation, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other similar entity or organization, including a government or political subdivision, department or agency of a government.

**Section 1.99** "Phase 2 Clinical Trial" means any clinical study that is not intended to be used as a Pivotal Study for purposes of seeking Regulatory Approval and that is conducted on human patients who have the relevant disease or condition with primary endpoints to establish the efficacy of a Licensed Product for its intended use and to define warnings, precautions, and adverse reactions that may be associated with the pharmaceutical product in the dosage range to be prescribed. "Phase 2 Clinical Trial" shall include without limitation any clinical trial that would satisfy requirements of 21 C.F.R. § 312.21(b).

**Section 1.100 “Pivotal Trial” or “Pivotal Clinical Study”** means a randomized, well-controlled, appropriately powered pivotal human clinical study or studies as defined in 21 C.F.R. § 312.21(c), as amended, or its equivalent, as appropriate, in foreign jurisdictions, the results of which, if the pre-defined endpoints are met, are intended to provide data necessary to support Regulatory Approval for a Licensed Product in a particular country.

**Section 1.101 “Product Trademark”** shall have the meaning assigned in Section 8.05(a).

**Section 1.102 “Regulatory Approval”** means any and all approvals (including without limitation pricing and reimbursement approvals), product or establishment licenses, registrations, or authorizations of any regional, federal, state, or local Regulatory Health Authority, department, bureau, or other governmental entity, necessary to commercially distribute, sell or market a Licensed Product in a regulatory jurisdiction, including, where applicable, (a) pricing or reimbursement approval in such jurisdiction, (b) pre- and post-approval marketing authorizations (including any prerequisite Manufacturing approval or authorization related thereto), (c) labeling approval and (d) technical, medical and scientific licenses.

**Section 1.103 “Regulatory Authority”** means any court or government body, whether national, supra-national, federal, state, local, foreign or provincial, including any political subdivision thereof, including any department, commission, board, bureau, agency, or other regulatory or administrative governmental authority or instrumentality, and further including any quasi-governmental Person or entity exercising the functions of any of these.

**Section 1.104 “Regulatory Documentation”** means all applications, registrations, licenses, authorizations and approvals, all correspondence submitted to or received from Regulatory Health Authorities (including minutes and official contact reports relating to any communications with any Regulatory Health Authority) and all supporting documents, including documentation arising in the course of all clinical studies and tests, in each case relating to any Licensed Compounds or Licensed Products, including all INDs, Regulatory Approvals, regulatory drug lists, advertising and promotion documents, adverse event files and complaint files.

**Section 1.105 “Regulatory Exclusivity”** means any exclusive marketing rights or data exclusivity rights conferred by any Regulatory Health Authority in the Territory with respect to a Licensed Product other than Patents.

**Section 1.106 “Regulatory Health Authority”** means any applicable national (for example, FDA or Japan’s Pharmaceuticals and Medical Devices Agency), supra-national, regional, state, provincial or local regulatory health authority, department, bureau, commission, council, or other government entity regulating or otherwise exercising authority with respect to the Exploitation of Licensed Compounds or Licensed Products in the Territory pursuant to the terms and conditions of this Agreement, including any such entity involved in the granting of Regulatory Approval for pharmaceutical products.

**Section 1.107 “Review Period”** shall have the meaning assigned in Section 7.08.

**Section 1.108 “Safety Agreement”** shall have the meaning assigned in Section 4.06.

**Section 1.109 “Senior Executives”** means (a) the Chief Executive Officer of Ardelyx and (b) the Chief Executive Officer of KHK or, in either case, an individual nominated by the relevant Chief Executive Officer.

**Section 1.110 “Sole Invention Patent”** means any Patent claiming any invention within the Sole Program Know-How.

**Section 1.111 “Sole Program Know-How”** shall have the meaning assigned in Section 8.01(a).

**Section 1.112 “Specifications”** means the specifications applicable to the Manufacture, packaging and labeling of Licensed Compound or Licensed Products in effect at a given time.

**Section 1.113 “Sublicensee”** shall have the meaning assigned in Section 2.02.

**Section 1.114 “Tax” or “Taxation”** means any form of tax or taxation, levy, duty, charge, social security charge, contribution or withholding of whatever nature (including any related fine, penalty, surcharge or interest) imposed by, or payable to, a Tax Authority.

**Section 1.115 “Tax Authority”** means any government, state or municipality, or any local, state, federal or other fiscal, revenue, customs, or excise authority, body or official anywhere in the world, authorized to levy Tax.

**Section 1.116 “Term”** shall have the meaning assigned in Section 11.01.

**Section 1.117 “Territory”** means Japan.

**Section 1.118 “Third Party”** means any Person other than Ardelyx or KHK, or their respective Affiliates.

**Section 1.119 “Third Party Claims”** shall have the meaning assigned in Section 12.01(a).

**Section 1.120 “Third Party Compensation”** shall have the meaning assigned in Section 6.04(e).

**Section 1.121 “Trademark”** means any registered trademark, application for registration thereof, trade name, service mark, service name, brand, domain name, trade dress, logo, slogan or other indicia of origin or ownership, including the goodwill and activities associated with each of the foregoing.

**Section 1.122 “Transfer Price”** means (i) with respect to Lead Licensed Compound, Lead Licensed Product, and placebo supplied by Ardelyx for KHK’s [\*\*\*], (ii) with respect to Lead Licensed Compound, Lead Licensed Product supplied by Ardelyx for KHK’s [\*\*\*] and (iii) with respect to Materials and any other physical materials that KHK requests that Ardelyx deliver and which Ardelyx agrees to deliver which are supplied by Ardelyx to KHK during the Term, [\*\*\*].

**Section 1.123 “Valid Claim”** means (a) a claim of an issued and unexpired Patent within the Licensed Patents, Ardelyx [\*\*\*] Patents, Joint Patents, or [\*\*\*] covering a method of using

the Licensed Product as applicable, that has not been held unpatentable, invalid, or unenforceable by a court or other government agency of competent jurisdiction in an unappealable decision or has not been admitted to be invalid or unenforceable through reissue, re-examination, disclaimer, or otherwise or (b) a claim of a pending patent application within the Licensed Patents, Ardelyx [\*\*\*] Patents, Joints Patents or [\*\*\*] covering a method of using the Licensed Product, as applicable, which patent application has not been abandoned, finally rejected or expired without the possibility of appeal or re-filing. For purposes hereof, a claim in a patent application that has not been granted within [\*\*\*] ([\*\*\*)] years of the priority date for such claim shall not be considered to be a Valid Claim unless and until such claim issues thereafter such that it is included in subsection (a).

**Section 1.124 “Written Disclosure”** shall have the meaning assigned in Section 10.02.

**Section 1.125 Construction.** Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or”. Whenever this Agreement refers to a number of days, unless otherwise specified, such number refers to calendar days. The term “including” or “includes” as used in this Agreement means including, without limiting the generality of any description preceding such term. The article, section, and subsection headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of such articles, sections, and subsections. The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties and no rule of strict construction shall be applied against any Party.

## ARTICLE II. GRANT OF RIGHTS AND LICENSES; EXCLUSIVITY

### Section 2.01 Licenses to KHK

(a) Subject to the terms of this Agreement, Ardelyx grants to KHK an exclusive right and license (including with regard to Ardelyx and its Affiliates, except with respect to the retained rights set forth in Section 2.05 below) under the (A) Licensed Technology, (B) Ardelyx’s rights in the Joint Technology and (C) Ardelyx [\*\*\*] Technology to (i) Develop, have Developed, Commercialize (but not Manufacture), have Commercialized (but not have Manufactured), import, and otherwise use the Licensed Products in Field in the Territory, and (ii) Manufacture, have Manufactured, package and have packaged the Licensed Products (but not the Licensed Compound) within or outside of the Territory, in the case of (i) and (ii), for the sole purpose of Developing and Commercializing Licensed Products, in each case in the Field and in the Territory.

(b) Effective as of the exercise of the Manufacturing Option under Section 5.04 Ardelyx hereby grants to KHK a non-exclusive license under the (i) Licensed Technology, (ii) Ardelyx’s rights in the Joint Technology, and (iii) Ardelyx [\*\*\*] Technology to Manufacture and to have Manufactured Lead Licensed Compound within or outside of the Territory, for the sole purpose of Developing and Commercializing Licensed Products in the Field and in the Territory. Effective as KHK’s assumption of responsibility for the Manufacture of Licensed Compound (other than the Lead Licensed Compound) under Section 5.07, Ardelyx hereby grants to KHK a non-exclusive license under the (i) Licensed Technology, (ii) Ardelyx’s rights in the Joint

Technology, and (iii) Ardelyx [\*\*\*] Technology to Manufacture and to have Manufactured Licensed Compound (other than the Lead Licensed Compound) within or outside of the Territory, for the sole purpose of Developing and Commercializing Licensed Products in the Field and in the Territory.

(c) Ardelyx [\*\*\*] (i) cause each of its licensees to grant back to Ardelyx, with a right to sublicense KHK without additional consideration [\*\*\*] (A) Know-How that arises under [\*\*\*] agreement with Ardelyx and such licensee; provided that such Know-How embodies or relates to [\*\*\*] (“**Ardelyx Licensee [\*\*\*] Know-How**”) and (B) Patents that arise under [\*\*\*] agreement between Ardelyx and such licensee; provided that such Patents claim [\*\*\*], (“**Ardelyx Licensee [\*\*\*] Patent**”) (collectively (A) and (B), “**Ardelyx Licensee [\*\*\*] Technology**”) and (ii) [\*\*\*] cause each of its licensees to grant back to Ardelyx, with a right to sublicense KHK without additional consideration [\*\*\*] (A) Know-How that arises under [\*\*\*] agreement with Ardelyx and such licensee; provided that [\*\*\*] or [\*\*\*] Know-How that arises under [\*\*\*] agreement with Ardelyx and such licensee and that [\*\*\*] (“**Ardelyx Licensee [\*\*\*] Know-How**”), and (B) Patents that arise under [\*\*\*] agreement between Ardelyx and such licensee; provided that such Patents claim the Ardelyx Licensee [\*\*\*] Know-How (“**Ardelyx Licensee [\*\*\*] Patents**”) (collectively, (A) and (B), “**Ardelyx Licensee [\*\*\*] Technology**”). [\*\*\*] For clarity, Ardelyx Licensee [\*\*\*] Know-How and Ardelyx Licensee [\*\*\*] Patents are included in the [\*\*\*] and in the [\*\*\*], respectively. To the extent that Ardelyx has obtained a license, with the right to sublicense KHK without additional consideration to the Ardelyx Licensee [\*\*\*] Know-How and the Ardelyx Licensee [\*\*\*] Patents, the Ardelyx Licensee [\*\*\*] Know-How and the Ardelyx Licensee [\*\*\*] Patents are included in [\*\*\*], and [\*\*\*], respectively.

## **Section 2.02 Sublicenses.**

(a) KHK shall have the right to grant sublicenses, through multiple tiers of sublicenses, under the licenses granted to KHK hereunder, to its Affiliates, and to any other Person with the prior written consent of Ardelyx, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the above, to the extent that KHK is unsuccessful, under Section 2.02(c) in obtaining from its Sublicensee, [\*\*\*], a grant back to KHK, with a right to sublicense Ardelyx without additional consideration, of the KHK Sublicensee [\*\*\*] Technology, KHK shall not have the right to grant such Sublicensee a sublicense under any Ardelyx [\*\*\*], or under any Ardelyx [\*\*\*] Know-How that Ardelyx, its Affiliates or licensees is using [\*\*\*].

(b) Where KHK or its Affiliates grants such sublicense to a Person that is not an Affiliate of KHK, and such Person is not a Distributor, such Person shall be a “**Sublicensee**” for the purposes of this Agreement, and any Person to which a Sublicensee grants a further sublicense shall also be a Sublicensee; provided, however, that any Person that (i) is granted a sublicense under a license granted to KHK pursuant to Section 2.01 solely to enable such Person to provide Development services or contract manufacturing services for KHK, its Affiliates or Sublicensees and (ii) does not have the right to distribute, market or sell the Licensed Products shall not be a “**Sublicensee**” for purposes of this Agreement. KHK, its Affiliates and its Sublicensees shall ensure that all Persons to which they grant sublicenses comply with all terms and conditions of this Agreement. KHK shall remain liable for any action or failure to act by any Sublicensee, or any other Party that is granted a sublicense under the licenses granted in Section 2.01 by KHK, its Affiliates or its Sublicensees, if such action or failure to act by the Sublicensee, or other sublicensee,



would have constituted a breach of this Agreement if such action or failure were committed by KHK.

(c) KHK [\*\*\*] (i) cause each of its Sublicensees to grant back to KHK, with a right to sublicense Ardelyx without additional consideration [\*\*\*] (A) Know-How that arises under [\*\*\*] agreement with KHK and such Sublicensee; provided that such Know-How embodies or relates to [\*\*\*] (“**KHK Sublicensee [\*\*\*] Know-How**”) and (B) Patents that arise under [\*\*\*] agreement between KHK and such Sublicensee; provided that such Patents claim [\*\*\*], (“**KHK Sublicensee [\*\*\*] Patents**”) (collectively (A) and (B), “**KHK Sublicensee [\*\*\*] Technology**”) and (ii) [\*\*\*] cause each of its Sublicensees to grant back to KHK, with a right to sublicense Ardelyx without additional consideration [\*\*\*] (A) Know-How that arises under [\*\*\*] agreement with KHK and such Sublicensee; provided that [\*\*\*] or [\*\*\*] Know-How that arises under [\*\*\*] agreement with KHK and such Sublicensee and that [\*\*\*] (“**KHK Sublicensee [\*\*\*] Know-How**”), and (B) Patents that arise under [\*\*\*] agreement between KHK and such Sublicensee; provided that such Patents claim the KHK Sublicensee [\*\*\*] Know-How (“**KHK Sublicensee [\*\*\*] Patents**”) (collectively, (A) and (B), “**KHK Sublicensee [\*\*\*] Technology**”). For clarity, KHK Sublicensee [\*\*\*] Know-How and KHK Sublicensee [\*\*\*] Patents are included in KHK [\*\*\*] Know-How and KHK [\*\*\*] Patents, respectively. To the extent that KHK has obtained a license, with the right to sublicense Ardelyx without additional consideration, to the KHK Sublicensee [\*\*\*] Know-How and the KHK Sublicensee [\*\*\*] Patents, the KHK Sublicensee [\*\*\*] Know-How and the KHK Sublicensee [\*\*\*] Patents are included in KHK [\*\*\*] Know-How, and KHK [\*\*\*] Patents, respectively.

**Section 2.03 Distributorships.** KHK, its Affiliates and its Sublicensees shall have the right, in their sole discretion, to appoint any other Persons in the Territory to distribute, market and sell the Licensed Products, with or without packaging rights. In circumstances where such appointed Person purchases its requirements of Licensed Products from KHK, its Affiliates or its Sublicensees, but does not otherwise make any royalty or other payment to KHK, its Affiliates or its Sublicensees with respect to Intellectual Property Rights, and where such Person is not an Affiliate of KHK and neither KHK nor any of its Affiliates shares in the profits from, or has an equivalent interest in the proceeds from, the sale of Licensed Products by such Person, that Person shall be a “**Distributor**” for purposes of this Agreement. The term “packaging rights” in this Section 2.03 shall mean the right for the Distributor to package Licensed Products supplied in unpackaged bulk form into individual ready-for-sale packs. KHK shall remain liable for any action or failure to act by the Distributor, if such action or failure to act by the Distributor would have constituted a breach of this Agreement if such action or failure were committed by KHK.

**Section 2.04 Provision of Development Data, Regulatory Documentation and Assistance.**

(a) In the furtherance of the rights and licenses granted by Ardelyx to KHK under this Agreement, as soon as reasonably practicable, Ardelyx shall furnish [\*\*\*], to KHK a data package in electronic format that shall include Development Data and Regulatory Documentation described on **Exhibit D** (the “**Initial Delivery of Development Data and Regulatory Documentation**”). Ardelyx shall, [\*\*\*] provide KHK with the Initial Delivery of Development Data and Regulatory Documentation electronically in the formats of (i) CDISC (Clinical Data Interchange Standards

Consortium), and (ii) additionally, other formats, if any, in which Ardelyx files such data with the FDA.

(b) During the Term, [\*\*\*], (i) as soon as reasonably practicable following request by KHK, Ardelyx shall provide KHK with copies of [\*\*\*] additional Ardelyx Development Data and Regulatory Documentation specifically requested by KHK that [\*\*\*] would be necessary or useful to Develop, Manufacture or Commercialize Licensed Products in the Field in the Territory, and (ii) as soon as reasonably practicable, Ardelyx shall disclose Ardelyx [\*\*\*] Know-How and Sole Program Know-How that comes to Ardelyx's Control (or that are reasonably requested by KHK) and that have not previously been provided to KHK by Ardelyx. Subject to, and limited by, the provisions of Section 2.01(c) above relating specifically to Ardelyx's obligations with respect to Ardelyx Licensee [\*\*\*] Technology and Ardelyx Licensee [\*\*\*] Technology, Ardelyx shall (A) obtain rights and licenses from its licensees, research and clinical partners or other Third Parties with which Ardelyx conducts Development or Manufacturing with respect to the Licensed Compound and/or Licensed Product to grant Ardelyx such rights and licenses as necessary to enable Ardelyx to comply with the obligations set forth in this Section 2.04(b).

(c) During the Term, [\*\*\*], (i) as soon as reasonably practicable following request by Ardelyx, KHK shall provide Ardelyx with copies of KHK Development Data and Regulatory Documentation specifically requested by Ardelyx and that [\*\*\*] would be necessary or useful to Develop, Manufacture or Commercialize Licensed Products outside of the Territory, or outside of the Field in the Territory, and (ii) as soon as reasonably practicable, KHK shall disclose KHK [\*\*\*] Technology and Sole Program Know-How that comes to KHK's Control (or that are reasonably requested by Ardelyx) and that have not previously been provided to Ardelyx by KHK. Subject to, and limited by, the provisions of Section 2.02(c) above relating specifically to KHK's obligations with respect to KHK Sublicensee [\*\*\*] Technology and KHK Sublicensee [\*\*\*] Technology, KHK shall obtain rights and licenses from KHK's Sublicensees, research and clinical partners or other Third Parties with which KHK conducts Development or Manufacturing with respect to the Licensed Compound and/or Licensed Product to grant KHK such rights and licenses as necessary to enable KHK to comply with the obligations set forth in this Section 2.04(c).

(d) [\*\*\*], KHK, its Affiliates and its Sublicensees shall have the right to reference Regulatory Documentation of Licensed Products for the Initial Indication and any Additional Indication, to the extent such Regulatory Documentation are Controlled by Ardelyx, its Affiliates or licensees (including any future licensees), in connection with any Regulatory Approval that KHK or its Affiliates or Sublicensees may seek for Exploitation of Licensed Products in the Initial Indication and any Additional Indication in Field and in the Territory.

(e) [\*\*\*], Ardelyx, its Affiliates and its licensees shall have the right to reference Regulatory Documentation for Licensed Products for the Initial Indication and any Additional Indication, to the extent such Regulatory Documentation are Controlled by KHK or its Affiliates or Sublicensees, in connection with any Regulatory Approvals that Ardelyx, its Affiliates or licensees (including those in the future) may seek for use of Licensed Products in the Initial Indication and any Additional Indication outside of the Territory, or outside of the Field in the Territory.

(f) In addition to the foregoing Section 2.04(a), Section 2.04(b) and Section 2.04(d), Ardelyx shall provide to KHK reasonable assistance as KHK may request in order to assist KHK in obtaining Regulatory Approval for the Licensed Product in the Territory; provided, however, that KHK shall (i) [\*\*\*] and (ii) in the event that Ardelyx is required to spend any FTE hours in supporting KHK under this Section 2.04(f) for any purpose, including [\*\*\*] KHK shall reimburse Ardelyx for such FTE hours spent by Ardelyx pursuant to this Section 2.04(f) at a rate of US \$[\*\*\*] annually or an hourly rate of US \$[\*\*\*]. Notwithstanding the foregoing, until KHK, its Affiliates or Sublicensees obtain Regulatory Approval for the Lead Licensed Product in the Territory, Ardelyx shall, [\*\*\*] maintain or cause its contract manufacturing organizations and contract research organizations to maintain Ardelyx Development Data for the Licensed Product consisting of GMP, GCP and GLP data that Ardelyx is required to file with the FDA in order to obtain Regulatory Approval in the United States, and Ardelyx shall [\*\*\*] of any such Ardelyx Development Data in connection with any Regulatory Documentation for the Lead Licensed Product. If any such GLP, GCP or GMP Ardelyx Development Data that Ardelyx is required to file with the FDA in order to obtain Regulatory Approval for the Lead Licensed Product in the United States is missing, destroyed or cannot be traced and any additional Clinical Trials or nonclinical studies are required to be conducted by KHK, its Affiliates or Sublicensees as a result thereof, the Parties shall discuss in good faith the possibility of [\*\*\*].

**Section 2.05 Rights Retained by Ardelyx.** Notwithstanding the foregoing, Ardelyx retains the right under (i) the Licensed Technology, (ii) Ardelyx's rights in the Joint Technology and (iii) Ardelyx [\*\*\*] Technology to Exploit the Licensed Compounds and the Licensed Products outside the Field and/or outside the Territory and to conduct any other activities expressly assigned to Ardelyx under this Agreement, including the Manufacturing of the Licensed Compound and the Lead Licensed Products.

**Section 2.06 License to Ardelyx.** KHK grants to Ardelyx an exclusive, fully paid, royalty free, sublicensable, irrevocable license under the KHK [\*\*\*] Technology, any Sole Program Know-How owned by KHK, the KHK Sole Invention Patents, and KHK's interest in the Joint Technology to Exploit the Licensed Compounds and Licensed Products outside the Field and/or outside the Territory. Notwithstanding the above, [\*\*\*].

**Section 2.07 Additional Indication Development.**

(a) If either Party, its Affiliates or licensees (or Sublicensees, in the case of KHK) elect to Develop a Licensed Product in the Field pursuant to the terms of this Agreement for an indication other than the Initial Indication ("**Additional Indication**"), and such Party (the "**Initiating Party**") conducts a Phase 2 Clinical Trial for such Additional Indication outside of the Territory in the case of Ardelyx or in the Territory in the case of KHK, the Party conducting such Phase 2 Clinical Trial shall share any and all Development Data generated therefrom ("**Phase 2 Data**") with the other Party (the "**Responding Party**"). Such Phase 2 Data shall be deemed Ardelyx Development Data if generated by Ardelyx, its Affiliates or licensees, or KHK Development Data if generated by KHK, its Affiliates or Sublicensees. Following the delivery of the Phase 2 Data, the Parties shall discuss in good faith whether to proceed with a Pivotal Clinical Study for the Additional Indication that would include both clinical sites in the Territory and clinical sites outside of the Territory, and such decision shall occur within the time frame presented by the Initiating Party when the Phase 2 Data is presented to the Responding Party, which time

frame shall be no more than [\*\*\*] ([\*\*\*]) days after the delivery of the Phase 2 Data unless the Parties shall agree otherwise. For clarity, (i) neither Party shall be obligated to proceed with a Pivotal Clinical Study regardless of whether it is the Initiating Party or the Responding Party, (ii) KHK, its Affiliates or its Sublicensees shall not be obligated to include any clinical sites outside of the Territory if KHK is the Initiating Party, and (iii) Ardelyx, its Affiliates or its licensees shall not be obligated to include any clinical sites within the Territory if Ardelyx is the Initiating Party. Should the Parties determine to proceed collaboratively with a Pivotal Clinical Study that includes both clinical sites in the Territory and clinical sites outside of the Territory, the mechanism set out in Sections 2.07(b) and 2.07(c) below shall apply.

(b) If Ardelyx is the Initiating Party and Ardelyx and KHK agree to proceed with a global Pivotal Clinical Study that includes both clinical sites in the Territory and clinical sites outside of the Territory, [\*\*\*] shall [\*\*\*] attributable to [\*\*\*]. Either Party, and their respective Affiliates, licensees and Sublicensees, may use the data generated by the global Pivotal Clinical Study at no cost for the purposes of any regulatory submission in the Territory (in the case of KHK, its Affiliates and Sublicensees) or outside the Territory (in the case of Ardelyx, its Affiliates or licensees). KHK shall pay relevant milestone payments to the extent that the Additional Indication triggers milestone payments, as well as any applicable royalties and sales milestones. In the event that the Parties determine not to proceed with a global Pivotal Clinical Study that includes both clinical sites in the Territory and clinical sites outside of the Territory, Ardelyx may proceed with a Pivotal Clinical Study at its own cost outside the Territory without including clinical sites in the Territory. KHK, its Affiliates or Sublicensees may elect to pursue the Additional Indication by conducting a Pivotal Clinical Study or a bridging study at its own cost in the Territory. KHK shall pay relevant milestone payments to the extent that the Additional Indication triggers milestone payments, as well as any applicable royalties and sales milestones. Either Party, and their respective Affiliates, licensees and Sublicensees may use the data generated by the other Party (Ardelyx Development Data if generated by Ardelyx and KHK Development Data if generated by KHK) at no cost for the purposes of any regulatory submission in the Territory (in the case of KHK, its Affiliates and Sublicensees) or outside of the Territory (in the case of Ardelyx, its Affiliates or licensees),

(c) If KHK is the Initiating Party, and KHK and Ardelyx agree to proceed with a global Pivotal Clinical Study that includes both clinical sites in the Territory and clinical sites outside of the Territory, [\*\*\*] shall [\*\*\*] attributable to [\*\*\*]. Either Party, and their respective Affiliates, licensees and Sublicensees, as the case may be, may use the data generated by the global Pivotal Clinical Study at no cost for the purposes of any regulatory submission in the Territory (in the case of KHK, its Affiliates or Sublicensees) or outside the Territory (in the case of Ardelyx, its Affiliates or licensees). KHK shall pay relevant milestone payments to the extent that the Additional Indication triggers such milestone payment, as well as any applicable royalties and sales milestones. In the event that the Parties determine not to proceed with a global Pivotal Clinical Study that includes both clinical sites in the Territory and clinical sites outside of the Territory, KHK may proceed with a Pivotal Clinical Study at its own cost, in the Territory. KHK shall pay relevant milestone payments to the extent that the Additional Indication triggers such milestones, as well as any applicable royalties and sales milestones. Ardelyx, its Affiliates or licensees may elect to pursue the Additional Indication by conducting its own Pivotal Clinical Study outside the Territory at Ardelyx's cost. In such circumstances, KHK may pursue the Additional Indication by conducting a bridging study in the Territory at its own cost. Either Party, and their respective

Affiliates, licensees and Sublicensees, may use the data generated by the other Party (Ardelyx Development Data if generated by Ardelyx and KHK Development Data if generated by KHK) at no cost for the purposes of any regulatory submission in the Territory (in the case of KHK, its Affiliates and Sublicensees) or outside the Territory (in the case of Ardelyx, its Affiliates or licensees).

**Section 2.08 No Implied Rights.** This Agreement confers no right, license, or interest by implication, estoppel, or otherwise under any Patents, Know-How, or other Intellectual Property Rights of either Party except as expressly set forth in this Agreement. Each Party hereby expressly retains and reserves all rights and interests with respect to Patents, Know-How, or other Intellectual Property Rights not expressly granted to the other Party hereunder. Without limiting the generality of the foregoing, no license or other rights are granted to KHK under this Agreement to any compounds claimed or disclosed in any Ardelyx [\*\*\*] Patents or any Licensed Patents, other than the Lead Licensed Compound and the Backup Licensed Compounds.

**Section 2.09 Exclusivity Term.** KHK's exclusive licenses granted under Section 2.01, shall expire with respect to each separate Licensed Product on the date when KHK's obligation to pay royalties with respect to such Licensed Product expires pursuant to Section 6.04(d). Upon expiry of KHK's exclusive licenses with respect to a Licensed Product in the Territory, KHK's licenses with respect to such Licensed Product in the Territory shall become non-exclusive, fully paid-up, perpetual and irrevocable and the Net Sales of such Licensed Product in the Territory shall be excluded from the royalty and sales milestone calculations under Section 6.04 (including the thresholds and ceilings). KHK and its Affiliates and Sublicensees shall be allowed to continue exercising KHK's rights under the licenses granted in Section 2.01 with respect to such Licensed Product on a non-exclusive basis in the Territory with no further consideration to Ardelyx.

**Section 2.10 Right of First Negotiation for Licensed Products Outside of the Field.**

(a) Ardelyx hereby grants to KHK the exclusive right of first negotiation as set forth in this Section 2.10 with respect to the grant of rights to Develop and/or Commercialize outside of the Field in the Territory a Licensed Compound that is being Developed or Commercialized by KHK, its Affiliates or Sublicensees ("**ROFN Licensed Product**") in the Field in the Territory.

(b) During the Term, if Ardelyx decides to (i) Develop and/or Commercialize a ROFN Licensed Product outside of the Field in the Territory, or to grant a Third Party a license under the Licensed Technology, Ardelyx's rights in the Joint Technology and/or Ardelyx [\*\*\*] Technology to Develop and/or Commercialize such ROFN Licensed Product outside of the Field in the Territory ("**Ardelyx License**"), Ardelyx shall notify KHK in writing, and shall provide to KHK [\*\*\*] information regarding the Development and/or Commercialization activities undertaken by Ardelyx with respect to the ROFN Licensed Product [\*\*\*]. KHK shall have [\*\*\*] ([\*\*\*]) days from receipt of such written notice to notify Ardelyx in writing if KHK would like to exercise its right of first negotiation with respect to the ROFN Licensed Product. Upon any exercise by KHK of such right, the Parties shall enter into exclusive good faith negotiations for a period of up to [\*\*\*] ([\*\*\*]) days ("**Negotiation Period**") (unless extended upon mutual agreement of the parties) regarding the terms and conditions of a definitive agreement.

(c) If (i) Ardelyx and KHK cannot reach mutually agreeable terms and conditions of an Ardelyx License during the Negotiation Period, (ii) the Parties otherwise mutually agree in writing to terminate negotiations, or (iii) KHK fails to exercise its right of first negotiation within the [\*\*\*] ([\*\*\*)] day period set forth in Section 2.10(b) (or KHK indicates in writing that it elects not to exercise such right), then Ardelyx shall be free to Develop and/or Commercialize the ROFN Licensed Product in the Territory outside of the Field or negotiate and enter into an Ardelyx License with a Third Party; provided that, upon written request from KHK, Ardelyx shall use or cause its Third Party licensee to use Commercially Reasonable Efforts to [\*\*\*] that is [\*\*\*] at the expiration or termination of the Negotiation Period, [\*\*\*]. Further, Ardelyx shall not, and shall cause its Third Party licensee not to, Commercialize the ROFN Licensed Product using [\*\*\*] at the expiration or termination of the Negotiation Period pursuant to the terms and conditions of this Agreement.

#### **Section 2.11 Right of First Negotiation New NHE3 Inhibitors**

(a) In the event that Ardelyx, its Affiliates or licensee generates [\*\*\*] a NHE3 inhibitor that is owned by Ardelyx but is not a Licensed Compound, and such [\*\*\*] was conducted to evaluate the use of the NHE3 inhibitor to treat a [\*\*\*] (the “**Licensed Product Indication**”) at the time that Ardelyx completes the [\*\*\*] (as documented in the most recent Development Plan or Commercialization Plan delivered to the SC prior to the completion of Ardelyx’s [\*\*\*]), then such NHE3 inhibitor shall be a “**ROFN New Product.**” For clarity, if KHK elects to [\*\*\*] after the time that Ardelyx completes the [\*\*\*], then the NHE3 inhibitor shall not be a ROFN New Product.

(b) Ardelyx hereby grants to KHK the exclusive right of first negotiation as set forth in this Section 2.11 with respect to the grant of rights to Develop and/or Commercialize a ROFN New Product in the Territory for the Licensed Product Indication.

(c) During the Term, if Ardelyx decides to (i) Develop and/or Commercialize a ROFN New Product in the Territory for the Licensed Product Indication, or to grant a Third Party a license to Develop and/or Commercialize such ROFN New Product in the Territory for the Licensed Product Indication, (“Ardelyx NHE3 License”), Ardelyx shall notify KHK in writing, and shall provide to KHK [\*\*\*] information regarding the Development and/or Commercialization activities undertaken by Ardelyx with respect to the ROFN New Product [\*\*\*]. KHK shall have [\*\*\*] ([\*\*\*)] days from receipt of such written notice to notify Ardelyx in writing if KHK would like to exercise its right of first negotiation with respect to the ROFN New Product. Upon any exercise by KHK of such right, the Parties shall enter into exclusive good faith negotiations for a period of up to [\*\*\*] ([\*\*\*)] days (“Negotiation Period”) (unless extended upon mutual agreement of the parties) regarding the terms and conditions of a definitive agreement.

(d) If (i) Ardelyx and KHK cannot reach mutually agreeable terms and conditions of an Ardelyx NHE3 License during the Negotiation Period, (ii) the Parties otherwise mutually agree in writing to terminate negotiations, or (iii) KHK fails to exercise its right of first negotiation within the [\*\*\*] ([\*\*\*)] day period set forth in Section 2.11(c) (or KHK indicates in writing that it elects not to exercise such right), then Ardelyx shall be free to Develop and/or Commercialize the ROFN New Product in the Territory or negotiate and enter into an Ardelyx NHE3 License with a Third Party.

## **Section 2.12 Exclusivity Covenant.**

(a) During the period starting on the Effective Date and continuing until [\*\*\*] (such period being the “**Covenant Period 1**”), KHK, its Affiliates and Sublicensees shall not, except as otherwise expressly permitted in this Agreement, either by themselves or through a Third Party, [\*\*\*]. If this Agreement is terminated as a result of a [\*\*\*], then for the purpose of this Section 2.12(a), the Covenant Period 1 shall expire on the [\*\*\*] ([\*\*\*) anniversary of the effective date of the [\*\*\*].

(b) During the period starting on the Effective Date and continuing until the earlier to occur of (i) [\*\*\*] and (ii) [\*\*\*] (such period being the “**Covenant Period 2**”), KHK, its Affiliates and Sublicensees shall not, except as otherwise expressly permitted in this Agreement, either by themselves or through a Third Party, [\*\*\*]. If this Agreement is terminated as a result of a [\*\*\*], then for the purpose of this Section 2.12(b), the Covenant Period 2 shall expire on the [\*\*\*] ([\*\*\*) anniversary of the effective date of the [\*\*\*], unless the Covenant Period 2 has expired prior to such date by reason of the expiry or termination of the Agreement.

(c) During Covenant Period 1, Ardelyx, its Affiliates and each of its licensees shall not, except as otherwise expressly permitted in this Agreement, either by themselves or through a Third Party, [\*\*\*].

(d) Notwithstanding the aforesaid, neither Party’s (nor that of its Affiliates’) direct or indirect acquisition of or merger with, in whole or in part, a Person (or group of companies) or the business of a Person (or group of companies) having any activity contravening the covenants set forth above in this Section 2.12, shall constitute a breach of such covenants by the Party, if, [\*\*\*] the Party either (i) provides the other Party with written notice of its, or its Affiliates’, as the case may be, [\*\*\*] or (ii) in the case of KHK, exercises its right to terminate this Agreement pursuant to Section 11.02(b)(i), in which case such termination shall be effective [\*\*\*] ([\*\*\*) days after Ardelyx’s receipt of a written notice of termination from KHK. In the event that a Party provides a written notice of its or its Affiliates’ [\*\*\*] pursuant to the above, then (X) such the Party shall (or, as the case may be, cause its relevant Affiliate to) diligently pursue [\*\*\*] and in any case, [\*\*\*] under which the relevant business was acquired, and (Y) neither the Party nor its Affiliates, as the case may be, shall [\*\*\*]. KHK shall, notwithstanding anything to the contrary in this Section 2.12(d), at all times continue to be obligated to use Commercially Reasonable Efforts to Develop or Commercialize Licensed Products in accordance with its obligations under and subject to Section 4.03.

(e) The words [\*\*\*] and all variations thereof included in this Section 2.12 with reference to products discussed in this Section 2.12 shall include the activities described in the [\*\*\*], but with such activities being with respect to such products described in this Section 2.12 rather than with respect to Licensed Product as set forth in the definition.

(f) The Parties agree that the restrictions contained in this Section 2.12 are reasonable and necessary for the protection of the Parties’ and their Affiliates’ respective Confidential Information and business, that such restrictions are reasonable in all the circumstances and that the Parties would not have entered into this Agreement without the protections afforded to them under this Section 2.12.

**ARTICLE III.  
COLLABORATION GOVERNANCE; DEVELOPMENT AND  
COMMERCIALIZATION PLANS**

**Section 3.01 Steering Committee.** Ardelyx and KHK shall establish a steering committee in accordance with this Article III (the “SC”). The SC shall remain in effect from the Effective Date through the Term. The SC shall serve as a forum for discussing and sharing Information in accordance with this Agreement and discussing strategy regarding the Development and Commercialization of the Licensed Products, among other activities.

**Section 3.02 Composition of the SC.** Each Party shall appoint [\*\*\*] ([\*\*\*)] representatives as its voting members of the SC. The first meeting of the SC shall be held within [\*\*\*] ([\*\*\*)] days of the Effective Date. The SC shall be chaired by a representative of [\*\*\*]. The chairperson shall be responsible for calling meetings, setting the agenda, circulating the agenda at least [\*\*\*] ([\*\*\*)] days prior to each meeting and distributing minutes of the meetings within [\*\*\*] ([\*\*\*)] days following such meetings (provided that the chairperson may elect to delegate the performance of its responsibilities to other members of the SC from time to time), but shall not otherwise have any greater power or authority than any other member of the SC. Alliance Managers shall coordinate to schedule the subsequent SC meetings and the date for each subsequent SC meeting shall be established at least [\*\*\*] ([\*\*\*)] months in advance of the scheduled meeting, or – with regard to meetings that are called for on shorter notice – as early as reasonably practicable in advance of such meeting. Each Party shall disclose to the chairperson any proposed agenda items, along with appropriate Information at least [\*\*\*] ([\*\*\*)] Business Days in advance of each meeting of the SC. With respect to the first members of the SC selected by each Party, at least one (1) member selected by Ardelyx and one (1) member selected by KHK shall have [\*\*\*], and all of the members of the SC shall have such expertise as appropriate to the activities of the SC. Each Party may replace its members of the SC upon written notice to the other Party and shall replace its members as the expertise required by the SC changes over time and as the Licensed Products advance through Development and Commercialization. From time to time, the SC may invite non-voting personnel of either Party having formulation, Manufacturing, Commercialization, marketing or other expertise to participate in discussions of the SC. Up to one (1) alternate voting member designated by a Party may serve temporarily in the absence of a permanent voting member appointed by such Party, and either Party may also designate one or more non-voting consultants to such Party who are under written obligations of confidentiality to such Party as SC observers who may attend the SC meetings in an observational capacity only.

**Section 3.03 Responsibilities of the SC.** The SC’s responsibilities shall include, among others, the following:

- (a) reviewing and discussing each Development Plan, and each Commercialization Plan and any amendments thereto;
- (b) reviewing KHK’s progress under each Development Plan and Commercialization Plan;



(c) facilitating the exchange of Information and regulatory strategies between the Parties with respect to the Development of the Licensed Product both in the Territory and outside the Territory as well as both in the Field and outside the Field; and

(d) discussing such other matters as the Parties mutually agree to discuss at the SC.

