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

FORM 10-K

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

For the fiscal year ended December 31, 2023

OR

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

Commission file number: 001-36500

CYMABAY THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**94-3103561** **(I.R.S. Employer Identification No.)**
7601 Dumbarton Circle **Fremont, CA** **(Address of principal executive offices)**	**94555** **(Zip Code)**

(510) 293-8800
(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common stock, $0.0001 par value per share	**CBAY**	**Nasdaq Global Select Market**

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant based upon the closing price of its Common Stock on the Nasdaq Global Select Market on June 30, 2023, was $954,563,272. This excludes 329,984 shares of the registrant's Common Stock held by executive officers, directors and stockholders affiliated with directors outstanding at June 30, 2023. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

The number of shares of common stock outstanding as of January 31, 2024 was 114,724,381.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2024 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the registrant's fiscal year ended December 31, 2023, are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

CYMABAY THERAPEUTICS, INC.
ANNUAL REPORT ON FORM 10-K
For the Year Ended December 31, 2023

TABLE OF CONTENTS

	Page
PART I	
Item 1. Business	6
Item 1A. Risk Factors	31
Item 1B. Unresolved Staff Comments	61
Item 1C. Cybersecurity	61
Item 2. Properties	62
Item 3. Legal Proceedings	62
Item 4. Mine Safety Disclosures	63
PART II	
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	63
Item 6. [Reserved]	64
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations	64
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	76
Item 8. Financial Statements and Supplementary Data	76
Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	77
Item 9A. Controls and Procedures	77
Item 9B. Other Information	79
Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	79
PART III	
Item 10. Directors, Executive Officers and Corporate Governance	80
Item 11. Executive Compensation	80
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	80
Item 13. Certain Relationships and Related Transactions, and Director Independence	80
Item 14. Principal Accountant Fees and Services	81
PART IV	
Item 15. Exhibits and Financial Statement Schedules	81
Item 16. Form 10-K Summary	120
Signatures	121

CAUTIONARY LANGUAGE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are subject to the "safe harbor" created by those sections. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believe," "estimate," "projected," "potential," "seek," "target," "goal," "intend," and similar expressions intended to identify forward-looking statements. These statements reflect the current views of CymaBay Therapeutics, Inc. ("CymaBay", the "Company", "we" or "us") with respect to future events and are based on assumptions and subject to risks and uncertainties, involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance, time frames or achievements to be materially different from any future results, performance, time frames or achievements expressed or implied by the forward-looking statements. Forward-looking statements include, without limitation, statements regarding our proposed transaction with Gilead Sciences, Inc. ("Gilead") and Pacific Merger Sub, Inc., a wholly owned subsidiary of Gilead ("Purchaser"), consisting of a tender offer and subsequent merger of Purchaser with and into the Company, and other related matters. We discuss many of these risks, uncertainties and other factors in this Annual Report on Form 10-K in greater detail under the heading "Risk Factors." Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this filing. You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify our forward-looking statements by our cautionary statements. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

In addition, statements that "we believe" or "we expect" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this report. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and readers are cautioned not to unduly rely on these statements.

RISK FACTOR SUMMARY

We are subject to a number of risks that if realized could materially harm our business, prospects, operating results, financial condition, and proposed transaction with Gilead. Some of the more significant risks and uncertainties we face include those summarized below. The summary below is not exhaustive and is qualified by reference to the full set of risk factors set forth in Item 1A of this Form 10-K "Risk Factors." Please carefully consider all the information in this Form 10-K, including the full set of risks set forth in the "Risk Factors" section, and in our other filings with the U.S. Securities and Exchange Commission (the "SEC") before making an investment decision regarding CymaBay.

Risks Related to the Proposed Transaction with Gilead

- There are uncertainties as to the timing of the tender offer and subsequent merger, including the risk that the tender offer or subsequent merger may not be completed in a timely manner or at all.
- Our ability to complete the merger is subject to certain closing conditions that could adversely affect us or cause the merger to be abandoned.

- The occurrence of certain events, changes or other circumstances could give rise to the termination of the merger agreement, including in circumstances which would require us to pay a termination fee or other expenses.
- The announcement or pendency of the proposed transaction may result in disruptions to our business, divert management's attention and/or disrupt our relationships with third parties and employees, any of which could negatively impact our operating results and ongoing business.
- Stockholder litigation in connection with the transactions contemplated by the Merger Agreement may result in significant costs of defense, indemnification and liability.

Risks Related to Our Financial Condition and Capital Requirements

- We have incurred significant net losses since our inception and anticipate that we will continue to incur significant losses for the foreseeable future. We may need to raise additional equity and/or debt capital to fund our continued operations, including clinical trials, commercialization activities and other product development. In the event we do not successfully raise sufficient funds to finance our operations, we will curtail our activities commensurate with the magnitude of the shortfall or our operations may cease altogether.
- Failure to remain in compliance with our obligations under the Development Financing Agreement with Abingworth could lead to acceleration of potentially significant payments to Abingworth.
- Our ability to generate future revenues from product sales is uncertain and depends upon our ability to successfully develop, obtain regulatory approval for, and commercialize product candidates, including most importantly, seladelpar.
- Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.

Risks Related to Clinical Development and Regulatory Approval

- Drug development and obtaining and maintaining regulatory approval for drug products is costly, time-consuming, and highly uncertain.
- Serious complications or side effects in connection with the use or development of our product candidates could lead to delay or discontinuation of development of our product candidates.

Risks Related to Our Reliance on Third Parties

- Our manufacturing partners and other service providers, including contract research organizations and contract manufacturers, may fail to perform adequately in their efforts to support the development, manufacture, and commercialization of our drug candidates and future products.

Risks Related to Commercialization of Our Product Candidates

- We have never successfully commercialized a product. If any of our product candidates receive marketing approval, they may nonetheless be unable to gain sufficient market acceptance by physicians, patients, health care payors and others in the medical community.
- If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our products, we may be unable to generate any revenue.
- The commercial success of our products is subject to significant competition from products that may be superior to, more cost effective than, or have been available in the market longer than, our products.

Risks Related to Our Intellectual Property

- We may not be able to protect the confidentiality of our trade secrets, and our patents or other means of defending our intellectual property may be insufficient to protect our proprietary rights.
- Patents or proprietary rights of others may restrict our development, manufacturing, and/or commercialization efforts and subject us to litigation and other proceedings that could find us liable for damages.

Other Risks Factors – Risks Related to Employees, Information Technology, and Owning Our Common Stock

- Our business is dependent on our key personnel and will be harmed if we cannot recruit and retain leaders in our development, administrative, and commercial organizations.
- Significant disruptions of information technology systems or breaches of data security could adversely affect our business.
- Changes in and failures to comply with United States and foreign privacy and data protection laws, regulations and standards may adversely affect our business, operations and consolidated financial performance.
- Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.

PART I

Item 1. Business

Overview

We are a clinical-stage biopharmaceutical company focused on developing innovative therapies for patients with liver and other chronic diseases with high unmet medical need.

Our lead product candidate, seladelpar, is a potent and selective agonist of peroxisome proliferator activated receptor delta (PPARd), a nuclear receptor that regulates genes directly or indirectly involved in the synthesis of bile acids/sterols, metabolism of lipids and glucose, inflammation and fibrosis. We are focused on developing seladelpar for the treatment of primary biliary cholangitis (PBC), an autoimmune disease that causes progressive destruction of the bile ducts in the liver resulting in impaired bile flow (cholestasis) and inflammation.

We reported net losses of approximately $105.4 million, $106.0 million, and $90.0 million for the years ended December 31, 2023, 2022, and 2021, respectively. As of December 31, 2023, we had cash, cash equivalents and marketable securities totaling $416.2 million.

Pending Acquisition by Gilead

On February 11, 2024, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with Gilead and Purchaser. The Merger Agreement provides for the acquisition of the Company by Gilead in a two-step all cash transaction, consisting of a tender offer (the "Offer"), followed by a subsequent merger of Purchaser with and into the Company (the "Merger" and, together with the Offer and the other transactions contemplated by the Merger Agreement, the "Transactions"), with the Company continuing as the surviving corporation.

On February 23, 2024, Purchaser commenced the Offer for all of the Company's issued and outstanding shares of common stock, par value $0.0001 per share ("Shares"), other than any Shares owned by the Company (including those held in the Company's treasury), Gilead or Purchaser ("Excluded Shares"), at a purchase price of $32.50 per Share (the "Offer Price"), net to the seller in cash, without interest and subject to any required withholding of taxes. The Offer will initially remain open until March 21, 2024 (unless otherwise agreed to in writing by Gilead and us), which period may be extended for additional periods of up to 10 business days per extension (or such other duration as may be agreed to in writing by the Company and Gilead) to permit the conditions to the Offer to be satisfied.

The obligation of Purchaser to accept for payment Shares validly tendered pursuant to the Offer is subject to customary closing conditions, including: (i) Shares having been validly tendered and not validly withdrawn that, considered together with all other Shares (if any) beneficially owned by Gilead and its affiliates, represent one more Share than 50% of the total number of Shares outstanding at the time of the expiration of the Offer (including, for the avoidance of doubt, all Shares that become outstanding as a result of the "cashless exercise" of the outstanding pre-funded warrants of the Company, as described below); (ii) the accuracy of the Company's representations and warranties contained in the Merger Agreement (subject to any applicable Material Adverse Effect (as defined in the Merger Agreement) and materiality qualifiers); (iii) the absence of a willful and material breach by the Company of the "no-shop" restrictions described in the Merger Agreement and the Company's performance of its other obligations, covenants and agreements under the Merger Agreement in all material respects; (iv) the absence, since the date of the Merger Agreement, of any Material Adverse Effect; (v) the expiration or early termination of the waiting period applicable to the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and if Gilead and the Company have entered into an agreement with any governmental body regarding the timing of the consummation of the Offer, such consummation being permitted under such agreement and (vi) the absence of any judgment, temporary restraining order, preliminary or permanent injunction or other order, decree or ruling restraining, enjoining or otherwise preventing the acquisition of or payment for Shares pursuant to the Offer or the consummation of the Offer or the Merger or subsequent integration.