**Section 3.04 Development Plans.** Following the Effective Date, KHK shall prepare the draft Development Plan and hold consultations with PMDA to finalize the draft Development Plan (the finalized plan, as amended from time to time in accordance with this Agreement being the “**Development Plan**”). The finalization of the draft Development Plan shall be effected by KHK within [\*\*\*] ([\*\*\*)] months after the issuance of the minutes of the final consultations with PMDA. During the Term, KHK shall consult with Ardelyx while finalizing each Development Plan and shall take into consideration any reasonable concerns of Ardelyx in finalizing each such Development Plan. Any material deviations from the draft Development Plan and from each Development Plan including, but not limited to, [\*\*\*] shall be reviewed and discussed at SC. Other than as set forth in Section 3.07, and notwithstanding that [\*\*\*] agrees to consider in good faith all reasonable concerns of [\*\*\*] with respect to each Development Plan and all material changes thereto, [\*\*\*] shall have the final decision making authority with respect to each Development Plan.

**Section 3.05 Commercialization Plans.** The planned activities regarding Commercialization of the Licensed Product in the Field in the Territory to be conducted by KHK shall be set out in a commercialization plan. KHK shall present an initial commercialization plan to the SC within [\*\*\*] ([\*\*\*)] months after [\*\*\*] (the initial commercialization plan, as amended from time to time in accordance with this Agreement, being the “**Commercialization Plan**.” The Commercialization Plan shall consist of non-binding sales forecasts and planned promotional activities. The initial Commercialization Plan shall include the following, among other things, [\*\*\*]. KHK shall provide an annual update of the Commercialization Plan every December that covers the following calendar year until the SC shall unanimously determine that such annual updates are no longer required. [\*\*\*] shall consider in good faith all reasonable concerns of [\*\*\*] with respect to each Commercialization Plan, and all material changes thereto. However, other than as set forth in Section 3.07 below, [\*\*\*] shall have the final decision making authority with respect to each Commercialization Plan.

**Section 3.06 Meetings of the SC.** The SC shall hold meetings at such times and places as shall be determined by a majority of the entire membership of the committee, but in no event, shall such meetings be held less frequently than once [\*\*\*] ([\*\*\*)] [\*\*\*] through the first [\*\*\*] ([\*\*\*)] years following the First Commercial Sale of a Licensed Product in the Territory. Meetings of the SC shall alternate between the offices of the Parties, unless otherwise agreed upon by the members of the SC, or may be held via internet, telephonically or by videoconference; provided that at least [\*\*\*] ([\*\*\*)] meetings per year shall be held in person until [\*\*\*] ([\*\*\*)] years following the First Commercial Sale of a Licensed Product in the Territory. Thereafter, the SC may determine how frequently to require meetings of the SC and how frequently to require in person meetings of the SC. Meetings of the SC shall be effective if at least [\*\*\*] ([\*\*\*)] representatives of each Party are in attendance or participating in the meeting. Each Party shall be responsible for the expenses incurred in connection with its employees, consultants and its members of the SC attending or otherwise participating in SC meetings.

**Section 3.07 SC Decision Making.** The SC shall make decisions within its remit only by [\*\*\*]. The presence of [\*\*\*] ([\*\*\*) SC members representing each Party shall constitute a quorum. In the event that [\*\*\*] on a matter before it for decision within [\*\*\*] ([\*\*\*) days after the matter was first considered by it, then [\*\*\*] shall have the final decision making authority except for decisions that (i) [\*\*\*]; or (ii) [\*\*\*], with respect to which decisions, [\*\*\*] shall have the right to refer such matter to the Senior Executives, who shall meet (in person, via internet, telephonically or by videoconference) and attempt to resolve the matter within [\*\*\*] ([\*\*\*) days of such referral. If Senior Executives of the Parties are unable to reach an agreement, the Parties shall follow the procedures as set forth in Article XIII. Notwithstanding that the Development Plans and the Commercialization Plans are to be presented to the SC without a formal approval by SC, if (i) [\*\*\*]; or (ii) [\*\*\*], then [\*\*\*] shall have the right to refer such matter to the Senior Executives, who shall meet (in person, via internet, telephonically or by videoconference) and attempt to resolve the matter within [\*\*\*] ([\*\*\*) days of such referral. If Senior Executives of the Parties are unable to reach an agreement, the Parties shall follow the procedures as set forth in Article XIII.

**Section 3.08 Joint Project Team.** As a subcommittee of the Steering Committee, the Parties shall establish a Joint Project Team (the “**JPT**”). The JPT shall remain in effect as from the Effective Date and continue in effect until such time as the Parties shall mutually determine that the JPT is no longer necessary. The JPT shall serve as a joint working group for the purpose of implementing the Development Plan, coordinating the practical aspects of the Parties’ collaboration under this Agreement, handling day-to-day issues in relation thereto, facilitating communication between the Parties in respect thereof and otherwise performing such specific tasks as may be assigned to it by the SC. The JPT shall consist of two project leaders, one appointed by KHK and the other by Ardelyx, and such additional members as each Party may appoint from time to time as necessary or useful for the performance of the JPT’s responsibilities hereunder. Each Party shall have the right to withdraw or replace its JPT representatives upon written notice to the other Party, provided that any such substitute representative shall have substantially the equivalent position and experience as the representative that such person replaces, and further provided that replacements for the Parties’ respective project leaders shall be subject to the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned. Each Party shall bear its own expenses of its JPT members related to such members’ participation on the JPT.

**Section 3.09 Alliance Managers.** As soon as practicable after the Effective Date, each Party shall appoint a representative to act as its alliance manager under this Agreement (the “**Alliance Manager**”). The Alliance Managers shall serve as the key contact point between the Parties. A Party may replace its Alliance Manager at any time by providing written notice to the other Party.

#### **ARTICLE IV. GENERAL PROVISIONS ON DEVELOPMENT AND COMMERCIALIZATION;**

**Section 4.01 Record Keeping.** Each Party shall maintain, or cause to be maintained, records of its activities under this Agreement in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes in accordance with Applicable Laws.

**Section 4.02 Conduct of Certain Development Activities.** Subject to Section 2.07, any clinical trial(s) and other Development studies that are commenced after the Effective Date to support Regulatory Approval of Licensed Products in the Field in the Territory shall be conducted solely by KHK, at [\*\*\*]. Subject to Section 2.07, any clinical trial(s) and other Development studies commenced after the Effective Date to support Regulatory Approval of Licensed Products outside the Field and/or outside the Territory shall be conducted solely by Ardelyx, at Ardelyx's sole expense. [\*\*\*].

**Section 4.03 Diligence Obligations**

(a) KHK shall use Commercially Reasonable Efforts at its own cost and expense to carry out its activities under this Agreement to develop (including to seek Regulatory Approval in the Territory), Manufacture (as set forth herein) and Commercialize the Lead Licensed Product in the Territory [\*\*\*]. KHK shall act reasonably in preparing the Development Plan and Commercialization Plan, and any amendments thereto. For purposes of this Section 4.03(a) the Parties agree that in order to be deemed to have utilized Commercially Reasonable Efforts carrying out its activities under this Agreement, KHK shall, at a minimum, meet the timelines and objectives set forth below:

- (i) [\*\*\*] within [\*\*\*] ([\*\*\*) months after [\*\*\*];
- (ii) [\*\*\*] on or before [\*\*\*] ([\*\*\*) months following [\*\*\*], provided that [\*\*\*] (A) [\*\*\*] and (B) [\*\*\*];
- (iii) [\*\*\*] within [\*\*\*] ([\*\*\*) months after [\*\*\*];
- (iv) [\*\*\*] within [\*\*\*] ([\*\*\*) months after [\*\*\*], as long as [\*\*\*];
- (v) [\*\*\*] such that [\*\*\*] of which [\*\*\*] in the Territory within [\*\*\*] ([\*\*\*) months [\*\*\*]; and
- (vi) [\*\*\*] such that it [\*\*\*] in the Territory for [\*\*\*] ([\*\*\*) years [\*\*\*].

(b) If Ardelyx believes that KHK may be in material breach of its obligations under Section 4.03(a), then Ardelyx may exercise its rights under Section 13.02(a) or proceed directly to exercise its rights under Section 11.02(a).

**Section 4.04 Reports of Development Activities.** KHK shall report on the Development activities of the Licensed Product undertaken by it in accordance with the Development Plan at each meeting of the SC or at such other intervals as may be set forth in the Development Plan. The Development reports shall include a reasonably detailed summary of all results, data and material inventions, if any, obtained from such Development activities. In addition, KHK shall, at its own expense, make appropriate scientific or regulatory personnel available to Ardelyx, either by telephone or in person as the Parties may mutually agree, as reasonably required to keep Ardelyx informed of Development activities conducted by KHK.

**Section 4.05 Regulatory Matters**

(a) KHK shall have the responsibility of preparing, filing and submitting all regulatory filings related to the Licensed Compounds and Licensed Products with the Regulatory Health Authority in the Territory for any indication in the Field pursued by KHK, including all applications for Regulatory Approval. Ardelyx shall provide [\*\*\*] Development Data relating to the Manufacturing of the Licensed Compound and Licensed Product [\*\*\*]. [\*\*\*] shall be responsible for filing a Drug Master File, or any similar document, unless KHK is required in its Drug Approval Application to provide Information relating to the Manufacture of the Licensed Compound and Licensed Product [\*\*\*], and [\*\*\*] to provide such information to KHK. In such case, [\*\*\*], shall file a Drug Master File, or any similar document to support KHK's Drug Approval Application. KHK shall own any and all applications for Regulatory Approvals, the Regulatory Approvals, and other regulatory filings related to the Licensed Compounds and Licensed Products, which shall be held in the name of KHK. Such regulatory filings shall include, in the format required by the applicable Regulatory Health Authorities, the data and information required to be submitted to such Regulatory Health Authorities for Regulatory Approval of the Licensed Products for the indication in the Field pursued by KHK in the Territory. KHK shall, subject to the conditions and within the limitations set forth in Section 4.03(a), use Commercially Reasonable Efforts to obtain Regulatory Approval for Licensed Products [\*\*\*] in the Territory. Upon request by KHK, Ardelyx shall use Commercially Reasonable Efforts to assist KHK in seeking and obtaining Regulatory Approvals for the Licensed Products, including without limitation: (i) [\*\*\*]; (ii) [\*\*\*]; (iii) [\*\*\*]; and (iv) [\*\*\*]. Notwithstanding the above, Ardelyx's obligation in (iv) above, shall be limited to [\*\*\*], and within [\*\*\*] ([\*\*\*) days following the [\*\*\*], KHK shall provide Ardelyx with [\*\*\*]. [\*\*\*]. As set forth in Section 2.04(f), KHK shall (i) [\*\*\*], and (ii) in the event that Ardelyx is required to spend any FTE hours in supporting KHK under this Section 4.05(a) [\*\*\*], KHK shall reimburse Ardelyx for the additional FTE hours spent by Ardelyx under this Section 4.05(a) at a rate of US \$[\*\*\*] per FTE and with an hourly FTE basis of \$US [\*\*\*] per hour).

(b) During the Term, KHK shall report to Ardelyx regarding the status of each pending or proposed IND equivalent application or Drug Approval Application covering a Licensed Product in the Territory.

(c) KHK shall notify Ardelyx of any request for [\*\*\*] and KHK shall allow [\*\*\*]. The foregoing shall apply with respect to [\*\*\*]. KHK shall as soon as reasonably practicable furnish Ardelyx with copies of all substantive correspondence KHK has had with any Regulatory Health Authority, and contact reports concerning substantive conversations or substantive meetings with any Regulatory Health Authority, in each case relating to any such IND equivalent or Drug Approval Application.

#### **Section 4.06 Adverse Event Reporting and Product Recall.**

(a) Each Party agrees to provide the other Party with the necessary safety information required by Regulatory Health Authorities to comply with Applicable Laws. Ardelyx shall hold the safety database for the Licensed Compounds and the Licensed Products and KHK shall provide safety information as required by Applicable Laws, in a timely manner. As promptly as possible following the Effective Date, but no later than the commencement of the first clinical trial by KHK in the Territory, the Parties shall enter into a detailed safety agreement (the "**Safety Agreement**"),

governing, among other things, appropriate adverse event reporting procedures relating to Licensed Products and reflecting the provisions set forth above in this Section 4.06.

(b) In the event that any government agency or authority issues or requests a recall or takes similar action in connection with the Licensed Compounds or the Licensed Products, or in the event either Party determines that an event, incident or circumstance has occurred that may result in the need for a recall or market withdrawal, the Party notified of or desiring such recall or market withdrawal shall promptly advise the other Party thereof.

**Section 4.07 General Provisions Regarding Commercialization.** KHK shall control and perform, itself or through its Affiliates, Sublicensees or Distributors, the Commercialization of all Licensed Products in the Field throughout the Territory and, as a result, shall, subject to the conditions and within the limitations set forth in Section 4.03(a), be obligated and responsible for using Commercially Reasonable Efforts to carry out each Commercialization Plan. For the avoidance of doubt KHK (or, as the case may be, its Affiliates or Sublicensees) shall book all of their sales of each Licensed Product, coordinate the Manufacture and supply of all Licensed Products (but not Licensed Compounds) required for Commercialization, invoice Third Parties (including Distributors) that purchase Licensed Products from KHK (or its Affiliates or Sublicensees), and collect payment for all Licensed Products sold by KHK (or its Affiliates or Sublicensees). Except to the extent otherwise described in this Agreement, KHK shall be solely responsible for, and shall bear all costs relating to, the Commercialization of the Licensed Products in the Territory. With respect to Commercialization of Licensed Products, such Commercialization shall be conducted independently of Ardelyx by KHK, its Affiliates and Sublicensees.

## ARTICLE V. MANUFACTURE AND SUPPLY

### **Section 5.01 Supply.**

(a) Ardelyx shall be responsible for supplying the Lead Licensed Compound for use in the Development and Regulatory Approval of the Licensed Products under this Agreement (the “**Development API Supply**”) as well as Materials. The Parties have agreed to the quantities of and timing for delivery of initial quantities of Development API Supply and Materials as described on **Exhibit E**. Ardelyx shall also be responsible for supplying the Lead Licensed Product and placebos for KHK’s Development activities hereunder, and the Parties have agreed to the quantity and delivery time as described in **Exhibit F** (the “**Development Product Supply**”). The Parties acknowledge that KHK may request changes to the timing and quantities set forth on Exhibit E and Exhibit F from time to time following the consultations with PMDA, and Ardelyx shall use Commercially Reasonable Effort to comply with such changes in Development API Supply or Development Product Supply. All Development API Supply, Materials and Development Product Supply delivered to KHK for Development purposes prior to such time as the first Licensed Product has received Regulatory Approval shall be at the [\*\*\*] Price (but with regard to the Materials at the Transfer Price as set out in Section 1.122 (iii)). Ardelyx shall use Commercially Reasonable Efforts to deliver the Development API Supply and the Development Product Supply required by KHK and agreed to by Ardelyx. KHK shall use Commercially Reasonable Efforts to Develop a process for the Manufacture of the Lead Licensed Product and to scale up or scale down

that process to Manufacture and supply the Lead Licensed Product in such volumes as reasonably take into account the anticipated demand for the Lead Licensed Product for use in the Field throughout the Territory. KHK shall use Commercially Reasonable Efforts to make necessary filings to obtain, or to cause a Third Party Manufacturer of the Lead Licensed Product to make necessary filings to obtain, Regulatory Approval for the Manufacture of the Lead Licensed Product.

(b) Ardelyx shall be responsible for: (i) supplying the Lead Licensed Compound for use in the Commercialization of the Licensed Products under this Agreement (the “**Commercial API Supply**”); and (ii) [\*\*\*]. Ardelyx shall continue to supply Lead Licensed Product to KHK for Commercialization until such time as KHK assumes responsibility for such supply hereunder (“**Temporary Commercial Product Supply**”). Commercial API Supply and Temporary Commercial Product Supply shall be delivered to KHK at the [\*\*\*] Price. Additionally, any Development API Supply and Development Product Supply delivered to KHK for Development that is to be conducted after the Regulatory Approval has been received for the first Licensed Product shall be delivered to KHK at the [\*\*\*] Price.

(c) The Parties agree and acknowledge that a separate manufacturing and supply agreement (“**MSA**”) is required to be entered into between the Parties to further govern the supply obligations undertaken by Ardelyx hereunder. The Parties shall also enter into a separate Quality Assurance Agreement (“**QAA**”) that shall define the manufacturing and supply quality responsibilities of the Parties for the Lead Licensed Compound and the Lead Licensed Product. Notwithstanding foregoing, if Ardelyx has a contract manufacturing organization Manufacture the Lead Licensed Compound or the Lead Licensed Product, Ardelyx shall cause such contract manufacturing organization to be a party to the QAA if required by Applicable Law. The MSA and the QAA shall be negotiated in good faith between the Parties and shall be executed as promptly as possible following the Effective Date. The Parties’ objective is that the MSA and the QAA for Development API Supply and Development Product Supply shall be entered into as soon as possible and within [\*\*\*] ([\*\*\*)] days of the Effective Date. The MSA and QAA for Commercial API Supply and Temporary Commercial Product Supply, if needed, shall be entered into at least [\*\*\*] ([\*\*\*)] month prior to the date of the expected Regulatory Approval of the Licensed Product in the Territory.

(d) When KHK’s obligation to pay a royalty under Section 6.04 expires with respect to a Licensed Product, unless KHK has exercised the Manufacturing Option, at the option of [\*\*\*], one of the following shall occur:

- (i) [\*\*\*];
- (ii) [\*\*\*]; or
- (iii) [\*\*\*].

**Section 5.02 Development Work.** In the event that Ardelyx is required to engage in any Development activities [\*\*\*] for the purposes of (i) [\*\*\*], (ii) [\*\*\*], and (iii) [\*\*\*], then in any such event KHK shall reimburse Ardelyx for [\*\*\*] (calculated on an FTE basis of US \$[\*\*\*] per

FTE and with an hourly FTE basis of \$US [\*\*\*] per hour) and [\*\*\*] incurred by Ardelyx in connection with completing such Development work.

**Section 5.03 Technology Transfer.** The SC shall coordinate the transfer of all Licensed Know-How, Ardelyx [\*\*\*] Know-How, and Ardelyx Development Data that have not previously been delivered to KHK and are necessary and/or useful to Manufacture the Lead Licensed Product as currently being Manufactured. Such transfer shall take place in a manner and at such time as not to disrupt the manufacture and delivery of the Development API Supply or the Development Product Supply in satisfaction of the obligations set forth in Section 5.01(a) and **Exhibit F.** [\*\*\*]

**Section 5.04 Manufacturing Option.** Notwithstanding anything to the contrary set forth herein, KHK shall have the right to exercise its option to assume responsibility for the manufacture of the Lead Licensed Compound (“**Manufacturing Option**”) in the event that: (i) [\*\*\*]; (ii) [\*\*\*]; or (iii) [\*\*\*]. In the event that KHK exercises the Manufacturing Option, Ardelyx shall continue to supply, and KHK shall continue to purchase, all of KHK’s requirement for the Commercialization of Lead Licensed Product for a period of [\*\*\*] ([\*\*\*) years. Thereafter, Ardelyx shall no longer be obligated to supply Lead Licensed Compound to KHK and KHK shall no longer be obligated to purchase Lead Licensed Compound from Ardelyx.

**Section 5.05 Technology Transfer upon Exercise of the Manufacturing Option.** In the event that KHK exercises the Manufacturing Option set forth in Section 5.04, Ardelyx shall promptly transfer to KHK all Licensed Know-How, Ardelyx [\*\*\*] Know-How, and Ardelyx Development Data, in each case to the extent not previously provided to KHK, [\*\*\*] for KHK, its Affiliates or Sublicensees or their contract manufacturers to Manufacture the Licensed Compound as being Manufactured at the time of the exercise of the Manufacturing Option (the “**API Technology Transfer**”). [\*\*\*] In addition, Ardelyx shall provide KHK with reasonable assistance to facilitate the practice of such Manufacturing rights by KHK, its Affiliate or its Sublicensee, including making regulatory filings available to KHK and providing reasonable technical and other assistance in order to enable KHK to practice the foregoing Manufacturing rights in accordance with Applicable Law. In the event that Ardelyx and its contract manufacturing organizations are required to continue to provide KHK, its Affiliates or its Sublicensees with reasonable assistance to facilitate the practice of such Manufacturing rights after the API Technology Transfer is complete, KHK shall reimburse Ardelyx for [\*\*\*] at an FTE rate of US \$[\*\*\*] per FTE and with an hourly FTE basis of \$US [\*\*\*] per hour).

**Section 5.06 Other Supply.** Notwithstanding anything to the contrary herein, KHK shall not supply Licensed Compound or Licensed Products to any Third Party for any Third Party use, other than to Develop and Commercialize Licensed Products in compliance with this Agreement. In addition, KHK shall not license any Third Party (other than a Sublicensee or other sublicensee consistent with the terms and conditions of this Agreement) to make or have made Licensed Compounds or Licensed Products, except to carry out the provisions of this Article V.

**Section 5.07 Supply of Backup Licensed Compound.** In the event that KHK Exploits a Licensed Product which contains a Backup Licensed Compound in the Territory, both Parties shall discuss the supply of such Licensed Product or Backup Licensed Compound in good faith. If Ardelyx decides not to supply such Licensed Product or Backup Licensed Compound to the Territory, KHK shall be entitled to assume responsibility for the Manufacture of such Licensed

Product and Backup Licensed Compound. In the event that Ardelyx has commenced any Manufacturing efforts with respect to such Licensed Product or Backup Compound, Ardelyx shall conduct Technology Transfer to KHK in accordance with Section 5.03 and Section 5.05.

**ARTICLE VI.  
CONSIDERATION**

**Section 6.01 Upfront.** As payment for the rights and licenses granted to KHK by Ardelyx under this Agreement, KHK shall pay to Ardelyx a nonrefundable one-time upfront payment of 30 million U.S. dollars (U.S. \$30,000,000) within [\*\*\*] ([\*\*\*)] days after the Effective Date. The upfront payment shall not be creditable against any other payments KHK is obligated to make to Ardelyx under this Agreement.

**Section 6.02 Milestone Payments.**

(a) KHK shall make the following one-time, nonrefundable milestone payments to Ardelyx within [\*\*\*] ([\*\*\*)] days following the first achievement of each of the following milestone events for a Licensed Product, subject to the limitations and additional provisions set forth below in this Section 6.02:

Milestone Event for a Licensed Product	Milestone Number	Milestone Payment
[***]	01	USD [***]
[***]	02	USD [***]
[***]	03	USD [***]
[***]	04	USD [***]
[***]	05	USD [***]
[***]	06	USD [***]
[***]	07	USD [***]

The milestones for the [\*\*\*] (Milestone Number [\*\*\*)] shall not apply to the [\*\*\*] if [\*\*\*]. In such case, the [\*\*\*] shall trigger Milestone Numbers [\*\*\*], and the next indication pursued by KHK that is not subject to exceptions set forth herein shall trigger Milestone Numbers [\*\*\*]. With respect to [\*\*\*], Milestone Numbers [\*\*\*)] shall not apply if (i) [\*\*\*], or (ii) [\*\*\*], or (iii) [\*\*\*]. For clarity, Milestones [\*\*\*] shall each be paid once before the obligation to pay milestones under this Section 6.02(a) expires, regardless of [\*\*\*] from the milestone obligations.

(b) With respect to the milestones set forth in Section 6.02(a), it is the intention of the Parties that each preceding milestone will be earned before the subsequent milestone is earned,



and that no milestones shall be skipped. For example, [\*\*\*] KHK shall pay Ardelyx both milestone 01 and milestone 02 when milestone 02 is earned.

(c) Each of the milestones set forth in Section 6.02(a) eligible to be earned individually.

(d) Notwithstanding anything else set forth herein, none of the milestone payments set forth in Section 6.02(a) (i.e., none of milestones number 01 through 07) shall be payable more than once irrespective of the number of Licensed Products or indications that have achieved the relevant milestone events set forth in Section 6.02(a), in which such milestone events have been achieved.

(e) No payments pursuant to Section 6.02(a) shall be creditable against any other payments KHK is obligated to make to Ardelyx under this Agreement.

**Section 6.03 Sales Related Milestones.**

(a) KHK shall make the following one-time, nonrefundable milestone payments to Ardelyx within [\*\*\*] ([\*\*\*)] days following the first achievement of each of the following milestones, subject to the limitations and additional provisions set forth below in this Section 6.03.

Milestone Event	Milestone Payment
[***]	[***] ([***)] Japanese Yen
[***]	[***] ([***)] Japanese Yen
[***]	[***] ([***)] Japanese Yen
[***]	[***] ([***)] Japanese Yen
[***]	[***] ([***)] Japanese Yen

(b) In the event that more than one of the sales milestones set forth in Section 6.03 is achieved in the same Calendar Year, the payment associated with each sales milestone achieved in such Calendar Year shall be due and payable by KHK to Ardelyx following the end of such Calendar Year.

(c) Notwithstanding anything else set forth herein, no milestone payment pursuant to Section 6.03 shall be made more than once.

(d) No payments pursuant to Section 6.03 shall be creditable against any other payments KHK is obligated to make to Ardelyx under this Agreement.

**Section 6.04 Royalties.**

(a) Subject to the provisions set forth below in Section 6.04(b) through Section 6.04(e), and Section 6.05, KHK shall pay to Ardelyx a royalty on aggregate Annual Net Sales of the Licensed Products made by KHK, its Affiliates, or its Sublicensees at a rate of [\*\*\*] ([\*\*\*)%].

(b) Sales between KHK, its Affiliates and Sublicensees shall not be subject to royalties hereunder. Royalties shall be calculated on KHK's, its Affiliates' and Sublicensees' sales of the Licensed Products to a Third Party, including Distributors (but excluding for the avoidance of doubt Sublicensees).

(c) If, at any time, a Generic Product receives Regulatory Approval then (i) the royalties that would otherwise have been payable on Net Sales of such Licensed Product in the Territory under this Agreement shall be reduced to [\*\*\*] percent ([\*\*\*]%) effective as of the first day of the first Calendar Quarter following the Calendar Quarter in which the NHI Price of the Licensed Product is reduced to a NHI Price being less than [\*\*\*] percent ([\*\*\*]%) of the NHI Price in effect immediately prior to the launch of the Generic Product, and (ii) to [\*\*\*] percent ([\*\*\*]%) effective as of the first day of the first Calendar Quarter following the Calendar Quarter in which the NHI Price of the Licensed Product is reduced to a NHI Price being less than [\*\*\*] percent ([\*\*\*]%) of the NHI Price in effect immediately prior to the launch of the Generic Product.

(d) KHK's obligation to pay royalties due under this Section 6.04 shall commence with respect to each separate Licensed Product, on the date of the First Commercial Sale of such Licensed Product in the Territory and shall expire with respect to such Licensed Product, at the latest of: (i) the [\*\*\*] ([\*\*\*) anniversary of the First Commercial Sale of such Licensed Product in the Territory, (ii) the date on which there is no longer a Valid Claim that covers the Exploitation of the Licensed Product or the Licensed Compound contained within such Licensed Product in the Territory, and (iii) the expiration of all Regulatory Exclusivities associated with the indication of [\*\*\*] for such Licensed Product in the Territory; provided that in the event that the only Valid Claim that claims the Licensed Product is a [\*\*\*], the royalty that would otherwise have been payable on Net Sales of such Licensed Product shall be reduced to [\*\*\*] percent ([\*\*\*]%) subject to the reduction of the Third Party Compensation set out in Section 6.04(e). At such time as KHK's obligation to pay royalties under this Section 6.04 have expired with respect to a Licensed Product, the license granted to KHK under Section 2.01 shall automatically, and without further action on the part of Ardelyx or KHK, become non-exclusive, fully-paid, irrevocable and perpetual with respect to such Licensed Product and the Net Sales of such Licensed Product shall be excluded from royalty calculations under this Section 6.04 (including for purposes of applying thresholds and ceilings) and shall be excluded from the sales milestones set forth in Section 6.03.

(e) If, during the Term, (i) KHK obtains a license to Exploit any Third Party Patent in the Territory that (i) [\*\*\*] required for KHK to Develop, Manufacture and Commercialize the Lead Licensed Compound or the Lead Licensed Product (as Manufactured and formulated by Ardelyx prior to the transfer of the responsibility to KHK for the Manufacture of Lead Licensed Product and with regard to the Lead Licensed Compound prior to the exercise of the Manufacturing Option, if such exercise occurred) in accordance with the terms of this Agreement [\*\*\*], and (ii) which [\*\*\*] would, in the absence of such license, be infringed by the Development, Manufacture or Commercialization of the Licensed Compound or the Licensed Product (as Manufactured and formulated by Ardelyx prior to the transfer of the responsibility to KHK for the Manufacture of the Lead Licensed Product and with regard to the Lead Licensed Compound prior to the exercise of the Manufacturing Option, if such exercise occurred) in the Territory [\*\*\*], (iii) KHK does not have any other [\*\*\*] alternatives available to avoid such infringement, and (iv) KHK is required to pay to such Third Party a royalty, milestone payments or other monetary compensation in consideration for the grant of such license (“**Third Party Compensation**”), then for the period

during which KHK owes royalties to Ardelyx hereunder, the amounts that would otherwise have been payable as royalties to Ardelyx under this Agreement shall be reduced by [\*\*\*] Third Party Compensation payable by or on behalf of KHK to such Third Party; provided, however, that in no event shall the amount of the royalties payable by KHK to Ardelyx be reduced by more than [\*\*\*] percent ([\*\*\*]%).

**Section 6.05 Combination Products.** In the event Ardelyx is entitled to receive royalties under this Agreement from any Licensed Product sold in the form of a Combination Product in the Territory, then Net Sales for such Combination Product shall be calculated by multiplying the actual Net Sales of such Combination Product in the Territory by the fraction  $A/(A+B)$ , where A is the [\*\*\*] price (“[\*\*\*] Price”) in the Territory of a Licensed Product, containing the same amount of Licensed Compound as the sole active ingredient as the Combination Product in question (a “**Comparable Licensed Product**”), if sold separately, and B is the [\*\*\*] price in the Territory of the ready for sale form of a product containing the same amount of the other therapeutically active ingredient(s) in the Combination Product that are not Licensed Compounds (the “**Other Ingredients**”), if sold separately. If the Other Ingredients are not sold separately in the Territory, Net Sales for the purpose of determining royalties of the Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction  $A/C$  where A is the standard sales price in the Territory of a Comparable Licensed Product, if sold separately, and C is the standard sales price of the Combination Product in the Territory. If a Comparable Licensed Product is not sold separately, Net Sales for the purpose of determining royalties of the Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction  $(C-B)/C$ , where B is the [\*\*\*] price in the Territory of the Other Ingredients and C is the [\*\*\*] price in the Territory of the Combination Product. For the purpose of the above, the NHI price for a Comparable Licensed Product and for each Other Ingredient shall be for a quantity comparable to that used in the Combination Product in question and of the same class, purity and potency. If neither a Comparable Licensed Product nor the Other Ingredients are sold separately in the Territory, Net Sales for the purposes of determining royalties of such Combination Product shall be determined by the Parties on the basis of a fair market value of such Comparable Licensed Product and Other Ingredient to be negotiated by the Parties in good faith, taking into account costs, overheads and profit of the relevant Licensed Compound(s), the Other Ingredients and the Combination Product. For purposes of the calculations set forth in this Section 6.05, prior to the First Commercial Sale of a Combination Product, the JDC shall discuss the calculations set forth herein, including the standard sale prices to be used in such calculation.

**Section 6.06 Sales by Sublicensees.** In the event KHK grants sublicenses to one or more Sublicensees to make or sell Licensed Products to the extent permitted hereunder, such sublicenses shall include without limitation an obligation for the Sublicensee to account for and report its Net Sales of such Licensed Products on the same basis as if such sales were Net Sales by KHK, and KHK shall pay royalties and sales milestones to Ardelyx as if the Net Sales of the Sublicensee were Net Sales of KHK.

**Section 6.07 Royalty Payments and Report.** The royalties payable under Section 6.04 shall be calculated quarterly as of the last day of March, June, September and December respectively for the Calendar Quarter ending on that date. KHK shall deliver to Ardelyx a report summarizing the Net Sales of Licensed Products during each Calendar Quarter following the First

Commercial Sale of a Licensed Product in the Territory. A draft of such report shall be provided within [\*\*\*] ([\*\*\*)] days the end of each Calendar Quarter for which royalties are due from KHK to allow Ardelyx to estimate its royalty payments from KHK. A final report shall be delivered within [\*\*\*] ([\*\*\*)] days following the end of each Calendar Quarter for which royalties are due from KHK. Any royalties payable to Ardelyx or its designee under this Agreement shall be paid on the due date for the report in the foregoing sentence of this Section 6.07.

#### **Section 6.08 Taxes**

(a) The royalties, milestones and other amounts payable by KHK to Ardelyx pursuant to this Agreement (“**Payments**”) shall not be reduced on account of Taxes unless required by Applicable Laws. KHK shall deduct or withhold from the Payments any Taxes that it is required by Applicable Laws to deduct or withhold. Notwithstanding the foregoing, if Ardelyx is entitled (whether under any applicable tax treaty or otherwise under Applicable Laws) to a reduction in the rate of, or the elimination of, withholding Tax, it may deliver to KHK or the appropriate governmental authority (with the assistance of KHK to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve KHK of its obligation to withhold Tax, and KHK shall apply the reduced rate of withholding, or dispense with withholding, as the case may be. If, in accordance with the foregoing, KHK withholds any Tax, it shall make timely payment to the proper Tax Authority of the withheld Tax, in accordance with Applicable Laws, and send to Ardelyx proof of such payment as soon as reasonably practicable following that payment. KHK agrees to take reasonable and lawful efforts to minimize such Taxes to Ardelyx. KHK shall cooperate with Ardelyx as reasonably requested in any claim for refund or application to any Tax Authority. If KHK intends to withhold Tax from any Payment, KHK shall inform Ardelyx reasonably in advance of making such Payment to permit Ardelyx an opportunity to provide Japanese forms or information or obtain Japanese Tax Authority approval as may be available to reduce or eliminate such withholding. If Ardelyx desires, it may request cooperation from KHK in any claim for refund or application to the Japanese Tax Authority.

(b) Notwithstanding anything to the contrary herein, if (i) KHK redomiciles or assigns its rights or obligations under this Agreement, (ii) as a result of such redomiciliation or assignment, KHK (or its assignee) is required by Applicable Law to withhold taxes, or such redomiciliation or assignment results in the imposition of Indirect Taxes that were not otherwise applicable, from or in respect of any amount payable under this Agreement, and (iii) such withholding taxes or Indirect Taxes exceed the amount of withholding taxes or Indirect Taxes that would have been applicable but for such redomiciliation or assignment, then any such amount payable to Ardelyx pursuant to this Agreement shall be increased to take into account such withholding taxes or Indirect Taxes as may be necessary so that, after making all required withholdings (including withholdings on the additional amounts payable) and/or paying such Indirect Taxes, as the case may be, Ardelyx receives an amount equal to the sum it would have received had no such increased withholding been made and no such Indirect Taxes had been imposed. The obligation to pay additional amounts pursuant to the preceding sentence shall not apply, however, to the extent such increased withholding tax or Indirect Taxes would not have been imposed but for the assignment by Ardelyx of its rights or obligations under this Agreement or the redomiciliation of Ardelyx outside of the United States, to the extent such assignment or redomiciliation occurs after the redomiciliation or assignment by KHK described in the first sentence of this (a). Solely for purposes of this (a), a

Party's "domicile" shall include its jurisdiction of incorporation or tax residence and a "redomiciliation" shall include a reincorporation or other action resulting in a change in tax residence of the applicable Party or its assignee.

(i) Notwithstanding anything to the contrary contained in this Section 6.08(b) or elsewhere in this Agreement, the following shall apply with respect to Indirect Taxes. All Payments are exclusive of Indirect Taxes. If any Indirect Taxes are chargeable in respect of any Payments, KHK shall pay such Indirect Taxes at the applicable rate in respect of any such Payments following the receipt, where applicable, of an Indirect Taxes invoice issued by Ardelyx in respect of those Payments, such Indirect Taxes to be payable on the due date of the payment of the Payments to which such Indirect Taxes relate or at the time such Indirect Taxes are required to be collected by Ardelyx, in the case of payment of Indirect Taxes to Ardelyx. The Parties shall issue invoices for all goods and services supplied under this Agreement consistent with Indirect Tax requirements, and to the extent any invoice is not initially issued in an appropriate form, KHK shall promptly inform Ardelyx and shall cooperate with Ardelyx to provide such information or assistance as may be necessary to enable the issuance of such invoice consistent with Indirect Tax requirements.

**Section 6.09 Payments or Reports by Affiliates.** Any Payment required under any provision of this Agreement to be made to Ardelyx or any report required to be made by KHK shall be made by an Affiliate of KHK if such Affiliate is designated by KHK as the appropriate payer or reporting entity.

**Section 6.10 Mode of Payment.** All payments set forth in this Article VI shall be remitted by wire transfer to the bank account of Ardelyx in the United States as designated in writing to KHK.

**Section 6.11 Payment Currency.** Payments by KHK under this Agreement shall be paid to Ardelyx in the currency in which the payments are expressed in this Agreement.

**Section 6.12 Imports.** For the avoidance of doubt, the Parties acknowledge and agree that none of the milestones or royalties payable under this Agreement are related to the license (or right) to import or any import of Licensed Products. KHK shall be responsible for any import clearance, including payment of any import duties and similar charges, in connection with any Licensed Products or Licensed Compounds transferred to KHK under this Agreement. The Parties shall co-operate in accordance with Applicable Laws to ensure where permissible that no import duties are paid on imported materials. Where import duties are payable, the Parties shall co-operate to ensure that the Party responsible for shipping values the materials in accordance with Applicable Laws and minimizes where permissible any such duties and any related import taxes that are not reclaimable from the relevant authorities.

**Section 6.13 Discounted Sales.** In the event that one or more Licensed Products is included as part of a package of products offered to customers of KHK, and discounts on packages including Licensed Products are offered independently in the Territory, KHK shall not discount the price of the Licensed Products sold as part of a package unreasonably compared to the discount KHK offers on prices of the other products included in such package.

**ARTICLE VII.  
CONFIDENTIALITY**

**Section 7.01 Confidentiality.** The Parties agree that the Party receiving Confidential Information disclosed by or on behalf of the other Party pursuant to this Agreement, unless it has obtained the prior written consent of the other Party, shall, and shall cause its officers, directors, employees, agents, Affiliates, licensees, Sublicensees and other sublicensees to keep confidential and not publish or otherwise disclose or use for any purpose other than to conduct its activities under this Agreement or otherwise as expressly authorized or licensed by this Agreement any Confidential Information furnished to it by or on behalf of the other Party pursuant to this Agreement.

**Section 7.02 Exceptions.** Notwithstanding the foregoing, the obligations set forth in Section 7.01 shall not apply in respect of Confidential Information to the extent that it can be established by the receiving Party that such Confidential Information:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of its disclosure to the receiving Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) was independently developed without use of the disclosing Party's information, as evidenced by contemporaneous written records;

(d) became generally available to the public or otherwise part of the public domain after its disclosure to the receiving Party and other than through any act or omission of the receiving Party in breach of this Agreement; or

(e) was disclosed to the receiving Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the disclosing Party not to disclose such information to others.

**Section 7.03 Receipt of Third Party Information.** Neither Party shall knowingly receive documents relating to Licensed Products or Licensed Compounds under an obligation of confidentiality to Third Parties that require the Party receiving such documents to withhold access to the other Party and without such Party's written consent.