As soon as practicable following the acceptance of the Shares validly tendered and not validly withdrawn pursuant to the Offer (the time of such acceptance, the "Offer Acceptance Time") and the consummation of the Offer, subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, the Merger will be effected under Section 251(h) of the Delaware General Corporation Law, as amended ("DGCL"), without a meeting or vote of the Company's stockholders.

At the effective time of the Merger (the "Effective Time"), each issued and outstanding Share, other than any Excluded Shares, any Shares irrevocably accepted for purchase pursuant to the Offer ("Tendered Shares") or any Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive the Offer Price (the "Merger Consideration"), in cash, without interest and subject to any required withholding of taxes.

At the Effective Time, each stock option to purchase Shares that is then outstanding and unexercised, whether or not vested and which has a per-share exercise price that is less than the Merger Consideration, will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to (i) the excess of (a) the Merger Consideration over (b) the exercise price payable per Share under such stock option, multiplied by (ii) the total number of Shares subject to such stock option immediately prior to the Effective Time.

At the Effective Time, each restricted stock unit award with respect to Shares that is then outstanding will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to the product, rounded to the nearest cent, of (i) the number of Shares subject to such restricted stock unit award as of the Effective Time and (ii) the Merger Consideration.

At the Offer Acceptance Time, each pre-funded warrant of the Company to purchase Shares that is outstanding immediately prior to the Effective Time will automatically be deemed to be exercised in full in a "cashless exercise" pursuant to the warrant agreement to which such warrant is subject. At the Effective Time, holders of Shares issued pursuant to such "cashless exercise" of the Company Warrants in accordance with the applicable warrant agreements and the Merger Agreement shall become entitled to the Merger Consideration as described above in respect of Shares other than the Excluded Shares, the Tendered Shares and any Dissenting Shares.

The Merger Agreement contains certain termination rights for the Company and Gilead. Upon termination of the Merger Agreement under specified circumstances, the Company will be required to pay Gilead a termination fee in the amount of $151.6 million.

For additional information related to the Merger Agreement, please refer to the relevant materials (including the Solicitation/Recommendation Statement on Schedule 14D-9) that we have filed and will file with the SEC and that will contain important information about the Company and the Transactions.

Strategy

Our goal is to become a leading biopharmaceutical company focused on developing innovative therapies for patients with liver and other chronic diseases with high unmet medical need. Key elements of our strategy are to:

- Advance clinical development of seladelpar for patients with PBC,
- Obtain regulatory approval and commercialize seladelpar for patients with PBC,
- Strengthen our patent portfolio and other means of protecting exclusivity, and
- Acquire or develop other products or product candidates.

Seladelpar in PBC

In December 2023, we submitted a New Drug Application (NDA) to the U.S. Food and Drug Administration (FDA) for seladelpar, our investigational treatment for the management of PBC, including

pruritus in adults without cirrhosis or with compensated cirrhosis (Child Pugh A) who are inadequate responders or intolerant to ursodeoxycholic acid (UDCA). In February 2024, we announced that (i) the FDA accepted our NDA for seladelpar and granted a priority review and set a Prescription Drug User Fee Act (PDUFA) target action date of August 14, 2024 and notified us that it is not currently planning to hold an advisory committee meeting to discuss the application, (ii) the U.K. Medicines and Healthcare products Regulatory Agency accepted for filing the application of the Company for approval of seladelpar for treatment of PBC, including pruritus, in early February 2024 and (iii) the Company submitted a similar application for the approval of seladelpar for the treatment of PBC, including pruritus, with the European Medicines Agency, in early February 2024. Previously, seladelpar was granted Breakthrough Therapy Designation by the FDA in 2019 and in October 2023, the FDA revised the Breakthrough Therapy Designation in recognition of clinical data that indicated seladelpar may provide meaningful improvement over existing therapy based on a reduction in alkaline phosphatase (ALP) and improvement in pruritus in patients without cirrhosis or with compensated cirrhosis.

Phase 3 Trials

In September 2023, we announced top line results from our Phase 3 RESPONSE study. RESPONSE was a double-blind, placebo-controlled, global study of one-year duration that randomized 193 PBC patients in a 2:1 ratio to seladelpar 10 mg or placebo, once daily. The study evaluated the safety and efficacy of seladelpar for the treatment of PBC. RESPONSE met its primary and two key secondary endpoints with high statistical significance.

We are also continuing our global long-term extension study (ASSURE) to evaluate seladelpar in patients with PBC that is intended to collect additional long-term safety and efficacy data to support registration. We have enrolled over 300 patients in ASSURE.

In August 2023, we announced the initiation of the IDEAL study, a52-week, placebo-controlled, randomized, Phase 3 study. The IDEAL study aims to enroll 150 patients globally with PBC who have an incomplete response or intolerance to ursodeoxycholic acid (UDCA), in each case with ALP greater than the upper limit of normal (ULN) but less than 1.67xULN, and total bilirubin less than or equal to 2xULN. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar 10 mg or placebo. The primary outcome measure is the normalization greater than or equal to a 15% decrease in ALP at 52 weeks and a key secondary endpoint evaluating the change in pruritus Numerical Rating Scale (NRS) at six months in subjects with moderate to severe pruritus at baseline.

In September 2023, we announced the initiation of the AFFIRM study, a randomized, placebo-controlled confirmatory study to evaluate the effect of seladelpar on clinical outcomes in patients with compensated cirrhosis due to PBC. The AFFIRM study is planned to enroll approximately 192 patients with PBC who have compensated cirrhosis (Child-Pugh A or Child-Pugh B) based on prespecified clinical criteria. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar or placebo for a fixed duration of three years. The primary outcome measure is the time from start of treatment to the first occurrence of clinical events (all-cause death, liver transplant, hospitalization for other serious liver-related events, and progression to Child-Pugh C decompensated cirrhosis). Additional key outcomes include overall survival, liver transplant-free survival, and time to hospitalization for serious liver-related events.

CymaBay Product Overview

We are primarily focused on developing our lead product candidate, seladelpar (a PPARd agonist).

Product Candidate	Disease/condition	Status
Seladelpar (MBX-8025, a PPARd agonist)	Primary Biliary Cholangitis (PBC)	NDA accepted in February 2024 with PDUFA target action date of August 14, 2024; U.K. MHRA application accepted for filing in February 2024; Submitted application to EMA in February 2024; Ongoing Phase 3 trials

Seladelpar (MBX-8025)

Summary

Seladelpar is a selective agonist for the peroxisome proliferator-activated receptor delta (PPARd). The PPARd receptor is a nuclear receptor that regulates genes involved in bile acid/sterol, lipid, and glucose metabolism, and regulation of certain inflammatory cells. Seladelpar has the potential to treat certain diseases of the liver and a variety of disorders of lipid metabolism.

Seladelpar was initially developed for treatment of mixed dyslipidemia, which is characterized by elevated low-density lipoprotein (LDL-C) and triglycerides (TGs). Results from our Phase 2 clinical study of seladelpar in patients with mixed dyslipidemia established effects that we believe have the potential to benefit patients affected with PBC and other conditions. These benefits include:

- Reductions in LDL-C and total cholesterol, and increases in high-density-lipoprotein (HDL-C),
- Reductions in triglycerides and free fatty acids,
- Reductions in high-sensitivity C-reactive protein (hs-CRP), a marker of inflammation, and
- Reductions in alkaline phosphatase (ALP) and gamma-glutamyl transferase (GGT).

In February 2024, we announced that (i) the FDA accepted our NDA for seladelpar and granted a priority review and set a Prescription Drug User Fee Act (PDUFA) target action date of August 14, 2024 and notified us that it is not currently planning to hold an advisory committee meeting to discuss the application, (ii) the U.K. Medicines and Healthcare products Regulatory Agency accepted for filing the application of the Company for approval of seladelpar for treatment of PBC, including pruritus, in early February 2024 and (iii) the Company submitted a similar application for the approval of seladelpar for the treatment of PBC, including pruritus, with the European Medicines Agency, in early February 2024. We submitted a New Drug Application (NDA) to the U.S. Food and Drug Administration (FDA) in December 2023 for seladelpar for the management of PBC, including pruritus in adults without cirrhosis or with compensated cirrhosis (Child Pugh A) who are inadequate responders or intolerant to ursodeoxycholic acid (UDCA). In February 2019, the United States Food and Drug Administration (FDA) granted seladelpar Breakthrough Therapy Designation for the treatment of early stage PBC and in October 2023, the Breakthrough Therapy Designation was revised to the recognition of clinical data that indicated seladelpar may provide meaningful improvement over existing therapy based on a reduction in alkaline phosphatase (ALP) and improvement in pruritus in patients without cirrhosis or with compensated cirrhosis. In November 2016, the FDA granted orphan drug designation to seladelpar for the treatment of PBC. In October 2016, seladelpar received the European Medicines Agency (EMA) PRIority Medicines (PRIME) designation for the treatment of PBC. In September 2017, EMA's Committee for Orphan Medicinal Products (COMP) granted orphan drug designation to seladelpar for the treatment of PBC.

To date, we have completed six-month and twelve-month toxicity studies of seladelpar in rats and monkeys, respectively, as well as two-year carcinogenicity studies in mice and rats. In addition, we have completed

multiple Phase 1 clinical studies, three Phase 2 and two Phase 3 clinical studies (ENHANCE and RESPONSE) of seladelpar in PBC. In addition, we are in the process of conducting two additional Phase 3 studies (AFFIRM and IDEAL) with seladelpar in PBC and a Phase 3 long-term extension study (ASSURE) of seladelpar in PBC patients. We believe that the data from the Phase 2 and 3 studies established seladelpar's anti-cholestatic and anti-inflammatory effects and identified a dose (10 mg/day) that has the potential to offer patients improved efficacy and better tolerability over the only approved second-line treatment available today. Those studies showed reductions in markers of cholestasis including ALP and GGT and showed improved inflammatory and metabolic markers with patients experiencing decreases in levels of transaminases, hs-CRP, and LDL-C. Many PBC patients suffer from pruritus, or itching, which can significantly impact their quality of life. Based on data from our completed Phase 2 and Phase 3 studies, and unlike the only approved second-line treatment currently available, we believe that seladelpar may reduce the incidence and severity of pruritus in PBC patients.

Target Indication for Seladelpar

We are actively pursuing PBC as our initial launch indication for seladelpar, if approved. We may look to develop seladelpar in other indications in the future. Following is a review of our clinical development progress for seladelpar in PBC.

Primary Biliary Cholangitis (PBC)

Summary

PBC is a rare, chronic, progressive, autoimmune liver disease that predominantly affects middle-aged women. AT-cell mediated immune response is thought to damage, and ultimately destroy, the interlobular and septal bile ducts. The loss of bile duct function leads to decreased bile secretion and retention of toxic substances, including bile acids, within the liver parenchyma. This retention may ultimately cause liver cirrhosis and liver failure in PBC patients.

PBC primarily affects an estimated one in 1,000 women over the age of 40. Due to its low prevalence, PBC has been recognized as an orphan disease in the U.S. and E.U., meeting their respective FDA and EMA orphan designation criteria. Diagnosis of PBC is confirmed by elevated serum ALP presence and/or the magnitude of antimitochondrial antibody (AMA presence) and liver biopsies, although biopsies are not required for diagnosis in most patients.

The most common clinical symptoms of PBC include fatigue and pruritus (or itching (up to 70% occurrence)), which adversely affects many patients' quality of life. PBC patients are also frequently affected by conditions including jaundice, hyperlipidemia (notably hypercholesterolemia), hypothyroidism, osteopenia and osteoporosis, and coexisting autoimmune diseases. Late complications of PBC include portal hypertension, malabsorption, deficiencies of fat-soluble vitamins, and steatorrhea (excess fat in feces). Left untreated, or without sufficient treatment, PBC disease progression can lead to the need for liver transplantation and liver-related mortality. Despite being a rare disease, PBC is one of the top six indications for liver transplantation in the U.S. and E.U. Recurrence of PBC following liver transplantation is reported in 11-46% of transplantations, with an estimated prevalence of 30% at 10 years following transplantation, further demonstrating a need for effective therapies.

Retrospective analyses of PBC clinical outcomes data have shown that elevated levels of ALP and bilirubin are associated with worsened clinical outcomes including liver transplantation and death associated with PBC. These analyses supported the use of ALP and bilirubin as elements of a clinical surrogate reasonably likely to predict outcomes that was used for the approval of obeticholic acid as a second line therapy for PBC. The current first line therapy for PBC is ursodeoxycholic acid (UDCA), a secondary bile acid.

Studies of Seladelpar in PBC

RESPONSE (Phase 3)

In July 2022, we completed enrollment of our global, Phase 3 registration study (RESPONSE) to evaluate seladelpar in patients with PBC. The Phase 3 study was a 52-week, double blind, placebo-controlled, randomized, global, registration study evaluating the safety and efficacy of seladelpar in patients with PBC. The study enrolled 193 patients who had an inadequate response to, or intolerance to, UDCA, in a 2:1 randomization to oral, once daily seladelpar 10 mg or placebo.

In September 2023, we announced top line results from RESPONSE. The trial achieved the primary and all key secondary endpoints. A total of 61.7% of patients on seladelpar 10 mg (n=128) met the primary composite endpoint related to serum alkaline phosphatase and bilirubin at 12 months versus 20.0% on placebo (n=65; $p<0.0001$). Alkaline phosphatase at 12 months (key secondary endpoint) normalized in 25.0% of patients on seladelpar vs. zero on placebo ($p<0.0001$). The least-squares mean percent reduction in alkaline phosphatase at 12 months was 42.4% in the seladelpar group vs. 4.3% in the placebo group ($p<0.0001$). Seladelpar treatment compared to placebo also demonstrated a statistically significant reduction in pruritus, or itch (key secondary endpoint), after six months of treatment. Seladelpar-treated patients with a baseline Numerical Rating Scale (NRS)$\geq$4 (moderate to severe pruritus) had a least-square mean reduction of 3.2 points in pruritus NRS (n=49) compared to 1.7 points for patients in the placebo group (n=23; $p<0.005$). Overall, the safety profile was comparable between placebo and seladelpar groups and was consistent with previous studies. Treatment-emergent adverse events, serious adverse events, and patient discontinuations were generally balanced across the treatment and placebo arms. There were no treatment-related serious adverse events in the study. Seladelpar's tolerability profile appeared favorable and consistent with previous studies.

ENHANCE (Phase 3)

In October 2018 we commenced a global, Phase 3 registration study (ENHANCE) to evaluate seladelpar in patients with PBC. ENHANCE was a double-blind, randomized, placebo-controlled 52-week study evaluating the safety and efficacy of 5 mg and 10 mg of seladelpar versus placebo in patients with PBC who had an inadequate response to, or were intolerant to, first-line treatment with UDCA.

Approximately 265 patients were randomized to receive placebo, 5 mg of seladelpar, or 10 mg of seladelpar. The primary endpoint was a composite response, defined as a patient achieving an ALP level below 1.67 times the upper limit of normal, with at least a 15% reduction from baseline, and a normal total bilirubin at 52 weeks. Key secondary endpoints were the ALP normalization rate and changes from baseline in pruritus, as measured by NRS in patients with moderate-to-severe pruritus at baseline.

In December 2019 we terminated ENHANCE early, based on initial histological observations obtained in our Phase 2b study of seladelpar in nonalcoholic steatohepatitis (NASH). In May 2020, we announced completion of an independent expert panel review into the NASH findings that concluded the data, in aggregate, did not support liver injury related to seladelpar. In June 2020, we discussed the data, the panel's conclusions, and other matters with the FDA. In July 2020, the FDA lifted the clinical hold on the program and we reinstated clinical development of seladelpar in PBC.

In August 2020 we announced positive results from ENHANCE, which we believe support seladelpar as a safe, well-tolerated, and efficacious treatment for patients with PBC. Although the study was terminated prior to the completion of the 52-week treatment period, the statistical analysis plan was amended while the study remained blinded to adjust for evaluation of the primary and two key secondary endpoints at Week 12 rather than Week 52. Topline data for patients through 12 and to 26 weeks showed what we believe to be robust anti-cholestatic, anti-inflammatory and anti-pruritic activity of seladelpar. Specifically, 78.2% of patients on 10 mg of seladelpar compared with 12.5% on placebo achieved the primary composite outcome after 3 months ($p<0.0001$), and 27.3% of patients on 10 mg of seladelpar compared with 0% on placebo normalized ALP by 3 months

($p<0.0001$). In addition, the study revealed statistically significant improvement in change from baseline in pruritus at 3 months ($p<0.05$) for patients with moderate-to-severe itch treated with seladelpar 10 mg versus placebo.

ASSURE (Phase 3)

We are continuing our global long-term extension study (ASSURE) to evaluate seladelpar in patients with PBC. ASSURE is intended to collect additional long-term safety and efficacy data to support registration. ASSURE is open to patients from our prior Phase 2 open label study, our Phase 3 ENHANCE and RESPONSE studies, as well as certain Phase 1 studies. The ASSURE trial is ongoing and we have enrolled over 300 patients.

IDEAL (Phase 3)

In August 2023, we announced the initiation of the IDEAL study, a Phase 3,52-week, placebo-controlled, randomized study that aims to enroll 150 patients globally with PBC who have an incomplete response or intolerance to ursodeoxycholic acid (UDCA), in each case with ALP greater than the upper limit of normal (ULN) but less than 1.67xULN, and total bilirubin less than or equal to 2xULN. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar 10 mg or placebo. The primary outcome measure is the normalization greater than or equal to a 15% decrease in ALP at 52 weeks and a key secondary endpoint evaluating the change in pruritus Numerical Rating Scale (NRS) at six months in subjects with moderate to severe pruritus at baseline.

AFFIRM (Phase 3)

In September 2023, we announced the initiation of the AFFIRM study, a randomized, placebo-controlled confirmatory study to evaluate the effect of seladelpar on clinical outcomes in patients with compensated cirrhosis due to PBC. The AFFIRM study plans to enroll approximately 192 patients with PBC who have compensated cirrhosis (Child-Pugh A or Child-Pugh B) based on prespecified clinical criteria. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar or placebo for a fixed duration of three years. The primary outcome measure is the time from start of treatment to the first occurrence of clinical events (all-cause death, liver transplant, hospitalization for other serious liver-related events, and progression to Child-Pugh C decompensated cirrhosis). Additional key outcomes include overall survival, liver transplant-free survival, and time to hospitalization for serious liver-related events.

Safety Studies

Prior to the decision to terminate the ENHANCE study in December 2019, we were conducting a long-term safety study of seladelpar, which was open to patients who had participated in other company-sponsored PBC studies. The safety study was discontinued due to the histological observations in the Phase 2b NASH study. With the reinstatement of the clinical development of seladelpar in 2020, we commenced the ASSURE study and those patients previously on the long-term safety study became eligible to enroll into ASSURE.