**Section 7.04 Exceptional Disclosure.** Each Party may disclose Confidential Information without the prior written consent of the other Party to the extent that such disclosure is:

(a) made to a patent office for the purposes of filing or enforcing a Patent as permitted in this Agreement, provided, however, that reasonable measures shall be taken to assure confidential treatment of such information, to the extent such protection is available;

(b) made by a Party or its Affiliates, Distributors, licensees, Sublicensees or other sublicensees, to Regulatory Health Authority for the purposes of any filing, application or request

for Regulatory Approval for Licensed Compounds or Licensed Products as permitted in this Agreement;

(c) made to investment bankers, financial advisors, or actual or potential investors, licensees, or sublicensees hereunder, contractors or subcontractors hereunder or acquirers of all or substantially all of the assets to which this Agreement relates; provided that with respect to disclosures as per subsection (c), the Party making such disclosures shall ensure that each Third Party recipient is bound by obligations of confidentiality no less restrictive than those contained in this Agreement and shall be liable to the other Party for any breach of such confidentiality obligations by the relevant recipient.

**Section 7.05 Legally Compelled Disclosure.**

Each Party may disclose, without the prior written consent of the other Party, Confidential Information required by law, order, or regulation of a government agency or a court of competent jurisdiction, or by the rules of a securities exchange, provided that the Party required to make such disclosure shall give the other Party reasonable advance notice of and an opportunity to comment on any such required disclosure in order for the disclosing party (who controls the Confidential Information) to have sufficient time to seek protective orders or any available limitations on or exemptions from such disclosure requirement where applicable and practicable;

**Section 7.06 Survival.** This Article VII (other than Section 7.03) shall survive the termination or expiration of this Agreement for a period of (i) [\*\*\*] ([\*\*\*)] years if termination occurs prior to the First Commercial Sale of the Lead Licensed Product, (ii) [\*\*\*] ([\*\*\*)] years if the termination occurs after the First Commercial Sale of the Lead Licensed Product and less than [\*\*\*] ([\*\*\*)] years after the First Commercial Sale of the Lead Licensed Product, or (ii) [\*\*\*] ([\*\*\*)] years if the termination or expiration occurs [\*\*\*] ([\*\*\*)] or more years after the First Commercial Sale of the Lead Licensed Product.

**Section 7.07 Termination of Prior Agreements.** This Agreement supersedes, in the relationship between the Parties hereunder, the Confidentiality Agreement between Ardelyx and KHK dated as of April 14, 2017, the Three-Way Confidentiality Agreement among Ardelyx, KHK and Patheon dated as of October 30, 2017, the Three-Way Confidentiality Agreement among Ardelyx, KHK and Hovione dated as of November 3, 2017, and the Three-Way Confidentiality Agreement among Ardelyx, KHK and Dotikon dated as of November 3, 2017 (the “**CDA**”). All Information exchanged between the Parties under the CDA shall be deemed Confidential Information and shall be subject to the terms of this Article VII, and shall be included within the definitions of Licensed Know-How and KHK [\*\*\*] Know-How, only if applicable.

**Section 7.08 Publications.** Except as required by law, each Party agrees that it shall not publish or publicly present any information relating to Licensed Compounds or Licensed Products in the Field, excluding marketing materials such as presentation materials or leaflets, (a) without the opportunity for prior review by the other Party and (b) other than in compliance with this Section 7.08. Each Party shall provide to the other Party the opportunity to review any proposed publications or presentations (i) to be made at medical conference but limited to abstracts or manuscripts; (ii) other than (i) described hereabove that relate to Licensed Compounds or Licensed Products in the Field as early as reasonably practical, but at least in the case of (i) above [\*\*\*]

([\*\*]) days, and in the case of (ii) above [\*\*] ([\*\*]) days prior to their intended submission for publication or presentation (collectively the “**Review Period**”) and such submitting Party agrees, upon written request from the other Party within the Review Period, not to submit such abstract or manuscript for publication or to make such presentation until the other Party agrees, which agreement shall not be unreasonably withheld. The other Party shall have in the case of (i) above [\*\*] ([\*\*]) days, and in the case of (ii) above [\*\*] ([\*\*]) days after its receipt of any such publication or presentation to notify the submitting Party in writing of any specific objections to the intended publication or presentation. Each Party shall, in any such publication or presentation, delete from the proposed disclosure any Confidential Information of the other Party. Additionally, if the other Party notifies the submitting Party within the Review Period that the other Party objects to such disclosure on the basis that a patent application claiming information contained in such disclosure should be filed prior to such disclosure, the submitting Party agrees to reasonably delay disclosure of the relevant information, for up to [\*\*] ([\*\*]) days after the other Party’s timely notification of its objection as per the above, or until such application has been filed, if earlier. Once any such abstract or manuscript is accepted for publication or presentation, the submitting Party may use only the same subject matter in whole or in part, in another publication or presentation under this Section 7.08, provided that the wording used in such new publication or presentation does not go beyond the scope of the subject matter disclosed in the previously approved publication or presentation. Notwithstanding the above, the obligations of this Section 7.08 shall not apply to publications and/or presentations that have been submitted by Ardelyx prior to the Effective Date.

### **ARTICLE VIII. OWNERSHIP OF INTELLECTUAL PROPERTY AND PATENT RIGHTS**

**Section 8.01 Disclosure.** During the Term, the Parties shall promptly disclose to one another all Joint Technology and Sole Program Know-How (whether patentable or not).

(a) **Ownership.** Inventorship of all inventions and other Know-How conceived or first made after the Effective Date in the course of the Parties’ performance under this Agreement shall be determined in accordance with the laws of inventorship of the United States. Subject to the licenses granted in Article II and to the other provisions of this Agreement, all such inventions and other Know-How invented by employees or independent contractors of one Party (“**Sole Program Know-How**”) shall be solely owned by the inventing Party, and any inventions and Know-How that are invented jointly by employees or independent contractors of each Party shall be owned jointly by the Parties (“**Joint Know-How**”). For clarity, Ardelyx’s Development and Commercialization of a Licensed Compound or Licensed Product outside of the Field and/or outside of the Territory shall not be activities performed in the course of Ardelyx’s performance under this Agreement, and any inventions and other Know-How conceived or first made during the course of such Development and Commercialization shall be Ardelyx [\*\*] Technology rather than Sole Program Know-How owned by Ardelyx.

(b) To the extent permissible under Applicable Laws, each Party shall cause each employee and contractor conducting work on such Party’s behalf under this Agreement to sign a contract that (i) compels prompt disclosure to such Party of all inventions and Know-How conceived or reduced to practice by such employee or contractor during any performance under this Agreement, (ii) automatically assigns to such Party all right, title and interest in and to all such



inventions and Know-How and all Intellectual Property Rights therein, and (iii) obligates such persons to similar obligations of confidentiality as set forth in this Agreement. Each Party shall require each employee and contractor conducting work on such Party's behalf under this Agreement to maintain records in sufficient detail and in a good scientific manner appropriate for regulatory purposes and purposes of pursuing Patent protection on inventions to properly reflect all work done

**Section 8.02 Prosecution and Maintenance of Patent Rights.**

(a) Ardelyx. “**Ardelyx Controlled Patents**” shall collectively include Licensed Patents, Ardelyx [\*\*\*] Patents and Joint Patents. Ardelyx (or with respect to Ardelyx [\*\*\*] Patents, Ardelyx or its licensor) shall be primarily responsible for and control the worldwide preparation, filing, prosecution (including without limitation conducting any interferences, oppositions, reissue proceedings, reexaminations and patent term extensions) and maintenance of the Ardelyx Controlled Patents; provided that with respect to all Ardelyx Controlled Patents, other than Ardelyx [\*\*\*], Ardelyx shall provide KHK with advance copies of, and a reasonable opportunity to comment upon, proposed patent filings, related prosecution strategies and proposed correspondence with patent officials or patent attorneys, all to the extent in the Territory and relating to any Ardelyx Controlled Patents (other than the Ardelyx [\*\*\*]), and shall consider comments received from KHK with respect to such proposed filings, strategies and correspondence in the Territory in good faith and shall not unreasonably reject such comments. Ardelyx agrees to discuss in good faith any changes reasonably requested by KHK to such filings, strategies and correspondence in the Territory promptly upon their being received.

(b) KHK. “**KHK Controlled Patents**” shall collectively include KHK Sole Invention Patents and KHK [\*\*\*] Patents. KHK (or with respect to KHK [\*\*\*] Patents, KHK or its licensor) shall be primarily responsible for and control the worldwide preparation, filing, prosecution (including without limitation conducting any interferences, oppositions, reissue proceedings, reexaminations and patent term extensions) and maintenance of the KHK Controlled Patents; provided that KHK with respect to all KHK Controlled Patents, other than KHK [\*\*\*], KHK shall provide Ardelyx with advance copies of, and a reasonable opportunity to comment upon, proposed patent filings, related prosecution strategies and proposed correspondence with patent officials or patent attorneys, and shall consider comments received from Ardelyx with respect to such proposed filings, strategies and correspondence in good faith and shall not unreasonably reject such comments. KHK agrees to discuss in good faith any changes reasonably requested by Ardelyx to such filings, strategies and correspondence promptly upon their being received.

(c) The Party responsible for prosecuting Patents pursuant to Section 8.02(a) or Section 8.02(b) shall provide all documentation it is required to provide pursuant to such Sections so as to provide the other Party a reasonable opportunity to review and comment thereon in advance of filing. A Party providing comments in accordance with Section 8.02(a) or Section 8.02(b) shall provide such comments expeditiously and in any event in reasonably sufficient time to meet any filing deadline communicated to it by the other Party that is consistent with the preceding sentence. The Party receiving any such patent application and correspondence shall maintain such information in confidence pursuant to Article VII, except (for the avoidance of doubt) for patent applications that have been published and official correspondence that is publicly available.

(d) Other than as set forth in Section 8.02(e) or (f) below, after the Effective Date, the Party prosecuting patent applications and maintaining Patents pursuant to this Section 8.02(d) shall be solely responsible for all costs and expenses associated with the filing, prosecution and maintenance of such Patents.

(e) If Ardelyx (or in the case of Ardelyx [\*\*\*] Patents, Ardelyx and/or Ardelyx's licensor (for the avoidance of doubt in any case in this Article VIII, Ardelyx's licensee might be Ardelyx's licensor)) decide not to file, prosecute or maintain Ardelyx Controlled Patents in the Territory, Ardelyx shall give KHK reasonable notice to that effect sufficiently in advance of any deadline for any filing with respect to such Patent to permit KHK to carry out such activity (but with respect to Ardelyx [\*\*\*] Patents only to the extent that the Patent is an Ardelyx [\*\*\*] Patent). After receiving such notice, KHK may elect by written notice to Ardelyx within [\*\*\*] ([\*\*\*)] days after receiving such notice from Ardelyx, to file, prosecute and maintain the relevant Patent in the Territory, at its sole cost and expense; provided, however, that the claims of the Patent being filed, prosecuted or maintained by KHK shall be limited to claims within the Field and KHK shall not file, prosecute or maintain claims that are outside of the Field without the prior written consent of Ardelyx. For the avoidance of doubt, where Ardelyx is in receipt of an official action with a shortened response deadline of [\*\*\*] ([\*\*\*)] days or less, Ardelyx shall communicate such notice to KHK as soon as possible and KHK make its election (pursuant to the foregoing sentence) no later than [\*\*\*] ([\*\*\*)] days prior to the deadline. If KHK does so elect, then Ardelyx shall cooperate with KHK as necessary to enable KHK to file, prosecute or maintain such Patent, including the execution and filing of appropriate instruments and to facilitate the transition of such patent activities to KHK.

(f) If KHK (or in the case of KHK [\*\*\*] Patents, KHK and/or KHK's licensor (for the avoidance of doubt in any case in this Article VIII, KHK's Sublicensee might be KHK's licensor)) decide not to file, prosecute or maintain KHK Controlled Patents in the Territory or outside of the Territory, KHK shall give Ardelyx reasonable notice to that effect sufficiently in advance of any deadline for any filing with respect to such Patent to permit Ardelyx, or its licensees in the territories where KHK has decided not to file, prosecute or maintain KHK Controlled Patents, to carry out such activity (but with respect to KHK [\*\*\*] Patents only to the extent that the Patent is a KHK [\*\*\*] Patent). After receiving such notice, Ardelyx may elect by written notice to KHK within [\*\*\*] ([\*\*\*)] days after receiving such notice from KHK, to file (or to permit its licensee to file), prosecute and maintain the relevant Patent in the Territory and/or outside of the Territory, at its sole cost and expense. For the avoidance of doubt, where KHK is in receipt of an official action with a shortened response deadline of [\*\*\*] ([\*\*\*)] days or less, KHK shall communicate such notice to Ardelyx as soon as possible and Ardelyx make its election (pursuant to the foregoing sentence) no later than [\*\*\*] ([\*\*\*)] days prior to the deadline. If Ardelyx (on its behalf, or that of its licensee) does so elect, then KHK shall cooperate with Ardelyx and/or its licensee as necessary to enable Ardelyx and/or its licensee to file, prosecute or maintain such Patent, including the execution and filing of appropriate instruments and to facilitate the transition of such patent activities to Ardelyx and/or its licensee.

(g) In any event, KHK shall not finally abandon any KHK [\*\*\*] without the prior written notice to Ardelyx. Additionally, KHK shall not assign any KHK [\*\*\*] to either its Affiliates or any Third Party unless such Affiliate or any Third Party agrees in writing that the

assignment of any such Patent shall be subject to the rights granted to Ardelyx under this Agreement.

(h) In any event, Ardelyx shall not finally abandon any Ardelyx [\*\*\*] or Ardelyx Sole Invention [\*\*\*] without the prior written notice to KHK. Additionally, Ardelyx shall not assign any Ardelyx [\*\*\*] or Ardelyx Sole Invention [\*\*\*] to either its Affiliates or any Third Party unless such Affiliate or any Third Party agrees in writing that the assignment of any such Patent shall be subject to the rights granted to KHK under this Agreement.

**Section 8.03 Third Party Patent Rights.** Except as otherwise provided in Article IX, neither Party makes any warranty with respect to the validity, perfection, or dominance of any Patent or proprietary right or with respect to the absence of rights in Third Parties which may be infringed by the manufacture or sale of any Licensed Compound or Licensed Product. Each Party agrees to bring to the attention of the other Party any Third Party Patent it discovers, or has discovered, and which relates to the subject matter of this Agreement.

**Section 8.04 Enforcement Rights.**

(a) Infringement by Third Parties.

(i) The Party first having knowledge that any (x) Ardelyx Controlled Patents or (y) KHK Controlled Patents, in each case, claiming or covering inventions that are necessary or useful to Exploit a Licensed Compound or Licensed Product, is infringed, or misappropriated by a Third Party, or suspected of being infringed or misappropriated by a Third Party shall promptly notify the other Party thereof in writing. Such notice shall set forth the facts of that infringement, misappropriation, or suspected infringement or misappropriation in reasonable detail.

(ii) Ardelyx (or in the case of Ardelyx [\*\*\*] Patents, Ardelyx and/or Ardelyx's licensor) shall have the first right, but not the obligation, to institute, prosecute, and control any action or proceeding or negotiation of any settlements at its expense with respect to any infringement of Ardelyx Controlled Patents, by counsel of its own choice. With respect to actions, proceedings or settlements in the Territory, KHK shall have the right to participate in such action or negotiations at its expense and be represented if it so desires by counsel of its own choice. If necessary, at Ardelyx's discretion, KHK agrees (i) in any such action in the Territory, and (ii) in any such action outside of the Territory with respect to a Joint Patent, to be joined as a party plaintiff and to give Ardelyx (or Ardelyx's licensor, as the case may be), reasonable assistance and any needed authority in order for Ardelyx or its licensor to control, file, and to prosecute such action, at Ardelyx's expense. If Ardelyx or its licensor, as the case may be, elects not to institute and prosecute an action or proceeding or to conduct such negotiation to abate such infringement, within a period of [\*\*\*] ([\*\*\*]) days after both Parties become aware of the infringement or suspected infringement, then Ardelyx shall discuss with KHK the reasons for this decision. KHK shall then have the right, but not the obligation, to institute, prosecute, and control any such action in the Territory at its expense (but with respect to Ardelyx [\*\*\*] Patents or Ardelyx Sole Invention Patents, only to the extent that the Patent is an Ardelyx [\*\*\*] [\*\*\*] Patent or Ardelyx Sole Invention [\*\*\*] Patent). In such case, Ardelyx, [\*\*\*] shall give KHK any

needed authority in order for KHK to control, file, and prosecute the suit as may be necessary; provided, however, that Ardelyx, or Ardelyx and/or its licensor (if the licensor is the owner of such Patent but only to the extent a co-party with Ardelyx) shall have the right to participate at its expense in such action as a party plaintiff(s) and be represented if it so desires by counsel of its own choice. No settlement or consent judgment or other voluntary final disposition of a suit in the Territory under this Section 8.04(a)(ii) may be entered into without the consent of Ardelyx and KHK, which consent shall not be withheld, delayed or conditioned unreasonably. If a Japanese court denies KHK's request for an injunction, provisional order or other legal actions brought pursuant to KHK's right to control a legal action under this Section 8.04(a)(ii) for lack of standing, Ardelyx shall, upon KHK's reasonable request and under KHK's direction, file for an injunction, provisional order or other legal actions by counsel of KHK's choice, at the sole cost and expense of KHK. Ardelyx shall not grant a registered exclusive license (a *senyo jishshiken* under Section 77 of the Japanese Patent Law) in the Territory to any Third Party with respect to the Ardelyx Controlled Patents.

(iii) KHK (or in the case of KHK [\*\*\*] Patents, KHK and/or KHK's licensor) shall have the first right, but not the obligation, to institute, prosecute, and control any action or proceeding or negotiation of any settlements at its expense with respect to any infringement of KHK Controlled Patents, by counsel of its own choice with Ardelyx (or, with respect to actions or proceedings or negotiations outside of the Territory, Ardelyx, or Ardelyx and its licensees in such territory where the infringement is alleged to have occurred) having the right to participate in such action or negotiations at its or their own expense and be represented by counsel of its or their own choice. If necessary, at KHK's discretion, Ardelyx agrees in any such action to be joined as a party plaintiff and to give KHK reasonable assistance and any needed authority in order for KHK to control, file, and to prosecute such action, at KHK's expense. If KHK elects not to institute and prosecute an action or proceeding or to conduct such negotiation to abate such infringement, within a period of [\*\*\*] ([\*\*\*)] days after both Parties become aware of the infringement or suspected infringement, then KHK shall discuss with Ardelyx the reasons for this decision. Ardelyx (or in the case of alleged infringement outside of the Territory, Ardelyx and/or its licensees in such territories where the infringement is alleged to have occurred) shall then have the right, but not the obligation, to institute, prosecute, and control any such action at its expense (but with respect to KHK [\*\*\*] Patents, only to the extent Patent is a KHK [\*\*\*] Patent). In such case, KHK, [\*\*\*] shall give Ardelyx (or its licensee, as the case may be) any needed authority in order for Ardelyx or its licensee to control, file, and prosecute the suit as may be necessary; provided, however, that KHK shall have the right to participate at its expense in such action as a party plaintiff and be represented if it so desires by counsel of its own choice. No settlement or consent judgment or other voluntary final disposition of a suit (i) in the Territory under this Section 8.04(a)(iii) may be entered into without the consent of Ardelyx and KHK, which consent shall not be withheld, delayed or conditioned unreasonably, and (ii) outside of the Territory under this Section 8.04(a)(iii) may be entered into without the consent of Ardelyx, and KHK, which consent shall not be withheld, delayed or conditioned unreasonably.

(iv) With respect to any proceeding, negotiation or settlement with respect to an alleged infringement within or outside of the Territory, any and all costs that are incurred

by a Party bringing suit in the exercise of rights under Section 8.04(a)(ii) and (iii) (including without limitation the internal costs and expenses specifically attributable to such suit) shall be reimbursed first out of any damages or other monetary awards recovered in favor of the Parties. If such recovery is insufficient to reimburse the costs of KHK, KHK’s licensor, Ardelyx and Ardelyx’s licensor or licensee, if applicable, then [\*\*\*].

(v) With respect to any proceeding, negotiation or settlement with respect to an alleged infringement within or outside of the Territory, any damages remaining after all costs have been reimbursed pursuant to Section 8.04(a)(iv) above, shall be allocated as follows:

Type of Patent	Where Suit Occurs	Party Bringing Suit in the Exercise of its Rights under this Article 8, whether as a first right or a second right	Split of Remaining Damages
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]
[***]	[***]	[***]	[***]
		[***]	[***]

(b) Defense and Settlement of Third Party Claims Against Licensed Products. If a Third Party asserts that a Patent or other right owned by it is infringed by the Development, Manufacture, or Commercialization of any Licensed Compound or Licensed Product in the Territory, the Party first obtaining knowledge of such a claim shall immediately provide the other Party written notice of such claim and the related facts in reasonable detail. In such event, Ardelyx shall have the first right, but not the obligation to defend and control the defense of such claim at its own expense, using counsel of its own choice. KHK shall have the right to participate in such defense and to be represented in any such action by counsel of its selection at its sole discretion and at its expense. If Ardelyx elects not to defend or control the defense of such claim within a period of [\*\*\*] ([\*\*\*)] days, KHK may conduct and control the defense of such claim at its own expense. Each Party shall keep the other Party reasonably informed of all material developments in connection with any such claim. The Party that controls the defense of a given claim with respect to a Licensed Product, shall also have the right to control settlement of such claim; provided, however, that no settlement of any action or suit in the Territory shall be entered into without the written consent of the other Party, which consent shall not be withheld, delayed or conditioned unreasonably.

( c ) Settlement of Third Party Claims for Infringement in the Territory; Payment of Third Party Royalties. If a Third Party asserts that a Patent or other right owned by it is infringed by the Development, Manufacture, or Commercialization or other Exploitation of any Licensed Compound or Licensed Product in the Territory, and as a result of settlement procedures or litigation under (b), KHK is required to pay the Third Party a royalty or make any payment of any kind for the right to Exploit a Licensed Product in the Territory, [\*\*\*].

(d) Oppositions by Parties. If either Party desires to bring an opposition, action for declaratory judgment, nullity action, interference, reexamination, or other attack upon the validity, title, or enforceability of any Patents Controlled by a Third Party in the Territory or in a country where the a Licensed Compound or a Licensed Product is Manufactured that claim the Manufacture, use, or sale or other Exploitation of any Licensed Compound or Licensed Product, such Party shall so notify the other Party in writing, and the Parties shall promptly confer to discuss whether to bring such action or the manner in which to settle such action and Ardelyx shall be entitled to determine the matter after having taken any reasonable views presented by KHK into due consideration. The Party not bringing an action under this (d) shall be entitled to separate representation in such proceeding by counsel of its own choice and at its own expense, and shall otherwise cooperate fully with the Party bringing such action at the other Party's expense.

(e) Oppositions by Third Parties. If any Patent becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, reexamination request, action for declaratory judgment, nullity action, interference, or other attack upon the validity, title, or enforceability thereof in the Territory, then the Party having the right to prosecute such Patent at such time pursuant to Sectio 8.02(b) shall control such defense, at its sole cost. The prosecuting Party shall permit the non-prosecuting Party, and in the case of an Ardelyx [\*\*\*] Patent, Ardelyx's licensor [\*\*\*], to participate in the proceeding to the extent permissible under law, and to be represented by its own counsel in such proceeding, at the non-prosecuting Party's expense. If either Party decides that it does not wish to defend against such action, then the other Party shall have a backup right to assume defense of such Third Party action at its own expense. Any awards

or amounts received in defending any such Third Party action shall be allocated [\*\*\*]. Any recoveries obtained in such action shall be shared, as set forth in Section 8.04(a)(v).

(f) Protective Order. If, in any action brought pursuant to this Section 8.04 any information is the subject of a protective order that may be reviewed by counsel only, the Parties shall endeavor to structure such protective order so as to enable their respective internal counsel to be included as permitted reviewers of such information.

#### **Section 8.05 Trademarks, Packaging and Labeling**

(a) Selection. Subject to applicable regulatory requirements and on a Licensed Product by Licensed Product basis, KHK shall have the option to (i) select the Trademarks to be used for the marketing and sale of the Licensed Products in the Territory or (ii) license from Ardelyx the Trademarks owned by Ardelyx (“**Ardelyx Trademarks**”), in each case (i) and (ii), to use in connection with the Commercialization of each Licensed Product (in either case, “**Product Trademarks**”).

(b) KHK Trademark. If KHK decides to select its own Trademarks for the Commercialization of a Licensed Product (“**KHK Trademarks**”), KHK shall solely bear the full costs and expense of and be responsible for filing, prosecuting and maintaining all KHK Trademarks. KHK shall, in its sole discretion, protect, defend, and maintain each KHK Trademark for use with Licensed Products in the Territory, and all registrations therefor. Ardelyx shall notify KHK promptly in writing upon learning of any actual, alleged, or threatened infringement of a KHK Trademark used in connection with Licensed Compounds or Licensed Products or of any unfair trade practices, trade dress imitation, passing off of counterfeit goods, or like offenses with respect to Licensed Compounds or Licensed Products. Ardelyx shall cooperate as reasonably requested by KHK in any actions or proceedings brought by KHK to halt the infringement. All of the [\*\*\*] in bringing, maintaining, and prosecuting any action to maintain, protect, or defend a KHK Trademark (or registration therefor) shall be borne [\*\*\*]. Any recovery in any such action that is [\*\*\*].

#### (c) Ardelyx Trademark

(i) If KHK decides to license one or more Ardelyx Trademarks to Commercialize a Licensed Product in the Field and in the Territory, KHK shall provide a written notice (“**Trademark Notice**”) to Ardelyx indicating which such Ardelyx Trademarks it wishes to license from Ardelyx. Upon Ardelyx’s receipt of the Trademark Notice, the Parties shall discuss in good faith a license grant under which Ardelyx would grant KHK a royalty-free (subject to this (c)) license, sublicensable exclusive license to use the Ardelyx Trademarks indicated in the Trademark Notice in the Field and in the Territory during the Term; provided, that in the event KHK wishes to use the Ardelyx Trademark licensed pursuant to this (c) upon expiration of the Term, then KHK shall pay to Ardelyx a royalty on the Annual Net Sales of the applicable Licensed Product made by KHK, its Affiliates, or its Sublicensees at a rate of [\*\*\*] percent ([\*\*\*]%).

(ii) Ardelyx shall solely bear the full costs and expense of and be responsible for filing, prosecuting and maintaining all Ardelyx Trademarks. Ardelyx shall, protect,

defend, and maintain each Ardelyx Trademark and all registrations therefor, and file a request for registration of the exclusive right to use the Ardelyx Trademark (*tsujyou shiyouken* under Section 31 of the Japanese Trademark Law or *senyou shiyouken* under Section 30 of the Japanese Trademark Law) at the Japan Patent Office if KHK so requests. KHK shall notify Ardelyx promptly in writing upon learning of any actual, alleged, or threatened infringement of a Ardelyx Trademark used in connection with Licensed Compounds or Licensed Products or of any unfair trade practices, trade dress imitation, passing off of counterfeit goods, or like offenses with respect to Licensed Compounds or Licensed Products. Ardelyx shall have the right, but not the obligation, to institute, prosecute and control any action, proceeding or negotiation of any settlements in the Territory with respect to any infringement of Ardelyx Trademarks. KHK shall cooperate as reasonably requested by Ardelyx in any actions or proceedings brought by Ardelyx to halt the infringement. All of the unrecovered costs, expenses, and legal fees (including without limitation internal costs, expenses, and legal fees) in bringing, maintaining, and prosecuting any action to maintain, protect, or defend a Ardelyx Trademark (or registration therefor) shall be borne solely by Ardelyx.

(iii) If an Ardelyx Trademark becomes the subject of any proceeding commenced by a Third Party in connection with an opposition or other attack upon the validity, title, or enforceability thereof in the Territory, then Ardelyx shall have the first right, but not the obligation, to control such defense, at its sole cost. Ardelyx shall permit KHK to participate in the proceeding to the extent permissible under the Applicable Law, and to be represented by its own counsel in such proceeding, at KHK's expense. If *senyou shiyouken* is registered and upon KHK's request, KHK shall control such defense, at its sole cost. Then KHK shall permit Ardelyx to participate in the proceeding to the extent permissible under the Applicable law, and to be represented by its own counsel in such proceeding, at Ardelyx's expense. Any awards or amounts or recoveries received in defending any such Third Party action shall be allocated based on the percentage of costs incurred by the Parties in defending such action.

(d) KHK shall be responsible for the design and procurement of all packaging (non-commercial and commercial) and labeling of the Licensed Products.

## **ARTICLE IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **Section 9.01 Representations, Warranties, and Covenants.**

(a) Each of the Parties hereby represents and warrants to the other Party that:

(i) this Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms. The execution, delivery, and performance of the Agreement by such Party does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a Party or by which it is bound, nor violate any law or regulation of any court, Governmental Body, or administrative or other agency having jurisdiction over it;



(ii) it is not aware of any government authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any Applicable Laws, currently in effect, necessary for, or in connection with, the transaction contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements (save for Regulatory Approvals, INDs and similar regulatory authorizations necessary for the Development or Commercialization of the Licensed Compounds and Licensed Products as contemplated hereunder);

(iii) such Party has not, and during the Term shall not, grant any right to any Third Party relating to its respective Patents and Know-How which would conflict with the rights granted to the other Party hereunder;

(iv) such Party shall at all times and in all material respects comply with all Applicable Laws relating to its activities under this Agreement; and

(v) All employees of each Party or its Affiliates performing activities under this Agreement shall be under an obligation to assign all right, title and interest in and to their inventions, Information and discoveries, whether or not patentable, and IPRs therein, to such Party or its Affiliate(s) as the sole owner thereof. The other Party shall have no obligation to contribute to any remuneration of any inventor employed or previously employed by such Party or any of its Affiliates in respect of any such inventions, Information and discoveries and IPRs therein that are so assigned to such Party or its Affiliate(s). Such Party shall pay all such remuneration due to such inventors with respect to such inventions, Information and discoveries and IPRs therein.

(b) Ardelyx represents, warrants and covenants as of the Effective Date to KHK that:

(i) Title; Encumbrances. It has sufficient legal or beneficial title, ownership, rights or license in the Licensed Technology to grant the licenses to KHK described in this Agreement. The Compound Patents and the Additional Patents are free and clear from any mortgages, pledges, liens, security interests or encumbrances;

(ii) Infringement or Misappropriation. To Ardelyx's Knowledge, the Licensed Technology in the Territory will not infringe, violate or misappropriate the intellectual property rights of any Third Party;

(iii) Third Party Infringement. To Ardelyx's Knowledge, no Third Party is infringing, violating or misappropriating, or has threatened in writing to infringe or misappropriate, any Licensed Technology in the Territory;

(iv) No Proceeding. There is no actual, suspected, pending, or, to Ardelyx's Knowledge, threatened, adverse action, suit, proceeding, claim or formal governmental investigations in the Territory against Ardelyx involving the Licensed Technology;

(v) Enforceability, Validity. All applicable filing, maintenance and other fees required to be paid to maintain the Licensed Patents in the Territory as of the Effective

Date have been timely paid (as such due date may be extended in accordance with Applicable Law or patent authority rules and regulations);

(v i) Full Disclosure. Ardelyx has disclosed to KHK all material information in Ardelyx's possession requested by KHK pertaining to the Licensed Technology, and Ardelyx has not knowingly withheld any material information applicable to KHK's ability to Develop, Manufacture or Commercialize the Licensed Products in the Field in the Territory as contemplated by this Agreement;

(v ii) No Conflicts. During the Term, Ardelyx shall not grant any right to any Third Party that conflicts with the rights granted to KHK under this Agreement. Ardelyx is not under any obligation, contractual or otherwise, to any Third Party that conflicts with or is inconsistent in any material respect with the terms of this Agreement;

(v iii) Patents. Exhibits B and C include a complete and accurate list of all Patents owned or licensed by Ardelyx or any of its Affiliates in the Territory as of the Effective Date that claim the Licensed Product, or any method of using the Licensed Product. There are no other Patents Controlled by Ardelyx that would be infringed by the Manufacture of the Licensed Compound or the Licensed Product in the Territory or outside of the Territory, and there are no Ardelyx [\*\*\*] Patents as of the Effective Date;

(ix) [\*\*\*] are [\*\*\*] for [\*\*\*] regardless of [\*\*\*] (and to the extent [\*\*\*], and the [\*\*\*] for [\*\*\*] regardless of [\*\*\*], [\*\*\*] shall [\*\*\*]; and

(x) Conduct of Development. As of the Effective Date, Ardelyx has conducted the Development of Licensed Products in compliance with Applicable Laws in all material respects.

(c) KHK represents, warrants and covenants as of the Effective Date to Ardelyx that:

(i) KHK has not been debarred by the FDA (and is not subject to any similar sanction of other Regulatory Health Authorities in the Territory), and is not subject to any such debarment or similar sanction by any such Regulatory Health Authority, and KHK has not used, and shall not engage, in any capacity, in connection with this Agreement, any Person who either has been debarred by such a Regulatory Health Authority, or is the subject of a conviction described in Section 306 of the FFDC (21 U.S.C. §335a). KHK shall inform Ardelyx in writing immediately if it or any Person engaged by KHK who is performing services under this Agreement is debarred or is the subject of a conviction described in Section 306 of the FFDC (21 U.S.C. §335a), or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to KHK's knowledge, is threatened, relating to the debarment or conviction of KHK or any such Person performing services hereunder.

(ii) KHK shall not knowingly engage in any activities that use the inventions covered or claimed in the Licensed Patents, Ardelyx [\*\*\*] Patents or any Licensed Know-How in a manner that is outside the scope of the license rights expressly granted to it hereunder.

(iii) KHK has determined in good faith that no filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended with respect to this Agreement or the transactions contemplated herein, it being understood that KHK in making such determination has relied on the information provided by Ardelyx regarding Ardelyx's and its Affiliates' corporate structure and financial status.

(iv) KHK shall perform, or cause its Affiliates or Third Party contractors to perform, its responsibilities under this Agreement in compliance with this Agreement, all Applicable Laws, applicable FDA (or foreign equivalent) requirements, including, without limitation, then-current GLP, GCP and GMP.

**Section 9.02 Manufacturing by Ardelyx and KHK.**

(a) KHK covenants to Ardelyx that any Licensed Compound or Licensed Product for Development or Commercial use that is Manufactured by or for KHK or its Affiliates (other than by or on behalf of Ardelyx or its Affiliates) shall: (i) be manufactured in compliance with Applicable Laws; (ii) conform to the applicable Specifications for such Licensed Compound or Licensed Product; (iii) conform to the certificates of analysis supplied with the shipment of such Licensed Product; and (iv) shall be packaged and shipped in accordance with the applicable Specifications therefor in effect at the time of delivery.

(b) Ardelyx covenants to KHK that any Licensed Compound or Licensed Product for Development or Commercial use by or for KHK or its Affiliates that is Manufactured by Ardelyx, its Affiliates or any of their contract manufacturing organizations shall: (i) be manufactured in compliance with Applicable Laws; (ii) conform to the applicable Specifications for such Licensed Compound or Licensed Product; (iii) conform to the certificates of analysis supplied with the shipment of such Licensed Product; and (iv) shall be packaged and shipped in accordance with the applicable Specifications therefor in effect at the time of delivery.

**Section 9.03 No Debarment.** In the course of the Development of Licensed Compound and Licensed Product in accordance with this Agreement, neither Party has used, and during the term of this Agreement neither Party shall use, any employee or consultant that is debarred by any Regulatory Health Authority or, to the best of such Party's knowledge, is the subject of debarment proceedings by any Regulatory Health Authority. If either Party learns that its employee or consultant performing on behalf under this Agreement has been debarred by any Regulatory Health Authority, or has become the subject of debarment proceedings by any Regulatory Health Authority, such Party shall so promptly notify the other Party and shall prohibit such employee or consultant from performing on its behalf under this Agreement. The foregoing shall be without prejudice to the warranties contained in Section 9.01(b)(iv) and Section 9.01(c)(i).

**Section 9.04 Anti-Bribery and Anti-Corruption Compliance.**

(a) Each Party agrees, on behalf of itself, its officers, directors and employees and on behalf of its Affiliates, agents, representatives, consultants and subcontractors hired in connection with the subject matter of this Agreement (together with such Party, the "**Party Representatives**") that in connection with the performance of its obligations hereunder, the Party Representatives

shall not directly or indirectly pay, offer or promise to pay, or authorize the payment of any money, or give, offer or promise to give, or authorize the giving of anything else of value, to:

(i) any Government Official in order to influence official action;

(ii) any Government Official (AA) to influence such Person to act in breach of a duty of good faith, impartiality or trust (“**acting improperly**”), (BB) to reward such Person for acting improperly, or (CC) where such Person would be acting improperly by receiving the money or other thing of value; or

(iii) any other Person while knowing or having reason to believe that all or any portion of the money or other thing of value will be paid, offered, promised or given to, or will otherwise benefit, a Government Official in order to influence official action for or against either Party in connection with the matters that are the subject of this Agreement.

(b) The Party Representatives shall not, directly or indirectly, solicit, receive or agree to accept any payment of money or anything else of value in violation of the Anti-Corruption Laws.

(c) Each Party, on behalf of itself and its other Party Representatives, represents and warrants to the other Party that for the Term and three (3) years thereafter, such Party shall keep and maintain accurate books and reasonably detailed records reasonably required to establish compliance with (a) and (b) above.

(d) Each Party shall promptly provide the other Party with written notice of the following events:

(i) Upon becoming aware of any breach or violation by the first Party or its Party Representative of any representation, warranty or undertaking set forth in (a) or (b).

(ii) Upon receiving a formal notification that it is the target of a formal investigation by a Regulatory Authority for a Material Anti-Corruption Law Violation or upon receipt of information from any of its Party Representatives connected with this Agreement that any of them is the target of a formal investigation by a Regulatory Authority for a Material Anti-Corruption Law Violation.

(e) Without prejudice to any auditing or inspection rights that are set forth elsewhere in this Agreement, each Party shall, for the Term and three (3) years thereafter, for the purpose of allowing the other Party to audit and monitor the performance of its compliance with this Article IX permit the other Party, its Affiliates, any auditors of any of them and any Regulatory Authority to have access, upon reasonable advance notice, during normal business hours to any premises of such first Party or its other Party Representatives used in connection with this Agreement, together with a right to access personnel and records that relate to this Agreement. The results of any such audit shall constitute Confidential Information of the audited Party, in respect of which the other Party shall comply with the provisions contained in Article VII (subject to the terms and exceptions set forth therein).

(f) Each Party shall be responsible for any breach of any representation, warranty, covenant or undertaking in this Article IX or of the Anti-Corruption Laws by its Party Representatives.

(g) Each Party may disclose the terms of this Agreement or any action taken under this 0 to prevent a potential violation or address a continuing violation of applicable Anti-Corruption Laws, including the identity of the other Party and the payment terms, to any governmental

authority if and to the extent the first Party reasonably determines, upon advice of counsel, that such disclosure is necessary.

**Section 9.05 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IX, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT.

## ARTICLE X. RECORD RETENTION, AUDIT AND USE OF NAME

### **Section 10.01 Records Retention; Audit.**

(a) Each Party shall keep or cause to be kept accurate records of account in accordance with Japanese Generally Accepted Accounting Principles, in the case of KHK, and in accordance with GAAP, in the case of Ardelyx, showing information that is necessary for the accurate determination of the royalties and other payments due under Article VI, or any other payment due hereunder. Such records or books of account shall be kept until the [\*\*\*] ([\*\*\*) anniversary of December 31 of the Calendar Year in which the relevant Licensed Product are sold (in the case of royalty or other payments due under Section 6.04) or in the period for which any other payment hereunder is required to be made. For clarity, each Party shall cause its Affiliates to keep, and shall require pursuant to a written agreement that any Sublicensee, other sublicensee or subcontractor performing activities hereunder keep accurate records or books of account in a manner that will permit such Party to comply with its obligations under the foregoing sentence.

(b) Upon the written request of the other Party, each Party shall permit a qualified accountant or a person possessing similar professional status and associated with an independent accounting firm acceptable to the Parties to inspect during regular business hours and no more than once a Calendar Year, and going back no more than [\*\*\*] ([\*\*\*) years preceding the current Calendar Year, all or any part of the audited Party's records and books necessary to check the accuracy of any payments made or required to be made hereunder. The accounting firm shall enter into appropriate obligations with the audited Party to treat all information it receives during its inspection in confidence. The accounting firm shall disclose to Ardelyx and KHK only whether the payments made are correct and details concerning any discrepancies, but no other information shall be disclosed to the Party requesting the inspection. The charges of the accounting firm shall be paid by the Party requesting the inspection, except that if the payments being audited have been underpaid or the costs being reimbursed have been overstated, in each case by more than [\*\*\*] percent ([\*\*\*)%), the charges shall be paid by the Party whose records and books are being

inspected. Any failure by a Party to exercise its rights under this Section 10.01 with respect to a Calendar Year within the [\*\*\*] ([\*\*\*)] year period allotted therefor shall constitute a waiver by such Party of its right to later object to any payments made by the other Party under this Agreement during such Calendar Year.

**Section 10.02 Publicity Review.** Subject to the further provisions of this Section 10.02, no Party shall originate any written publicity, news release, or other announcement relating to this Agreement or to performance hereunder or the existence of an arrangement between the Parties (collectively, “**Written Disclosure**”), without the prior prompt review and written approval of the other, which approval shall not be unreasonably withheld or delayed. The disclosing Party shall provide the other Party with a copy of the materials proposed to be disclosed at least [\*\*\*] ([\*\*\*)] Business Days prior to the proposed Written Disclosure. Notwithstanding the foregoing provisions of this Section 10.02, any Party may make any public Written Disclosure, it believes in good faith based upon the advice of counsel, to be required by Applicable Laws or any listing or trading agreement concerning its publicly traded securities, provided that, at least [\*\*\*] ([\*\*\*)] Business Days prior to making such Written Disclosure, the disclosing Party shall provide the other Party with a copy of the materials proposed to be disclosed and an opportunity to promptly review and comment on the proposed Written Disclosure. To the extent that the receiving Party reasonably requests that any information in the materials proposed to be disclosed be deleted, the disclosing Party shall use reasonable efforts to request confidential treatment of such information pursuant to the Applicable Laws so that any information that the receiving Party reasonably requests to be deleted, to the extent permitted by the applicable government agency, are omitted from such materials. The terms of this Agreement may also be disclosed to government agencies where required by Applicable Laws, provided that the Party making such disclosure shall seek a protective order or confidential treatment of this Agreement to the extent allowed under Applicable Laws, Notwithstanding the foregoing, the Parties intend to issue a joint press release regarding the transaction contemplated by this Agreement, the contents of such press release to be mutually agreed by the Parties in writing (prior to the Effective Date and prior to any publication thereof), subject to such additional modifications as the Parties may mutually agree. For clarity, Ardelyx shall have the right to issue press releases and other public announcements regarding the Development or Commercialization of Licensed Products outside of the Territory and/or outside of the Field without the prior review or written approval of KHK.

**Section 10.03 Use of Names.** Neither Party shall use the name, insignia, symbol, trademark, trade name or logotype of the other Party or its Affiliates in relation to this transaction or otherwise in any public announcement, press release, or other public document without the prior written consent of such other Party, which consent shall not be unreasonably withheld, delayed or conditioned, except for those disclosures for which consent has previously been obtained; provided, however, that either Party may use the name of the other Party in any document required to be filed with any government authority, including without limitation the FDA and the Securities and Exchange Commission or otherwise as may be required by Applicable Law, provided that such disclosure shall be governed by Section 7.05. Further, the restrictions imposed on each Party under this Section 10.03 are not intended, and shall not be construed, to prohibit a Party from identifying the other Party in its internal business communications, provided that any Confidential Information in such communications remains subject to Article VII.

**ARTICLE XI.  
TERM AND TERMINATION**

**Section 11.01 Term.** The term of this Agreement shall commence as of the Effective Date, and, unless sooner terminated as provided herein, shall continue in effect until the date on which all of KHK's payment obligations under Article VI have been performed or have expired (the "**Term**"). Performance or expiry of all of KHK's payment obligations with respect to all Licensed Products in the Territory shall constitute expiration of this Agreement in its entirety.

**Section 11.02 Termination Rights**

(a) **Termination for Cause.** Subject to the provisions of this Section 11.02, if either Party (the "**Breaching Party**") shall have committed a material breach of any of its material obligations under this Agreement, and such material breach shall remain uncured and shall be continuing for a period of [\*\*\*] ([\*\*\*)] days following the Breaching Party's receipt of notice of such breach from the other Party (the "**Non-Breaching Party**") stating the Non-Breaching Party's intent to terminate this Agreement in its entirety pursuant to this Section 11.02(a) if such breach remains uncured, then, in addition to any and all other rights and remedies that may be available, the Non-Breaching Party shall have the right to terminate this Agreement effective upon the expiration of such [\*\*\*] ([\*\*\*)] day period (subject, however, to the provisions set forth below in this Section 11.02(a)). Notwithstanding the above, if (i) such material breach cannot reasonably be cured within such [\*\*\*] ([\*\*\*)] -day period, (ii) the Breaching Party provides, within such [\*\*\*] ([\*\*\*)] -day period, the Non-Breaching Party with a written detailed plan that contains measures that can be reasonably expected to cure such breach as soon as reasonably practicable, (iii) the Breaching Party commences to perform such measures in accordance with such plan, and (iv) the Breaching Party thereafter diligently continues to perform such measures as detailed in such plan, then the Non-Breaching Party shall not be entitled to terminate this Agreement (and any notice of termination issued pursuant to the foregoing sentence shall not become effective) unless and until the Breaching Party ceases to diligently perform such measures despite then not having cured the breach. Notwithstanding the above, if within the aforementioned [\*\*\*] ([\*\*\*)] -day period either Party takes measures to resolve the dispute (for which termination is being sought) pursuant to Section 13.01 (or Ardelyx initiates mediation pursuant to Section 13.02(b)) and thereafter (if the dispute then remains unresolved) within a period of [\*\*\*] ([\*\*\*)] days after the expiry of the time period set forth in Section 13.01 (and, as the case may be, Section 13.02(a)), initiates arbitration as permitted under Section 13.02(b) to resolve the dispute and diligently pursues such procedure, then the cure period set forth in this Section 11.02(a) shall be suspended and the Non-Breaching Party shall have the right to terminate this Agreement due to the breach for which termination is being sought only if (x) the arbitration tribunal determines through its final resolution of the dispute that such breach exists and (y) such breach remains uncured for [\*\*\*] ([\*\*\*)] days after such final resolution. Any notice of alleged material breach by the Non-Breaching Party under this Section 11.02(a) shall include without limitation a reasonably detailed description of all relevant facts and circumstances demonstrating, supporting, or relating to each such alleged material breach by the Breaching Party. Actual termination of this Agreement pursuant to this Section 11.02(a) shall only occur upon a separate written notice of termination by the Non-Breaching Party after the end of the applicable cure period. This Section 11.02(a) defines exclusively the Parties' right to terminate this agreement for any material breach of contract.

(b) Termination for Convenience.

(i) Prior to its expiration, this Agreement may be terminated in its entirety at any time by KHK effective upon [\*\*\*] ([\*\*\*)] days (or such longer period as KHK may elect at its sole discretion) prior written notice to Ardelyx.

(ii) Additionally, if KHK ceases all Exploitation of the Licensed Products for a continuous period of more than [\*\*\*] ([\*\*\*)] consecutive months, KHK shall, at Ardelyx written request following the expiration of such [\*\*\*] ([\*\*\*)] month period (such request to reference explicitly this Section 11.02(b)(ii)), provide to Ardelyx within [\*\*\*] ([\*\*\*)] months after KHK's receipt of such request a written reasonable plan under which KHK would recommence Exploitation of the Licensed Products under this Agreement within [\*\*\*] ([\*\*\*)] months after having provided such plan to Ardelyx. KHK shall, after providing such plan to Ardelyx, perform substantially in accordance therewith. If KHK fails to provide such plan to recommence Exploitation of Licensed Products within such [\*\*\*] ([\*\*\*)] month period or if KHK fails to recommence such Exploitation within the aforementioned [\*\*\*] ([\*\*\*)] month period, KHK shall be deemed to have exercised its right to terminate this Agreement in its entirety pursuant to this Section 11.02(b) effective upon expiration of such [\*\*\*] ([\*\*\*)] month or (as the case may be) [\*\*\*] ([\*\*\*)] month period.

(c) Termination for Technical Reasons. Prior to its expiration, KHK may terminate this Agreement with a [\*\*\*] ([\*\*\*)] days' written notice to Ardelyx if (i) KHK receives an instruction to suspend any ongoing Clinical Trial(s) for the applicable Licensed Product by a Regulatory Authority for safety reasons, (ii) KHK is unable to proceed or continue with the activities under the applicable Development Plan due to safety reasons, or (iii) primary endpoints specified in the applicable Development Plan are not met despite KHK's Commercially Reasonable Efforts and KHK reasonably determines that it cannot obtain Regulatory Approval or (iv) the Pivotal Trials conducted by Ardelyx [\*\*\*] do not meet the primary endpoints. In the event that the last remaining Licensed Product that is Exploited by KHK, its Affiliates or Sublicensees is terminated pursuant to this (c), the Agreement in its entirety shall terminate.

( d ) Termination for Challenge of Licensed Patents. Prior to its expiration, Ardelyx may terminate this Agreement in its entirety by written notice to KHK if (i) KHK or its Affiliates challenges the validity, scope or enforceability of or otherwise opposes any Patent included in (i) the Licensed Patents<sub>x</sub> or (ii) Ardelyx [\*\*\*] Patents or, corresponding Patents outside of the Territory, and (ii) KHK does not cause such measures to cease within [\*\*\*] ([\*\*\*)] days after having received written notice thereof from Ardelyx, requesting such measures to cease and stating Ardelyx's intention to terminate this Agreement if such measures are not ceased within the prescribed time. If a Sublicensee of KHK challenges the validity, scope or enforceability of or otherwise opposes any Patent included in the Licensed Patents or Ardelyx [\*\*\*] Patents under which such Sublicensee is sublicensed<sub>x</sub> or corresponding Patents outside of the Territory, then KHK shall, upon written notice from Ardelyx, terminate such sublicense as promptly as possible pursuant to the terms of the sublicense agreement. KHK shall include provisions in all agreements under which a Sublicensee obtains a sublicense under any Patent included in the Licensed Patents or Ardelyx [\*\*\*] Patents<sub>x</sub> or corresponding Patents outside of the Territory, providing that if the Sublicensee challenges the validity or enforceability of or otherwise opposes any such Patent under which the Sublicensee is sublicensed, KHK may terminate such sublicense.



(e) Termination for Insolvency. A Party may terminate this Agreement effective immediately upon written notice to the other Party if at any time during the Term, the other Party (the “**Debtor**”) (i) becomes insolvent, (ii) has a case commenced by or against it under the Bankruptcy Code, (iii) files for or is subject to the institution of bankruptcy, liquidation or receivership proceedings, (iv) assigns all or a substantial portion of its assets for the benefit of creditors, (v) has a receiver or custodian appointed for the Debtor’s business, or (vi) has a substantial part of its business being subject to attachment or similar process; provided, however, that in the event of any involuntary case under the Bankruptcy Code, the first Party shall not be entitled to terminate this Agreement pursuant to this subsection (e) if the case is dismissed within [\*\*\*] ([\*\*\*)] days after the commencement thereof.

**Section 11.03 Consequences of a KHK Triggered Termination.** In the event (a) Ardelyx terminates this Agreement pursuant to Section 11.02(a) for KHK’s material breach; (b) Ardelyx terminates this Agreement pursuant to Section 11.02(d) for patent challenge by KHK or its Affiliates; (c) Ardelyx terminates this Agreement pursuant to Section 11.02(e) for KHK’s insolvency; (d) KHK terminates this Agreement pursuant to Section 11.02(b) or (e) KHK terminates this Agreement pursuant to Section 11.02(c) for technical reasons (a termination as per (a) through (e) being a “**KHK Triggered Termination**”), KHK shall, subject to (a), continue to be obligated during the termination notice period (as applicable) to perform as far as reasonably practicable all of its obligations under this Agreement. If a KHK Triggered Termination occurs after the first Regulatory Approval of one or more Licensed Products in the Territory, KHK shall continue to use Commercially Reasonable Efforts to Commercialize such Licensed Product(s) in the Territory until the earlier of: (i), if applicable, the expiration of the [\*\*\*] ([\*\*\*)] -day notice period, in the event of a termination by KHK pursuant to Section 11.02(b)(i); (ii) receipt of Ardelyx’s written notice that KHK may cease such Commercialization activities; or (iii), if applicable, the effective date of the termination notice issued pursuant to Section 11.02(a), Section 11.02(c), Section 11.02(d) or Section 11.02(e). In addition, as a result of a KHK Triggered Termination the following shall apply:

(a) All licenses and rights to the Licensed Technology and the Ardelyx [\*\*\*] Technology granted to KHK hereunder shall terminate as of the effective date of such termination, except to the extent and for so long as is necessary to permit KHK to meet its obligations under Section 11.03 (m), to finish work-in-progress, sell any inventory as per Section 11.03(l) below, and otherwise to perform any responsibilities in connection with any then ongoing Clinical Trial or other activity that cannot be terminated as of such date under Applicable Laws, including GCP, it being agreed that all such activities and responsibilities shall be discontinued and ceased (unless otherwise agreed or required under Applicable Laws by transitioning such activities and responsibilities to Ardelyx) as promptly as possible, subject to Applicable Laws, including GCP.

(b) KHK shall grant, and hereby grants to Ardelyx (i) an exclusive, worldwide, royalty-free right and license, with the right to grant sublicenses, under any KHK Sole Invention Patents, under any Sole Program Know-How owned by KHK and under KHK’s interest in any Joint Technology, all to the extent that the practice thereof would infringe the Licensed Patents, and (ii) a non-exclusive, worldwide, royalty-free right and license, with the right to grant sublicenses, under any KHK Sole Invention Patents, under any Sole Program Know-How owned by KHK and under KHK’s interest in any Joint Technology, all to the extent that the practice thereof would not infringe the Licensed Patents, (iii) a non-exclusive, worldwide, royalty-free right and license, with

the right to grant sublicenses, under the KHK [\*\*\*] Technology, in the case of each of (i), (ii) and (iii) solely to Develop, make, have made, use, sell, have sold offer for sale and import Licensed Compounds and Licensed Products.

(c) Ardelyx shall have the right (but not the obligation) to enforce the KHK Sole Invention Patents against any infringement relating to Licensed Products.

(d) Ardelyx shall have the right (but not the obligation) to prosecute, maintain, enforce and defend all Licensed Patents, Ardelyx [\*\*\*] Patents, and Joint Patents and KHK shall, as promptly as reasonably practicable, and to a reasonable extent take such other actions and execute such other instruments, assignments, and documents as may be necessary to enable Ardelyx to practice the rights set forth in this Section 11.03(d), with such cooperation to be provided at Ardelyx's sole cost and expense.

(e) KHK shall return all data, files, records and other materials in its possession or Control containing or comprising Ardelyx's Confidential Information (except one copy thereof, which may be retained by KHK solely for legal archiving purposes). For the avoidance of doubt, should Ardelyx elect to pursue any Development, Manufacture or Commercialization of the relevant Licensed Compound or Licensed Product following any such KHK Triggered Termination, Ardelyx shall, without prejudice to or limitation of any other or further obligations Ardelyx may have to KHK under this Agreement (including Section 12.01(b)), indemnify KHK for any Third Party claims arising from Ardelyx's Development, Manufacture or Commercialization of the relevant Licensed Compound or Licensed Product after the effective date of the termination as set forth in Section 12.01(b).

(f) KHK shall, where permitted under Applicable Laws, as promptly as reasonably practical transfer to Ardelyx all INDs, Drug Approval Applications, and Regulatory Approvals with respect to Licensed Compounds and Licensed Products, and shall take such other actions and execute such other instruments, assignments, and documents as may be necessary to affect the transfer of rights hereunder to Ardelyx. Without limiting the generality of the foregoing, KHK agrees to submit to the PMDA and other Regulatory Authorities where reasonably appropriate and required by Applicable Laws in jurisdictions in which any regulatory filings have been made with respect to the Licensed Product, without delay after the effective date of such termination, a letter (with copy to Ardelyx) notifying the PMDA and such other Regulatory Authorities of the transfer or withdrawal, if applicable, of any regulatory filings for the Licensed Product in such jurisdictions from KHK to Ardelyx. Additionally, KHK shall provide Ardelyx with copies of regulatory filings necessary to practice the rights granted to it under this Section 11.03(f).

(g) KHK shall use Commercially Reasonable Effort to assign (or cause its Affiliates to assign) to Ardelyx, at Ardelyx's request, all of KHK's (or its Affiliates') rights and obligations under agreements with Third Parties with respect to (i) the conduct of Clinical Trials for each Licensed Product, including agreements with contract research organizations, clinical sites and investigators that relate to Clinical Trials in support of Regulatory Approvals in the Territory, (ii) the Manufacture of Licensed Compound or Licensed Product (subject to KHK's obligations under Section 11.03(m)), and (iii) any other Third Party agreements involving the Development or Commercialization of the Licensed Products, unless in each of (i) through (iii), (A) such agreement is not permitted to be assigned pursuant to its terms or relates to products other than Licensed

Products, or (B) the assignment is not agreed by the Third Party to such agreement, in which case KHK shall use Commercially Reasonable Effort to cooperate with Ardelyx in all reasonable respects to transfer as promptly as reasonably practical to Ardelyx the benefit of such contract (against Ardelyx undertaking to perform all the obligations and assume all liabilities under such contract) in another mutually acceptable manner and upon Ardelyx's request facilitate discussions between Ardelyx and such Third Parties to assist Ardelyx in entering into a direct agreement with such Third Parties.

(h) KHK shall [\*\*\*] assign all of its rights in and to the KHK Trademarks and the Ardelyx Trademarks for Licensed Products (and all registrations and applications for registration therefor) that it owns pursuant to Section 8.05(b) to Ardelyx and Ardelyx shall have the exclusive right (but not the obligation) to enforce the KHK Trademark rights and the Ardelyx Trademark rights against infringers.

(i) To the extent agreed by relevant Third Parties and as requested by Ardelyx, KHK shall execute any documents necessary to transfer to Ardelyx rights under any Third Party licenses obtained by KHK pursuant to and during the course of the term of this Agreement for the purpose of Exploiting the Licensed Compounds or Licensed Products, and Ardelyx shall thereafter be responsible for all costs, expenses and obligations associated with such Third Party licenses.

(j) Upon Ardelyx's reasonable request, KHK shall transfer to Ardelyx copies of all materials, data, results, analyses, reports, websites, marketing materials, technology, regulatory filings, including without limitation, all KHK Development Data and KHK Additional Development Data, and other Information and Materials existing in tangible or electronic form at the effective date of the KHK Triggered Termination, that is Controlled by KHK or its Affiliates and have been generated on or before the effective date of such termination by or on behalf of KHK, its Affiliates or Sublicensees with respect to the Licensed Products ("**KHK Product Data**"). In the event that KHK has an obligation to a Third Party to keep any KHK Product Data confidential, KHK shall use Commercially Reasonable Efforts to obtain approval from such Third Party to provide such KHK Product Data to Ardelyx. Ardelyx shall have the right to use on a non-exclusive basis such KHK Product Data to enable Ardelyx to proceed to Develop, Manufacture and Commercialize the Licensed Compounds and/or Licensed Products, as applicable, upon and after termination of this Agreement. For [\*\*\*] calendar months after the Parties have mutually agreed that the transfer of the KHK Product Data from KHK to Ardelyx has been completed, KHK shall respond to Ardelyx's reasonable inquiries in respect of the KHK Product Data.

(k) Except where expressly provided for otherwise in this Agreement, termination of this Agreement shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party's right to obtain performance of any obligation. In the event of such termination, this Section 11.03 shall survive in addition to others specified in this Agreement to survive in such event.

(l) KHK shall be entitled, during a period of [\*\*\*] ([\*\*\*)] days following the KHK Triggered Termination, to finish any work-in-progress, and to sell any inventory of the Licensed Product that remains on hand as of the date of the termination, so long as KHK pays to Ardelyx

the royalties applicable to said subsequent sales in accordance with the terms and conditions set forth in this Agreement; provided that if such termination is by Ardelyx pursuant to Section 11.02(a), that KHK's rights under this Section 11.03(l) shall be subject to Ardelyx's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

(m) KHK shall promptly transfer to Ardelyx all Information and Materials that are necessary or useful for Ardelyx, its Affiliates or licensees or their contract manufacturers to Manufacture the Licensed Products, and, if KHK has assumed responsibility for the Manufacture of the Licensed Compounds, shall facilitate the practice of such Manufacturing rights by Ardelyx, its Affiliates or each of its licensees, [\*\*\*] including making regulatory filings available to Ardelyx and providing reasonable technical and other assistance in order to enable Ardelyx to practice the foregoing Manufacturing rights in accordance with Applicable Law. KHK shall make Commercially Reasonable Efforts to have any Third Party agreements under which KHK, its Affiliates or Sublicensees engage Third Parties to manufacture the Licensed Compounds, and, if KHK assumes responsibility for the Manufacture of the Licensed Compounds, contain provisions regarding the allocation of Intellectual Property Rights and rights in work product that are consistent with the terms of this Agreement and enable KHK to fulfill its obligations to Ardelyx under this Section.

(n) In the event that KHK terminates this Agreement in accordance with Section 11.02(c) for technical reasons:

(i) KHK's obligations under Section Section 11.03(f), (g), (h), (i), (j) and (m) shall only be triggered following receipt by KHK of a written notice from Ardelyx requesting KHK to perform such obligations; and

(ii) Neither Ardelyx nor KHK shall have any other remedies, or any other obligations to the other arising solely out of the termination of this Agreement by KHK pursuant to Section 11.02(c), than such remedies or obligations set out in this Section 11.03.

**Section 11.04 Consequences of Ardelyx Triggered Termination (or Right to Terminate).** If KHK is entitled to terminate this Agreement pursuant to Section 11.02(a) as a result of a material breach by Ardelyx or Section 11.02(e) for an insolvency or other transaction described therein affecting Ardelyx, KHK may elect to terminate this Agreement subject to the provisions set forth in Section 11.04(a), or to continue the Agreement subject to the provisions set forth in Section 11.04(b).

(a) If KHK terminates the Agreement under Section 11.02(a) or under Section 11.02(e), Section 11.03 shall apply as if such termination were an KHK Triggered Termination, except that (i) [\*\*\*] and (ii) in consideration of the [\*\*\*] and any other rights granted under the above provisions in Section 11.03, if (x) this Agreement is terminated pursuant to Section 11.02(a) by KHK after the First Commercial Sale of the Licensed Product in the Territory, Ardelyx shall [\*\*\*]; provided, however, that the [\*\*\*]. The foregoing shall be [\*\*\*] in connection with its termination pursuant to Section 11.02(a).

(b) If KHK has the right to terminate this Agreement under Section 11.02(a) or Section 11.02(e), but elects to continue this Agreement, this Agreement shall continue in full force and

effect except that if KHK is entitled to terminate this Agreement under Section 11.02(a) due to Ardelyx breach (but not if KHK's right to terminate is based solely on Ardelyx's insolvency pursuant to Section 11.02(e)), the royalties that Ardelyx shall be entitled to receive on Net Sales of Licensed Products by KHK, its Affiliates, or its Sublicensees as set forth in Section 6.04 shall each be reduced to [\*\*\*], provided that when a Generic Product is launched in the Territory, the royalty rate shall be further reduced to [\*\*\*], subject to the reduction of the Third Party Compensation as set out in Section 6.04(e).

(c) Except where expressly provided for otherwise in this Agreement, termination of this Agreement by either Party shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party's right to obtain performance of any obligation. In the event of such termination, this Section 11.04(c) shall survive in addition to others specified in this Agreement to survive in such event.

**Section 11.05 Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by a Party are, and shall otherwise be deemed to be, for the purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code or equivalent provisions of applicable legislation in any other jurisdiction. The Parties agree that the Parties, as licensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the United States Bankruptcy Code, or equivalent provisions of applicable legislation in any other jurisdiction. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code or equivalent provisions of applicable legislation in any other jurisdiction, the Party that is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in the non-subject Party's possession, shall be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon the non-subject Party's written request therefor, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under subsection (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefor by the non-subject Party.

**Section 11.06 Surviving Rights and Obligations.** The rights and obligations set forth in this Agreement shall extend beyond the expiration or termination of the Agreement only to the extent expressly provided for herein, or to the extent that the survival of such rights or obligations are necessary to permit their complete fulfillment or discharge. Without limiting the foregoing, the Parties have identified various rights and obligations which are understood to survive, as follows: In the event of expiration or termination of this Agreement for any reason, the following provisions shall survive in addition to others specified in this Agreement to survive in such event: Article I, Section 4.01, Section 5.01 (d), Section 6.08 through 6.11 (inclusive), Article VII (with the exception of Section 7.03 pursuant to Section 7.06), Section 8.01 (with regard to disclosure of the Joint Technology and the Sole Program Know-How invented during the Term), Section 8.03, Section 8.04 (with regard to Sections 8.03 and 8.04 solely with respect to Joint Patents), Article

**ARTICLE XII.  
INDEMNIFICATION**

**Section 12.01 Indemnification.**

(a) KHK hereby agrees to indemnify, defend, and hold harmless Ardelyx, its Affiliates, and each of its and their respective employees, officers, directors and agents from and against any and all Losses incurred by them resulting from or arising out of or in connection with any suits, claims, actions or demands made or brought by a Sublicensee or other Third Party (collectively, “**Third Party Claims**”) against Ardelyx, its Affiliates or their respective employees, officers, directors or agents, that result from or arise out of [\*\*\*], except in any case, to the extent such Losses are Losses for which Ardelyx has an obligation to indemnify KHK, its Affiliates or their respective employees, officers, directors or agents pursuant to (b), as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses.

(b) Ardelyx hereby agrees to indemnify, defend and hold harmless KHK, its Affiliates, and each of its and their respective employees, officers, directors and agents from and against any and all Losses incurred by them resulting from or arising out of or in connection with any Third Party Claims against KHK, its Affiliates or their respective employees, officers, directors or agents, that result from or arise out of [\*\*\*]; except in any case, to the extent such Losses are Losses for which KHK has an obligation to indemnify Ardelyx, its Affiliates or their respective employees, officers, directors or agents pursuant to Section 12.01(a), as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses.

**Section 12.02 Mechanism.**

(a) In the event that a Party (the “**Indemnified Party**”) is seeking indemnification under Section 12.01(a) or Section 12.01(b), it shall notify the other Party (the “**Indemnifying Party**”) in writing of the relevant Third Party Claim and the relevant Loss for which indemnification is being sought as soon as reasonably practicable after it becomes aware of such claim. Each such notice shall contain a description of the Third Party Claim and the nature and amount of the Loss claimed (to the extent that the nature and amount of such Loss is known at such time). The Indemnified Party shall furnish promptly to the Indemnifying Party copies of all papers and official documents received in respect of any such Third Party Claim or Losses. For the avoidance of doubt, all indemnification claims in respect of a Party, its Affiliates, and each of its and their respective employees, officers, directors and agents shall be made solely by such Party to this Agreement. The Indemnified Party shall permit the Indemnifying Party to assume direction and control of the defense of the relevant Third Party Claim (including without limitation the right to settle the claim solely for monetary consideration), and shall cooperate as requested (at the expense of the Indemnifying Party) in the defense of the claim. The assumption of the defense of a Third Party Claim by the Indemnifying Party shall not be construed as an acknowledgement that the Indemnifying Party is liable to indemnify any Indemnified Party in respect of the Third Party Claim, nor shall it constitute a waiver by the Indemnifying Party of any defenses it may assert against any Indemnified Party’s claim for indemnification.

(b) Notwithstanding Section 12.02(a), the failure to give timely notice to the Indemnifying Party shall not release the Indemnifying Party from any liability to the Indemnified Party to the extent the Indemnifying Party is not prejudiced thereby and, for the avoidance of doubt, the Indemnifying Party shall not be liable to the extent any Loss is caused by any delay by the Indemnified Party in providing such notice. Notwithstanding the provisions of (a) requiring the Indemnified Party to tender to the Indemnifying Party the exclusive ability to defend such claim, if the Indemnifying Party declines to or fails to timely assume control of the relevant Third Party Claim, the Indemnified Party shall be entitled to assume such control, conduct the defense of, and settle such claim, all at the sole costs and expense of the declining or failing Party; provided, however, that neither Party shall settle or dispose of any such claim in any manner that would adversely affect the rights or interests or admit fault, of the other Party without the prior written consent of such other Party, which shall not be unreasonably withheld, delayed or conditioned. Each Party, at the other Party's expense and reasonable request, shall cooperate with such other Party and its counsel in the course of the defense or settlement of any such claim, such cooperation to include without limitation using reasonable efforts to provide or make available documents, information, and witnesses.

**Section 12.03 Insurance.** Each Party shall have and maintain such type and amounts of liability insurance covering the Manufacture, supply, use and sale of the Licensed Compounds and the Licensed Products as is normal and customary in the pharmaceutical industry generally for Persons similarly situated, and shall upon request provide the other Party with a copy of its policies of insurance in that regard, along with any amendments and revisions thereto.

### **ARTICLE XIII. DISPUTE RESOLUTION**

**Section 13.01 Referral of Disputes to the Parties Senior Executives.** In the event of any dispute, controversy or claim between the Parties arising out of or in connection with this Agreement, including the existence, negotiation, validity, formation, interpretation, breach, performance or application of this Agreement ("**Dispute**"), either Party may, by written notice to the other, have such Dispute referred to the Senior Executives for attempted resolution by good faith negotiations.

#### **Section 13.02 Mediation and Arbitration.**

(a) If (i) Ardelyx at any time has a good faith belief that KHK may be in material breach of its obligations under Section 4.03, (ii) Ardelyx has notified KHK of its belief in writing and the Parties are not in agreement as to whether or not such breach under Section 4.03 exists, and (iii) the Parties have not resolved the dispute through good faith negotiations pursuant to Section 13.01 within the prescribed time, then Ardelyx shall have the right (but not the obligation) to request, through written notice to KHK (a "**Mediation Notice**") within [\*\*\*] ([\*\*\*)] days after the expiry of the time period set forth in Section 13.01, that the Parties shall first refer the dispute proceedings under the International Chamber of Commerce ("**ICC**") under its Mediation Rules. For clarity, Ardelyx shall not be obligated to exercise its right to initiate mediation pursuant to this Section 13.02(a) before initiating arbitration pursuant to Section 13.02(b). If Ardelyx elects to exercise its right to initiate mediation within the prescribed time, then the following shall apply: If the Parties are unable to reach agreement on the selection of the mediator within [\*\*\*] ([\*\*\*)] Business Days

after KHK's receipt of the Mediation Notice from Ardelyx, then either or both Parties shall immediately request the ICC to select a mediator with the requisite background, experience and expertise in the biopharmaceutical industry to assist the Parties in resolving the dispute amicably. The place of mediation shall be New York City, New York, and all negotiations and communications shall be in English. The Parties shall have the right to be represented by counsel during the mediation. Each Party shall bear its own costs and expenses and attorneys' fees, and the Parties shall share equally all costs of engaging such mediator and using the ICC to mediate such matter. Any decisions or recommendations of the mediator shall be confidential and non-binding on the Parties. If the Parties are unable to resolve the dispute through mediation pursuant to this Section 13.02(a) within a period of [\*\*\*] ([\*\*\*)] days following KHK's receipt of the Mediation Notice from Ardelyx, then either Party shall thereafter have the right to refer the dispute to arbitration pursuant to Section 13.02(b).

(b) Subject to Section 13.01 and Section 13.02(a), any Dispute that is not resolved by the Senior Executives within [\*\*\*] ([\*\*\*)] days after such notice is received, such Dispute shall be finally settled under the Rules of Arbitration of the ICC by three (3) arbitrators. If the two party-appointed arbitrators fail to nominate the President of the Tribunal within [\*\*\*] ([\*\*\*)] days after the appointment of the two party-appointed arbitrators then, the ICC shall appoint the President of the Tribunal. The place of arbitration shall be New York City, New York. The language of the arbitration shall be English. The Parties agree that such judgment or award may be enforced in any court of competent jurisdiction.

**Section 13.03 Preliminary Injunctions.** Notwithstanding anything to the contrary, a Party may seek preliminary measures, including but not limited to a temporary restraining order or a preliminary injunction from any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss, or damage on a provisional basis, pending the decision of the arbitral tribunal on the ultimate merits of any dispute.

**Section 13.04 Patent Disputes.** Notwithstanding anything to the contrary, any and all issues regarding the scope, inventorship, construction, validity, or enforceability of Patents shall be determined in a court of competent jurisdiction under the local patent laws of the jurisdictions having issued the Patents in question.

**Section 13.05 Confidentiality.** The Parties undertake to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by the other Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required by a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority.

#### **ARTICLE XIV. MISCELLANEOUS**

##### **Section 14.01 Assignment; Performance by Affiliates.**

(a) Neither Party may assign any of its rights or obligations under this Agreement in any country in whole or in part without the prior written consent of the other Party, except that



each Party shall have the right, without such consent, (i) to perform any of its obligations and exercise any of its rights under this Agreement through, and to assign all of its rights and obligations under this Agreement to, any of its Affiliates; provided, that, such performance or exercise by such Affiliate, or such assignment, as applicable, [\*\*\*]; and (ii) on written notice to the other Party, to assign all of its rights and obligations under this Agreement to a non-Affiliate successor in interest, whether by merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, to all or substantially all of the business to which this Agreement relates. In the event that a Party performs its obligations or exercises its rights under this Agreement through an Affiliate (without having assigned all of its rights and obligations to such Affiliate as permitted under this Section 14.01(a), doing so shall not relieve the relevant Party of its responsibilities for the performance of its obligations under this Agreement and the relevant Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance).

(b) This Agreement shall survive any succession of interest permitted pursuant to Section 14.01(a)(ii) whether by merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, provided, that, in the event of such merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, no Intellectual Property Rights of the acquiring corporation shall be included in the technology licensed hereunder, unless such Intellectual Property Rights arise as a result of the performance of this Agreement by such corporation after such transaction becomes effective.

(c) This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties. Any assignment not in accordance with this Agreement shall be void.

**Section 14.02 Force Majeure.** In this Agreement, “**Force Majeure**” means an event which is beyond a non-performing Party’s reasonable control, including an act of God, strike, lock-out or other industrial/labor disputes (whether involving the workforce of the Party so prevented or of any other Person), war, riot, civil commotion, terrorist act, epidemic, quarantine, fire, flood, storm, earthquake, natural disaster or compliance with any law or governmental order, rule, regulation or direction, whether or not it is later held to be invalid. A Party that is prevented or delayed in its performance under this Agreement by an event of Force Majeure (a “**Force Majeure Party**”) shall, as soon as reasonably practical but no later than [\*\*\*] ([\*\*\*) days after the occurrence of a Force Majeure event, give notice in writing to the other Party specifying the nature and extent of the event of Force Majeure, its anticipated duration and any action being taken to avoid or minimize its effect. Subject to providing such notice and to this Section 14.02, the Force Majeure Party shall not be liable for delay in performance or for non-performance of its obligations under this Agreement, in whole or in part, except as otherwise provided in this Agreement, where non-performance or delay in performance has resulted from an event of Force Majeure. The suspension of performance allowed hereunder shall be of no greater scope and no longer duration than is reasonably required and the Force Majeure Party shall exert all reasonable efforts to avoid or remedy such Force Majeure.

**Section 14.03 Further Actions.** Each Party agrees to execute, acknowledge, and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

**Section 14.04 Notices.** All notices hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested and postage prepaid), or sent by internationally recognized overnight delivery service that maintains records of delivery, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided, that notices of a change of address shall be effective only upon receipt thereof).

**If to Ardelyx, addressed to:** Ardelyx, Inc.  
34175 Ardenwood Blvd.  
Fremont, CA 94555  
Attention: Michael Raab, CEO  
Facsimile: 510-745-0493

**With a copy to:** Latham & Watkins LLP  
140 Scott Drive  
Menlo Park, CA 94025-1008  
Attention: Judith A. Hasko, Esq.  
Facsimile: (650) 463-2600

**If to KHK, addressed to** Kyowa Hakko Kirin Co., Ltd.  
1-9-2 Otemachi, Chiyoda-ku, Tokyo 100-0004, Japan  
Attention: Business Development Department  
Facsimile: +[\*\*\*]

**With a copy to:** Kyowa Hakko Kirin Co., Ltd.  
1-9-2 Otemachi, Chiyoda-ku, Tokyo 100-0004, Japan  
  
Attention: Legal and Intellectual Property Department  
Facsimile: +[\*\*\*]

**Section 14.05 No Waiver.** Except as specifically provided for herein, the waiver from time to time by either of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a waiver of any other of such Party's rights or remedies provided in this Agreement.

**Section 14.06 Severability.** If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (a) the remainder of this Agreement, or the application of such term, covenant, or condition to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law, and (b) the Parties

covenant and agree to renegotiate any such term, covenant, or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant, or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

**Section 14.07 Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of New York, USA, without giving effect to any conflict of law principle that would otherwise result in the application of the laws of any State or jurisdiction other than the State of New York, USA, except that Section 13.02(b) and any arbitration thereunder shall be governed by the Federal Arbitration Act, Chapters 1 and 2 as long as such Chapters are applicable.

**Section 14.08 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 14.09 Entire Agreement.** This Agreement, including without limitation all exhibits attached hereto, sets forth all the covenants, promises, agreements, warranties, representations, conditions, and understandings between the Parties and supersedes and terminates all prior and contemporaneous agreements and understanding between the Parties, including without limitation the agreements and amendments set forth in Section 7.07. There are no covenants, promises, agreements, warranties, representations, conditions, or understandings, either oral or written, between the Parties other than as set forth in this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by the respective authorized officers of the Parties.

**Section 14.10 Limitation of Liability.** EXCEPT IN CIRCUMSTANCES OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY A PARTY OR ITS AFFILIATES, OR WITH RESPECT TO THIRD PARTY CLAIMS UNDER Section 12.01, IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE AFFILIATES AND SUBLICENSEES BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, MILESTONES OR ROYALTIES. This Section 14.10 shall not limit either Party's obligations under Article XII.