Phase 2 Open Label Study

In December 2016, we initiated a Phase 2 study of seladelpar in patients with PBC. The study was an open label, randomized, dose-ranging study evaluating 2 mg, 5 mg and 10mg doses of seladelpar and the primary efficacy endpoint was percent change in ALP from baseline. The study had an initial twelve-week period in which starting doses were maintained, but after which doses could be increased to as high as 10 mg for those patients in which a greater biochemical response was deemed appropriate, these being described as titration groups. Secondary outcomes included the evaluation of other markers of cholestasis, inflammation, and lipid parameters, as well as clinical symptoms such as pruritus and quality of life.

In November 2018 we announced data from the study that we believe showed that seladelpar treatment led to sustained anti-cholestatic and anti-inflammatory effects with no worsening of pruritus through 52 weeks. Specifically, at 52 weeks the mean decreases in ALP were -47% and -46% in the 5/10 titration and 10 mg groups, respectively. A key secondary outcome was the composite response measured at week 52 where a responder was defined as a patient with ALP <1.67 x ULN, ≥15% decrease in ALP, and total bilirubin ≤ULN. At 52 weeks 59% and 71% of patients met the composite endpoint in the 5/10 titration and 10 mg groups, respectively. The anti-cholestatic effect of seladelpar was further substantiated with ALP normalization at 52 weeks in 24% and 29% of patients in the 5/10 titration and 10 mg groups, respectively. Treatment with seladelpar also demonstrated a robust anti-inflammatory activity with median transaminase decreases of -31% and -33% in the 5/10 titration and 10 mg groups, respectively.

We subsequently reported on a 52-week analysis from the study on the effect of seladelpar on pruritus, or itching, which is a common clinical symptom of PBC that adversely effects a patient's quality of life. Patient self-reported experiences were collected using the pruritus visual analogue scale (VAS) in 101 PBC patients in the 5/10 titration or 10 mg groups. In patients with moderate to severe pruritus (VAS ≥ 40), substantial improvement in pruritus (VAS ≥ 20-point decrease) was seen in 58% and 93% of patients in the 5/10 titration and 10 mg groups, respectively. These data suggest that seladelpar is not associated with drug-induced pruritus and supported further evaluation of seladelpar's potential benefit on pruritus.

MBX-2982

MBX-2982 targets G protein-coupled receptor 119 (GPR119), a receptor that interacts with bioactive lipids known to stimulate glucose-dependent insulin secretion. In November 2020, we announced a Phase 2a proof-of-pharmacology study led by AdventHealth Translational Research Institute and funded by the Leona M. and Harry B. Helmsley Charitable Trust to evaluate MBX-2982 in subjects with type 1 diabetes (T1D). The study assessed whether MBX-2982 enhanced glucagon secretion during insulin-induced hypoglycemia in subjects with T1D. In November 2023, we announced that while the study found that MBX-2982 demonstrated pharmacodynamic action, it did not demonstrate the pharmacology needed to benefit the T1D population as there was no change in glucagon secretion during clamps in subjects with T1D dosed with MBX-2982 versus placebo. We are not planning any further studies with MBX-2982.

Significant Agreements and Intellectual Property

General

We actively seek to obtain, where appropriate, patent protection and regulatory exclusivity for the proprietary technology that we consider important to our business, including compounds, compositions and formulations, their methods of use and processes for their manufacture both in the United States and other countries. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing to develop and maintain our proprietary position. Our success depends in part on our ability to obtain, maintain and enforce proprietary protection for our product candidates, technology and know-how, to operate without infringing the proprietary rights of others, and to exclude others from infringing our proprietary rights. However, patent protection may not afford us complete protection against competitors who seek to circumvent our patents.

We also depend upon the skills, knowledge, experience and know-how of our management, research and development personnel, as well as that of our advisors, consultants and other service providers. To help protect our proprietary know-how, which is not patentable, and for inventions for which patents may be difficult to enforce, we currently rely, and will in the future rely, on trade secret protection and confidentiality agreements to protect our interests. To this end, we require all our employees, consultants, advisors and other service providers to enter into confidentiality agreements that prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business.

Significant Agreements

Our current significant arrangements are summarized below:

Merger Agreement with Gilead and Purchaser: On February 11, 2024, we entered into the Merger Agreement with Gilead and Purchaser, which provides for the acquisition of the Company by Gilead in a two-step all cash transaction, consisting of the Offer, followed by the Merger, with the Company continuing as the surviving corporation.

On February 23, 2024, Purchaser commenced the Offer for all of the Company's Shares, other than any Excluded Shares, at the Offer Price, net to the seller in cash, without interest and subject to any required withholding of taxes. The Offer will initially remain open until March 21, 2024 (unless otherwise agreed to in writing by Gilead and us), which period may be extended for additional periods of up to 10 business days per extension (or such other duration as may be agreed to in writing by the Company and Gilead) to permit the conditions to the Offer to be satisfied.

The obligation of Gilead to accept for payment Shares validly tendered pursuant to the Offer is subject to customary closing conditions, including: (i) Shares having been validly tendered and not validly withdrawn that, considered together with all other Shares (if any) beneficially owned by Gilead and its affiliates, represent one more Share than 50% of the total number of Shares outstanding at the time of the expiration of the Offer (including, for the avoidance of doubt, all Shares that become outstanding as a result of the "cashless exercise" of the outstanding pre-funded warrants of the Company, as described below); (ii) the accuracy of the Company's representations and warranties contained in the Merger Agreement (subject to any applicable Material Adverse Effect (as defined in the Merger Agreement) and materiality qualifiers); (iii) the absence of a willful and material breach by the Company of the "no-shop" restrictions described in the Merger Agreement and the Company's performance of its other obligations, covenants and agreements under the Merger Agreement in all material respects; (iv) the absence, since the date of the Merger Agreement, of any Material Adverse Effect; (v) the expiration or early termination of the waiting period applicable to the Offer under the HSR Act and if Gilead and the Company have entered into an agreement with any governmental body regarding the timing of the consummation of the Offer, such consummation being permitted under such agreement and (vi) the absence of any judgment, temporary restraining order, preliminary or permanent injunction or other order, decree or ruling restraining, enjoining or otherwise preventing the acquisition of or payment for Shares pursuant to the Offer or the consummation of the Offer or the Merger or subsequent integration.

As soon as practicable following the acceptance of the Shares validly tendered and not validly withdrawn pursuant to the Offer and the consummation of the Offer, subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, the Merger will be effected under Section 251(h) of the DGCL without a meeting or vote of the Company's stockholders.

At the Effective Time, each issued and outstanding Share, other than any Excluded Shares, any Tendered Shares or any Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive the Merger Consideration, in cash, without interest and subject to any required withholding of taxes.

At the Effective Time, each stock option to purchase Shares that is then outstanding and unexercised, whether or not vested and which has a per-share exercise price that is less than the Merger Consideration, will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to (i) the excess of (a) the Merger Consideration over (b) the exercise price payable per Share under such stock option, multiplied by (ii) the total number of Shares subject to such stock option immediately prior to the Effective Time.

At the Effective Time, each restricted stock unit award with respect to Shares that is then outstanding will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to the product, rounded to the nearest cent, of (i) the number of Shares subject to such restricted stock unit award as of the Effective Time and (ii) the Merger Consideration.

At the Offer Acceptance Time, each pre-funded warrant of the Company to purchase Shares that is outstanding immediately prior to the Effective Time will automatically be deemed to be exercised in full in a "cashless exercise" pursuant to the warrant agreement to which such warrant is subject. At the Effective Time, holders of Shares issued pursuant to such "cashless exercise" of the pre-funded warrants of the Company in accordance with the applicable warrant agreements and the Merger Agreement shall become entitled to the Merger Consideration as described above in respect of Shares other than the Excluded Shares, the Tendered Shares and any Dissenting Shares.

The Merger Agreement contains certain termination rights for the Company and Gilead. Upon termination of the Merger Agreement under specified circumstances, the Company will be required to pay Gilead a termination fee in the amount of $151.6 million.

Kaken Pharmaceutical: In January 2023, we entered into a Collaboration and License Agreement (the License Agreement) with Kaken Pharmaceutical Co., Ltd. (Kaken). Pursuant to the License Agreement, we granted Kaken an exclusive license to commercialize seladelpar (the Licensed Product) for the prevention or treatment of PBC in Japan.

Pursuant to the terms of the License Agreement, Kaken will bear the cost of, and be responsible for, among other things, conducting the clinical studies and other developmental activities for the Licensed Product in PBC in Japan as well as preparing and filing applications for regulatory approval in Japan and commercializing the Licensed Product in Japan. Kaken is obligated to use commercially reasonable efforts to develop, obtain regulatory approval for, and commercialize, the Licensed Product in Japan, including obtaining pricing approval for the Licensed Product in Japan. We are obligated to supply to Kaken, its requirements of Licensed Product for clinical and commercial use in Japan, which obligation may be terminated upon specified circumstances and technology transfer.

In consideration of the license and other rights granted by us, Kaken made an upfront cash payment to us of $34.2 million and is obligated to pay potential milestone payments to us totaling up to ¥17.0 billion (approximately $128.0 million at contract inception date) for the achievement of certain regulatory and sales milestones. In addition, during the Royalty Term (as defined below), while we supply Licensed Product to Kaken, Kaken will make payments to us for each unit of Licensed Product that we supply at a percentage of the Japanese National Health Insurance price of the Licensed Product that equates to 20+% royalties. If we are not supplying product to Kaken during the Royalty Term, a lower royalty payment will be payable to us by Kaken based on Kaken net sales of Licensed Product in Japan. After the Royalty Term, if we are supplying Licensed Product to Kaken, we will receive payments for each unit of Licensed Product based on a percentage of the Japanese National Health Insurance price of the Licensed Product that is lower than during the Royalty Term.

The Royalty Term means the period ending on the latest to occur of (a) the expiration of the last valid claim of the royalty patents covering such Licensed Product in Japan, (b) the expiration of regulatory exclusivity for such Licensed Product in Japan, and (c) 10 years after the first commercial sale of such Licensed Product in Japan.

The License Agreement is effective until the date upon which (a) the Royalty Term has expired in Japan for the final Licensed Product, or (b) the License Agreement is earlier terminated (the Initial Term). After the Initial Term (except in the case of early termination), the License Agreement will be automatically renewed for 2-year periods, unless either party has given the other party a written notice not to renew the License Agreement no later than 12 months prior to the expiration of the Initial Term or any subsequent renewal term, in which case the License Agreement shall expire (and thus terminate) at the end of the then-existing term or, if applicable, shall earlier terminate upon an early termination.

The License Agreement may be early terminated by either party for material breach, upon a party's insolvency or bankruptcy or upon a challenge by one party of any patents of the other party, and Kaken may

terminate in specified situations, including for a safety concern, clinical failure or termination of an underlying in-license to us from Janssen Pharmaceutica NV (see below), or at its convenience with specified prior notice. Upon an intentional or willful material breach of the License Agreement by us, Kaken also has an alternative remedy for material breach of the License Agreement that results in a reduction in the payments otherwise payable to us under the License Agreement. Upon early termination, (i) license rights granted under the License Agreement terminate, (ii) to the extent permitted by applicable law, Kaken is obligated to transfer to us copies of, and its entire right, title and interest in, all regulatory materials in Japan (subject to a royalty if such termination is by Kaken for our uncured material breach) and (iii) Kaken will automatically grant to us, with immediate effect, a non-exclusive, fully paid, royalty-free license under the Kaken program intellectual property solely for the exploitation of Licensed Products.

Pursuant to the License Agreement, we and Kaken agreed to establish a joint steering committee to provide strategic oversight of both our and Kaken's activities under the License Agreement. The License Agreement also contains customary representations, warranties and covenants by both us and Kaken, as well as customary provisions relating to indemnification, confidentiality, intellectual property and other matters.

Johnson & Johnson: In June 2006, we entered into a license agreement with Janssen Pharmaceutica NV (Janssen NV), an affiliate of Johnson & Johnson, in which we received an exclusive worldwide, royalty-bearing license to seladelpar and certain other PPARd compounds (the PPARd Products) with the right to grant sublicenses to third parties to make, use and sell such PPARd Products. Under the terms of the agreement, we have full control and responsibility over the research, development and registration of any PPARd Products and are required to use diligent efforts to conduct all such activities, while Janssen NV has the sole responsibility for the preparation, filing, prosecution, maintenance of, and defense of certain patents related to the PPARd Products. Under the terms of the agreement, Janssen NV is entitled to receive up to an 8% royalty on net sales of PPARd Products. If we do not expend more than a de minimis amount of effort and resources on the research and/or development of at least one PPARd Product, such action would constitute a default under the agreement. In addition, if we fail to use diligent efforts to promote, market and sell any PPARd Product under the agreement, such action would constitute a default under the agreement. In the event of such default, or upon our termination of the agreement, we are obligated to grant Janssen NV a worldwide, exclusive, irrevocable license under the agreement in all information that is controlled, developed or acquired by us that relates to a PPARd compound or PPARd Product and in all patents that are filed during the term of the agreement with a priority date after the effective date of the agreement and relate to a PPARd compound or PPARd Product.

Abingworth: In July 2021, we entered into a Development Financing Agreement (the Financing Agreement) with ABW Cyclops SPV LP, an affiliate of Abingworth LLP (Abingworth), pursuant to which Abingworth provided us with $75 million of funding to support our development of seladelpar for the treatment of PBC. In return, we will pay to Abingworth (1) contingent upon the first to occur of regulatory approval of seladelpar for the treatment of PBC in the U.S., U.K., Germany, Spain, Italy or France (Regulatory Approval), fixed success payments equal to 2.0x of the funding provided, consisting of $10 million payable within 90 days after Regulatory Approval and thereafter payments due on the first six anniversaries of the Regulatory Approval in the amounts of $15 million, $22.5 million, $22.5 million, $25.0 million, $27.5 million and $27.5 million, respectively and (2) variable success payments equal to 1.1x of the funding provided, consisting of sales milestone payments of (x) $17.5 million and $27.5 million, respectively upon first reaching certain cumulative U.S. product sales thresholds, and (y) $37.5 million upon first reaching a specified U.S. product sales run rate.

Promptly following receipt of Regulatory Approval, we are required to execute and deliver a promissory note to Abingworth to convert the fixed and variable success payments into a note payable. At the time that Abingworth receives, collectively, an aggregate of 3.1x of the funding provided (approximately $232.5 million), our payment obligations under the Financing Agreement will be fully satisfied. We have the option to satisfy our payment obligations to Abingworth upon Regulatory Approval, or a change of control of us, by paying an amount equal to the remaining payments payable to Abingworth subject to a mid-single-digit discount rate. Upon a change of control of us, an acceleration payment of 1.35x of the funding provided is payable, net of payments already made to Abingworth and creditable against future payments to Abingworth.

Pursuant to the Financing Agreement, we are required to use commercially reasonable efforts to develop seladelpar and complete our development program in accordance with the Financing Agreement and an agreed timeline. In addition, an executive review committee was established between Abingworth and us to discuss our development of seladelpar.

Pursuant to the Financing Agreement, we granted Abingworth a security interest in all of our assets (other than intellectual property not related to seladelpar), provided that we are permitted to incur certain indebtedness. The security interest will terminate when we have paid Abingworth 2.0x of the funding provided or upon certain terminations of the Financing Agreement. The Financing Agreement also provides for negative, affirmative and additional covenants, with which we have agreed to comply.

The Financing Agreement terminates upon the payment of all payments owing to Abingworth, unless earlier terminated. The Financing Agreement may be earlier terminated by Abingworth if (i) we fail to use commercially reasonable efforts to develop seladelpar as set forth in the Financing Agreement or fail to make required payments (Fundamental Breach), (ii) we suffer a material adverse event, (iii) there is a material adverse patent impact on our intellectual property covering seladelpar, (iv) there are certain irresolvable disagreements within the executive review committee, (v) the security interests of Abingworth are invalidated or terminated other than as set forth in the Financing Agreement or (vi) the RESPONSE clinical trial is completed or terminated and (1) the primary endpoint is not met or (2) Abingworth reasonably determines that the results of the RESPONSE clinical trial do not support regulatory approval. The Financing Agreement may be earlier terminated by us if (i) Abingworth fails to fund as provided in the Financing Agreement, (ii) Abingworth fails to release its security interests as provided in the Financing Agreement or (iii) the RESPONSE clinical trial is completed or terminated and the primary endpoint is not met. The Financing Agreement may be terminated by either party (i) if the other party materially breaches the Financing Agreement (Material Breach), (ii) if seladelpar fails to receive regulatory approval in the U.S., U.K. or E.U., (iii) upon the bankruptcy of the other party, (iv) if a serious safety concern arises in a seladelpar clinical trial or (v) upon a change of control of us.

In certain instances, upon the termination of the Financing Agreement, we will be obligated to pay Abingworth a multiple of the amounts paid to us under the Financing Agreement, including specifically,

(i) 310% of such amounts in the event that Abingworth terminates the Financing Agreement due to (x) a Fundamental Breach, (y) our bankruptcy, or (z) a safety concern resulting from gross negligence on our part or due to a safety concern that was material on the effective date of the Financing Agreement and the material data showing such safety concern was not publicly known, disclosed to Abingworth, or in the diligence room made available to Abingworth,

(ii) 200% of such amounts in the event the Financing Agreement is terminated due to (x) our Material Breach or (y) the security interests of Abingworth being invalidated or terminated other than as set forth in the Financing Agreement, and

(iii) 100% of such amounts in the event of certain irresolvable disagreements within the executive review committee.

In addition, if, following certain terminations, we continue to develop seladelpar for the treatment of PBC and obtain Regulatory Approval, we will make the payments to Abingworth as if the Financing Agreement had not been terminated, less any payments made upon termination. We are not obligated to make any payments to Abingworth under certain instances of technical or regulatory failure of the development program.

Research and Development

We do not currently own or operate research and development facilities. We rely on contract service providers (CSPs), including clinical research organizations, clinical trial sites, central laboratories and other service providers to ensure the proper and timely conduct of our clinical trials. While we have agreements

governing their activities, we have limited influence over their actual performance. We have relied and plan to continue to rely upon CSPs to monitor and manage data for our ongoing clinical programs for our product candidates, as well as the execution of nonclinical studies. We control only certain aspects of our CSPs' activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on the CSPs does not relieve us of our regulatory responsibilities. We also rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us, which could also adversely affect the progress of our research, development and commercialization objectives.

Intellectual Property

We own 22 United States patents and 227 foreign patents, as well as 6 United States patent applications and 25 foreign and Patent Cooperation Treaty applications that are counterparts to certain United States patents and patent applications. In addition, we license from third parties 11 United States patents and 1 United States patent application and 206 foreign patents and 6 foreign and Patent Cooperation Treaty applications that are counterparts to certain United States patents and patent applications. These patents and patent applications include claims related to the composition of seladelpar and method of use of seladelpar that expire between 2025 and 2042, before accounting for any potential patent term extension or orphan disease exclusivity. Patent and trade secret protection is critical to our business. Our success will depend in large part on our ability to obtain, maintain, defend and enforce patents and other intellectual property, to extend the life of patents covering our product candidates, to preserve trade secrets and proprietary know-how, and to operate without infringing the patents and proprietary rights of third parties.