**Section 14.11 No Partnership.** It is expressly agreed that the relationship between Ardelyx and KHK shall not constitute a partnership, joint venture, or agency. Neither Ardelyx nor KHK shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party to do so.

[SIGNATURE PAGE FOLLOWS]

**Confidential**

**In Witness Whereof**, the Parties have executed this Agreement in duplicate originals by their proper officers as of the Effective Date.

**Ardelyx, Inc.**

**Kyowa Hakko Kirin Co., Ltd.**

By: /s/ Michael Raab  
Title: CEO

By: /s/ Nobuo Hanai, Ph.D  
Title: President and CEO

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**Confidential**

**TENAPANOR STRUCTURE**

[\*\*\*]

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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**Confidential**

**EXHIBIT B**  
**COMPOUND PATENTS**

[\*\*\*]

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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**Confidential**

**ADDITIONAL PATENTS**

[\*\*\*]

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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Confidential

EXHIBIT D

INITIAL DELIVERY OF DEVELOPMENT DATA AND REGULATORY DOCUMENTATION

\*\*\*]

Study Number	Description
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]
***]	***]

Confidential Portions of this Exhibit marked as \*\*\*] have been omitted

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EXHIBIT E  
DEVELOPMENT API SUPPLY

\*\*\*

Compound / Material	Quantity	Timing for Delivery	Purpose
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

Confidential Portions of this Exhibit marked as \*\*\* have been omitted

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EXHIBIT F

DEVELOPMENT PRODUCT SUPPLY

(i) [\*\*\*]

Timing for Delivery	Product	Quantity
[***]	[***]	[***]
	[***]	[***]
	[***]	[***]
	[***]	[***]
	[***]	[***]

(ii) [\*\*\*]

Timing for Delivery	Product	Quantity
[***]	[***]	[***]
	[***]	[***]
	[***]	[***]
	[***]	[***]
	[***]	[***]

(iii) [\*\*\*]

Timing for Delivery	Product	Quantity
[***]	[***]	[***]
	[***]	[***]
	[***]	[***]
	[***]	[***]

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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[\*\*\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

**Exhibit 10.36**

**LICENSE AGREEMENT**

**BY AND BETWEEN**

**SHANGHAI FOSUN PHARMACEUTICAL INDUSTRIAL DEVELOPMENT CO., LTD.**

**AND**

**ARDELYX, INC.**

**DECEMBER 11, 2017**

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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## CONTENTS

### EXHIBITS

**Exhibit A:** Tenapanor Structure

**Exhibit B:** Listed Patents

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## LICENSE AGREEMENT

This License Agreement (the “**Agreement**”) is entered into as of the December 11, 2017 (the “**Effective Date**”) by and between Shanghai Fosun Pharmaceutical Industrial Development Co., Ltd., a Chinese corporation with a place of business at 1289 Yishan Road, Shanghai, 200233 P.R. China (“**FOSUN**”) and **Ardelyx, Inc.**, a Delaware corporation having its principal place of business at 34175 Ardenwood Boulevard, Fremont, California United States of America 94555 (“**Ardelyx**”). Ardelyx and FOSUN are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

**WHEREAS**, FOSUN is a pharmaceutical company engaged in the research, development and commercialization of products useful in the amelioration, treatment or prevention of human diseases and conditions;

**WHEREAS**, Ardelyx is a biotechnology company developing a certain proprietary compound known as tenapanor, having the structure set forth on **Exhibit A** for use in the treatment of human diseases and disorders;

**WHEREAS**, FOSUN and Ardelyx desire to establish a license agreement for the further development and commercialization of tenapanor, with the objective of providing pharmaceutical products in specified territories to patients derived from application of the expertise of each of Ardelyx and FOSUN.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. DEFINITIONS AND CONSTRUCTION

The following terms shall have the following meanings as used in this Agreement:

**Section 1.01** “**Affiliate**” means with respect to either Party, any Person controlling, controlled by or under common control with such Party, from time to time and for so long as such control exists. For purposes of this definition of Affiliate, “control” (and, with correlative meanings, the terms “controlled by” and “under common control with”) means (a) direct or indirect ownership of fifty percent (50%) or more of the stock or shares having the right to vote for the election of directors of a Person or (b) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**Section 1.02** “**Annual Net Sales**” means the Net Sales made during any given Calendar Year.

**Section 1.03 “Anti-Corruption Laws”** means the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, as amended, and any other applicable anti-corruption laws and laws for the prevention of fraud, racketeering, money laundering or terrorism.

**Section 1.04 “API Supply”** shall have the meaning assigned in Section 5.01(a).

**Section 1.05 “Applicable Laws”** means all applicable statutes, ordinances, codes, executive or governmental orders, laws, rules and regulations, including without limitation, any rules, regulations, guidelines or other requirements of Regulatory Health Authorities, that may be in effect from time to time.

**Section 1.06 “Ardelyx [\*\*\*] Know-How”** means Know-How that [\*\*\*]; provided, that (i) such Know-How is used by [\*\*\*] a Licensed Compound or a Licensed Product, or (ii) such Know-How [\*\*\*] a Licensed Product in the Field. Ardelyx [\*\*\*] Know-How specifically excludes any Excluded Know-How.

**Section 1.07 “Ardelyx [\*\*\*] Patents”** means all Patents that [\*\*\*] invention that (i) [\*\*\*] a Licensed Compound or a Licensed Product (“Ardelyx [\*\*\*]”), or (ii) is [\*\*\*] a Licensed Product in the Field (“Ardelyx [\*\*\*] Patents”). Ardelyx [\*\*\*] Patents specifically excludes any Excluded Patents.

**Section 1.08 “Ardelyx [\*\*\*] Technology”** means Ardelyx [\*\*\*] Know-How and Ardelyx [\*\*\*] Patents.

**Section 1.09 “Ardelyx Controlled Patents”** shall have the meaning assigned in Section 8.03(a).

**Section 1.10 “Ardelyx Sole Invention Patent”** shall mean any Patent claiming Sole Program Know-How owned solely by Ardelyx.

**Section 1.11 “Bankruptcy Code”** means Title 11, United States Code, as amended, or analogous provisions of Applicable Laws outside the United States.

**Section 1.12 “Breaching Party”** shall have the meaning assigned in Section 11.02(a).

**Section 1.13 “Bridging Study”** shall mean a clinical study conducted in the Territory for the purpose of providing pharmacodynamic or clinical data on efficacy, safety, dosage and dose regimen in the Territory to allow extrapolation of the clinical data generated by Ardelyx, its Affiliates or its licensees outside of the Territory. The Bridging Study may be a pharmacokinetics study or a full clinical trial, as required by the Regulatory Health Authorities in the Territory.

**Section 1.14 “Business Day”** means any day other than (a) a Saturday or a Sunday or (b) a day on which commercial banking institutions are authorized or required by Applicable Laws to be closed in New York City, New York or in People’s Republic of China.

**Section 1.15 “Calendar Quarter”** means each successive period of three (3) consecutive calendar months commencing on 1st January, 1st April, 1st July and 1st October.

**Section 1.16 “Calendar Year”** means each successive period of twelve (12) consecutive calendar months commencing on 1st January.

**Section 1.17 “CFDA”** means the People’s Republic of China’s Food and Drug Administration, or any successor thereto.

**Section 1.18 “P.R.C. GAAP”** means Chinese Generally Accepted Accounting Principles, consistently applied in the Territory.

**Section 1.19 “Combination Product”** means a product in form suitable for human or animal applications containing a Licensed Compound as an active ingredient and containing one or more other active ingredients, that is sold either as a fixed dose or as separate doses in a single package; provided, that if any other active ingredient is Controlled by Ardelyx and is not a Licensed Compound, it is understood that FOSUN is not being granted any license under any Intellectual Property Rights to Exploit such other active ingredient.

**Section 1.20 “Commercialization”** means all activities undertaken relating to the Manufacture of commercial supplies, marketing and sale of a Licensed Product, advertising, education, planning, marketing, promotion, distribution, market and product support, and Phase 4 Clinical Trials commenced after the First Commercial Sale of the Licensed Product in the Territory

**Section 1.21 “Commercialization Budget”** shall have the meaning assigned in Section 3.03.

**Section 1.22 “Commercialization Plan”** shall have the meaning assigned in Section 3.03.

**Section 1.23 “Commercialize”** means the conduct of Commercialization activities.

**Section 1.24 “Commercially Reasonable Efforts”** shall mean the efforts and resources typically used by pharmaceutical companies similar in size and scope to perform the obligations at issue, which efforts shall not be less than those efforts made by the performing Party with respect to other products at a similar stage of development or in a similar market and commercial potential, taking into account the competitiveness of the market place, the proprietary position of the products, the regulatory structure involved and the profitability of the applicable products.

**Section 1.25 “Comparable Licensed Product”** shall have the meaning assigned in Section 6.05.

**Section 1.26 “Competitive Product”** means any pharmaceutical product other than a Licensed Product that [\*\*\*]. A Competitive Product shall not include [\*\*\*].

**Section 1.27 “Confidential Information”** means any and all (a) Know-How relating to the Exploitation of Licensed Compounds or Licensed Products (including Licensed Know-How) or relating to other aspects of the collaboration between the Parties under this Agreement, and (b) Information and Materials, whether oral or in writing or in any other form, disclosed before, on or after the date of this Agreement by one Party to the other Party, including the terms of this Agreement.

**Section 1.28 “Control”** means, with respect to an item of Know-How, Patent or other Intellectual Property Rights, the ability and authority of a Party or its Affiliates, whether arising by ownership, possession, or pursuant to a license or sublicense, to grant licenses, sublicenses, or other rights to the other Party under or to such item of Know-How, Patent or Intellectual Property Rights as provided for in this Agreement, (a) without breaching the terms of any agreement between such Party and any Third Party, and (b) in the case of Ardelyx [\*\*\*] Technology, without incurring any additional royalty, milestone or other costs or expenses which FOSUN has not agreed in writing to bear.

**Section 1.29 “Cost of Goods”** shall mean the sum of (a) [\*\*\*] in accordance with GAAP, representing amounts [\*\*\*] as the case may be, and (b) any amounts [\*\*\*] that are incurred by Ardelyx after transfer of ownership of such materials and that [\*\*\*].

**Section 1.30 “Develop”** means the conduct of Development activities.

**Section 1.31 “Development”** means all activities relating to obtaining Regulatory Approval of a Licensed Product, Licensed Product line extensions, alternative delivery systems and new indications therefor, and all activities relating to developing the ability to Manufacture the same. This includes, for example, (a) nonclinical testing, toxicology, formulation, clinical studies, regulatory affairs, and outside counsel regulatory legal services, (b) manufacturing process development for finished forms of Licensed Products, and manufacturing and quality assurance technical support activities prior to the First Commercial Sale of a Licensed Product anywhere in the Territory and (c) the conduct of advisory boards with relevant experts, e.g. clinical experts or payer representatives. Development shall not include activities associated with Phase 4 Clinical Trials in respect of a Licensed Product commenced after First Commercial Sale of such Licensed Product anywhere in the Territory.

**Section 1.32 “Development Supply”** shall have the meaning assigned in Section 5.01(a).

**Section 1.33 “Distributor”** shall have the meaning assigned in Section 2.03.

**Section 1.34 “Drug Approval Application”** means an application for Regulatory Approval required before commercial sale or use of a Licensed Product as a drug in a regulatory jurisdiction.

**Section 1.35 “Effective Date”** shall have the meaning assigned in the first paragraph of this Agreement.

**Section 1.36 “Excluded Know-How”** means Know-How related to Ardelyx’s proprietary platform technology known as Ardelyx Primary Enterocyte and Colonocyte Culture System.

**Section 1.37 “Excluded Patents”** means any Patents claiming aspects of Ardelyx’s proprietary platform technology known as Ardelyx Primary Enterocyte and Colonocyte Culture System.

**Section 1.38 “Exploit”** means to Develop, Manufacture, have Manufactured, Commercialize a product or process.



**Section 1.39 “Exploitation”** means the act of Exploiting a product or process.

**Section 1.40 “FDA”** means the United States Food and Drug Administration or any successor thereto.

**Section 1.41 “FFDCA”** means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et seq., as amended from time to time.

**Section 1.42 “Field”** means the treatment, diagnosis or prevention of (i) irritable bowel syndrome with constipation and chronic idiopathic constipation, (ii) hyperphosphatemia related to chronic kidney disease, and (iii) other diseases or conditions for which Ardelyx obtains marketing approval in either the United States or the Territory; provided, however, that with respect to (i), (ii) and (iii), the Field shall exclude the treatment of cancer.

**Section 1.43 “Filing”** means, with respect to a submission to a Regulatory Health Authority, the date that such submission is confirmed to have been received by the relevant Regulatory Health Authority.

**Section 1.44 “First Commercial Sale”** means, with respect to any Licensed Product, the first arm’s length sale for monetary value by FOSUN, its Affiliates, or its Sublicensees to a Third Party for end use or consumption by the general public of such Licensed Product in the Territory.

**Section 1.45 “FOSUN [\*\*\*] Know-How”** means Know-How (a) that [\*\*\*] provided, that, (i) such Know-How is used by [\*\*\*] a Licensed Compound or a Licensed Product, or (ii) such Know-How [\*\*\*] a Licensed Product.

**Section 1.46 “FOSUN [\*\*\*] Patents”** means all Patents (a) that [\*\*\*]; provided, that, such Patents claim inventions that (i) [\*\*\*] of a Licensed Compound or a Licensed Product (“FOSUN [\*\*\*]”), or (ii) is [\*\*\*] a Licensed Product (“FOSUN [\*\*\*]”).

**Section 1.47 “FOSUN [\*\*\*] Technology”** means FOSUN [\*\*\*] Know-How and FOSUN [\*\*\*] Patents.

**Section 1.48 “FOSUN Sole Invention Patent”** shall mean any Patent claiming Sole Program Know-How owned solely by FOSUN.

**Section 1.49 “FOSUN Triggered Termination”** shall have the meaning assigned in Section 11.03.

**Section 1.50 “FTE”** means a full time equivalent person year of eighteen hundred eighty (1,880) hours of scientific, technical or operational work (excluding administrative services).

**Section 1.51 “GCP” or “Good Clinical Practices”** means the current standards for clinical trials for pharmaceuticals, as set forth in China as well as in the United States Code of Federal Regulations, ICH guidelines and applicable regulations, laws or rules as promulgated thereunder, as amended from time to time, and such standards of good clinical practice as are required by other organizations and governmental agencies in the Territory to the extent such standards are not less stringent than United States GCP.

**Section 1.52 “Generic Product”** means with respect to a Licensed Product in the Territory a product (a) that is sold in by a Third Party who is not a Sublicensee or a Distributor selling such product under authorization from FOSUN or its Affiliates, (b) that has received Regulatory Approval necessary for sale in the Territory, (c) that [\*\*\*] and (d) that contains as the active ingredient the same compound as is contained in such Licensed Product.

**Section 1.53 “GLP” or “Good Laboratory Practices”** means good laboratory practices required under the regulations set forth in 21 C.F.R. Part 58, as in effect during the Term, and the requirements thereunder imposed by the FDA and the CFDA, and the equivalent thereof in any jurisdiction.

**Section 1.54 “GMP” or “Good Manufacturing Practices”** means the current good manufacturing practices required under the applicable regulations set forth in 21 C.F.R. Subchapter C (Drugs) and Subchapter H (Medical Devices), including without limitation Parts 210–211, 808, 812, and 820, and the requirements thereunder imposed by the FDA and the CFDA, and the equivalent thereof in any jurisdiction, and the laws, regulations, guidelines, guidance, pharmaceutical industry standards and requirements in force from time to time that apply to the Manufacture of each Licensed Compound or Licensed Product in any jurisdiction.

**Section 1.55 “Government Official”** means any Person employed by or acting on behalf of a Governmental Body, government-controlled entity or public international organization.

**Section 1.56 “Governmental Body”** means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal); or (d) self-regulatory organization (including the NASDAQ Global Market and the NASDAQ Global Select Market).

**Section 1.57 “IND”** means an Investigational New Drug application or the equivalent filed with or submitted to the relevant Regulatory Health Authority, including, for example, the FDA, for authorization to commence human clinical trials.

**Section 1.58 “Indirect Taxes”** means value added taxes, sales taxes, consumption taxes and other similar taxes.

**Section 1.59 “Information”** means (a) techniques, information and data necessary or useful for the Development, Manufacture or Commercialization of Licensed Compounds or Licensed Products, including without limitation, Know-How, marketing, pricing, distribution, cost, sales, and manufacturing data or descriptions as well as (b) any information or data relating to Materials.

**Section 1.60 “Intellectual Property Rights” or “IPR”** means Patents, Trademarks, service marks, trade secrets (including patentable inventions), trade names, registered designs, design rights, copyrights (including rights in computer software), domain names, database rights and any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights.

**Section 1.61** “**Joint Know-How**” shall have the meaning assigned in Section 8.02(a).

**Section 1.62** “**Joint Patent**” shall mean any Patent claiming any invention within the Joint Know-How.

**Section 1.63** “**Joint Technology**” shall mean collectively, Joint Patents and Joint Know-How.

**Section 1.64** “**Know-How**” means all inventions, discoveries, data, information (including scientific, technical or regulatory information), trade secrets, processes, means, methods, practices, formulae, instructions, procedures, techniques, materials, technology, results, analyses, designs, drawings, computer programs, apparatuses, specifications, technical assistance, laboratory, pre-clinical and clinical data (including laboratory notes and notebooks), and other material or know-how, in written, electronic or any other form, whether or not confidential, proprietary or patentable, including without limitation: development technology; biology, chemistry, pharmacology, toxicology, drug stability, Manufacturing and formulation, test procedures, synthesis, purification and isolation techniques, quality control data and information, methodologies and techniques; information regarding clinical and non-clinical safety and efficacy studies, including study designs and protocols, marketing studies, absorption, distribution, metabolism and excretion studies; assays and biological methodology.

**Section 1.65** “**Knowledge**” means the good faith understanding of the officers of Ardelyx and its Affiliates, [\*\*\*]. For clarity, for purposes of the representations and warranties set forth in Section 9.01(b), “**Knowledge**” will not include any obligation to conduct any special searches or analyses such as, but not limited to, any analysis of Ardelyx’s freedom to operate with respect to Patents relevant to Licensed Compounds or Licensed Products.

**Section 1.66** “**Licensed Compound**” means the compound of Licensor, known as tenapanor, having the structure set forth on **Exhibit A**, and any metabolites, salts, polymorphs, hydrates, semihydrates or degradants of such compound.

**Section 1.67** “**Licensed Product**” means any and all products in finished forms suitable for human applications containing the Licensed Compound as an active ingredient.

**Section 1.68** “**Licensed Know-How**” means (a) Know-How that Ardelyx or its Affiliates Control as of the Effective Date and (b) Sole Program Know-How owned by Ardelyx; provided that, with respect to Know-How described in (a) or (b) above, such Know-How is necessary or useful to Exploit any Licensed Compound or Licensed Product in the manner permitted under the terms and conditions of this Agreement. Licensed Know-How specifically excludes the Ardelyx [\*\*\*] Know-How and the Excluded Know-How.

**Section 1.69** “**Licensed Patents**” means (a) the Listed Patents, and (b) all Ardelyx Sole Invention Patents; provided that in case of (b) above, such Patents claim any inventions necessary or useful for the Exploitation of Licensed Compound or Licensed Products pursuant to the terms and conditions of this Agreement. Licensed Patents excludes Ardelyx [\*\*\*] Patents and the Excluded Patents.

**Section 1.70 “Licensed Product”** shall mean any and all pharmaceutical preparations, compositions and formulations in forms suitable for human applications containing a Licensed Compound as an active ingredient.

**Section 1.71 “Licensed Technology”** means all Licensed Patents and Licensed Know-How.

**Section 1.72 “Listed Patents”** means the Patents listed in **Exhibit B**, and any Patents issuing after the Effective Date in the Territory claiming priority to any such Patents listed on **Exhibit B**.

**Section 1.73 “Losses”** means any and all direct or indirect liabilities, claims, actions, damages, losses or expenses, including interest, penalties, and reasonable lawyers’ fees and disbursements. In calculating Losses, the legal duty to mitigate on the part of the Party suffering the Loss shall be taken into account.

**Section 1.74 “Manufacture” or “Manufacturing”** means activities in connection with the synthesis, manufacture, processing, formulating, testing (including, without limitation quality control, quality assurance and lot release testing), bulk packaging or storage and delivery of Licensed Compound or Licensed Product.

**Section 1.75 “Material Anti-Corruption Law Violation”** means a violation of an Anti-Corruption Law relating to the subject matter of this Agreement which would, if it were publicly known, be reasonably expected to have a material adverse effect on the Party committing such violation or on the reputation of the other Party because of its relationship with the Party committing such violation.

**Section 1.76 “Materials”** means compounds, compositions of matter, and assays necessary or useful for the Development, Manufacture or Commercialization of Licensed Products. Materials excludes and materials associated with the Excluded Know-How.

**Section 1.77 “Mediation Notice”** shall have the meaning assigned in Section 13.02(a).

**Section 1.78 “Net Sales”** means the gross amount invoiced by a Party, its Affiliates and Sublicensees for sales of Licensed Products to a Third Party (including Distributors but excluding, for the avoidance of doubt, Sublicensees) less deductions for the following :

(a) customary trade, quantity discounts, settlement discounts, or chargebacks actually granted, allowed, or incurred in the ordinary course of business in connection with the sale of the Licensed Products;

(b) credits to customers, not in excess of the selling price of the Licensed Products, on account of governmental requirements, rejection, recalls, or return of the Licensed Products;

(c) distributors fees, rebates, or allowances actually granted or allowed, including without limitation government and managed care rebates;

(d) Indirect Taxes and excise taxes or customs duties paid by the selling entity and any other governmental charges imposed upon the sale; importation, use or distribution of the Licensed Products; and

(e) transportation costs, distribution expenses, special packaging and related insurance charges actually incurred.

**Section 1.79** “**Non-Breaching Party**” shall have the meaning assigned in [Section 11.02\(a\)](#).

**Section 1.80** “**Other Ingredients**” shall have the meaning assigned in [Section 6.05](#).

**Section 1.81** **Intentionally Left Blank.**

**Section 1.82** “**Patent**” means (a) all national, regional and international patents and patent applications, including provisional patent applications, (b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from any of these, including divisionals, continuations, continuations-in-part, provisionals, converted provisionals, and continued prosecution applications, (c) any and all patents that have issued or in the future issue from the foregoing patent applications ((a) and (b)), including utility models, petty patents and design patents and certificates of invention, (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications ((a), (b) and (c)), and (e) any similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any such foregoing patent applications and patents.

**Section 1.83** “**Payments**” shall have the meaning assigned in [Section 6.08\(a\)](#).

**Section 1.84** “**Person**” means any individual, sole proprietorship, corporation, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other similar entity or organization, including a government or political subdivision, department or agency of a government.

**Section 1.85** “**Phase 4 Clinical Trial**” means any clinical study of a pharmaceutical product on human subjects commenced after receipt of Regulatory Approval in a territory of such pharmaceutical product for the purpose of satisfying a condition imposed by a Regulatory Health Authority to obtain Regulatory Approval, or marketing the pharmaceutical product in that territory, and not for the purpose of obtaining initial Regulatory Approval of such pharmaceutical product. For clarity, Phase 4 Clinical Trials shall be considered a part of Commercialization.

**Section 1.86** “**Pro-Rata Percentage**” shall have the meaning assigned in [Section 2.06\(b\)\(i\)](#).

**Section 1.87** “**Regulatory Approval**” means any and all approvals (including without limitation pricing and reimbursement approvals), product or establishment licenses, registrations, or authorizations of any regional, federal, state, or local Regulatory Health Authority, department,

bureau, or other governmental entity, necessary to commercially distribute, sell or market a Licensed Product in a regulatory jurisdiction, including, where applicable, (a) pricing or reimbursement approval in such jurisdiction, (b) pre- and post-approval marketing authorizations (including any prerequisite Manufacturing approval or authorization related thereto), (c) labeling approval and (d) technical, medical and scientific licenses.

**Section 1.88 “Regulatory Authority”** means any court or government body, whether national, supra-national, federal, state, local, foreign or provincial, including any political subdivision thereof, including any department, commission, board, bureau, agency, or other regulatory or administrative governmental authority or instrumentality, and further including any quasi-governmental Person or entity exercising the functions of any of these.

**Section 1.89 “Regulatory Documentation”** means all applications, registrations, licenses, authorizations and approvals, all correspondence submitted to or received from Regulatory Health Authorities (including minutes and official contact reports relating to any communications with any Regulatory Health Authority) and all supporting documents, including documentation arising in the course of all clinical studies and tests, in each case relating to any Licensed Compounds or Licensed Products, including all INDs, Regulatory Approvals, regulatory drug lists, advertising and promotion documents, adverse event files and complaint files.

**Section 1.90 “Regulatory Exclusivity”** means any exclusive marketing rights or data exclusivity rights conferred by any Regulatory Health Authority with respect to a Licensed Product other than Patents, including, without limitation, rights conferred in the U.S. under the Hatch- Waxman Act or the FDA Modernization Act of 1997 (including pediatric exclusivity), orphan drug exclusivity, or rights similar thereto outside the U.S.

**Section 1.91 “Regulatory Health Authority”** means any applicable national (for example, FDA or CFDA), supranational, regional, state, provincial or local regulatory health authority, department, bureau, commission, council, or other government entity regulating or otherwise exercising authority with respect to the Exploitation of Licensed Compounds or Licensed Products in the Territory pursuant to the terms and conditions of this Agreement, including any such entity involved in the granting of Regulatory Approval for pharmaceutical products.

**Section 1.92 “Review Period”** shall have the meaning assigned in [Section 7.07](#).

**Section 1.93 “ROFN Product”** shall have the meaning assigned in [Section 2.11](#).

**Section 1.94 “Safety Agreement”** shall have the meaning assigned in [Section 4.06\(a\)](#).

**Section 1.95 “Senior Executives”** means (a) the Chief Executive Officer of Ardelyx and (b) the Chief Executive Officer of FOSUN. A Party shall be entitled, effective upon written notice thereof to the other Party, to designate one of its other representatives having equivalent seniority and experience to replace such foregoing representative as that Party’s Senior Executive for the purpose of this Agreement.

**Section 1.96 “Sole Invention Patent”** shall mean any Patent claiming any invention within the Sole Program Know-How.

**Section 1.97** “**Sole Program Know-How**” shall have the meaning assigned in Section 8.02(a).

**Section 1.98** “**Specifications**” means the specifications applicable to the Manufacture, packaging and labeling of Licensed Compound or Licensed Products in effect at a given time.

**Section 1.99** “**Sublicensee**” shall have the meaning assigned in Section 2.02.

**Section 1.100** “**Tax**” means any form of tax or taxation, levy, duty, charge, social security charge, contribution or withholding of whatever nature (including any related fine, penalty, surcharge or interest) imposed by, or payable to, a Tax Authority.

**Section 1.101** “**Tax Authority**” means any government, state or municipality, or any local, state, federal or other fiscal, revenue, customs, or excise authority, body or official anywhere in the world, authorized to levy Tax.

**Section 1.102** “**Term**” shall have the meaning assigned in Section 11.01.

**Section 1.103** “**Territory**” means People’s Republic of China, including Hong Kong and Macao.

**Section 1.104** “**Third Party**” means any Person other than Ardelyx or FOSUN, or their respective Affiliates.

**Section 1.105** “**Third Party Claims**” shall have the meaning assigned in Section 12.01(a).

**Section 1.106** “**Third Party Compensation**” shall have the meaning assigned in Section 6.04(f).

**Section 1.107** “**Trademark**” means any trademark, trade name, service mark, service name, brand, domain name, trade dress, logo, slogan or other indicia of origin or ownership, including the goodwill and activities associated with each of the foregoing.

**Section 1.108** “**Transfer Price**” means with respect to the Licensed Compound, the Licensed Product and the placebo supplied by Ardelyx for [\*\*\*]

**Section 1.109** “**U.S. GAAP**” means United States Generally Accepted Accounting Principles, consistently applied.

**Section 1.110** “**Valid Claim**” means (a) a claim of an issued and unexpired Patent within the Licensed Patents, Ardelyx [\*\*\*] Patents, Joint Patents or [\*\*\*], as applicable, that has not been held unpatentable, invalid, or unenforceable by a court or other government agency of competent jurisdiction in an unappealable decision or has not been admitted to be invalid or unenforceable through reissue, re-examination, disclaimer, or otherwise or (b) a claim of a pending patent application within the Licensed Patents, Ardelyx [\*\*\*] Patents, Joints Patents or [\*\*\*], as applicable, that has not been abandoned, finally rejected or expired without the possibility of appeal or re-filing.

**Section 1.111 “Written Disclosure”** shall have the meaning assigned in Section 10.02.

**Section 1.112 Construction.** Except where the context requires otherwise, whenever used in this Agreement, the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or”. Whenever this Agreement refers to a number of days, unless otherwise specified, such number refers to calendar days. The term “including” or “includes” as used in this Agreement means including, without limiting the generality of any description preceding such term. The article, section, and subsection headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of such articles, sections, and subsections. The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties and no rule of strict construction shall be applied against any Party.

## **ARTICLE II. GRANT OF RIGHTS AND LICENSES; EXCLUSIVITY**

### **Section 2.01 Licenses to FOSUN.**

(a) Subject to the terms of this Agreement, Ardelyx grants to FOSUN an exclusive (including with regard to Ardelyx and its Affiliates, except with respect to the retained rights set forth in Section 2.04 below) right and license under the (i) Licensed Technology, (ii) Ardelyx’s rights in the Joint Technology and (iii) Ardelyx [\*\*\*] Technology to Develop, have Developed, Commercialize (but not Manufacture), have Commercialized (but not have Manufactured), including without limitation package, have packaged and import the Licensed Products in the Field and in the Territory.

(b) Subject to the terms of this Agreement, Ardelyx grants to FOSUN a non-exclusive right and license under the (i) Licensed Technology, (ii) Ardelyx’s rights in the Joint Technology, and (iii) Ardelyx [\*\*\*] Technology to Manufacture and to have Manufactured Licensed Product (but not Licensed Compound) within or outside of the Territory, for the sole purpose of Developing and Commercializing the Licensed Product in the Field and in the Territory.

**Section 2.02 Sublicenses.** FOSUN shall have the right to grant sublicenses, through multiple tiers of sublicenses, under the licenses granted to FOSUN under Section 2.01, to its Affiliates without the prior written consent of Ardelyx, and to any other Person with the prior written consent of Ardelyx, such consent not to be unreasonably withheld. Where FOSUN or its Affiliates grants such sublicense to a Person that is not an Affiliate of FOSUN, and such Person is not a Distributor, such Person shall be a “**Sublicensee**” for the purposes of this Agreement, and any Person to which a Sublicensee grants a further sublicense shall also be a Sublicensee; provided, however, that any Person that (a) is granted a sublicense under the license granted to FOSUN pursuant to Section 2.01 solely to enable such Person to provide development services or contract manufacturing services for FOSUN, its Affiliates or Sublicensees, and (b) does not have the right to distribute, market or sell the Licensed Products shall not be a “**Sublicensee**” for purposes of this Agreement. FOSUN, its Affiliates and its Sublicensees shall ensure that all Persons to which they grant sublicenses comply with all terms and conditions of this Agreement. FOSUN shall remain liable for any action or failure to act by any Sublicensee, or any other Party that is granted a sublicense under the licenses granted in Section 2.01 by FOSUN, its Affiliates or its Sublicensees,



if such action or failure to act by the Sublicensee would have constituted a breach of this Agreement if such action or failure were committed by FOSUN. Without limiting the foregoing, FOSUN shall obtain rights and licenses from its Affiliates (but only to the extent that such Affiliates are FOSUN's Sublicensees hereunder) and Sublicensees as necessary to enable FOSUN to grant to Ardelyx rights and licenses under Patents and Know-How Controlled by such Affiliates and Sublicensees to the same extent as FOSUN grants to Ardelyx pursuant to this Agreement under FOSUN Sole Invention Patents, Sole Program Know-How owned by FOSUN, FOSUN's interest in the Joint Technology and FOSUN [\*\*\*] Technology, including without limitation the licenses and rights granted to Ardelyx pursuant to Section 2.05 and Article XI. FOSUN shall remain liable for any action or failure to act by any Sublicensee, or any other Party that is granted a sublicense under the licenses granted in Section 2.01 by FOSUN, its Affiliates or its Sublicensees, if such action or failure to act by the Sublicensee would have constituted a breach of this Agreement if such action or failure were committed by FOSUN.

For clarity, Ardelyx currently expects to enter into additional license agreements for the further development and commercialization of tenapanor outside of the Territory, and the provisions of this Agreement relating to certain Intellectual Property Controlled by FOSUN, its Sublicensees or Affiliates, or by Ardelyx, its licensees or Affiliates are intended to [\*\*\*] to Intellectual Property that [\*\*\*] with respect to Intellectual Property that [\*\*\*].

**Section 2.03 Distributorships.** FOSUN shall have the right, in its sole discretion, to appoint its Affiliates, and FOSUN, its Affiliates and its Sublicensees shall have the right, in their sole discretion, to appoint any other Persons in the Territory to distribute, market and sell the Licensed Products in the Territory, with or without packaging rights. In circumstances where such appointed Person purchases its requirements of Licensed Products from FOSUN, its Affiliates or its Sublicensees, but does not otherwise make any royalty or other payment to FOSUN, its Affiliates or its Sublicensees with respect to Intellectual Property Rights, and where such Person is not an Affiliate of FOSUN and neither FOSUN nor any of its Affiliates shares in the profits from, or has an equivalent interest in the proceeds from, the sale of Licensed Products by such Person, that Person shall be a "**Distributor**" for purposes of this Agreement. The term "packaging rights" in this Section 2.03 shall mean the right for the Distributor to package Licensed Products supplied in unpackaged bulk form into individual ready-for-sale packs. FOSUN shall ensure that its legal contracts with its Distributors restrict such Distributor from selling or exporting the Licensed Product out of the Territory. FOSUN shall remain liable for any action or failure to act by the Distributor, if such action or failure to act by the Distributor would have constituted a breach of this Agreement if such action or failure were committed by FOSUN.

**Section 2.04 Rights Retained by Ardelyx.** Notwithstanding the foregoing, Ardelyx retains the right under (a) the Licensed Technology, (b) Ardelyx's rights in the Joint Technology and (c) Ardelyx [\*\*\*] Technology to Exploit the Licensed Compounds and the Licensed Products outside the Field and in the Territory or outside the Territory and to conduct any other activities expressly assigned to Ardelyx under this Agreement, including the Manufacturing of the Licensed Compound and the Licensed Products.

**Section 2.05 License to Ardelyx.** FOSUN grants to Ardelyx an exclusive, fully paid, royalty free, sublicensable, irrevocable license under the FOSUN [\*\*\*] Technology, any Sole Program Know-How owned by FOSUN, the FOSUN Sole Invention Patents, and FOSUN's

interest in the Joint Technology to Exploit the Licensed Compounds and Licensed Products outside the Field and in the Territory or outside the Territory.

#### **Section 2.06 Use of Data.**

(a) Ardelyx shall grant and hereby grants to FOSUN, and shall use Commercially Reasonable Efforts to cause its Affiliates and Sublicensees to grant to FOSUN, a fully paid, royalty free, irrevocable, worldwide, sublicensable, non-exclusive license under such Party's right, interest and title in, to and under any data, results and information regarding the use of the Licensed Product to treat (i) [\*\*\*], or (ii) [\*\*\*] that may be may generated by Ardelyx, its Affiliates or Sublicensees solely for the purpose of allowing FOSUN to Develop, Manufacture (Licensed Product, but not Licensed Compound), and/or Commercialize the Licensed Product, in the Field and in the Territory, and to Manufacture and to have Manufactured Licensed Product (but not Licensed Compound) outside of the Territory.

(b) If Ardelyx, its Affiliates or licensees, plan to conduct any other clinical trial of a Licensed Product in the Field that is not otherwise a clinical trial to support the Development of the Licensed Product for [\*\*\*] (an "**Additional Study**"), Ardelyx shall so notify FOSUN and present the proposed design and projected costs of such Additional Study to FOSUN, and the following shall apply:

(i) If FOSUN agrees to co-fund such Additional Study, the Parties shall prepare a budget for the associated costs of the Additional Study and FOSUN shall bear a mutually agreed upon percentage of the associated costs [\*\*\*] (such percentage to be referred to as the "**Pro-Rata Percentage**"). If the Parties cannot agree on the Pro-Rata Percentage allocation for FOSUN, then the provisions of Section 2.06(b)(ii) shall apply as if FOSUN did not wish to co-fund such Additional Study. If FOSUN co-funds any Additional Study, all resulting data would be available for use by FOSUN in connection with exercising its rights under this Agreement;

(ii) If FOSUN does not wish to co-fund such proposed Additional Study, then Ardelyx shall be entitled to proceed with such Additional Study at its cost. In such case, FOSUN would have no rights to use any resulting data, except with respect to safety information required to be filed with the applicable Regulatory Authorities in any filings with Regulatory Authorities, unless and until a Buy-In occurs as set forth in Section 2.06(c).

(c) Buy-In Right. Notwithstanding Section 2.06(b)(ii) above, at any time, whether during the Additional Study, or after the conclusion of the Additional Study, FOSUN shall have the right by written notice to Ardelyx to buy in to co-funding any Additional Study for which FOSUN declined previously to co-fund (the "**Buy-In**") by (i) [\*\*\*], and (ii) in order to compensation Ardelyx for FOSUN's delayed decision to co-fund the Additional Study, paying to Ardelyx [\*\*\*] percent ([\*\*\*]%) of the Pro-Rata Percentage of the [\*\*\*] costs incurred to conduct such Additional Study [\*\*\*]. Upon any such Buy-In, FOSUN shall have the rights with respect to such clinical trial or studies and the data arising therefrom as set forth in Section 2.06(a). If FOSUN elects a Buy-In, it shall pay to Ardelyx the Buy-In amounts set forth in this Section 2.06(c).

within [\*\*\*] ([\*\*\*) days after FOSUN notifies Ardelyx in writing that FOSUN is exercising its right to Buy-In.

(d) FOSUN shall grant and hereby grants to Ardelyx, and shall use cause its Affiliates and Sublicensees to grant to Ardelyx, a fully paid, royalty free, irrevocable, worldwide, sublicensable, non-exclusive license under such Party's right, interest and title in, to and under any data, results and information regarding the use of Licensed Products that may be may generated by FOSUN, its Affiliates or Sublicensees solely for the purpose of allowing Ardelyx, its Affiliates and Sublicensees to Develop, Manufacture, and/or Commercialize the Licensed Products outside of the Field in the Territory, or outside of the Territory, whether or not in the Field.

**Section 2.07 No Implied Rights.** This Agreement confers no right, license, or interest by implication, estoppel, or otherwise under any Patents, Know-How, or other Intellectual Property Rights of either Party except as expressly set forth in this Agreement. Each Party hereby expressly retains and reserves all rights and interests with respect to Patents, Know-How, or other Intellectual Property Rights not expressly granted to the other Party hereunder. Without limiting the generality of the foregoing, no license or other rights are granted to FOSUN under this Agreement to any compounds claimed or disclosed in any Ardelyx [\*\*\*] Patents or any Licensed Patents, other than the Licensed Compound.