Manufacturing

We do not currently own or operate manufacturing facilities for the production or testing of seladelpar or other product candidates, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We presently depend on third party contract manufacturers to obtain all our required raw materials, active pharmaceutical ingredients (APIs) and finished products for our clinical studies for seladelpar. We have contracted with third party contract manufacturers to obtain our clinical and commercial supplies of seladelpar. We have executed manufacturing agreements for our API and finished products for our supplies of seladelpar with established manufacturing firms that are responsible for sourcing and obtaining the raw materials necessary for, as well as manufacturing, the API, finished drug product and packaged product. The raw materials necessary to manufacture the API and the finished product are available from more than one source.

Competition

The biopharmaceutical industry is highly competitive and subject to rapid and significant innovation. Although we believe that our development expertise and scientific knowledge provide us with advantages over our competitors, particularly in the therapeutic areas in which we are focused, other biopharmaceutical companies in the industry may be able to develop, or have developed, therapeutics that are able to achieve better results or have had a more successful or earlier market entry. Our competitors include pharmaceutical companies, biotechnology companies, specialty pharmaceutical companies, universities and other research institutions. Many of our competitors have significantly greater financial, technical and human resources than we have.

We have been developing seladelpar for the treatment of patients with PBC and a description of the competition in this indication is below.

PBC Competition

Currently, the only FDA-approved treatments for PBC are ursodeoxycholic acid (UDCA), also known as ursodiol, an isomer of chenodeoxycholic acid and the semi-synthetic bile acid analog obeticholic acid (Ocaliva® by Intercept Pharmaceuticals, Inc., acquired in 2023 by Alfasigma S.p.A.).

Ursodiol decreases serum levels of ALP, bilirubin, alanine aminotransferase, aspartate aminotransferase, cholesterol, and immunoglobulin M, all of which are elevated in patients with PBC and can serve as biochemical markers of the disease. In a study that combined data from three controlled trials with a total of 548 patients, ursodiol significantly reduced the likelihood of liver transplantation or death after four years. Ursodiol also delayed the progression of hepatic fibrosis in early-stage PBC, but was not effective in advanced disease. It has been reported that up to 50% of PBC patients fail to respond adequately to ursodiol therapy. Ursodiol is available as a generic, is approved for other indications, and is priced at a discount to typical branded therapies used in rare populations.

Ocaliva was approved by the FDA and European Medicines Agency in 2016 for the treatment of PBC in combination with UDCA in adults with an inadequate response to UDCA, or as monotherapy in adults unable to tolerate UDCA. Ocaliva also received orphan designations in the U.S. and the E.U. A Phase 3 study was completed with a primary composite endpoint defined as a responder rate comprised of the percentage of patients with ALP < 1.67 times upper limit of the normal range with a decrease in ALP of at least 15% and total bilirubin less than or equal to upper limit of the normal range. This study met its goals and Ocaliva was granted accelerated approval based on meeting this primary composite endpoint. In February 2018, Intercept announced that the Ocaliva label in the United States was updated by the FDA to include a boxed warning and a dosing table that reinforced the then-existing dosing schedule for patients with Child-Pugh Class B or C or decompensated cirrhosis. In addition, the FDA issued an updated drug safety communication to accompany the revised label. In 2021, following the conclusion of the FDA's evaluation of a newly identified safety signal, Ocaliva became contraindicated for patients with PBC and decompensated cirrhosis, a prior decompensation event, or compensated cirrhosis with evidence of portal hypertension, in addition to the existing contraindication for complete biliary obstruction.

Elafibranor (Genfit S.A./Ipsen, S.A.) is a mixed PPARα/d agonist in development for patients with PBC. In December 2023, Ipsen announced that (i) the FDA granted Priority Review for New Drug Application for elafibranor in PBC with a FDA PDUFA date of June 10, 2024, (ii) the EMA validated Ipsen's Marketing Authorization Application (MAA) for elafibranor, and (iii) a regulatory filing of elafibranor was validated for review by the U.K. Medicines and Healthcare products Regulatory Agency. In November 2023, Genfit announced the full results from its Phase 3 study of elafibranor in patients with PBC who had an inadequate response or intolerance to UDCA, reporting a 47% placebo-adjusted difference (P<0.001) between patients on elafibranor 80mg (51%) compared with patients on placebo (4%) achieving a biochemical response. In the trial, a biochemical response is defined as alkaline phosphatase (ALP) <1.67 x upper limit of normal (ULN), an ALP decrease ≥ 15 percent and total bilirubin (TB) ≤ ULN at 52 weeks. Only patients receiving elafibranor achieved normalization of ALP (upper limit of normal 104 U/L in females and 129 U/L in males) at Week 52 (15% vs 0% placebo, P=0.002), a key secondary endpoint of the trial. The significant biochemical effect of elafibranor measured by ALP reduction was further supported by data demonstrating reductions from baseline in ALP levels were seen at Week 4 in the elafibranor group, and were sustained through Week 52, with a decrease in ALP of 41% on elafibranor compared with placebo. Genfit also announced that on another key secondary endpoint using the PBC Worst Itch NRS, the reduction of pruritus observed for elafibranor versus placebo was not statistically significant. A long-term placebo-controlled study of elafibranor has been initiated in which patients with PBC will be followed up for up to seven years of treatment to examine the effects on liver-related clinical outcomes, including death.

Another potential therapy in clinical development for PBC is the dual PPARα/g agonist saroglitazar (Zydus Lifesciences Limited, formerly known as Cadila Healthcare Limited). In November 2020, Phase 2 results were

presented at the Liver Meeting hosted by the American Association for the Study of Liver Disease. In December 2020, Zydus announced saroglitizar had been granted Fast Track Designation for PBC and in January 2021 it received Orphan Drug Designation for PBC by the FDA. In December 2021, Zydus announced it had initiated a Phase 2(b)/3 study of saroglitazar in patients with PBC. Calliditas Therapeutics AB's selective NOX inhibitor setanaxib has also reported Phase 2 study data for PBC and in August 2021, Calliditas announced setanaxib had been granted Fast Track Designation for PBC by the FDA and that setanaxib has previously been granted orphan drug designation for PBC in the U.S. and Europe. In February 2022, Calliditas announced it had initiated a Phase 2b/3 study in PBC. In cholestatic pruritus, GSK2330672 (GSK plc) is an inhibitor of the Intestinal Bile Acid Transporter (IBAT), which is undergoing evaluation for decreasing symptoms of pruritus, including in PBC. The disclosed planned completion data for the study is October 2024.

Although not approved for use in PBC,off-label use of fibrate drugs has been reported, though many fibrates are specifically contraindicated for use in PBC due to potential concerns over acute and long-term safety in this patient population. Nevertheless, off-label use of fibrates is mentioned in several published treatment guidelines. Other therapies, such as colchicine, methotrexate, prednisone and multiple immunosuppressive regimens have been attempted. However, their efficacy is limited or unproven, and they are associated with multiple side-effects impacting tolerance and safety. Liver transplantation improves survival in patients with PBC, and it is the only effective treatment for those with liver failure. Liver transplantation however is problematic because of its costs, the limited availability of donor organs, and by the fact that the disease may recur after an initially successful transplantation.

Government Regulation and Product Approval

Government authorities in the United States, at the federal, state and local level, and other countries extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, post-approval monitoring and reporting, marketing and export and import of products such as those we are developing. The pharmaceutical drug product candidates that we develop must be approved by the Food and Drug Administration (FDA) before they may be legally marketed in the United States.

United States Pharmaceutical Product Development Process

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug and Cosmetic Act, and implements regulations. Pharmaceutical products are also subject to other federal, state and local statutes and regulations. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable United States requirements at any time during the product development process, approval process or after approval, may subject an applicant to administrative or judicial sanctions. FDA sanctions could include refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. Any agency or judicial enforcement action could have a material adverse effect on us. The process required by the FDA before a pharmaceutical product may be marketed in the United States generally involves the following:

- Completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices (GLP) or other applicable regulations;
- Submission to the FDA of an Investigational New Drug (IND) application, which must become effective before human clinical studies may begin;
- Performance of adequate and well-controlled human clinical studies according to the FDA's current Good Clinical Practices (GCP), to establish the safety and efficacy of the proposed pharmaceutical product for its intended use;

- Submission to the FDA of a New Drug Application (NDA) for a new pharmaceutical product;
- Satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the pharmaceutical product is produced to assess compliance with the FDA's current Good Manufacturing Practice standards (cGMP), to assure that the facilities, methods and controls are adequate to preserve the pharmaceutical product's identity, strength, quality and purity;
- Potential FDA audit of selected preclinical and clinical study sites that generated the data in support of the NDA; and
- FDA review and approval of the NDA.

The lengthy process of seeking required approvals and the continuing need for compliance with applicable statutes and regulations require the expenditure of substantial resources and approvals are inherently uncertain.

Before testing any compounds with potential therapeutic value in humans, the pharmaceutical product candidate enters the preclinical testing stage. Preclinical tests include laboratory evaluations of product chemistry, toxicity and formulation, as well as animal studies to assess the potential safety and activity of the pharmaceutical product candidate. The conduct of the preclinical tests must comply with federal regulations and requirements including GLP. The sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data, any available clinical data or literature and a proposed clinical protocol, to the FDA as part of the IND. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA has concerns and notifies the sponsor by way of a clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical study can begin. The FDA may also impose clinical holds on a pharmaceutical product candidate at any time before or during clinical studies due to safety concerns or non-compliance. Submission of an IND may not result in the FDA allowing clinical studies to begin and, once begun, issues may arise that lead to suspension or termination of such clinical study.

Clinical studies involve the administration of the drug candidate to healthy volunteers or patients under the supervision of qualified investigators, who are generally physicians not employed by or under the clinical study sponsor's control. Clinical studies are conducted under protocols detailing, among other things, the objectives of the clinical study, dosing procedures, subject selection and exclusion criteria, how the results will be analyzed and presented and the parameters to be used to monitor subject safety. Each protocol must be submitted to the FDA as part of the IND. Clinical studies must be conducted in accordance with GCP. Further, each clinical study must be reviewed and approved by an independent Institutional Review Board (IRB) at, or servicing, each institution at which the clinical study will be conducted. An IRB is charged with protecting the welfare and rights of study participants and considers such items as whether the risks to individuals participating in the clinical studies are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the informed consent form that must be provided to each clinical study subject or his or her legal representative and must monitor the clinical study until completed.

Human clinical studies are typically conducted in three sequential phases that may overlap or be combined:

- Phase 1. The pharmaceutical product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion.
- Phase 2. The pharmaceutical product is evaluated in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases, to determine dosage tolerance, optimal dosage and dosing schedule and to identify patient populations with specific characteristics where the pharmaceutical product may be more effective.
- Phase 3. Clinical studies are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical study sites. These clinical studies are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for

product labeling. The studies must be well-controlled and usually include a control arm for comparison. One or two Phase 3 studies are required by the FDA for an NDA approval, depending on the disease severity and other available treatment options.

- Post-approval studies, or Phase 4 clinical studies, may be conducted after initial marketing approval. These studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication.

Progress reports detailing the results of the clinical studies must be submitted at least annually to the FDA and written IND safety reports must be submitted to the FDA and the investigators for serious and unexpected adverse events or any finding from tests in laboratory animals that suggests a significant risk for human subjects. Phase 1, Phase 2 and Phase 3 clinical studies may not be completed successfully within any specified period, if at all. The FDA or the sponsor or its data safety monitoring board may suspend a clinical study at any time on various grounds, including, but not limited to, a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical study at its institution if the clinical study is not being conducted in accordance with the IRB's requirements or if the drug candidate has been associated with unexpected serious harm to patients.

Concurrent with clinical studies, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the drug candidate as well as finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the drug candidate and, among other things, must develop methods for testing the identity, strength, quality and purity of the final pharmaceutical 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.

United States Review and Approval Processes

Pre-Approval Requirements

The results of product development, preclinical studies and clinical studies, along with descriptions of the manufacturing process, analytical tests conducted on the chemistry of the pharmaceutical product, proposed labeling and other relevant information are submitted to the FDA as part of an NDA requesting approval to market the product. The submission of an NDA is subject to the payment of substantial user fees; a waiver of such fees may be obtained under certain limited circumstances.

In addition, under the Pediatric Research Equity Act (PREA), an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the pharmaceutical product for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any pharmaceutical product for an indication for which orphan designation has been granted.

The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act (PDUFA), the FDA has 10 months from filing in which to complete its initial review of a standard NDA and respond to the applicant, and six months from filing for a priority NDA. The FDA does not always meet its PDUFA goal dates for standard and priority NDAs. The review process and the PDUFA goal date may be extended by three months if the FDA requests or if the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date.

After the NDA submission is accepted for filing, the FDA reviews the NDA application to determine, among other things, whether the proposed product is safe and effective for its intended use, and whether the product is being manufactured in accordance with cGMP to assure and preserve the product's identity, strength, quality and purity. The FDA may refer applications for novel pharmaceutical products or pharmaceutical products which present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions. During the pharmaceutical product approval process, the FDA also will determine whether a risk evaluation and mitigation strategy (REMS) is necessary to assure the safe use of the pharmaceutical product. If the FDA concludes that a REMS is needed, the sponsor of the NDA must submit a proposed REMS; the FDA will not approve the NDA without a REMS, if required.

Before approving an NDA, the FDA will inspect the facilities at which the product is manufactured. The FDA will not approve the product unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. Additionally, before approving an NDA, the FDA will typically inspect one or more clinical sites to assure compliance with GCP. If the FDA determines the application, manufacturing process or manufacturing facilities are not acceptable, it will outline the deficiencies in the submission and often will request additional testing or information. In addition, the FDA will require the review and approval of product labeling.

The NDA review and approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical studies are not always conclusive and the FDA may interpret data differently than we interpret the same data. The FDA will issue a complete response letter if the agency decides not to approve the NDA. The complete response letter describes the specific deficiencies in the NDA identified by the FDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical studies. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, or withdraw the application.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical studies designed to further assess pharmaceutical product safety and effectiveness and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

Expedited Development and Review Programs

The FDA offers a number of expedited development and review programs for qualifying product candidates. A product intended to treat a serious or life-threatening disease or condition may be eligible for breakthrough therapy designation to expedite its development and review. A product can receive breakthrough therapy designation if preliminary clinical evidence indicates that the product, alone or in combination with one or more other drugs or biologics, may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. The designation provides opportunities for frequent interactions with the review team during product development and, once an NDA is submitted, the product may be eligible for priority review. The NDA may also be eligible for rolling review, where the FDA may consider for review sections of the NDA on a rolling basis before the complete application is submitted.

Orphan Drug Designation

Under the Orphan Drug Act, the FDA may grant orphan designation to a drug or biologic intended to treat a rare disease or condition, which is a disease or condition that affects fewer than 200,000 individuals in the United States, or more than 200,000 individuals in the United States for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for this type of disease or condition will be recovered from sales in the United States for that drug. Orphan drug designation must be requested before submitting an NDA. After the FDA grants orphan drug designation, the generic identity of the therapeutic agent and its potential orphan use are disclosed publicly by the FDA. The orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review or approval process.

If a product that has orphan drug designation subsequently receives the first FDA approval for the disease for which it has such designation, the product is entitled to orphan drug exclusive approval (or exclusivity), which means that the FDA may not approve any other applications, including a full NDA, to market the same drug for the same indication for seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity or if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated. Orphan drug exclusivity does not prevent the FDA from approving a different drug or biologic for the same disease or condition, or the same drug or biologic for a different disease or condition. Among the other benefits of orphan drug designation are tax credits for certain research and a waiver of the NDA application fee.

A designated orphan drug may not receive orphan drug exclusivity if it is approved for a use that is broader than the indication for which it received orphan designation. In addition, exclusive marketing rights in the United States may be lost if the FDA later determines that the request for designation was materially defective. A comparable orphan drug program is provided under EU law.

Post-Approval Requirements

Any pharmaceutical products for which we receive FDA approvals are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements, which include, among others, standards for direct-to-consumer advertising, prohibitions on promoting pharmaceutical products for uses or in patient populations that are not described in the pharmaceutical product's approved labeling (known as "off-label use"), industry-sponsored scientific and educational activities and promotional activities involving the internet. Failure to comply with FDA requirements can have negative consequences, including adverse publicity, enforcement letters from the FDA, actions by the United States Department of Justice and/or United States Department of Health and Human Services (HHS) Office of Inspector General, mandated corrective advertising or communications with doctors, and civil or criminal penalties. Although physicians may prescribe legally available pharmaceutical products for off-label uses, manufacturers may not directly or indirectly market or promote such off-label uses.

Manufacturers of our products are required to comply with applicable FDA manufacturing requirements contained in the FDA's cGMP regulations. cGMP regulations require, among other things, quality control and quality assurance, as well as the corresponding maintenance of records and documentation. Pharmaceutical product manufacturers and other entities involved in the manufacture and distribution of approved pharmaceutical products are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer or holder of an approved NDA, including

withdrawal of the product from the market. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

The FDA also may require post-marketing testing, known as Phase 4 testing, risk minimization action plans and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product.

U.S. Foreign Corrupt Practices Act

The U.S. Foreign Corrupt Practices Act, or FCPA, prohibits certain individuals and entities, including us, from promising, paying, offering to pay, or authorizing the payment of anything of value to any foreign government official, directly or indirectly, to obtain or retain business or an improper advantage. The U.S. Department of Justice and the U.S. Securities and Exchange Commission, or SEC, have increased their enforcement efforts with respect to the FCPA. Violations of the FCPA may result in large civil and criminal penalties and could result in an adverse effect on a company's reputation, operations, and financial condition. A company may also face collateral consequences such as debarment and the loss of export privileges.

Federal and State HealthCare Laws

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal healthcare laws have been applied to restrict certain business practices in the biopharmaceutical industry in recent years. These laws include anti-kickback statutes, false claims statutes, data privacy and security laws, as well as transparency laws regarding payments or other items of value provided to healthcare providers. The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering, or arranging for the purchase, lease, or order of any healthcare item or service reimbursable under Medicare, Medicaid, or other federally financed healthcare programs. The term "remuneration" has been broadly interpreted to include anything of value, including for example, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payment, ownership interests and providing anything at less than its fair market value. The Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and our practices may not in all cases meet all of the criteria for statutory exemptions or safe harbor protection. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases, or recommendations may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The intent standard of the Anti-Kickback Statute was also broadened by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the Patient Protection and Affordable Care Act ("PPACA"), so that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the PPACA 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 civil False Claims Act (discussed below).

The federal False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government. Recently, several pharmaceutical and other healthcare companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of the companies' marketing of the product for unapproved, and thus non-reimbursable, uses. Additionally, the civil monetary penalties statute imposes penalties

against any person who is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created additional federal criminal statutes that prohibit knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

The federal Physician Payments Sunshine Act, created under the PPACA, and its implementing regulations, require certain manufacturers of drugs, devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually information related to certain payments or other transfers of value provided to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), other healthcare professionals (such as physicians assistants and nurse practitioners), and teaching hospitals, or to entities or individuals at the request of, or designated on behalf of, the physicians and teaching hospitals, and applicable manufacturers and group purchasing organizations to report annually certain ownership and investment interests held by physicians and their immediate family members.