**Section 2.08 Exclusivity Term.** FOSUN's exclusive licenses granted under Section 2.01, shall expire with respect to each separate Licensed Product on the date when FOSUN's obligation to pay royalties with respect to such Licensed Product expires pursuant to Section 6.04(e). Upon expiry of FOSUN's exclusive licenses with respect to a Licensed Product in the Territory, FOSUN's exclusive licenses with respect to such Licensed Product in the Territory shall become non-exclusive, fully paid-up, perpetual and irrevocable and the Net Sales of such Licensed Product in the Territory shall be excluded from the royalty calculations under Section 6.04 (including the thresholds and ceilings). FOSUN and its Affiliates and Sublicensees shall be allowed to continue exercising FOSUN's exclusive rights under the licenses granted in Section 2.01 on a non-exclusive basis in the Territory with no further consideration to Ardelyx.

**Section 2.09 Right of Reference.** Each Party shall have access and a right of reference to all data contained or referenced in any Regulatory Documents (including any Regulatory Approvals) necessary for the Development, Manufacture or Commercialization of the Licensed Product for the treatment of hyperphosphatemia or irritable bowel syndrome with constipation.

**Section 2.10 Exclusivity Covenant.**

(a) During the period starting on the [\*\*\*] and continuing until the earlier to occur of (i) [\*\*\*] and (ii) [\*\*\*] (such period, "**Covenant Period 1**"), neither FOSUN nor any of its Affiliates shall, except as otherwise expressly permitted in this Agreement, either by itself or through a Third Party, [\*\*\*]. Notwithstanding the above, in the event that [\*\*\*], FOSUN will not be in violation of this Section 2.10(a); provided, that (i) [\*\*\*] and (ii) [\*\*\*] during Covenant Period 1 or Covenant Period 2.

(b) During the period starting on the Effective Date and continuing until [\*\*\*] (such period, "**Covenant Period 2**"), neither FOSUN nor any of its Affiliates shall, except as otherwise

expressly permitted in this Agreement, either by itself or through a Third Party, [\*\*\*] in the Territory any Competitive Product [\*\*\*]; provided that [\*\*\*]. Notwithstanding the above, in the event that [\*\*\*] or a [\*\*\*], the sale or distribution of the Competitive Product by such Affiliate shall not be a violation of this Section 2.10(b); provided, that, [\*\*\*], and provided, further that [\*\*\*].

(c) Notwithstanding the aforesaid, neither FOSUN's nor any of FOSUN Affiliates' direct or indirect acquisition of or merger with, in whole or in part, a Person (or group of companies) or the business of a Person (or group of companies), which will become an Affiliate of FOSUN or controlled by FOSUN immediately after closing of such acquisition or merger transaction, having any activity contravening the covenant set forth above in this Section 2.10, shall constitute a breach of such covenants by FOSUN, if, [\*\*\*] FOSUN shall either (i) provide Ardelyx with written notice of its, or its Affiliates', as the case may be, [\*\*\*], or (ii) exercises its right to terminate this Agreement pursuant to Section 11.02(b)(i), in which case such termination shall be effective [\*\*\*] ([\*\*\*)] days after Ardelyx's receipt of a written notice of termination from FOSUN. In the event that FOSUN provides a written notice of its or its Affiliates' [\*\*\*] pursuant to the above, then (X) FOSUN shall (or, as the case may be, cause its relevant Affiliate to) diligently pursue [\*\*\*], and in any case, [\*\*\*] after the closing of the acquisition or merger transaction under which the relevant business was acquired, and (Y) neither FOSUN nor its Affiliates, as the case may be, shall during such [\*\*\*] ([\*\*\*)] [\*\*\*] period, [\*\*\*] the product in question, unless the product [\*\*\*]. Notwithstanding the foregoing, FOSUN's or any of FOSUN Affiliates' [\*\*\*] other than the acquisition or merger transaction aforementioned shall not constitute a breach of the covenants set forth above in this Section 2.10 by FOSUN, [\*\*\*]. FOSUN shall, notwithstanding anything to the contrary in this Section 2.10 (c), at all times continue to be obligated to use Commercially Reasonable Efforts to Develop or Commercialize Licensed Products in accordance with its obligations under and subject to Section 4.03.

(d) Notwithstanding the above, in the event that (i) [\*\*\*], or (ii) [\*\*\*], then in the case of each of (i) and (ii), rather than exercising its right of termination under this Agreement, FOSUN may [\*\*\*] from Ardelyx such that FOSUN may [\*\*\*] impacted by [\*\*\*] for [\*\*\*] and the Parties shall negotiate in good faith the terms under which the Ardelyx may [\*\*\*], which may include [\*\*\*].

(e) The words [\*\*\*] and all variations thereof included in this Section 2.10 with reference to a Competitive Product shall include the activities described in the [\*\*\*], but with such activities being with respect to a Competitive Product rather than with respect to Licensed Product as set forth in the definition.

(f) The Parties agree that the restrictions contained in this Section 2.10 are reasonable and necessary for the protection of the Parties' and their Affiliates' respective confidential information and business, that such restrictions are reasonable in all the circumstances and that the Parties would not have entered into this Agreement without the protections afforded to them under this Section 2.10.

**Section 2.11 Right of First Negotiation.** During the Term, if Ardelyx decides to Develop and/or Commercialize outside of the Field in the Territory, a pharmaceutical preparation, composition and/or formulation in a form suitable for human application containing the Licensed

Compound as an active ingredient (a “**ROFN Product**”) or is willing to grant a Third Party a license under the Licensed Technology, Ardelyx’s rights in the Joint Technology and/or Ardelyx [\*\*\*] Technology to Develop and/or Commercialize such ROFN Product in the Territory (“Ardelyx License”), Ardelyx shall inform FOSUN by written notice of its intention as such, and shall provide FOSUN with [\*\*\*] of the ROFN Product, and shall negotiate exclusively with FOSUN for a period of up to [\*\*\*] ([\*\*\*)] days (“Negotiation Period”). FOSUN may notify Ardelyx by way of a letter of acceptance that it wishes to collaborate with Ardelyx to engage in the Development or Commercialization activities of such ROFN Product in the Territory, or to enter into an agreement for an Ardelyx License. If Ardelyx and FOSUN cannot reach mutually agreeable terms and conditions of an Ardelyx License during the Negotiation Period, then Ardelyx shall be free to Develop and/or Commercialize the ROFN Product in the Territory outside of the Field, or negotiate and enter into an Ardelyx License with a Third Party [\*\*\*].

### ARTICLE III.

#### COLLABORATION GOVERNANCE; DEVELOPMENT AND COMMERCIALIZATION PLANS

**Section 3.01 Steering Committee.** Ardelyx and FOSUN shall establish a steering committee in accordance with this Article III (the “SC”). The SC shall remain in effect as from the Effective Date through the Term, or until such earlier date, as Ardelyx, in its sole discretion, determines to terminate its membership in the SC. The SC shall serve as a forum for discussing and sharing Information and Materials; discussing strategy regarding the Development of the Licensed Products, among other activities. FOSUN shall submit to the SC all results from the Bridging Studies and any other clinical trials that FOSUN shall conduct in the Territory as soon as reasonably practicable after completion, but in any event within a time frame sufficient to enable Ardelyx to meet any obligations that it may have regarding such clinical trial results and the disclosure thereof, including those obligations it may have under any Applicable Law or the rules and regulations of any Governmental Body. At a minimum, FOSUN shall provide a summary in English of each final report of each clinical trial to the SC, within [\*\*\*] ([\*\*\*)] days after finalization of the clinical trial report. The summary shall contain such information as Ardelyx shall reasonably request.

**Section 3.02 Composition of the SC.** Each Party shall appoint [\*\*\*] ([\*\*\*)] representatives as its voting members of the SC. The first meeting of the SC shall be held within [\*\*\*] ([\*\*\*)] days of the Effective Date. The SC shall be chaired by a representative of [\*\*\*]. The chairperson shall be responsible for calling meetings, setting the agenda, circulating the agenda at least [\*\*\*] ([\*\*\*)] days prior to each meeting and distributing minutes of the meetings within [\*\*\*] ([\*\*\*)] days following such meetings, but will not otherwise have any greater power or authority than any other member of the SC. The chairperson shall coordinate with each Party to schedule each SC meeting at least [\*\*\*] ([\*\*\*)] months in advance of such meeting, or – with regard to meetings that are called for on shorter notice – as early as reasonably practicable in advance of such meeting. Each Party shall disclose to the chairperson any proposed agenda items, along with appropriate Information and Materials at least [\*\*\*] ([\*\*\*)] Business Days in advance of each meeting of the SC (or – with regard to meetings that are called for on shorter notice – as early as reasonably practicable in advance of such meeting). The chairperson shall not reject any proposed agenda items. All of the members of the SC shall have such expertise as appropriate to the activities of the SC. Each Party may replace its members of the SC upon written notice to the

other Party and shall replace its members as the expertise required by the SC changes over time and as the Licensed Products advance through Development; [\*\*\*]. From time to time, the SC may invite non-voting personnel of either Party having formulation, Manufacturing, Commercialization, marketing or other expertise to participate in discussions of the SC. An alternate voting member designated by a Party may serve temporarily in the absence of a permanent voting member appointed by such Party, and either Party may also designate one or more non-voting consultants to such Party who are under written obligations of confidentiality to such Party as SC observers who may attend the SC meetings in an observational capacity only.

**Section 3.03 Commercialization Plan.** The SC shall be responsible for the approval of the first commercialization plan prepared for each Licensed Product. Each such commercialization plan shall govern the launch of the Licensed Product and the Commercialization of the Licensed Product for at least [\*\*\*] ([\*\*\*) months following such launch (“**Commercialization Plan**”), and each Commercialization Plan shall set forth the commercialization budget describing the costs and expenses relating to the Commercialization of the Licensed Product during the relevant period (“**Commercialization Budget**”). Within [\*\*\*] ([\*\*\*) months after the [\*\*\*], FOSUN shall submit the initial Commercialization Plan and Commercialization Budget for the relevant Licensed Product to the SC for approval. The initial Commercialization Plan shall include, the following, among other things, (a) a requirement that during launch and for the first [\*\*\*] ([\*\*\*) months following the First Commercial Sale of the first Licensed Product, that FOSUN shall use [\*\*\*], and (b) specific plans as to [\*\*\*]. After the approval of the first Commercialization Plan and Commercialization Budget, the SC will review the Commercialization Plan and Commercialization Budget and the current status of the Commercialization activities at least [\*\*\*] ([\*\*\*) times per year, and will amend the Commercialization Plan and Commercialization Budget as necessary pursuant to review. The SC will approve any material changes to the Commercialization Budget.

**Section 3.04 Meetings of the SC.** The SC shall hold meetings at such times and places as shall be determined by a majority of the entire membership of the committee, but in no event shall such meetings be held less frequently than once every [\*\*\*] ([\*\*\*) months through the first [\*\*\*] ([\*\*\*) years following the First Commercial Sale of each Licensed Product in the Territory. Meetings of the SC will alternate between the offices of the Parties, unless otherwise agreed upon by the members of the SC, or may be held via internet, telephonically or by videoconference; provided that at least one 1 meeting per year shall be held in person until [\*\*\*] ([\*\*\*) years following the First Commercial Sale of each Licensed Product in the Territory. Thereafter, the SC may determine how frequently to require meetings of the SC and how frequently to require in person meetings of the SC. Meetings of the SC will be effective if at least two (2) representatives of each Party are in attendance or participating in the meeting. Each Party will be responsible for the expenses incurred in connection with its employees, consultants and its members of the SC attending or otherwise participating in SC meetings.

**Section 3.05 SC Decision Making.** The SC shall make decisions within its remit only by [\*\*\*]. In the event that [\*\*\*] on a matter before it for decision within [\*\*\*] ([\*\*\*) days after the matter was first considered by it, then [\*\*\*] shall have the final decision making authority except for decisions that (a) [\*\*\*] (i) [\*\*\*] or (ii) [\*\*\*], or (b) [\*\*\*], with respect to which decisions, [\*\*\*] shall have the right to refer such matter to the Senior Executives, who shall meet

(in person, via internet, telephonically or by videoconference) to resolve the matter within [\*\*\*] ([\*\*\*) days of such referral.

**ARTICLE IV.**  
**GENERAL PROVISIONS ON DEVELOPMENT AND COMMERCIALIZATION**

**Section 4.01 Record Keeping.** Each Party shall maintain, or cause to be maintained, records of its activities under this Agreement in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes, which shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of its activities hereunder, which shall record only such activities and shall not include or be commingled with records of activities outside the scope of this Agreement, and which shall be retained by such Party for at least [\*\*\*] ([\*\*\*) years after the termination of this Agreement, or for such longer period as may be required by Applicable Laws. Each Party shall have the right, during normal business hours and upon reasonable prior notice to the other Party, to inspect and copy any such records of such other Party.

**Section 4.02 Conduct of Certain Development Activities.** Any clinical trial(s) and other Development studies that are commenced in the Territory after the Effective Date to support Regulatory Approval of the Licensed Products in the Territory will be conducted solely by FOSUN; provided, however, Ardelyx may sponsor or co-sponsor such clinical studies pursuant to the Applicable Law of the Regulatory Health Authority of the Territory, in which case Ardelyx shall use Commercially Reasonable Efforts to cooperate with FOSUN to conduct such clinical trials in the Territory. Notwithstanding anything to the contrary, all clinical trials in the Territory conducted in accordance with this Agreement shall be [\*\*\*] and [\*\*\*] of [\*\*\*]'s cooperation and assistance.

**Section 4.03 Diligence Obligations.**

(a) FOSUN shall use Commercially Reasonable Efforts at its own cost and expense to carry out its activities under this Agreement to develop (including to seek Regulatory Approval in the Territory), Manufacture (as set forth herein) and Commercialize the Licensed Product in the Territory for the indication of hyperphosphatemia related to chronic kidney disease and for irritable bowel syndrome with constipation. FOSUN shall act reasonably in preparing the Commercialization Plans, and any amendments thereto, including the corresponding Commercialization Budgets each of which shall be consistent with the obligation to use Commercially Reasonable Efforts as set forth herein. For purposes of this Section 4.03(a) the Parties agree that in order to demonstrate that it has utilized Commercially Reasonable Efforts as required under this Section 4.03(a), FOSUN shall meet the following timelines and other objectives [\*\*\*] with respect to each of the indications of hyperphosphatemia related to chronic kidney disease and irritable bowel syndrome:

- (i) [\*\*\*] provided that all necessary documents for the [\*\*\*] have been provided by Ardelyx;
- (ii) [\*\*\*] following [\*\*\*];

- (iii) [\*\*\*] within [\*\*\*] ([\*\*\*) months after [\*\*\*];
  - (iv) [\*\*\*] within [\*\*\*] ([\*\*\*) months following completion of [\*\*\*];
  - (v) [\*\*\*] within [\*\*\*] ([\*\*\*) months after receipt of [\*\*\*];
  - (vi) [\*\*\*] and for the first [\*\*\*] ([\*\*\*) [\*\*\*];
  - (vii) [\*\*\*] in the first [\*\*\*] ([\*\*\*) months shall [\*\*\*] of FOSUN's [\*\*\*] in the Territory; and
- (viii) Each [\*\*\*] for each Licensed Product shall not be less than [\*\*\*] for such Licensed Product for [\*\*\*] following the [\*\*\*].

(b) If FOSUN fails to fulfill its obligations within certain period under Section 4.03(a), the Parties agree to extend another [\*\*\*] ([\*\*\*) months of such period for FOSUN to achieve such objectives. If FOSUN fails to achieve the specific objectives within the extended periods, or if FOSUN fails to meet its obligations generally under Section 4.03(a), then Ardelyx may exercise its rights under Section 13.02 or proceed directly to exercise its rights under Section 11.02(a) (subject to the provisions set forth therein), at Ardelyx's sole discretion.

**Section 4.04 Reports of Development Activities.** FOSUN shall report on the Development activities of the Licensed Product undertaken by it at each meeting of the SC. The Development reports shall include a reasonably detailed summary of all results, data and material inventions, if any, obtained from such Development activities. In addition, FOSUN shall, at its own expense, make appropriate scientific and regulatory personnel available to Ardelyx, either by telephone or in person as the Parties may mutually agree, as reasonably required to keep Ardelyx informed of Development activities conducted by FOSUN.

**Section 4.05 Regulatory Matters.**

(a) To the extent permitted under Applicable Law, FOSUN shall be the marketing authorization holder for the Licensed Products in the Field in the Territory. If it is determined during the Term that pursuant to Applicable Law the Parties are not able to operate under the terms of this Section 4.05, then Ardelyx shall be the marketing authorization or imported drug license holder of the Licensed Products. Notwithstanding the foregoing sentence, however, Ardelyx shall not have any right to Develop and/or Commercialize the Licensed Product in the Field in the Territory. FOSUN shall reimburse Ardelyx for any and all costs (internal and external) that Ardelyx may incur in being the marketing authorization or imported drug license holder, if so required by Applicable Law.

(b) FOSUN shall be solely responsible for preparing, filing and submitting all Regulatory Documents related to the Licensed Compounds and Licensed Products with the Regulatory Health Authority in the Territory, including all applications for Regulatory Approval. FOSUN shall own any and all applications for Regulatory Approvals, the Regulatory Approvals, and other regulatory filings related to the Licensed Compounds and Licensed Products, which will be held in the name of FOSUN. FOSUN shall also be solely responsible for providing, in the format required by the applicable Regulatory Health Authorities, the data and information required



to be submitted to such Regulatory Health Authorities for Regulatory Approval of the Licensed Products in the Territory, including without limitation data from all clinical trials and all Manufacturing and controls information required for Regulatory Approval of such Licensed Product by the Regulatory Health Authorities in the Territory. FOSUN shall, subject to Section 4.03(a), use Commercially Reasonable Efforts to obtain Regulatory Approval for Licensed Products in the Territory.

(c) During the Term, FOSUN shall report to Ardelyx regarding the status of each pending or proposed IND equivalent application or Drug Approval Application covering a Licensed Product in the Territory.

(d) FOSUN shall notify Ardelyx of any request for [\*\*\*] and FOSUN shall allow [\*\*\*], in Ardelyx's sole discretion. The foregoing shall apply with respect to [\*\*\*]. FOSUN shall as soon as reasonably practicable furnish Ardelyx with copies of all substantive correspondence FOSUN has had with any Regulatory Health Authority, and contact reports concerning substantive conversations or substantive meetings with any Regulatory Health Authority, in each case relating to any such IND equivalent or Drug Approval Application.

#### **Section 4.06 Adverse Event Reporting and Product Recall.**

(a) Each Party agrees to provide the other Party with the necessary safety information required by Regulatory Health Authorities to comply with Applicable Laws. Ardelyx will hold the safety database for the Licensed Compounds and the Licensed Products and FOSUN will provide safety information as required by Applicable Laws, in a timely manner. As promptly as possible following the Effective Date, but no later than the commencement of the first clinical trial by FOSUN in the Territory, the Parties will enter into a detailed safety agreement (the "**Safety Agreement**"), governing, among other things, appropriate adverse event reporting procedures relating to Licensed Products and reflecting the provisions set forth above in this Section 4.06(a). The Parties shall also enter into a detailed pharmacovigilance agreement at such time as the phase of Development of a Licensed Product by a Party, its Affiliates or Sublicensees would make such an agreement necessary or advisable.

(b) In the event that any government agency or authority issues or requests a recall or takes similar action in connection with the Licensed Compounds or the Licensed Products, or in the event either Party determines that an event, incident or circumstance has occurred that may result in the need for a recall or market withdrawal, the Party notified of or desiring such recall or market withdrawal shall promptly advise the other Party thereof.

**Section 4.07 General Provisions Regarding Commercialization.** FOSUN will control and perform, itself or through its Affiliates, Sublicensees or Distributors, the Commercialization of all Licensed Products in the Field throughout the Territory and, as a result, shall, subject to Section 4.03(a), be obligated and responsible for using Commercially Reasonable Efforts to carry out Commercialization activities pursuant to each Commercialization Plan and in accordance with each Commercialization Budget. For the avoidance of doubt FOSUN (or, as the case may be, its Affiliates or Sublicensees) shall book all of their sales of each Licensed Product, coordinate the Manufacture and supply of all Licensed Products required for Commercialization, invoice Third Parties (including Distributors) that purchase Licensed Products from FOSUN (or its Affiliates or

Sublicensees), and collect payment for all Licensed Products sold by FOSUN (or its Affiliates or Sublicensees). Except to the extent otherwise described in this Agreement, FOSUN will be solely responsible for, and will bear all costs relating to, the Commercialization of the Licensed Products in the Territory.

## **ARTICLE V. MANUFACTURE AND SUPPLY**

### **Section 5.01 Supply.**

(a) Ardelyx shall be responsible for supplying such quantities of Licensed Compound and Licensed Product for use in the Development and Commercialization of the Licensed Products under this Agreement as the Parties shall agree to and document in the MSA discussed below (the “**API Supply**”). Ardelyx shall also be responsible for supplying such quantities of Licensed Product and placebos for FOSUN’s Development activities hereunder as the Parties shall agree to and document in the MSA discussed below (the “**Development Supply**”). All API Supply and Development Supply delivered to FOSUN shall be paid for by FOSUN at the Transfer Price. Ardelyx shall deliver such quantities of API Supply to FOSUN for Development as the Parties shall agree.

(b) Ardelyx shall continue to supply sufficient Licensed Product to FOSUN for Commercialization, at the Transfer Price, until FOSUN notify Ardelyx in accordance with the terms of the MSA to reduce or cease the supply due to the fact that (i) FOSUN is permitted under Applicable Law to Manufacture, or to have Manufactured, Licensed Product for Commercialization on its own, (ii) FOSUN has developed a commercial process for the Manufacture of the Licensed Product and has scaled up that process to Manufacture the Licensed Product in such volumes as reasonably take into account the anticipated demand for the Licensed Product throughout the Territory, and (iii) FOSUN has completed all the necessary regulatory procedures with CFDA to enable FOSUN to Manufacture commercial supplies of the Licensed Product. FOSUN shall use Commercially Reasonable Efforts to complete all activities set forth in (i) through (iii) above.

(c) The Parties agree and acknowledge that a separate manufacturing and supply agreement (“**MSA**”) is required to be entered into between the Parties to further govern the supply obligations undertaken by Ardelyx hereunder. The Parties shall also enter into a separate Quality Assurance Agreement (“**QAA**”) that shall define the manufacturing and supply quality responsibilities of the Parties for the Licensed Compound and the Licensed Product. The MSA and the QAA shall be negotiated in good faith between the Parties and be executed as promptly as possible following the Effective Date. The Parties’ objective is that the MSA and the QAA shall be entered into as soon as possible and within [\*\*\*] ([\*\*\*)] days of the Effective Date.

**Section 5.02 Development Work.** Ardelyx covenants to FOSUN that it is and will be capable of satisfying its obligations to supply Licensed Compound and Licensed Product in the quantities and timeframes that are agreed to by the Parties and set forth in the MSA. In the event that Ardelyx is required to engage in any Development activities [\*\*\*] for the purposes of (i) [\*\*\*], and (ii) [\*\*\*], then in any such event FOSUN shall reimburse Ardelyx for its reasonable internal

costs, including its FTE costs, and any and all external costs incurred by Ardelyx in connection with completing such Development work.

**Section 5.03 Material Transfer.** Ardelyx shall transfer and the SC shall coordinate to transfer all Licensed Know-How, including, but not limited to all dossiers for registration in US, that is necessary and/or useful to Develop, have Developed, Manufacture, have Manufactured, Commercialize, have Commercialized the Licensed Product in the Territory to FOSUN. Ardelyx shall make such Licensed Know-How available to FOSUN within [\*\*\*] ([\*\*\*)] days after the determination by the SC of the specific Licensed Know-How required.

**Section 5.04 Manufacturing after Certain Terminations** If, after such time as when FOSUN has assumed responsibility for the Manufacture of Licensed Products and this Agreement is terminated, FOSUN shall, as soon as reasonably practicable, provide to Ardelyx, if Ardelyx so requests, all Information and Materials Controlled by FOSUN and relating specifically to the Licensed Product, including without limitation development and manufacturing reports. FOSUN shall provide Ardelyx copies of all Regulatory Documentations sufficient to enable Ardelyx to Manufacture and supply Ardelyx's requirements of all Licensed Products as promptly as possible thereafter. At Ardelyx's election, in addition to its obligation set forth in [Section 11.03\(h\)](#) to seek to assign to Ardelyx Third Party agreements with respect to the Manufacture of Licensed Product, FOSUN shall transfer to Ardelyx any inventory of Licensed Compound and/or Licensed Product that FOSUN has in its Control as of the effective date of such foregoing termination (except for such quantities as FOSUN may need to retain for reference purposes), and Ardelyx shall in consideration thereof pay to FOSUN the Cost of Goods for such inventory. At all times, FOSUN shall provide reasonable assistance to Ardelyx with respect to the transfer of Information and Materials so as to permit Ardelyx to begin Manufacturing and supplying its requirements of Licensed Product as soon as possible to minimize any disruption in the continuity of supply. FOSUN covenants to Ardelyx that any Third Party agreements under which FOSUN engages such Third Party to manufacture Licensed Products shall contain provisions regarding the allocation of Intellectual Property Rights and rights in work product that are consistent with the terms of this Agreement and will enable FOSUN to fulfill its obligations to Ardelyx under this Section.

**Section 5.05 Other Supply.** Notwithstanding anything to the contrary herein, FOSUN shall not supply Licensed Compound or Licensed Products to any Third Party for any Third Party use, other than to Develop and Commercialize Licensed Products in compliance with this Agreement. In addition, FOSUN shall not license any Third Party (other than a Sublicensee or other sublicensee consistent with the terms and conditions of this Agreement) to make or have made Licensed Products, except to carry out the provisions of this [Article V](#). FOSUN shall not Manufacture or have Manufactured Licensed Compound, nor shall FOSUN authorize or license any Third Party to Manufacture or to have Manufactured Licensed Compound. FOSUN shall not purchase any Licensed Compound from any party other than Ardelyx, and FOSUN shall not purchase any Licensed Product from any party other than Ardelyx or a Third Party under written agreement with FOSUN to Manufacture Licensed Product for sale to FOSUN, its Affiliates and/or its Sublicensees.

**ARTICLE VI.  
CONSIDERATION**

**Section 6.01 Upfront.** As payment for the rights and licenses granted to FOSUN by Ardelyx under this Agreement, FOSUN shall pay to Ardelyx a nonrefundable one-time upfront payment of twelve million U.S. dollars (U.S. \$12,000,000) within thirty (30) Business Days after the Effective Date. The upfront payment shall not be creditable against any other payments FOSUN is obligated to make to Ardelyx under this Agreement.

**Section 6.02 Milestone Payments.**

(a) FOSUN shall make the following one-time, nonrefundable milestone payments to Ardelyx within [\*\*\*] ([\*\*\*) Business Days following the first achievement of each of the following milestone events for a Licensed Product, subject to the limitations and additional provisions set forth below in this Section 6.02:

<b>Milestone Event for a Licensed Product</b>	<b>Milestone Number</b>	<b>Milestone Payment</b>
[***]	[***]	USD [***]
[***]	[***]	USD [***]
[***]	[***]	USD [***]
[***]	[***]	USD [***]
[***]	[***]	USD [***]
[***]	[***]	USD [***]

For the avoidance of doubt, [\*\*\*].

(b) Each of the milestones set forth in Section 6.02(a) is eligible to be earned individually.

(c) No payments pursuant to Section 6.02(a) shall be creditable against any other payments FOSUN is obligated to make to Ardelyx under this Agreement.

**Section 6.03 Sales Related Milestones.**

(a) FOSUN shall make the following one-time, nonrefundable milestone payments to Ardelyx within [\*\*\*] ([\*\*\*) Business Days following the first achievement of each of the following milestones, subject to the limitations and additional provisions set forth below in this Section 6.03.

<b>Milestone Event</b>	<b>Milestone Payment</b>
[***]	[***] ([***) USD
[***]	]Fifteen Million] ([***) USD
[***]	[***] ([***) USD
[***]	[***] ([***) USD

(b) Sales between FOSUN, its Affiliates and Sublicensees shall not be subject to sales milestones hereunder. Sales milestones shall be calculated on FOSUN's, its Affiliates' and Sublicensees' sales of the Licensed Products to a Third Party, including Distributors (but excluding for the avoidance of doubt Sublicensees).

(c) In the event that more than one of the sales milestones set forth in Section 6.03(a) are achieved in the same Calendar Year, the payment associated with each sales milestone achieved in such Calendar Year shall be due and payable by FOSUN to Ardelyx following the end of such Calendar Year.

(d) No payments pursuant to Section 6.03(a) shall be creditable against any other payments FOSUN is obligated to make to Ardelyx under this Agreement.

**Section 6.04 Royalties.**

(a) Subject to the provisions set forth below in Section 6.04(c) through Section 6.04(f), and Section 6.05, FOSUN shall pay to Ardelyx a royalty on aggregate Annual Net Sales of the Licensed Products made by FOSUN, its Affiliates, or its Sublicensees at the following rate:

Range of Annual Net Sales	Royalty Rate
[***]	[***]%
[***]	[***]%
[***]	[***]%
[***]	[***]%

Each Royalty Rate set forth in the table above shall apply only to that portion of the Net Sales in the Territory during a given Calendar Year that falls within the indicated range. For illustration purposes only, if Annual Net Sales in the Territory during a Calendar Year is \$[\*\*\*], then the aggregate royalties payable with respect thereto will be \$[\*\*\*], with calculation as follows: (i) \$[\*\*\*] multiplied by [\*\*\*]% = \$[\*\*\*], plus (ii) \$[\*\*\*] multiplied by [\*\*\*]% = \$[\*\*\*], plus (iii) \$[\*\*\*] multiplied by [\*\*\*]% = \$[\*\*\*], and plus (iv) \$[\*\*\*] multiplied by [\*\*\*]% = \$[\*\*\*].

(b) Sales between FOSUN, its Affiliates and Sublicensees shall not be subject to royalties hereunder. Royalties shall be calculated on FOSUN's, its Affiliates' and Sublicensees' sales of the Licensed Products to a Third Party, including Distributors (but excluding for the avoidance of doubt Sublicensees).

(c) If, at any time, (i) a Generic Product receives Regulatory Approval in the Territory and (ii) the aggregate number of units of the relevant Licensed Product sold in the Territory in a given Calendar Year (after the first Calendar Year in which the Generic Product is sold in the Territory) decrease by more than [\*\*\*] percent ([\*\*\*]%) compared to the Calendar Year immediately preceding the first Calendar Year in which the Generic Product is sold, then, the royalties that would otherwise have been payable on Net Sales of such Licensed Product in the Territory under this Agreement shall be reduced by [\*\*\*] percent ([\*\*\*]%) as from the first Calendar Year in which this Section 6.04(c) applies and thereafter for so long as the aggregate number of units of the relevant Licensed Product sold in a given Calendar Year are at least [\*\*\*] percent ([\*\*\*]%) less than the number of units of such Licensed Product sold in the Calendar Year immediately preceding the first Calendar Year in which the Generic Product is sold. The calculation of the royalty reduction under this Section 6.04(c) shall be conducted separately for each Licensed Product.

(d) Any reductions set forth in Section 6.04(c) and Section 6.04(f) shall be applied in the order in which the event triggering such reduction occurs, provided that in no event shall, due to the cumulative reductions set out in Section 6.04(c), and Section 6.04(f), the royalties that would otherwise have been payable to Ardelyx under this Section 6.04 in a particular Calendar Quarter

be reduced by more than [\*\*\*] percent ([\*\*\*]%) of that which would be due pursuant to Section 6.04(a). [\*\*\*]

(e) FOSUN's obligation to pay royalties due under this Section 6.04 shall commence with respect to each separate Licensed Product, on the date of the First Commercial Sale of such Licensed Product and shall expire with respect to such Licensed Product, at the latest of: (i) the [\*\*\*] anniversary of the First Commercial Sale of such Licensed Product in the Territory, (ii) the date on which there is no longer a Valid Claim that covers the Exploitation of the Licensed Product or the Licensed Compound in the Territory, and (iii) the expiration of all Regulatory Approvals for such Licensed Product in the Territory. At such time as FOSUN's obligation to pay royalties under this Section 6.04 have expired with respect to a Licensed Product, the license granted to FOSUN under Section 2.01 shall automatically, and without further action on the part of Ardelyx or FOSUN, become non-exclusive, fully-paid, irrevocable and perpetual with respect to such Licensed Product and the Net Sales of such Licensed Product shall be excluded from royalty calculations under this Section 6.04 (including for purposes of applying thresholds and ceilings). Notwithstanding the foregoing, FOSUN's exclusivity to such Licensed Product shall continue if FOSUN elects to keep paying the royalties as defined in this Section 6.04 after the expiration of its obligation to pay royalties due.

(f) If (i) [\*\*\*] that it is necessary to obtain a license from any Third Party in order to avoid infringement of such Third Party's Patent in the Territory, (ii) such Patent claims the [\*\*\*], (iii) there are not any other [\*\*\*] alternatives available to avoid such infringement, and (iv) FOSUN is required to pay to such Third Party a royalty, milestone payments or other monetary compensation in consideration for the grant of such license ("**Third Party Compensation**"), then, provided that Ardelyx has consented in writing to the terms (including, without limitation, the payment terms) of the Third Party license under which the Third Party Compensation is payable prior to the execution of such Third Party license, for the period during which FOSUN owes royalties to Ardelyx hereunder, the amounts that would otherwise have been payable as royalties to Ardelyx under this Agreement shall be reduced by the amount of all Third Party Compensation payable by or on behalf of FOSUN to such Third Party. [\*\*\*]. For the avoidance of doubt, provided that Ardelyx has consented in writing to the terms (including, without limitation, the payment terms) of the Third Party license under which the Third Party Compensation is payable prior to the execution of such Third Party license, Ardelyx shall [\*\*\*].

**Section 6.05 Combination Products.** In the event Ardelyx is entitled to receive royalties under this Agreement from any Licensed Product sold in the form of a Combination Product in the Territory, then Net Sales for such Combination Product will be calculated by multiplying the actual Net Sales of such Combination Product in the Territory by the fraction  $A/(A+B)$ , where A is the standard sales price in the Territory of a Licensed Product, containing the same amount of Licensed Compound as the sole active ingredient as the Combination Product in question (a "**Comparable Licensed Product**"), if sold separately, and B is the standard sales price in the Territory of the ready for sale form of a product containing the same amount of the other therapeutically active ingredient(s) in the Combination Product that are not Licensed Compounds (the "**Other Ingredients**"), if sold separately. If the Other Ingredients are not sold separately in the Territory, Net Sales for the purpose of determining royalties of the Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction  $A/C$  where A is the standard sales price in the Territory of a Comparable Licensed Product,

if sold separately, and C is the standard sales price of the Combination Product in the Territory. If a Comparable Licensed Product is not sold separately, Net Sales for the purpose of determining royalties of the Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction (C-B)/C, where B is the standard sales price in the Territory of the Other Ingredients and C is the standard sales price in the Territory of the Combination Product. For the purpose of the above, the standard sales price for a Comparable Licensed Product and for each Other Ingredient shall be for a quantity comparable to that used in the Combination Product in question and of the same class, purity and potency. If neither a Comparable Licensed Product nor the Other Ingredients are sold separately in the Territory, Net Sales for the purposes of determining royalties of such Combination Product shall be determined by the Parties on the basis of a fair market value of such Comparable Licensed Product and Other Ingredient to be negotiated by the Parties in good faith, taking into account costs, overheads and profit of the relevant Licensed Compound(s), the Other Ingredients and the Combination Product. For purposes of the calculations set forth in this Section 6.05, prior to the First Commercial Sale of a Combination Product, the SC shall discuss the calculations set forth herein, including the standard sale prices to be used in such calculation.

**Section 6.06 Sales by Sublicensees.** In the event FOSUN grants sublicenses to one or more Sublicensees to make or sell Licensed Products to the extent permitted hereunder, such sublicenses shall include without limitation an obligation for the Sublicensee to account for and report its Net Sales of such Licensed Products on the same basis as if such sales were Net Sales by FOSUN, and FOSUN shall pay royalties and sales milestones to Ardelyx as if the Net Sales of the Sublicensee were Net Sales of FOSUN.

**Section 6.07 Royalty Payments and Reports.** The royalties payable under Section 6.04 shall be calculated quarterly as of the last day of March, June, September and December respectively for the Calendar Quarter ending on that date. FOSUN shall deliver to Ardelyx a report summarizing the Net Sales of Licensed Products during each Calendar Quarter following the First Commercial Sale of a Licensed Product in the Territory. A draft of such report shall be provided within [\*\*\*] days the end of each Calendar Quarter for which royalties are due from FOSUN to allow Ardelyx to estimate its royalty payments from FOSUN. A final report shall be delivered within [\*\*\*] ([\*\*\*) Business Days following the end of each Calendar Quarter. Any royalties payable to Ardelyx or its designee under this Agreement shall be paid on the date that final report for the Calendar Quarter is delivered to Ardelyx under this Section 6.07.

**Section 6.08 Taxes.**

(a) The royalties, milestones and other amounts payable by FOSUN to Ardelyx pursuant to this Agreement (“**Payments**”) shall not be reduced on account of Taxes unless required by Applicable Laws. To the extent any payments made by FOSUN pursuant to this Agreement become subject to withholding Taxes under Applicable Laws, FOSUN shall deduct and withhold the amount of such Taxes for the account of Ardelyx to the extent required by Applicable Laws; such amounts payable to Ardelyx shall be reduced by the amount of withholding Taxes deducted and withheld; and FOSUN shall pay the amounts of such Taxes to the proper governmental authority in a timely manner and transmit to Ardelyx an official tax certificate or other evidence of such tax obligations together with proof of payment from the relevant governmental authority of all amounts deducted and withheld sufficient to enable Ardelyx to claim such payment of Taxes.



Any such withholding Taxes required under Applicable Laws to be paid or withheld shall be an expense of, and borne solely by, Ardelyx. Except as provided in this Section 6.08(a), all taxes or duties in connection with payments made by FOSUN for Indirect Taxes, including any value added or similar tax or local tax or surcharge on value added taxes and any import duty or fees, shall be borne by FOSUN.. Notwithstanding the foregoing, if Ardelyx is entitled (whether under any applicable tax treaty or otherwise under Applicable Laws) to a reduction in the rate of, or the elimination of, withholding Tax, it may deliver to FOSUN or the appropriate governmental authority (with the assistance of FOSUN to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve FOSUN of its obligation to withhold Tax, and FOSUN shall apply the reduced rate of withholding, or dispense with withholding, as the case may be. FOSUN agrees to take reasonable and lawful efforts to minimize such Taxes to Ardelyx. FOSUN shall cooperate with Ardelyx as reasonably requested in any claim for refund or application to any Tax Authority. If FOSUN intends to withhold Tax from any Payment, FOSUN shall inform Ardelyx reasonably in advance of making such Payment to permit Ardelyx an opportunity to provide any forms or information or obtain any Tax Authority approval as may be available to reduce or eliminate such withholding.

(b) Tax Gross-up. Notwithstanding anything to the contrary herein, if (i) FOSUN redomiciles or assigns its rights or obligations under this Agreement, (ii) as a result of such redomiciliation or assignment, FOSUN (or its assignee) is required by Applicable Law to withhold taxes, or such redomiciliation or assignment results in the imposition of Indirect Taxes that were not otherwise applicable, from or in respect of any amount payable under this Agreement, and (iii) such withholding taxes or Indirect Taxes exceed the amount of withholding taxes or Indirect Taxes that would have been applicable but for such redomiciliation or assignment, then any such amount payable to Ardelyx pursuant to this Agreement shall be increased to take into account such withholding taxes or Indirect Taxes as may be necessary so that, after making all required withholdings (including withholdings on the additional amounts payable) and/or paying such Indirect Taxes, as the case may be, Ardelyx receives an amount equal to the sum it would have received had no such increased withholding been made and no such Indirect Taxes had been imposed. The obligation to pay additional amounts pursuant to the preceding sentence shall not apply, however, to the extent such increased withholding tax or Indirect Taxes would not have been imposed but for the assignment by Ardelyx of its rights or obligations under this Agreement or the redomiciliation of Ardelyx outside of the United States, to the extent such assignment or redomiciliation occurs after the redomiciliation or assignment by FOSUN described in the first sentence of this Section 6.08(b). Solely for purposes of this Section 6.08(b), a Party's "**domicile**" shall include its jurisdiction of incorporation or tax residence and a "**redomiciliation**" shall include a reincorporation or other action resulting in a change in tax residence of the applicable Party or its assignee.

(c) Notwithstanding anything to the contrary contained in this Section 6.08 or elsewhere in this Agreement, the following shall apply with respect to Indirect Taxes. If any Indirect Taxes are chargeable in respect of any Payments, FOSUN shall be responsible for such Indirect Taxes and shall not reduce any Payments due Ardelyx hereunder as a result of such Indirect Taxes. FOSUN shall pay such Indirect Taxes at the applicable rate in respect of any such Payments following the receipt, where applicable, of an Indirect Taxes invoice issued by Ardelyx in respect of those Payments, such Indirect Taxes to be payable on the due date of the payment of

the Payments to which such Indirect Taxes relate or at the time such Indirect Taxes are required to be collected by Ardelyx, in the case of payment of Indirect Taxes to Ardelyx. The sum of the net amount received by Ardelyx and the withholding income Tax levied by China Tax Authority discussed in Section 6.08(a) above for each payment shall not be less than the amount of the Upfront and Milestone Payments set forth in Section 6.01, 6.02 and 6.03. The Parties shall issue invoices for all goods and services supplied under this Agreement consistent with Indirect Tax requirements, and to the extent any invoice is not initially issued in an appropriate form, FOSUN shall promptly inform Ardelyx and shall cooperate with Ardelyx to provide such information or assistance as may be necessary to enable the issuance of such invoice consistent with Indirect Tax requirements.

**Section 6.09 Payments or Reports by Affiliates.** Any Payment required under any provision of this Agreement to be made to Ardelyx or any report required to be made by FOSUN shall be made by an Affiliate of FOSUN if such Affiliate is designated by FOSUN as the appropriate payer or reporting entity.

**Section 6.10 Mode of Payment.** All payments set forth in this Article VI shall be remitted by wire transfer to the bank account of Ardelyx as designated in writing to FOSUN.

**Section 6.11 Payment Currency.** All amounts payable and calculations under this Agreement shall be in United States dollars. As applicable, Net Sales and any adjustments to payments under this Agreement shall be translated into United States dollars at an exchange rate determined by using the 30-day trailing average of the daily Middle Exchange Rate for the renminbi of People's Bank of China (the central bank of the government of China) as published daily at <http://www.safe.gov.cn/wps/portal/english/Home>.

**Section 6.12 Imports.** For the avoidance of doubt, the Parties acknowledge and agree that none of the milestones or royalties payable under this Agreement are related to the license (or right) to import or any import of Licensed Products. FOSUN shall be responsible for any import clearance, including payment of any import duties and similar charges, in connection with any Licensed Products or Licensed Compounds transferred to FOSUN under this Agreement. The Parties shall co-operate in accordance with Applicable Laws to ensure where permissible that no import duties are paid on imported materials. Where import duties are payable, the Parties shall co-operate to ensure that the Party responsible for shipping values the materials in accordance with Applicable Laws and minimizes where permissible any such duties and any related import taxes that are not reclaimable from the relevant authorities.

**Section 6.13 Discounted Sales.** In the event that one or more Licensed Products is included as part of a package of products offered to customers of FOSUN, and discounts on packages including Licensed Products are offered independently in the Territory, FOSUN shall not discount the price of the Licensed Products sold as part of a package unreasonably compared to the discount FOSUN offers on prices of the other products included in such package.

**ARTICLE VII.  
CONFIDENTIALITY**

**Section 7.01 Confidentiality.** The Parties agree that the Party receiving Confidential Information disclosed by or on behalf of the other Party pursuant to this Agreement shall, and shall cause its officers, directors, employees, agents, Affiliates and Sublicensees and other Persons to which a sublicense is granted, to, keep confidential and not publish or otherwise disclose or use for any purpose other than to conduct its activities under this Agreement or otherwise as expressly authorized by this Agreement any Confidential Information furnished to it by or on behalf of the other Party pursuant to this Agreement.

**Section 7.02 Exceptions.** Notwithstanding the foregoing, the obligations set forth in Section 7.01 shall not apply in respect of Confidential Information to the extent that it can be established by the receiving Party that such Confidential Information:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by or on behalf of the other Party;

(b) was generally available to the public (or otherwise part of the public domain at the time of its disclosure to the receiving Party);

(c) was independently developed without use of the disclosing Party's information, as evidenced by contemporaneous written records;

(d) became generally available to the public or otherwise part of the public domain after its disclosure to the receiving Party and other than through any act or omission of the receiving Party in breach of this Agreement; or

(e) was disclosed to the receiving Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the disclosing Party not to disclose such information to others.

**Section 7.03 Receipt of Third Party Information and Materials.** Neither Party shall knowingly receive documents relating to Licensed Products or Licensed Compounds under an obligation of confidentiality to Third Parties that requires the Party receiving such documents to withhold access to the other Party without such Party's written consent.

**Section 7.04 Authorized Disclosure.** Each Party may disclose Confidential Information to the extent that such disclosure is:

(a) required by law, order, or regulation of a government agency or a court of competent jurisdiction, or by the rules of a securities exchange, provided that the Party required to make such disclosure shall (i) give the other Party reasonable advance notice of and an opportunity to comment on any such required disclosure, (ii) if requested by the other Party, use Commercially Reasonable Efforts to obtain protective orders or any available limitations on or exemptions from such disclosure requirement where applicable and practicable;

(b) made to a patent office for the purposes of filing or enforcing a Patent as permitted in this Agreement, provided, however, that reasonable measures shall be taken to assure confidential treatment of such information, to the extent such protection is available;

(c) made by a Party or its Affiliates, Distributors, Sublicensees or other sublicensees to the Regulatory Health Authority for the purposes of any filing, application or request for Regulatory Approval for Licensed Compounds or Licensed Products as permitted in this Agreement;

(d) made to advisors, actual or potential Third Party partners, investors, licensees, sublicensees or acquirers of all or substantially all of the assets to which this Agreement relates;

(e) made by FOSUN or its Affiliates, Distributors, Sublicensees, or other sublicensees to Third Parties as may be necessary or useful in connection with the Exploitation of the Licensed Compounds or Licensed Products as contemplated by this Agreement, including subcontracting or sublicensing transactions in connection therewith; or

provided that with respect to disclosures as per subsection (d) and (e) or the following sentence, the Party making such disclosures shall ensure that each Third Party recipient is bound by obligations of confidentiality no less restrictive than those contained in this Agreement and shall be liable to the other Party for any breach of such confidentiality obligations by the relevant recipient. In addition (but without prejudice to) the above provisions, each Party shall be entitled to disclose, under a binder of confidentiality containing provisions as protective as those of this Article VII, Confidential Information to any Third Party for the purpose of carrying out activities authorized under this Agreement, including without limitation disclosures to Sublicensees or other sublicensees.

**Section 7.05 Survival.** This Article VII (other than Section 7.03) shall survive for a period of [\*\*\*] ([\*\*\*) years following the termination or expiration of the Agreement, provided that the First Commercial Sale of a Licensed Product had commenced at the time this Agreement terminates or expires. However, this Article VII (other than Section 7.03) shall survive for a period of [\*\*\*] ([\*\*\*) years following the Effective Date of this Agreement, provided that the First Commercial Sale of a Licensed Product had not commenced at the time this Agreement terminates or expires.

**Section 7.06 Termination of Prior Agreements.** This Agreement supersedes the Confidentiality Agreement between Ardelyx and FOSUN dated as of February 23, 2017, (the “**CDA**”). All Information and Materials exchanged between the Parties under the CDA shall be deemed Confidential Information and shall be subject to the terms of this Article VII, and shall be included within the definitions of Licensed Technology and FOSUN [\*\*\*] Technology, as applicable.

**Section 7.07 Publications.** Except as required by law, each Party agrees that it shall not publish or publicly present any information relating to Licensed Compounds or Licensed Products, (a) without the opportunity for prior review by the other Party and (b) other than in compliance with this Section 7.07. Each Party shall provide to the other Party the opportunity to review any proposed publications or presentations (including without limitation information to be presented

verbally) that relate to Licensed Compounds or Licensed Products as early as reasonably practical, but at least [\*\*\*] ([\*\*\*)] days prior to their intended submission for publication or presentation and such submitting Party agrees, upon written request from the other Party within the Review Period (as defined below), not to submit such abstract or manuscript for publication or to make such presentation until the other Party agrees, which agreement shall not be unreasonably withheld. The other Party shall have [\*\*\*] ([\*\*\*)] days after its receipt of any such publication or presentation (the “**Review Period**”) to notify the submitting Party in writing of any specific objections to the intended publication or presentation. Each Party shall, in any such publication or presentation, delete from the proposed disclosure any Confidential Information and Materials of the other Party. Additionally, if the other Party notifies the submitting Party within the Review Period that the other Party objects to such disclosure on the basis that a patent application claiming information contained in such disclosure should be filed prior to such disclosure, the submitting Party agrees to reasonably delay disclosure of the relevant information, for up to [\*\*\*] ([\*\*\*)] days after the other Party’s timely notification of its objection as per the above, or until such application has been filed, if earlier. Once any such abstract or manuscript is accepted for publication, the submitting Party will provide the other Party with a copy of the final version of the manuscript or abstract.

## **ARTICLE VIII. OWNERSHIP OF INTELLECTUAL PROPERTY AND PATENT RIGHTS**

**Section 8.01 Disclosure.** During the Term, the Parties shall promptly disclose to one another all Joint Technology and Sole Program Know-How (whether patentable or not).

### **Section 8.02 Ownership.**

(a) Inventorship of all inventions and other Know-How conceived or first made in the course of activities performed after the Effective Date in the course of the Parties’ performance under this Agreement shall be determined in accordance with the laws of inventorship of the United States. Subject to the licenses granted in Article II and to the other provisions of this Agreement, all such inventions and other Know-How invented by employees or independent contractors of one Party (“**Sole Program Know-How**”) shall be solely owned by the inventing Party, and any inventions and Know-How that are invented jointly by employees or independent contractors of each Party will be owned jointly by the Parties (“**Joint Know-How**”). For clarity, Ardelyx’s Development and Commercialization of a Licensed Compound or Licensed Product outside of the Field and/or outside of the Territory shall not be activities performed in the course of Ardelyx’s performance under this Agreement, and any inventions and other Know-How conceived or first made during the course of such Development and Commercialization shall be Ardelyx [\*\*\*] Technology rather than Sole Program Know-How owned by Ardelyx.

(b) To the extent permissible under Applicable Laws, each Party will ensure that prior to conducting work on such Party’s behalf under this Agreement, each employee and contractor is obligated by Applicable Law, or written contract to (i) promptly disclose to such Party of all inventions and Know-How conceived or reduced to practice by such employee or contractor during any performance under this Agreement, (ii) automatically assign to such Party all right, title and interest in and to all such inventions and Know-How and all Intellectual Property Rights therein, and (iii) adhere to similar obligations of confidentiality as are set forth in this Agreement. Each

Party will require each employee and contractor conducting work on such Party's behalf under this Agreement to maintain records in sufficient detail and in a good scientific manner appropriate for regulatory purposes and purposes of pursuing Patent protection on inventions to properly reflect all work done.

### **Section 8.03 Prosecution and Maintenance of Patent Rights.**

( a ) Ardelyx. Ardelyx (or with respect to Ardelyx [\*\*\*] Patents, Ardelyx or its licensor) shall be primarily responsible for and control the worldwide preparation, filing, prosecution (including without limitation conducting any interferences, oppositions, reissue proceedings, reexaminations and patent term extensions) and maintenance of Licensed Patents, Ardelyx [\*\*\*] Patents and Joint Patents (collectively, the "**Ardelyx Controlled Patents**"); provided that with respect to all Ardelyx Controlled Patents, other than Ardelyx [\*\*\*], Ardelyx shall provide FOSUN with advance copies of, and a reasonable opportunity to comment upon, proposed patent filings, related prosecution strategies and proposed correspondence with patent officials, all to the extent in the Territory and relating to any Ardelyx Controlled Patents (other than the Ardelyx [\*\*\*]), and will consider comments received from FOSUN with respect to such proposed filings, strategies and correspondence in the Territory in good faith and will not unreasonably reject such comments. Ardelyx agrees to discuss in good faith any changes reasonably requested by FOSUN to such filings, strategies and correspondence in the Territory upon their being received.

( b ) FOSUN. FOSUN shall be primarily responsible for and control the worldwide preparation, filing, prosecution (including without limitation conducting any interferences, oppositions, reissue proceedings, reexaminations and patent term extensions) and maintenance of FOSUN Sole Invention Patents, FOSUN [\*\*\*] Patents ("**FOSUN Controlled Patents**") using in-house patent attorneys or counsel reasonably acceptable to Ardelyx; provided with respect to all FOSUN Controlled Patents, other than FOSUN [\*\*\*], that FOSUN shall provide Ardelyx with advance copies of, and a reasonable opportunity to comment upon, proposed patent filings, related prosecution strategies and proposed correspondence with patent officials or other Third Parties relating to any FOSUN Sole Invention Patents, and will consider comments received from Ardelyx with respect to such proposed filings, strategies and correspondence in good faith and will not unreasonably reject such comments. FOSUN agrees to discuss in good faith any changes reasonably requested by Ardelyx to such filings, strategies and correspondence promptly upon their being received. FOSUN agrees to implement any such recommended changes with the goal of optimizing overall patent protection for Licensed Compounds and Licensed Products, and Joint Technology. In any event, FOSUN will not finally abandon any claims and will not limit any claims that are specific to Licensed Compounds or Licensed Products without Ardelyx's prior written consent.

(c) The Party responsible for prosecuting Patents pursuant to Section 8.03(a) or Section 8.03(b) shall provide all documentation it is required to provide pursuant to such Sections so as to provide the other Party a reasonable opportunity to review and comment thereon in advance of filing. A Party providing comments in accordance with Section 8.03(a) or Section 8.03(b) shall provide such comments expeditiously and in any event in reasonably sufficient time to meet any filing deadline communicated to it by the other Party that is consistent with the preceding sentence. The Party receiving any such patent application and correspondence shall maintain such

information in confidence pursuant to Article VII, except (for the avoidance of doubt) for patent applications that have been published and official correspondence that is publicly available.

(d) Other than as described in Section 8.04(c) below, after the Effective Date, the Party prosecuting patent applications and maintaining Patents pursuant to this Section 8.03 shall be solely responsible for all costs and expenses associated with the filing, prosecution and maintenance of such Patents.

(e) If FOSUN decides not to file, prosecute or maintain a FOSUN Controlled Patent pursuant to Section 8.03(b), it shall give Ardelyx reasonable notice to that effect sufficiently in advance of any deadline for any filing with respect to such Patent to permit Ardelyx or its licensees in the territories where FOSUN has decided not to file, prosecute or maintain the FOSUN Controlled Patent to carry out such activity (but with respect to FOSUN [\*\*\*] Patents only to the extent that the Patent is a FOSUN [\*\*\*] Patent). After receiving such notice, Ardelyx may elect by written notice to FOSUN within [\*\*\*] ([\*\*\*)] days after receiving such notice from FOSUN to file, prosecute and maintain the relevant Patent, at its sole cost and expense. For the avoidance of doubt, where FOSUN is in receipt of an official action with a shortened response deadline of [\*\*\*] ([\*\*\*)] days or less, FOSUN will communicate such notice to Ardelyx as soon as possible and Ardelyx may make its election (pursuant to the foregoing sentence) no later than [\*\*\*] ([\*\*\*)] days prior to the deadline. If Ardelyx does so elect, then FOSUN shall cooperate with Ardelyx as necessary to enable Ardelyx to perform such acts as may be reasonably necessary for Ardelyx to file, prosecute or maintain such Patent, including the execution and filing of appropriate instruments and to facilitate the transition of such patent activities to Ardelyx.

(f) Each Party agrees to bring to the attention of the other Party any Third Party Patent it discovers, or has discovered, and which relates to the subject matter of this Agreement.

#### **Section 8.04 Enforcement Rights.**

##### **(a) Infringement by Third Parties in the Territory**

(i) The Party first having knowledge that any (x) Ardelyx Controlled Patents or (y) FOSUN Controlled Patents, in each case, claiming or covering inventions that are necessary or useful to Exploit a Licensed Compound or Licensed Product, is infringed, or misappropriated by a Third Party, or suspected of being infringed or misappropriated by a Third Party in the Territory shall promptly notify the other Party thereof in writing. Such notice shall set forth the facts of that infringement, misappropriation, or suspected infringement or misappropriation in reasonable detail.

(ii) Ardelyx (or in the case of Ardelyx [\*\*\*] Patents, Ardelyx and/or Ardelyx's licensee) shall have the first right, but not the obligation, to institute, prosecute, and control any action or proceeding or negotiation of any settlements at its expense with respect to any infringement of Ardelyx Controlled Patents, by counsel of its own choice. With respect to actions, proceedings or settlements in the Territory, FOSUN shall have the right to participate in such action or negotiations at its expense and be represented if it so desires by counsel of its own choice. If necessary, at Ardelyx's discretion, FOSUN agrees (i) in any such action in the Territory, and (ii) in any such action outside of the Territory with

respect to a Joint Patent, to be joined as a party plaintiff and to give Ardelyx (or Ardelyx's licensee or licensor, as the case may be), reasonable assistance and any needed authority to control, file, and to prosecute such action, at Ardelyx's or its licensee's or licensor's expense. If Ardelyx or its licensee or licensor, as the case may be, elects not to institute and prosecute an action or proceeding or to conduct such negotiation to abate such infringement, within a period of [\*\*\*] ([\*\*\*)] days after both Parties become aware of the infringement or suspected infringement, then Ardelyx shall discuss with FOSUN the reasons for this decision. FOSUN shall then have the right, but not the obligation, to institute, prosecute, and control any such action in the Territory at its expense (but with respect to Ardelyx [\*\*\*] Patents, only to the extent that the Patent is an Ardelyx [\*\*\*] Patent). In such case, Ardelyx agrees, and to use Commercially Reasonable Efforts to cause its licensor to be joined as a party plaintiff and to give FOSUN reasonable assistance and any needed authority to control, file, and prosecute the suit as may be necessary; provided, however, that Ardelyx and/or its licensor if the licensor is the owner of such Patent, shall have the right to participate at its expense in such action and be represented if it so desires by counsel of its own choice. No settlement or consent judgment or other voluntary final disposition of a suit in the Territory under this Section 8.04(a)(ii) may be entered into without the consent of Ardelyx (and in the case of an Ardelyx [\*\*\*] Patent owned by an Ardelyx licensor, such licensor) and FOSUN, which consent shall not be withheld, delayed or conditioned unreasonably.

(iii) FOSUN (or in the case of FOSUN [\*\*\*] Patents, FOSUN and/or FOSUN's licensor or licensee) shall have the first right, but not the obligation, to institute, prosecute, and control any action or proceeding or negotiation of any settlements with respect to any infringement of FOSUN Controlled Patents, by counsel of its own choice with Ardelyx (or, with respect to actions or proceedings or negotiations outside of the Territory, Ardelyx and/or its licensees in such territory where the infringement is alleged to have occurred) having the right to participate in such action or negotiations at its expense and be represented if it so desires by counsel of its own choice. If necessary, Ardelyx agrees in any such action to be joined as a party plaintiff and to give FOSUN reasonable assistance and any needed authority to control, file, and to prosecute such action, at FOSUN's expense. If FOSUN elects not to institute and prosecute an action or proceeding or to conduct such negotiation to abate such infringement, within a period of [\*\*\*] ([\*\*\*)] days after both Parties become aware of the infringement or suspected infringement, then FOSUN will discuss with Ardelyx the reasons for this decision. Ardelyx (or in the case of alleged infringement outside of the Territory, Ardelyx and/or its licensees in such territories where the infringement is alleged to have occurred) shall then have the right, but not the obligation, to institute, prosecute, and control any such action in the Territory. In such case, FOSUN agrees to be joined as a party plaintiff and to give Ardelyx (or its licensee, as the case may be) reasonable assistance and all authority to control, file, and prosecute the suit as may be necessary; provided, however, that FOSUN shall have the right to participate at its expense in such action and be represented if it so desires by counsel of its own choice. No settlement or consent judgment or other voluntary final disposition of a suit (i) in the Territory under this Section 8.04 (a)(iii) may be entered into without the joint consent of Ardelyx and FOSUN, which consent shall not be withheld, delayed or conditioned unreasonably, and (ii) outside of the Territory under this Section 8.04(a)(iii)



may entered into without the consent of Ardelyx, FOSUN and, if applicable, Ardelyx's licensee in the territory where the infringement is alleged to have occurred..

(iv) With respect to any proceeding, negotiation or settlement with respect to an alleged infringement within or outside of the Territory, any and all costs that are incurred by the Party bringing suit in the exercise of rights under Section 8.04(a) (including without limitation the internal costs and expenses specifically attributable to such suit) shall be reimbursed first out of any damages or other monetary awards recovered in favor of the Parties. If such recovery is insufficient to reimburse the costs of FOSUN, Ardelyx and Ardelyx's licensees, if applicable, then each Party shall receive a pro rata portion of the recovery based on such Party's costs relative to all costs incurred by the Parties in such action. If FOSUN is the Party bringing suit in the Territory, any remaining damage awards shall be deemed Net Sales for the purposes of Section 6.04. If Ardelyx (or its licensor) is the only Party bringing suit in the Territory, [\*\*\*] shall be distributed [\*\*\*]. If the suit is brought outside of the Territory, [\*\*\*] shall be distributed [\*\*\*].

(b) **Defense and Settlement of Third Party Claims Against Licensed Products.** If a Third Party asserts that a Patent or other right owned or controlled by it is infringed by the Development, Manufacture, or Commercialization of any Licensed Compound or Licensed Product in the Territory, the Party first obtaining knowledge of such a claim shall immediately provide the other Party written notice of such claim and the related facts in reasonable detail. In such event, the Parties shall discuss how best to control the defense of any such claim. In the any event Ardelyx shall cooperate with FOSUN in any such defense. Both Parties shall have the right to participate in such defense and to be represented in any such action by counsel of its selection.

(c) **Allocation of Expenses Incurred Pursuant to Section 8.04.** The expenses of patent defense, settlement, and judgments pursuant to Section 8.04(b) or any action pursuant to Section 8.04(b) or Section 8.04(d) shall be borne [\*\*\*]

( d ) **Settlement of Third Party Claims for Infringement in the Territory; Payment of Third Party Royalties.** If a Third Party asserts that a Patent or other right owned or controlled by it is infringed by the Development, Manufacture, or Commercialization or other Exploitation of any Licensed Compound or Licensed Product in the Territory, and as a result of settlement procedures or litigation under Section 8.04 (b), FOSUN is required to pay the Third Party a royalty or make any payment of any kind for the right to sell a Licensed Product in the Territory, such expense shall be borne solely by FOSUN, subject to any applicable reductions under Section 6.04(f).

( e ) **Oppositions by Parties.** If either Party desires to bring an opposition, action for declaratory judgment, nullity action, interference, reexamination, or other attack upon the validity, title, or enforceability of any Patents Controlled by a Third Party in the Territory that claim the Manufacture, use, or sale or other Exploitation of any Licensed Compound or Licensed Product, such Party shall so notify the other Party in writing, and the Parties shall promptly confer to discuss whether to bring such action or the manner in which to settle such action. The Party not bringing an action under this Section 8.04 (e) shall be entitled to separate representation in such proceeding by counsel of its own choice and at its own expense, and shall otherwise cooperate fully with the Party bringing such action at the other Party's expense.

( f ) **Oppositions by Third Parties.** If any Patent becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, reexamination request, action for declaratory judgment, nullity action, interference, or other attack upon the validity, title, or enforceability thereof in the Territory, then the Party having the right to prosecute such Patent at such time pursuant to Section 8.03 shall control such defense, at its sole cost. The prosecuting Party shall permit the non-prosecuting Party, and in the case of an Ardelyx [\*\*\*] Patent, Ardelyx’s licensee or licensor, to participate in the proceeding to the extent permissible under law, and to be represented by its own counsel in such proceeding, at the non-prosecuting Party’s expense, or that of Ardelyx’s licensee or licensor, as the case may be. If either Party decides that it does not wish to defend against such action, then the other Party shall have a backup right to assume defense of such Third Party action at its own expense. Any awards or amounts received in defending any such Third Party action shall be allocated [\*\*\*]. Any recoveries obtained in such action shall be shared, as set forth in Section 8.04 (a)(iv).

(g) **Protective Order.** If, in any action brought pursuant to this Section 8.04 any information is the subject of a protective order that may be reviewed by counsel only, the Parties will endeavor to structure such protective order so as to enable their respective internal counsel to be included as permitted reviewers of such information.

#### **Section 8.05 Trademarks.**

(a) Subject to applicable regulatory requirements and on a Licensed Product by Licensed Product basis, FOSUN shall have the option to (i) select the Trademarks to be used for the marketing and sale of the Licensed Products in the Territory or (ii) license from Ardelyx the Trademarks owned by Ardelyx (“**Ardelyx Trademarks**”), in each case (i) and (ii), to use in connection with the Commercialization of each Licensed Product (in either case, “**Product Trademarks**”).

(b) If FOSUN decides to select its own Trademarks to be used for the marketing and sale of the Licensed Products in the Territory (the “**FOSUN Trademarks**”). FOSUN shall solely bear the full costs and expense of and be responsible for filing, prosecuting and maintaining all FOSUN Trademarks. FOSUN shall, in its sole discretion, protect, defend, and maintain each FOSUN Trademark for use with Licensed Products in the Territory, and all registrations therefor. Ardelyx shall notify FOSUN promptly in writing upon learning of any actual, alleged, or threatened infringement of a FOSUN Trademark used in connection with Licensed Compounds or Licensed Products or of any unfair trade practices, trade dress imitation, passing off of counterfeit goods, or like offenses with respect to Licensed Compounds or Licensed Products. Ardelyx shall cooperate as reasonably requested by FOSUN in any actions or proceedings brought by FOSUN to halt the infringement. All of the [\*\*\*] in bringing, maintaining, and prosecuting any action to maintain, protect, or defend a FOSUN Trademark (or registration therefor) shall be borne [\*\*\*]. Any recovery in any such action that is [\*\*\*].

(c) Ardelyx Trademark.

(i) If FOSUN decides to license one or more Ardelyx product Trademarks to Commercialize a Licensed Product in the Field and in the Territory, FOSUN shall provide a written notice (“**Trademark Notice**”) to Ardelyx indicating which such Ardelyx

Trademarks it wishes to license from Ardelyx. Upon Ardelyx's receipt of the Trademark Notice, the Parties shall discuss in good faith a license grant under which Ardelyx would grant FOSUN a royalty-free (subject to this (c)) license, sublicensable exclusive license to use the Ardelyx product Trademarks indicated in the Trademark Notice in the Field and in the Territory during the Term; provided that, in the event FOSUN wishes to use the Ardelyx product Trademark licensed pursuant to this (c) upon expiration of the Term, then FOSUN shall pay to Ardelyx a royalty on the Annual Net Sales of the applicable Licensed Product made by FOSUN, its Affiliates, or its Sublicensees at a rate of [\*\*\*] percent ([\*\*\*]%). Notwithstanding the foregoing, if FOSUN elects to keep paying the royalties as defined in Section 6.04 after the expiration of the Term, Ardelyx shall keep granting FOSUN the royalty-free (subject to this (c)) license, sublicensable exclusive license of Ardelyx product Trademarks pursuant to this (c).

(ii) Ardelyx shall solely bear the full costs and expense of and be responsible for filing, prosecuting and maintaining all Ardelyx Trademarks. Ardelyx shall, protect, defend, and maintain each Ardelyx Trademark and all registrations therefor. FOSUN shall notify Ardelyx promptly in writing upon learning of any actual, alleged, or threatened infringement of a Ardelyx Trademark used in connection with Licensed Compounds or Licensed Products or of any unfair trade practices, trade dress imitation, passing off of counterfeit goods, or like offenses with respect to Licensed Compounds or Licensed Products. Ardelyx shall have the right, but not the obligation, to institute, prosecute and control any action, proceeding or negotiation of any settlements in the Territory with respect to any infringement of Ardelyx Trademarks. FOSUN shall cooperate as reasonably requested by Ardelyx in any actions or proceedings brought by Ardelyx to halt the infringement. All of the unrecovered costs, expenses, and legal fees (including without limitation internal costs, expenses, and legal fees) in bringing, maintaining, and prosecuting any action to maintain, protect, or defend a Ardelyx Trademark (or registration therefor) shall be borne solely by Ardelyx.

(iii) If an Ardelyx Trademark becomes the subject of any proceeding commenced by a Third Party in connection with an opposition or other attack upon the validity, title, or enforceability thereof in the Territory, then Ardelyx shall have the first right, but not the obligation, to control such defense, at its sole cost. Any awards or amounts or recoveries received in defending any such Third Party action shall be allocated based on the percentage of costs incurred by the Parties in defending such action.

(d) FOSUN shall be responsible for the design and procurement of all packaging (non-commercial and commercial) and labeling of the Licensed Products.

## **ARTICLE IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **Section 9.01 Representations, Warranties, and Covenants.**

(a) Each of the Parties hereby represents and warrants to the other Party that:

(i) this Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms. The execution, delivery, and performance of the Agreement by such Party does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a Party or by which it is bound, nor violate any law or regulation of any court, Governmental Body, or administrative or other agency having jurisdiction over it;

(ii) it is not aware of any government authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any Applicable Laws, currently in effect, necessary for, or in connection with, the transaction contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements (save for Regulatory Approvals, INDs and similar regulatory authorizations necessary for the Development or Commercialization of the Licensed Compounds and Licensed Products as contemplated hereunder);

(iii) such Party has not, and during the Term will not, grant any right to any Third Party relating to its respective Patents and Know-How which would conflict with the rights granted to the other Party hereunder; and

(iv) such Party will at all times and in all material respects comply with all Applicable Laws relating to its activities under this Agreement.

(v) such Party shall implement appropriate processes and controls with respect to technology and work flow methodologies in connection with its activities under or in connection with this Agreement so as to protect the security and privacy of personally identifiable information in accordance with Applicable Laws.

(b) Ardelyx represents, warrants and covenants as of the Effective Date (or as of such other /additional time as may be explicitly specified below) to FOSUN that:

(i) Ardelyx is the sole and exclusive owner of the entire right, title and interest in the Listed Patents existing as of the Effective Date. Ardelyx has all rights necessary to grant the licenses under the Licensed Technology existing as of the Effective Date that it grants to FOSUN in this Agreement. The Listed Patents are not subject to any encumbrance, lien or claim of ownership by any Third Party. To Ardelyx's Knowledge, the Licensed Technology in the Territory had not infringed and will not infringe any Intellectual Property Rights of any Third Party.

(ii) To Ardelyx's Knowledge, all applicable fees due to patent authorities with respect to the filing and prosecution of the Listed Patents existing as of the Effective Date have been paid on or before the due date for payment (as such due date may be extended in accordance with Applicable Law or patent authority rules and regulations).

(iii) As of the Effective Date, to Ardelyx's Knowledge, there is no actual or threatened infringement or misappropriation of the Licensed Patents or Licensed Know-How by any Person.

(iv) Ardelyx has not been debarred by the FDA, is not subject to any similar sanction of other Regulatory Health Authorities in the Territory, and is not subject to any such debarment or similar sanction by any such Regulatory Health Authority, and Ardelyx has not used, and will not engage, in any capacity, in connection with this Agreement, any Person who either has been debarred by such a Regulatory Health Authority, or is the subject of a conviction described in Section 306 of the FFDCFA (21 U.S.C. §335a). Ardelyx shall inform FOSUN in writing immediately if it or any Person engaged by Ardelyx who is performing services under this Agreement is debarred or is the subject of a conviction described in Section 306 of the FFDCFA (21 U.S.C. §335a) or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to Ardelyx's Knowledge, is threatened, relating to the debarment or conviction of Ardelyx or any such Person performing services hereunder.

(c) FOSUN represents, warrants and covenants as of the Effective Date (or as of such other /additional time as may be explicitly specified below) to Ardelyx that:

(i) FOSUN has not been debarred by the FDA (and is not subject to any similar sanction of other Regulatory Health Authorities in the Territory), and is not subject to any such debarment or similar sanction by any such Regulatory Health Authority, and FOSUN has not used, and will not engage, in any capacity, in connection with this Agreement, any Person who either has been debarred by such a Regulatory Health Authority, or is the subject of a conviction described in Section 306 of the FFDCFA (21 U.S.C. §335a). FOSUN shall inform Ardelyx in writing immediately if it or any Person engaged by FOSUN who is performing services under this Agreement is debarred or is the subject of a conviction described in Section 306 of the FFDCFA (21 U.S.C. §335a), or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to FOSUN's knowledge, is threatened, relating to the debarment or conviction of FOSUN or any such Person performing services hereunder.

(ii) To the extent permissible under Applicable Laws, each employee and contractor of FOSUN performing obligations under this Agreement shall, prior to conducting any such obligations hereunder, be obligated by Applicable Law, or written contract to (i) promptly disclose to FOSUN of all inventions and Know-How conceived or reduced to practice by such employee or contractor during any performance under this Agreement, (ii) automatically assign to FOSUN all right, title and interest in and to all such inventions and Know-How and all Intellectual Property Rights therein, and (iii) adhere to similar obligations of confidentiality as are set forth in this Agreement. FOSUN shall not knowingly engage in any activities that use the inventions covered or claimed in the Licensed Patents, Ardelyx [\*\*\*] Patents or any Licensed Know-How in a manner that is outside the scope of the license rights expressly granted to it hereunder.

(iii) FOSUN shall perform, or cause its Affiliates or Third Party contractors to perform, its responsibilities under this Agreement in compliance with this Agreement, all Applicable Laws, applicable CFDA (or foreign equivalent) requirements, including, without limitation, then-current GLP, GCP and GMP.

**Section 9.02 Manufacturing by FOSUN.** FOSUN covenants to Ardelyx that any Licensed Product manufactured by or for FOSUN or its Affiliates shall: (a) be manufactured in compliance with Applicable Laws; (b) conform to the applicable Specifications for such Licensed Product; (c) conform to the certificates of analysis supplied with the shipment of such Licensed Product; and (d) shall be packaged and shipped in accordance with the applicable Specifications therefor in effect at the time of delivery.

**Section 9.03 No Debarment.** In the course of the Development of Licensed Compound and Licensed Product in accordance with this Agreement, neither Party has used, and during the term of this Agreement neither Party will use, any employee or consultant that is debarred by any Regulatory Health Authority or, to the best of such Party's knowledge, is the subject of debarment proceedings by any Regulatory Health Authority. If either Party learns that its employee or consultant performing on behalf under this Agreement has been debarred by any Regulatory Health Authority, or has become the subject of debarment proceedings by any Regulatory Health Authority, such Party shall so promptly notify the other Party and shall prohibit such employee or consultant from performing on its behalf under this Agreement. The foregoing shall be without prejudice to the warranties contained in Section 9.01(b)(iv).

**Section 9.04 Anti-Bribery and Anti-Corruption Compliance.**

( a ) Compliance with Laws. Each of the Parties shall implement appropriate processes and controls with respect to technology and work flow methodologies in connection with its activities under or in connection with this Agreement so as to protect the security and privacy of personally identifiable information in accordance with Applicable Law.

( b ) Compliance With Applicable Anti-Corruption Laws. Each party understands and agrees that it has complied and will continue to comply with all applicable Anti-Corruption Laws in connection with this Agreement.

(i) Each Party represents and warrants that no payments of money or anything of value have been or will be offered, promised, or paid, whether directly or indirectly, by any of its directors, officers, employees, Affiliates, or third party representatives to any Government Official in connection with this Agreement: (a) to influence any official act or decision of any Government Official; (b) to induce any Government Official to do or omit to do any act in violation of lawful duty; (c) to secure any improper business advantage; or (d) to obtain or retain business for, or otherwise direct business to, any Party in connection with this Agreement.

(ii) Each Party warrants and represents that, in connection with this Agreement, the Party, its directors, officers, employees, and third party representatives: (a) have not and will not request, accept, offer, promise, or give any bribe, kickback, or other corrupt payment to any person, including any representative of any commercial entity, in violation of any applicable Anti-Corruption Law; and (b) have not and will not request, offer, promise, or give any financial or other advantage to induce another person to perform a function or activity in order to obtain or retain an improper business advantage in any way relating to this Agreement.

( c ) Notification Of Investigations Into Potential Non-Compliance With Applicable Anti-Corruption Laws. Each Party warrants and represents that it will promptly inform the other Party if that Party, or any of its directors, officers, employees, Affiliates, third party representatives, or Sublicensees becomes subject to any investigation relating to any actual or potential violation of any applicable Anti-Corruption Law in connection with this Agreement, including any meeting, interview, inspection, or audit requested by any Governmental Body.

( d ) Cooperation With Due Diligence And Investigations. Each Party will provide reasonable cooperation in connection with any good faith investigation conducted by the other Party into potential violations of applicable Anti-Corruption Laws in connection with this Agreement.

( e ) Compliance Program. Each Party will adopt, implement, and/or update and, throughout the course of this Agreement, have, maintain, and enforce an appropriate and risk-based anti-corruption compliance program designed to reasonably ensure compliance with the representations contained in this Section of the Agreement and all applicable Anti-Corruption Compliance Laws.

( f ) Periodic Compliance Certifications. On an annual basis following the execution of this Agreement, or as reasonably requested in good faith by the other Party, each Party agrees to submit to a compliance certificate to the other Party which restates the representations and warranties that are set forth in this Section 9.04 and provides certification by such Party that it has adhered, during the period covered by the compliance certificate, to the representations and warranties.

## ARTICLE X. RECORD RETENTION, AUDIT AND USE OF NAME

### **Section 10.01 Records Retention; Audit.**

(a) Each Party shall keep or cause to be kept accurate records of account in accordance with P.R.C. GAAP, in the case of FOSUN, and in accordance with U.S. GAAP, in the case of Ardelyx, showing information that is necessary for the accurate determination of the royalties and other payments due under Article VI, or any other payment due hereunder. Such records or books of account shall be kept until the [\*\*\*] ([\*\*\*) anniversary of December 31 of the Calendar Year in which the relevant Licensed Product are sold (in the case of royalty or other payments due under Section 6.04) or in the period for which any other payment hereunder is required to be made. For clarity, each Party shall cause its Affiliates to keep, and shall require pursuant to a written agreement that any Sublicensee, other sublicensee or subcontractor performing activities hereunder keep accurate records or books of account in a manner that will permit such Party to comply with its obligations under the foregoing sentence.

(b) Upon the written request of the other Party, each Party shall permit a qualified accounting firm acceptable to both Parties to inspect during regular business hours and no more than once a year and once in any given Calendar Year, and going back no more than [\*\*\*] ([\*\*\*) years preceding the current Calendar Year, all or any part of the audited Party's records and books necessary to check the accuracy of any payments made or required to be made hereunder. The

accounting firm shall enter into appropriate obligations with the audited Party to treat all information it receives during its inspection in confidence. The accounting firm shall disclose to Ardelyx and FOSUN only whether the payments made are correct and details concerning any discrepancies, but no other information shall be disclosed to the Party requesting the inspection. The charges of the accounting firm shall be paid by the Party requesting the inspection, except that if the payments being audited have been underpaid or the costs being reimbursed have been overstated, in each case by more than [\*\*\*] percent ([\*\*\*]%), the charges will be paid by the Party whose records and books are being inspected. Any failure by a Party to exercise its rights under this Section 10.01 with respect to a Calendar Year within the [\*\*\*] ([\*\*\*)] year period allotted therefor shall constitute a waiver by such Party of its right to later object to any payments made by the other Party under this Agreement during such Calendar Year.

**Section 10.02 Publicity Review.** Subject to the further provisions of this Section 10.02, no Party shall originate any written publicity, news release, or other announcement relating to this Agreement or to performance hereunder or the existence of an arrangement between the Parties (collectively, “**Written Disclosure**”), without the prior prompt review of a copy of the materials proposed to be disclosed and written approval of the other Party. This Section 10.02, shall not prohibit the disclosure under Section 7.04(a). Notwithstanding the foregoing provisions of this Section 10.02, Each Party may make any public Written Disclosure it believes in good faith based upon the advice of counsel is required under the Securities Laws of the United States, or any listing or trading agreement concerning its publicly traded securities, or under any applicable securities laws, or any rule or order of stock exchange; provided that, prior to making such Written Disclosure, Ardelyx or FOSUN shall where reasonably practicable provide the other Party with a copy of the materials proposed to be disclosed and an opportunity to promptly review and comment on the proposed Written Disclosure. To the extent that FOSUN reasonably requests that any information in the materials proposed to be disclosed be deleted, Ardelyx shall use reasonable efforts to request confidential treatment of such information pursuant to Rule 406 of the Securities Act of 1933 or Rule 24b-2 of the Securities Exchange Act of 1934, as applicable (or any other applicable regulation relating to the confidential treatment of information) so that any information that FOSUN reasonably requests to be deleted, to the extent permitted by the applicable government agency, are omitted from such materials. Notwithstanding the foregoing, each Party may issue an individual press release regarding the transaction contemplated by this Agreement; and the contents of each such press release shall be mutually agreed by the Parties in writing prior to any publication thereof. For clarity, Ardelyx shall have the right to issue press releases and other public announcements regarding the Development or Commercialization of Licensed Products outside of the Territory and/or outside of the Field without the prior review or written approval of FOSUN.

**Section 10.03 Use of Names.** Neither Party shall use the name, insignia, symbol, trademark, trade name or logotype of the other Party or its Affiliates in relation to this transaction or otherwise in any public announcement, press release, or other public document without the prior written consent of such other Party; provided, however, that either Party may use the name of the other Party in any document required to be filed with any government authority, including without limitation the FDA and the Securities and Exchange Commission or otherwise as may be required by Applicable Law, provided that such disclosure shall be governed by Section 7.04. Further, the restrictions imposed on each Party under this Section 10.03 are not intended, and shall not be construed, to prohibit a Party from identifying the other Party in its internal business



communications, provided that any Confidential Information in such communications remains subject to Article VII.

**ARTICLE XI.  
TERM AND TERMINATION**

**Section 11.01 Term.** The term of this Agreement shall commence as of the Effective Date and, unless sooner terminated as provided herein, shall continue in effect until the date on which all of FOSUN's payment obligations under Article VI have been performed or have expired (the "**Term**").

**Section 11.02 Termination Rights.**

(a) **Termination for Cause.** Subject to the provisions of this Section 11.02, if either Party (the "**Breaching Party**") shall have committed a material breach of any of its material obligations under this Agreement, and such material breach shall remain uncured and shall be continuing for a period of [\*\*\*] ([\*\*\*)] days following the Breaching Party's receipt of notice of such breach from the other Party (the "**Non-Breaching Party**") stating the Non-Breaching Party's intent to terminate this Agreement in its entirety pursuant to this Section 11.02(a) if such breach remains uncured, then, in addition to any and all other rights and remedies that may be available, the Non-Breaching Party shall have the right to terminate this Agreement effective upon the expiration of such [\*\*\*] ([\*\*\*)] day period (subject, however, to the provisions set forth below in this Section 11.02(a)). Notwithstanding the above, if (i) such material breach cannot reasonably be cured within such [\*\*\*] ([\*\*\*)] day period, (ii) the Breaching Party provides, within such [\*\*\*] ([\*\*\*)] day period, the Non-Breaching Party with a written detailed plan that contains measures that can be reasonably expected to cure such breach in a time frame reasonably acceptable to both Parties, which shall not extend beyond [\*\*\*] ([\*\*\*)] months from the date the plan is presented to the Non-Breaching Party, and (iii) the Breaching Party commences to perform such measures in accordance with such plan, and (iv) the Breaching Party thereafter diligently continues to perform such measures as detailed in such plan, then the Non-Breaching Party shall not be entitled to terminate this Agreement (and any notice of termination issued pursuant to the foregoing sentence shall not become effective) unless and until the earlier of (x) the Breaching Party ceases to diligently perform such measures despite then not having cured the breach, or (y) the Breaching Party fails to cure the breach in the time frame agreed to by the Non-Breaching Party in the plan, which shall not exceed [\*\*\*] ([\*\*\*)] months from the date the plan is presented to the Non-Breaching Party.

(b) **Termination for Convenience.**

(i) Prior to its expiration, this Agreement may be terminated in its entirety at any time by FOSUN effective upon [\*\*\*] ([\*\*\*)] days (or such longer period as FOSUN may elect at its sole discretion) prior written notice to Ardelyx.

(ii) Additionally, if FOSUN ceases all Exploitation of the Licensed Products for a continuous period of more than [\*\*\*] ([\*\*\*)] consecutive months, FOSUN shall, at Ardelyx written request following the expiration of such [\*\*\*] ([\*\*\*)] month period (such request to reference explicitly this Section 11.02(b)(ii)), provide to Ardelyx within [\*\*\*] ([\*\*\*)] months after FOSUN's receipt of such request a written reasonable plan under which FOSUN would recommence Exploitation of the Licensed Products under this Agreement within [\*\*\*]

(**\*\*\***) months after having provided such plan to Ardelyx. FOSUN shall, after providing such plan to Ardelyx, perform substantially in accordance therewith. If FOSUN fails to provide such plan to recommence Exploitation of Licensed Products within such **\*\*\*** (**\*\*\***) month period or if FOSUN fails to recommence such Exploitation within the aforementioned **\*\*\*** (**\*\*\***) month period, FOSUN shall be deemed to have exercised its right to terminate this Agreement in its entirety pursuant to this Section 11.02(b) effective upon expiration of such **\*\*\*** (**\*\*\***) month or (as the case may be) **\*\*\*** (**\*\*\***) month period.

( c ) **Termination for Challenge of Licensed Patents.** Prior to its expiration, Ardelyx may terminate this Agreement in its entirety by written notice to FOSUN if (i) FOSUN or its Affiliates challenges the validity, scope or enforceability of or otherwise opposes any Patent included in the Licensed Patents or Ardelyx **\*\*\*** Patents or corresponding Patents outside the Territory and (ii) FOSUN does not cause such measures to cease within **\*\*\*** (**\*\*\***) days after having received written notice thereof from Ardelyx, requesting such measures to cease and stating Ardelyx's intention to terminate this Agreement if such measures are not ceased within the prescribed time. If a Sublicensee of FOSUN challenges the validity, scope or enforceability of or otherwise opposes any Patent included in the Licensed Patents or Ardelyx **\*\*\*** Patents under which such Sublicensee is sublicensed or corresponding Patents outside of the Territory, then FOSUN shall, upon written notice from Ardelyx terminate such sublicense or cause the Sublicensee to cease such measures, **\*\*\*** as promptly as possible. FOSUN shall include provisions in all agreements under which a Sublicensee obtains a sublicense under any Patent included in the Licensed Patents or Ardelyx **\*\*\*** Patents providing that if the Sublicensee challenges the validity or enforceability of or otherwise opposes any such Patent under which the Sublicensee is sublicensed, FOSUN may terminate such sublicense.

( d ) **Termination for Insolvency.** A Party may terminate this Agreement effective immediately upon written notice to the other Party if at any time during the Term, the other Party (the "**Debtor**") (i) becomes insolvent, (ii) has a case commenced by or against it under the Bankruptcy Code, (iii) files for or is subject to the institution of bankruptcy, liquidation or receivership proceedings, (iv) assigns all or a substantial portion of its assets for the benefit of creditors, (v) has a receiver or custodian appointed for the Debtor's business, or (vi) has a substantial part of its business being subject to attachment or similar process; provided, however, that in the event of any involuntary case under the Bankruptcy Code, the first Party shall not be entitled to terminate this Agreement pursuant to this subsection (d) if the case is dismissed within **\*\*\*** (**\*\*\***) days after the commencement thereof.

**Section 11.03 Consequences of an FOSUN Triggered Termination .** In the event (a) Ardelyx terminates this Agreement pursuant to Section 11.02(a) for FOSUN's material breach; (b) Ardelyx terminates this Agreement pursuant to Section 11.02(c) for patent challenge by FOSUN; (c) Ardelyx terminates this Agreement pursuant to Section 11.02(d) for FOSUN's insolvency; or (d) FOSUN terminates this Agreement pursuant to Section 11.02(b) (a termination as per (a) through (d) being an "**FOSUN Triggered Termination**"), both Ardelyx and FOSUN shall, subject to Section 11.03(a), continue to be obligated during the termination notice period (as applicable) to perform as far as reasonably practicable all of its obligations under this Agreement and any

other agreements concluded between the Parties in accordance with this Agreement. If an FOSUN Triggered Termination occurs after the first Regulatory Approval of one or more Licensed Products in the Territory, FOSUN shall continue to use Commercially Reasonable Efforts to

Commercialize such Licensed Product(s) in the Territory until the earlier of (i), if applicable, the expiration of the [\*\*\*] ([\*\*\*)] day notice period, in the event of a termination by FOSUN pursuant to Section 11.02(b); (ii) receipt of Ardelyx's written notice that FOSUN may cease such Commercialization activities; or (iii), if applicable, the effective date of the termination notice issued pursuant to Section 11.02(a), Section 11.02(c), or Section 11.02(d). In addition, as a result of an FOSUN Triggered Termination the following shall apply:

(a) All licenses and rights to the Licensed Technology granted to FOSUN hereunder shall terminate as of the effective date of such termination, except to the extent and for so long as is necessary to permit FOSUN to meet its obligations under Section 5.04, to finish work-in-progress and sell any inventory as per Section 11.03(m) and to otherwise perform any responsibilities in connection with any then ongoing Clinical Trial or other activity that cannot be terminated as of such date under Applicable Laws, including GCP, it being agreed that all such activities and responsibilities shall be discontinued and ceased (unless otherwise agreed or required under Applicable Laws by transitioning such activities and responsibilities to Ardelyx) as promptly as possible, subject to Applicable Laws, including GCP.

(b) FOSUN shall grant, and hereby grants to Ardelyx (i) an exclusive, worldwide, royalty-free right and license, with the right to grant sublicenses, under any FOSUN Sole Invention Patents, under any FOSUN Sole Program Know-How and under FOSUN's interest in any Joint Technology, all to the extent that the practice thereof would infringe the Licensed Patents, (ii) a non-exclusive, worldwide, royalty-free right and license, with the right to grant sublicenses, under any FOSUN Sole Invention Patents, under any FOSUN Sole Program Know-How, and under FOSUN's interest in any Joint Technology, all to the extent that the practice thereof would not infringe the Licensed Patents, and (iii) a non-exclusive license, worldwide, royalty-free right and license, with the right to grant sublicenses, under the FOSUN [\*\*\*] Technology, in the case of each of (i), (ii) and (iii) solely to Develop, make, have made, use, sell, have sold offer for sale and import Licensed Compounds and Licensed Products.

(c) Ardelyx shall have the right (but not the obligation) to enforce the FOSUN Sole Invention Patents and FOSUN [\*\*\*] Patents against any infringement relating to Licensed Products.

(d) Ardelyx shall have the right (but not the obligation) to prosecute, maintain, enforce and defend all Licensed Patents, Ardelyx [\*\*\*] Patents, and Joint Patents and FOSUN shall, as promptly as reasonably practicable, and to a reasonable extent take such other actions and execute such other instruments, assignments, and documents as may be necessary to enable Ardelyx to practice the rights set forth in this subsection (c), with such cooperation to be provided at Ardelyx's sole cost and expense.

(e) Each Party shall return all data, files, records and other materials in its possession or Control containing or comprising the other Party's Confidential Information to which such first Party does not retain rights hereunder (except one copy thereof, which may be retained by the returning Party solely for legal archive purposes).

(f) FOSUN shall, where permitted under Applicable Laws, as promptly as reasonably practical transfer to Ardelyx all INDs, Drug Approval Applications, and Regulatory Approvals with respect to Licensed Compounds and Licensed Products, and shall take such other actions and execute such other instruments, assignments, and documents as may be necessary to affect the transfer of rights hereunder to Ardelyx. Without limiting the generality of the foregoing, FOSUN agrees to submit to the CFDA and other Regulatory Authorities where reasonably appropriate and permitted under Applicable Laws in jurisdictions in which any regulatory filings have been made with respect to the Licensed Product, within [\*\*\*] ([\*\*\*) Business Days after the effective date of such termination, a letter (with copy to Ardelyx) notifying the CFDA and such other Regulatory Authorities of the transfer of any regulatory filings for the Licensed Product in such jurisdictions from FOSUN to Ardelyx. Additionally, FOSUN will provide Ardelyx with copies of regulatory filings necessary to practice the rights granted to it under this Section 11.03(f).

(g) FOSUN shall [\*\*\*] assign all of its rights in and to FOSUN Trademarks which are specifically filed and maintained, and used for Licensed Products other than any other Products (and all registrations and applications for registration therefor) that it owns pursuant to Section 8.05 to Ardelyx and Ardelyx shall have the exclusive right (but not the obligation) to enforce the FOSUN Trademark rights against infringers.

(h) FOSUN will assign (or cause its Affiliates to assign) to Ardelyx, at Ardelyx's request, all of FOSUN's (or its Affiliates') rights and obligations under agreements with Third Parties with respect to (i) the conduct of Clinical Trials for each Licensed Product, including Agreements with contract research organizations, clinical sites and investigators that relate to Clinical Trials in support of Regulatory Approvals in the Territory, (ii) the Manufacture of Licensed Compound or Licensed Product (subject to FOSUN's obligations under Section 5.04), and (iii) any other Third Party agreements involving the Development or Commercialization of the Licensed Products, unless in each of (i) through (iii), such agreement is not permitted to be assigned pursuant to its terms or relates to products other than Licensed Products, in which case FOSUN will cooperate with Ardelyx in all reasonable respects to transfer as promptly as reasonably practical to Ardelyx the benefit of such contract (against Ardelyx undertaking to perform all the obligations and assume all liabilities under such contract) in another mutually acceptable manner and upon Ardelyx's request facilitate discussions between Ardelyx and such Third Parties to assist Ardelyx in entering into a direct agreement with such Third Parties.

(i) To the extent they are assignable and as requested by Ardelyx, FOSUN shall execute any documents necessary to transfer to Ardelyx rights under any Third Party licenses obtained by FOSUN pursuant to and during the course of the term of this Agreement for the purpose of Exploiting the Licensed Compounds or Licensed Products, and Ardelyx shall thereafter be responsible for all costs, expenses and obligations associated with such Third Party licenses.

(j) If FOSUN at the time of termination was Manufacturing Licensed Product, FOSUN shall comply with the obligations set forth in Section 5.04. Upon Ardelyx's request, FOSUN shall transfer to Ardelyx copies of all materials, data, results, analyses, reports, websites, marketing materials, technology, regulatory filings and other Information and Materials existing in tangible or electronic form at the effective date of the FOSUN Triggered Termination, that is Controlled by FOSUN and has been generated on or before the effective date of such termination by or on behalf of FOSUN, its Affiliates or Sublicensees with respect to the Licensed Products ("FOSUN

**Product Data**”) and Ardelyx shall have the right to use on a non-exclusive basis such FOSUN Product Data to enable Ardelyx to proceed to Develop, Manufacture and Commercialize Licensed Products upon and after termination of this Agreement

(k) Except where expressly provided for otherwise in this Agreement, termination of this Agreement shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party’s right to obtain performance of any obligation. In the event of such termination, this Section 11.03 shall survive in addition to others specified in this Agreement to survive in such event.

(l) FOSUN shall be entitled, during a period of [\*\*\*] ([\*\*\*)] days following the FOSUN Triggered Termination, to finish any work-in-progress, unless Ardelyx requests the transfer thereof in accordance with the terms of Section 5.04, and to sell any inventory of the Licensed Product that remains on hand as of the date of the termination, so long as FOSUN pays to Ardelyx the royalties applicable to said subsequent sales in accordance with the terms and conditions set forth in this Agreement; provided that if such termination is by Ardelyx pursuant to Section 11.02(a), that FOSUN’s rights under this Section 11.03(l) shall be subject to Ardelyx’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

(m) Notwithstanding anything else set forth in this Agreement, (i) FOSUN shall not have any obligations to continue any Development, Manufacture or Commercialization of the relevant Licensed Compound or Licensed Product if FOSUN has terminated this Agreement pursuant to Section 11.02(b) with reference to any material safety concerns; and (ii) should Ardelyx elect to pursue any Development, Manufacture or Commercialization of the relevant Licensed Compound or Licensed Product following any such termination by FOSUN, Ardelyx shall - without prejudice to or limitation of any other or further obligations Ardelyx may have to FOSUN under this Agreement (including Section 12.01(b)) - indemnify FOSUN for any Third Party claims arising from Ardelyx’s Development, Manufacture or Commercialization after the effective date of the termination of the relevant Licensed Compound or Licensed Product as set forth in Section 12.01(b).

**Section 11.04 Consequences of Termination (or Right to Terminate) by FOSUN for Ardelyx’s breach or insolvency.** If FOSUN is entitled to terminate this Agreement pursuant to Section 11.02(a) as a result of a material breach by Ardelyx or Section 11.02(d) for an insolvency or other transaction described therein affecting Ardelyx, FOSUN may elect to terminate this Agreement subject to the provisions set forth in Section 11.04(a), or to continue the Agreement subject to the provisions set forth in Section 11.04(b).

(a) If FOSUN terminates the Agreement under Section 11.02(a) or under Section 11.02(d), Section 11.03 shall apply as if such termination were a FOSUN Triggered Termination, except that (i) notwithstanding anything set forth to the contrary in Section 11.03, Ardelyx shall [\*\*\*], and (ii) in consideration of [\*\*\*] and any other rights granted under the above provisions in Section 11.03, if this Agreement is terminated pursuant to Section 11.02(a) by FOSUN [\*\*\*] Ardelyx shall [\*\*\*]; provided, however, that [\*\*\*]. The foregoing shall be [\*\*\*] in connection with its termination pursuant to Section 11.02(a).

(b) If FOSUN has the right to terminate this Agreement under Section 11.02(a) or Section 11.02(d), but elects to continue this Agreement, this Agreement shall continue in full force and effect except that if FOSUN is entitled to terminate this Agreement under Section 11.02(a) due to Ardelyx breach (but not if FOSUN's right to terminate is based solely on Ardelyx's insolvency pursuant to Section 11.02(d)), the royalties that Ardelyx shall be entitled to receive on Net Sales of Licensed Products by FOSUN, its Affiliates, or its Sublicensees as set forth in Section 6.04 shall each be reduced by [\*\*\*].

(c) Except where expressly provided for otherwise in this Agreement, termination of this Agreement by either Party shall not relieve the Parties of any liability, including without limitation any obligation to make payments hereunder, which accrued hereunder prior to the effective date of such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice any Party's right to obtain performance of any obligation. In the event of such termination, this Section 11.04 shall survive in addition to others specified in this Agreement to survive in such event.

**Section 11.05 Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by a Party are, and shall otherwise be deemed to be, for the purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code or equivalent provisions of applicable legislation in any other jurisdiction. The Parties agree that the Parties, as licensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the United States Bankruptcy Code, or equivalent provisions of applicable legislation in any other jurisdiction. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against either Party under the United States Bankruptcy Code or equivalent provisions of applicable legislation in any other jurisdiction, the Party that is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in the non-subject Party's possession, shall be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon the non-subject Party's written request therefor, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under subsection (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefor by the non-subject Party.

**Section 11.06 Surviving Rights and Obligations.** The rights and obligations set forth in this Agreement shall extend beyond the expiration or termination of the Agreement only to the extent expressly provided for herein, or to the extent that the survival of such rights or obligations are necessary to permit their complete fulfillment or discharge. Without limiting the foregoing, the Parties have identified various rights and obligations which are understood to survive, as follows: In the event of expiration or termination of this Agreement for any reason, the following provisions shall survive in addition to others specified in this Agreement to survive in such event: Article I, Article VII (with the exception of Section 7.03), Article X, Article XII (solely as to actions arising during the term of this Agreement, or as to activities conducted in the course of a Party's exercise of licenses surviving after the term of this Agreement), Article XIII and Article XIV, and, Section 2.10 (to the extent Covenant Period 2 is extended by its terms), Section 4.01, Section 5.04, Section 6.04 through Section 6.07 (solely to the extent provided in Section 11.03 and Section 11.04),

Section 6.078 through Section 6.11 inclusive (solely with respect to payments received following the effective date of termination or expiration), Section 8.01 (with regard to disclosure of the Joint Technology and Sole Program Know-How invented during the Term), Section 8.02 through Section 8.04 (solely with respect to Joint Patents, Section 8.05(c), Section 11.02, Section 11.03, Section 11.04, Section 11.05, Section 11.06 and Section 11.07.

**Section 11.07 Accrued Rights.** Termination, relinquishment, or expiration of the Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of either Party prior to such termination, relinquishment, or expiration, including without limitation damages arising from any breach hereunder. Such termination, relinquishment, or expiration shall not relieve either Party from obligations that are expressly indicated to survive termination or expiration of the Agreement.

## ARTICLE XII. INDEMNIFICATION

### Section 12.01 Indemnification.

(a) FOSUN hereby agrees to indemnify, defend, and hold harmless Ardelyx, its Affiliates, and each of its and their respective employees, officers, directors and agents from and against any and all Losses incurred by them resulting from or arising out of or in connection with any suits, claims, actions or demands made or brought by a Sublicensee or other Third Party (collectively, “**Third Party Claims**”) against Ardelyx, its Affiliates or their respective employees, officers, directors or agents, that result from or arise out of [\*\*\*], except in any case, to the extent such Losses are Losses for which Ardelyx has an obligation to indemnify FOSUN, its Affiliates or their respective employees, officers, directors or agents pursuant to Section 12.01(b), as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses.

(b) Ardelyx hereby agrees to indemnify, defend and hold harmless FOSUN, its Affiliates, and each of its and their respective employees, officers, directors and agents from an against any and all Losses incurred by them resulting from or arising out of or in connection with any Third Party Claims against FOSUN, its Affiliates or their respective employees, officers, directors or agents, that result from or arise out of [\*\*\*]; except in any case, to the extent such Losses are Losses for which FOSUN has an obligation to indemnify Ardelyx, its Affiliates or their respective employees, officers, directors or agents pursuant to Section 12.01(a), as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses.

### Section 12.02 Mechanism.

(a) In the event that a Party (the “**Indemnified Party**”) is seeking indemnification under Section 12.01(a) or Section 12.01(b), it shall notify the other Party (the “**Indemnifying Party**”) in writing of the relevant Third Party Claim and the relevant Loss for which indemnification is being sought as soon as reasonably practicable after it becomes aware of such claim. Each such notice shall contain a description of the Third Party Claim and the nature and amount of the Loss claimed (to the extent that the nature and amount of such Loss is known at

such time). The Indemnified Party shall furnish promptly to the Indemnifying Party copies of all papers and official documents received in respect of any such Third Party Claim or Losses. For the avoidance of doubt, all indemnification claims in respect of a Party, its Affiliates, and each of its and their respective employees, officers, directors and agents shall be made solely by such Party to this Agreement. The Indemnified Party shall permit the Indemnifying Party to assume direction and control of the defense of the relevant Third Party Claim (including without limitation the right to settle the claim solely for monetary consideration), and shall cooperate as requested (at the expense of the Indemnifying Party) in the defense of the claim. The assumption of the defense of a Third Party Claim by the Indemnifying Party shall not be construed as an acknowledgement that the Indemnifying Party is liable to indemnify any Indemnified Party in respect of the Third Party Claim, nor shall it constitute a waiver by the Indemnifying Party of any defenses it may assert against any Indemnified Party's claim for indemnification.

(b) Notwithstanding Section 12.01, the failure to give timely notice to the Indemnifying Party shall not release the Indemnifying Party from any liability to the Indemnified Party to the extent the Indemnifying Party is not prejudiced thereby and, for the avoidance of doubt, the Indemnifying Party shall not be liable to the extent any Loss is caused by any delay by the Indemnified Party in providing such notice. Notwithstanding the provisions of Section 12.02(a) requiring the Indemnified Party to tender to the Indemnifying Party the exclusive ability to defend such claim, if the Indemnifying Party declines to or fails to timely assume control of the relevant Third Party Claim, the Indemnified Party shall be entitled to assume such control, conduct the defense of, and settle such claim, all at the sole costs and expense of the declining or failing Party; provided, however, that neither Party shall settle or dispose of any such claim in any manner that would adversely affect the rights or interests or admit fault, of the other Party without the prior written consent of such other Party, which shall not be unreasonably withheld, delayed or conditioned. Each Party, at the other Party's expense and reasonable request, shall cooperate with such other Party and its counsel in the course of the defense or settlement of any such claim, such cooperation to include without limitation using reasonable efforts to provide or make available documents, information, and witnesses.

**Section 12.03 Insurance.** Each Party shall have and maintain such type and amounts of liability insurance covering the Manufacture, supply, use and sale of the Licensed Compounds and the Licensed Products as is normal and customary in the pharmaceutical industry generally for Persons similarly situated, and shall upon request provide the other Party with a copy of its policies of insurance in that regard, along with any amendments and revisions thereto.

### **ARTICLE XIII. DISPUTE RESOLUTION**

**Section 13.01 Referral of Disputes to the Parties Senior Executives.** In the event of any dispute between the Parties arising out of or in connection with this Agreement, either Party may, by written notice to the other, have such dispute referred to the Senior Executives for attempted resolution by good faith negotiations within [\*\*\*] ([\*\*\*)] days after such notice is received.

**Section 13.02 Mechanism.**



(a) If (i) Ardelyx at any time has a good faith belief that FOSUN may be in material breach of its obligations under Section 4.03, (ii) Ardelyx has notified FOSUN of its belief in writing and the Parties are not in agreement as to whether or not such breach under Section 4.03 exists, and (iii) the Parties have not resolved the dispute through good faith negotiations pursuant to Section 13.01 within the prescribed time, then Ardelyx shall have the right (but not the obligation) to request, through written notice to FOSUN (a “**Mediation Notice**”) within thirty (30) days after the expiry of the time period set forth in Section 13.01, that the Parties shall attempt in good faith to settle such dispute by mediation administered by the American Arbitration Association (“**AAA**”) under its Commercial Mediation Procedures. For clarity, Ardelyx shall not be obligated to exercise its right to initiate mediation pursuant to this Section 13.02(a) before initiating arbitration pursuant to Section 13.02(b), or before notifying FOSUN that it is exercising its right of termination under Section 11.02(a). If Ardelyx’s elects to exercise its right to initiate mediation within the prescribed time, then the following shall apply: If the Parties are unable to reach agreement on the selection of the mediator within fifteen (15) Business Days after FOSUN’s receipt of the Mediation Notice from Ardelyx, then either or both Parties shall immediately request the AAA to select a mediator with the requisite background, experience and expertise in the biopharmaceutical industry to assist the Parties in resolving the dispute amicably. The place of mediation shall be San Francisco, California, and all negotiations and communications shall be in English. The Parties shall have the right to be represented by counsel during the mediation. Each Party shall bear its own costs and expenses and attorneys’ fees, and the Parties shall share equally all costs of engaging such mediator and using the AAA to mediate such matter. Any decisions or recommendations of the mediator shall be confidential and non-binding on the Parties. If the Parties are unable to resolve the dispute through mediation pursuant to this Section 13.02(a) within a period of ninety (90) days following FOSUN’s receipt of the Mediation Notice from Ardelyx, then Ardelyx shall thereafter have the right to refer the dispute to arbitration pursuant to Section 13.02(b) or notify FOSUN that it is exercising its right of termination under Section 11.02(a).

(b) Subject to Section 13.01 and Section 13.02(a), any dispute, controversy or claim arising out of or relating to this Agreement, including the existence, negotiation, validity, formation, interpretation, breach, performance or application of this Agreement shall be settled by binding arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (or the AAA International Arbitration Rules, if recommended under the AAA guidelines), as such rules may be modified by this Section 13.02(b) or otherwise by subsequent written agreement of the Parties. The number of arbitrators shall be three (3), of whom the Parties shall select one (1) each. The two arbitrators so selected will select the third and final arbitrator. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the AAA shall select the third arbitrator. The place of arbitration shall be New York City, New York, and all proceedings and communications shall be in English. The Parties shall have the right to be represented by counsel. Any judgment or award rendered by the arbitrators shall be final and binding on the Parties. The Parties agree that such judgment or award may be enforced in any court of competent jurisdiction.

**Section 13.03 Preliminary Injunctions.** Notwithstanding anything to the contrary, a Party may seek a temporary restraining order or a preliminary injunction from any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss, or damage on a provisional basis, pending the decision of the arbitrator(s) on the ultimate merits of any dispute.

**Section 13.04 Patent Disputes.** Notwithstanding anything to the contrary, any and all issues regarding the scope, inventorship, construction, validity, or enforceability of Patents shall be determined in a court of competent jurisdiction under the local patent laws of the jurisdictions having issued the Patents in question.

**Section 13.05 Confidentiality.** All proceedings and decisions of the arbitrator(s) in connection with an arbitral proceeding pursuant to Section 13.02 shall be deemed Confidential Information of each of the Parties and shall be subject to Article VII.

#### **ARTICLE XIV. MISCELLANEOUS**

##### **Section 14.01 Assignment; Performance by Affiliates.**

(a) Neither Party may assign any of its rights or obligations under this Agreement in any country in whole or in part without the prior written consent of the other Party, except that each Party shall have the right, without such consent, (i) to perform any of its obligations and exercise any of its rights under this Agreement through, and to assign all of its rights and obligations under this Agreement to, any of its Affiliates, such performance or exercise by such Affiliate, or such assignment, as applicable, [\*\*\*]; and (ii) on written notice to the other Party, to assign all of its rights and obligations under this Agreement to a non-Affiliate successor in interest, whether by merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, to all or substantially all of the business to which this Agreement relates. In the event that a Party performs its obligations or exercises its rights under this Agreement through an Affiliate (without having assigned all of its rights and obligations to such Affiliate as permitted under this Section 14.01), doing so shall not relieve the relevant Party of its responsibilities for the performance of its obligations under this Agreement, and the relevant Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance).

(b) This Agreement shall survive any succession of interest permitted pursuant to Section 14.01(a)(ii), whether by merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, provided, that, in the event of such merger, consolidation, reorganization, acquisition, stock purchase, asset purchase or other similar transaction, no Intellectual Property Rights of the acquiring corporation shall be included in the technology licensed hereunder, unless such Intellectual Property Rights arise as a result of the performance of this Agreement by such corporation after such transaction becomes effective.

(c) This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties. Any assignment not in accordance with this Agreement shall be void.

**Section 14.02 Force Majeure.** In this Agreement, “**Force Majeure**” means an event which is beyond a non-performing Party’s reasonable control, including an act of God, strike, lock-out or other industrial/labor disputes (whether involving the workforce of the Party so prevented or of any other Person), war, riot, civil commotion, terrorist act, epidemic, quarantine, fire, flood, storm, earthquake, natural disaster or compliance with any law or governmental order, rule,

regulation or direction, whether or not it is later held to be invalid. A Party that is prevented or delayed in its performance under this Agreement by an event of Force Majeure (a “**Force Majeure Party**”) shall, as soon as reasonably practical but no later than [\*\*\*] ([\*\*\*) days after the occurrence of a Force Majeure event, give notice in writing to the other Party specifying the nature and extent of the event of Force Majeure, its anticipated duration and any action being taken to avoid or minimize its effect. Subject to providing such notice and to this Section 14.02, the Force Majeure Party shall not be liable for delay in performance or for non-performance of its obligations under this Agreement, in whole or in part, except as otherwise provided in this Agreement, where non-performance or delay in performance has resulted from an event of Force Majeure. The suspension of performance allowed hereunder shall be of no greater scope and no longer duration than is reasonably required and the Force Majeure Party shall exert all reasonable efforts to avoid or remedy such Force Majeure.

**Section 14.03 Further Actions.** Each Party agrees to execute, acknowledge, and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

**Section 14.04 Notices.** All notices hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), mailed by registered or certified mail (return receipt requested), postage prepaid, or sent by internationally recognized overnight delivery service that maintains records of delivery, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided, that notices of a change of address shall be effective only upon receipt thereof).

If to Ardelyx, addressed to: Ardelyx, Inc.  
34175 Ardenwood Blvd.  
Fremont, CA 94555  
Attention: Michael Raab, CEO  
Facsimile: 510-745-0493

With a copy to: Latham & Watkins LLP  
140 Scott Drive  
Menlo Park, CA 94025-1008  
Attention: Judith A. Hasko, Esq.  
Facsimile: (650) 463-2600

If to FOSUN, addressed to

Strategic Product Development Center  
Shanghai Fosun Pharmaceutical Industrial Development  
Co., Ltd  
Building A, 1289 Yishan Road  
Minhang District, Shanghai 200233  
P.R.China

Attention: [\*\*\*]  
Facimile: [\*\*\*]  
Email: [\*\*\*]

With a copy to:

Legal Department  
Shanghai Fosun Pharmaceutical (Group) Co., Ltd  
Building A, 1289 Yishan Road  
Minhang District, Shanghai 200233  
P.R.China  
Attention: [\*\*\*]  
Facimile: [\*\*\*]  
Email: [\*\*\*]

**Section 14.05 Waiver.** Except as specifically provided for herein, the waiver from time to time by either of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a waiver of any other of such Party's rights or remedies provided in this Agreement.

**Section 14.06 Severability.** If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (a) the remainder of this Agreement, or the application of such term, covenant, or condition to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law, and (b) the Parties covenant and agree to renegotiate any such term, covenant, or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant, or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

**Section 14.07 Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Delaware, USA, without giving effect to any conflict of law principle that would otherwise result in the application of the laws of any State or jurisdiction other than the State of Delaware, USA.

**Section 14.08 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 14.09 Entire Agreement.** This Agreement, including without limitation all exhibits attached hereto, sets forth all the covenants, promises, agreements, warranties, representations, conditions, and understandings between the Parties and supersedes and terminates all prior and contemporaneous agreements and understanding between the Parties, including without limitation the agreements and amendments set forth in Section 7.06. There are no covenants, promises, agreements, warranties, representations, conditions, or understandings, either oral or written, between the Parties other than as set forth in this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by the respective authorized officers of the Parties.

**Section 14.10 Limitation of Liability.** EXCEPT IN CIRCUMSTANCES OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY A PARTY OR ITS AFFILIATES, OR WITH RESPECT TO THIRD PARTY CLAIMS UNDER Section 12.01, IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE AFFILIATES AND SUBLICENSEES BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, MILESTONES OR ROYALTIES. This Section 14.10 shall not limit either Party's obligations under Article XII.

**Section 14.11 No Partnership.** It is expressly agreed that the relationship between Ardelyx and FOSUN shall not constitute a partnership, joint venture, or agency. Neither Ardelyx nor FOSUN shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party to do so.

[SIGNATURE PAGE FOLLOWS]

**In Witness Whereof**, the Parties have executed this Agreement in duplicate originals by their proper officers as of the Effective Date.

**Ardelyx, Inc.**

By: /s/ Michael Raab  
Name: Michael Raab  
Title: CEO

**Fosun Pharmaceutical Industrial  
Development Co., Ltd.**

By: /s/ Yifang Wu  
Name: Yifang Wu  
Title: President

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**EXHIBIT A**  
**TENAPANOR STRUCTURE**

[\*\*\*]

Confidential Portions of this Exhibit marked as [\*\*\*] have been omitted

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**EXHIBIT B**  
**LISTED PATENTS**

<b>Application No.</b>	<b>Publication No.</b>	<b>Patent No.</b>	<b>Status</b>
[**]			

Confidential Portions of this Exhibit marked as [\*\*] have been omitted

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## STATEMENT OF COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for each of the periods indicated (in thousands):

	Year Ended December 31,				
	2017	2016	2015	2014	2013
<b>Earnings (losses):</b>					
Net loss before income taxes	\$ (63,160)	\$ (112,387)	\$ (29,650)	\$ (3,147)	\$ (6,423)
Add back: Fixed Charges	433	367	300	187	259
Adjusted loss	\$ (62,727)	\$ (112,020)	\$ (29,350)	\$ (2,960)	\$ (6,164)
<b>Fixed charges:</b>					
Interest expense	\$ —	\$ —	\$ —	\$ —	\$ —
Estimated interest component of rent	433	367	300	187	259
Total fixed charges	\$ 433	\$ 367	\$ 300	\$ 187	\$ 259
<b>Ratio of earnings to fixed charges<sup>(1)</sup></b>	N/A	N/A	N/A	N/A	N/A
<b>Deficiency of earnings to fixed charges</b>	\$ 62,727	\$ 112,020	\$ 29,350	\$ 2,960	\$ 6,164

(1) The company has never generated earnings to cover fixed charges.

**SUBSIDIARIES OF THE REGISTRANT**

Name	Jurisdiction
Ardelyx Cayman Islands (in liquidation)	Cayman Islands

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement on Form S-8 (No. 333-197408) pertaining to the 2008 Stock Incentive Plan, as amended, the 2014 Equity Incentive Award Plan and the 2014 Employee Stock Purchase Plan of Ardelyx, Inc.
- (2) Registration Statement on Form S-8 (No. 333-202663) pertaining to the 2014 Equity Incentive Award Plan and the 2014 Employee Stock Purchase Plan of Ardelyx, Inc.
- (3) Registration Statements on Form S-3 (Nos. 333-205630, 333-205631, 333-213085 and 333-217441) of Ardelyx, Inc.
- (4) Registration Statements on Form S-8 (Nos. 333-210079 and 333-216154) pertaining to the 2014 Equity Incentive Award Plan of Ardelyx, Inc.
- (5) Registration Statement on Form S-8 (No. 333-214538) pertaining to the 2016 Employment Commencement Incentive Plan of Ardelyx, Inc.

of our report dated March 14, 2018, with respect to the consolidated financial statements of Ardelyx, Inc. included in this Annual Report (Form 10-K) of Ardelyx Inc. for the year ended December 31, 2017.

/s/ Ernst & Young LLP

Redwood City, California  
March 14, 2018

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