We may also be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and its implementing regulations, imposes certain requirements on covered entities, including certain healthcare providers, health plans, and healthcare clearinghouses, and their respective business associates that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity as well as their covered subcontractors relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates". HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

The majority of states also have statutes or regulations similar to the aforementioned federal fraud and abuse laws, some of which are broader in scope and apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Further, some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring drug manufacturers to report information related to payments or other transfers of value provided to physicians and other health care providers and entities, marketing expenditures, and drug pricing. Certain state and local laws also require the registration of pharmaceutical sales representatives.

These federal and state laws may impact, among other things, our proposed sales, marketing and education programs. If our operations are found to be in violation of any of the federal and state laws described above or any other governmental regulations that apply to us, we may be subject to significant penalties, including administrative, criminal and civil monetary penalties, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate its business and our results of operations. To the extent that any of our product candidates are ultimately sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-marketing requirements, including safety surveillance, anti-fraud and abuse laws, and implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals.

Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of the FDA approval of the use of our pharmaceutical product candidates, some of our patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved pharmaceutical product is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent. The United States Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we may apply for restoration of patent term for one of our currently owned or licensed patents to add patent life beyond its current expiration date, depending upon the expected length of the clinical studies and other factors involved in the filing of the relevant NDA.

Market exclusivity provisions under the U.S. Food, Drug, and Cosmetic Act can also delay the submission or the approval of certain applications of other companies seeking to reference another company's NDA. Currently seven years of reference product exclusivity are available to pharmaceutical products designated as orphan drugs, during which the FDA may not approve generic products relying upon the reference product's data. Pediatric exclusivity is another type of regulatory market exclusivity in the United States. Pediatric exclusivity, if granted, adds six months to existing exclusivity periods and patent terms. This six-month exclusivity, which runs from the end of other exclusivity protection or patent term, may be granted based on the voluntary completion of a pediatric clinical study in accordance with an FDA-issued "Written Request" for such a clinical study.

Pharmaceutical Coverage, Pricing and Reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any pharmaceutical product candidates for which we obtain regulatory approval. In the United States and markets in other countries, sales of any products for which we receive regulatory approval for commercial sale will depend in part upon the availability of coverage and adequate reimbursement from third-party payors. Third-party payors include government payors such as Medicare and Medicaid, managed care providers, private health insurers and other organizations. In the United States, no uniform policy of coverage and reimbursement for products exists among third-party payors. While commercial payors often follow Medicare coverage policy and payment limitations, coverage and reimbursement for products can differ significantly from payor to payor. The process for determining whether a payor will provide coverage for a pharmaceutical product may be separate from the process for setting the price or reimbursement rate that the payor will pay for the pharmaceutical product. Third-party payors may limit coverage to specific pharmaceutical products on an approved list, or formulary, which might not include all of the FDA-approved pharmaceutical products for a particular indication.

Third-party payors are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. We may need to conduct expensive pharmaco-economic studies in order to demonstrate the medical necessity and cost-effectiveness of its products, in addition to the costs required to obtain the FDA approvals. Our pharmaceutical product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a pharmaceutical 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 the United States there is a growing emphasis on comparative effectiveness research, both by private payors and by government agencies. To the extent other drugs or therapies are found to be more effective than our products, payors may elect to cover such therapies in lieu of our products and/or reimburse our products at a lower rate.

Different pricing and reimbursement schemes exist in other countries. The downward pressure on health care costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, in some countries, cross-border imports from low-priced markets exert a commercial pressure on pricing within a country.

The marketability of any pharmaceutical product candidates for which we receive regulatory approval for commercial sale may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement. In addition, emphasis on managed care in the United States has increased and we expect this will continue to increase the pressure on pharmaceutical pricing. Coverage policies and third-party reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

In the United States and foreign jurisdictions, there have been a number of legislative and regulatory changes to the healthcare system that could affect our future results of operations. In particular, there have been and continue to be a number of initiatives at the United States federal and state levels that seek to reduce healthcare costs. For example, in March 2010 the PPACA was enacted, which includes measures to significantly change the way healthcare is financed by both governmental and private insurers. Among the provisions of the PPACA of importance to the pharmaceutical and biotechnology industry are the following: increased the minimum level of Medicaid rebates payable by manufacturers of brand name drugs from 15.1% to 23.1%; required collection of rebates for drugs paid by Medicaid-managed care organizations; imposed a non-deductible annual fee on pharmaceutical manufacturers or importers who sell certain “branded prescription drugs” to specified federal government programs; implemented a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted, or injected; expanded eligibility criteria for Medicaid programs; created a Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; established a Center for Medicare and Medicaid Innovation at CMS, or CMMI, to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending; and implemented new transparency reporting requirements set forth as the Physician Payments Sunshine Act.

Since its enactment there have been executive, judicial and Congressional challenges to certain aspects of the PPACA. For example, President Trump signed several Executive Orders and other directives designed to delay the implementation of certain provisions of the PPACA or otherwise circumvent some of the requirements for health insurance mandated by the PPACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the PPACA. On June 17, 2021 the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the PPACA is unconstitutional in its entirety because the “individual mandate” was repealed by Congress. Further, on August 16, 2022, President Biden signed the Inflation Reduction Act of 2022, or IRA, into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in PPACA marketplaces through plan year 2025. The IRA also eliminates the “donut hole” under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and creating a new manufacturer discount program. It is possible that the PPACA will be subject to judicial or Congressional challenges in the future. It is unclear how any such challenges, and the healthcare reform measures of the Biden administration will impact the PPACA and our business.

In addition, other legislative changes have been proposed and adopted since the PPACA was enacted. In August 2011, President Obama signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction, or joint committee, to recommend proposals in spending reductions to Congress. The joint committee did not achieve its targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering automatic reductions to several government programs. These reductions include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, starting in 2013 and, due to subsequent legislative amendments, will remain in effect until 2032 unless additional

congressional action is taken. Under current legislation, the actual reduction in Medicare payments will vary from 1% in 2022 to up to 4% in the final fiscal year of this sequester. Additionally, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, beginning January 1, 2024. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

In addition, there have been several congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. At the federal level, for example, in July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, HHS released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. Further, the IRA, among other things (i) directs HHS to negotiate the price of certain high-expenditure, single-source drugs and biologics covered under Medicare and (ii) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. These provisions will take effect progressively starting in fiscal year 2023. On August 29, 2023, HHS announced the list of the first ten drugs that will be subject to price negotiations, although the Medicare drug price negotiation program is currently subject to legal challenges. Further in response to the Biden administration's October 2022 executive order, on February 14, 2023, HHS released a report outlining three new models for testing by the CMMI which will be evaluated on their ability to lower the cost of drugs, promote accessibility, and improve quality of care. It is unclear whether the models will be utilized in any health reform measures in the future. On December 7, 2023, the Biden administration announced an initiative to control the price of prescription drugs through the use of march-in rights under the Bayh-Dole Act. On December 8, 2023, the National Institute of Standards and Technology published for comment a Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights which for the first time includes the price of a product as one factor an agency can use when deciding to exercise march-in rights. While march-in rights have not previously been exercised, it is uncertain if that will continue under the new framework. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on our business.

International Regulation

In addition to regulations in the United States, there are a variety of foreign regulations governing clinical studies and commercial sales and distribution of our future product candidates. Whether or not FDA approval is obtained for a product, approval of a product must be obtained by the comparable regulatory authorities of foreign countries before clinical studies or marketing of the product can commence in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical studies, product licensing, pricing and reimbursement vary greatly from country to country. In addition, certain regulatory authorities in select countries may require us to repeat previously conducted preclinical and/or clinical studies under specific criteria for approval in their respective country which may delay and/or greatly increase the cost of approval in certain markets targeted for approval by us.

Environment, Health and Safety

Various laws and regulations have been implemented or are under consideration to mitigate the effects of climate change caused by greenhouse gas emissions. For example, the California Air Resources Board is in the process of drafting regulations to meet state emissions targets. Based on current information and subject to the finalization of the proposed regulations, we believe that our primary risk related to climate change is the risk of increased energy costs. However, because we are not an energy-intensive business, we do not anticipate being subject to a cap and trade system or any other mitigation measures that would likely be material to our capital expenditures, results of operations or competitive position.

We are also subject to other federal, state and local regulations regarding workplace safety and protection of the environment. Our service providers use hazardous materials, chemicals, and various compounds in the furtherance of our research and development activities and we cannot eliminate the risk of accidental contamination or injury from these materials. Certain misuse or accidents involving these materials could lead to significant litigation, fines and penalties. We have implemented proactive programs to reduce and minimize the risk of hazardous materials incidents.

Corporate Information

CymaBay Therapeutics, Inc., formerly Metabolex, Inc., was incorporated under the laws of the State of Delaware on October 5, 1988, originally under the name Transtech Corporation. Our executive offices are located at 7601 Dumbarton Circle, Fremont, CA 94555. The telephone number at our executive office is (510) 293-8800. Our corporate website address is www.cymabay.com. We do not incorporate the information contained on, or accessible through, our website into this Annual Report on Form 10-K, and you should not consider it part of this Annual Report. We make available free of charge on or through our website our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934, as amended, or the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

Employees

As of December 31, 2023, and January 31, 2024, we had 101 and 108 full-time employees, respectively.

Information about our Executive Officers

As of January 31, 2024, our executive officers were as follows:

Name	Age	Position Held With CymaBay
Sujal Shah	50	President & Chief Executive Officer
Charles A. McWherter, Ph.D.	69	President of Research and Development and Chief Scientific Officer
Paul T. Quinlan	61	General Counsel and Chief Compliance Officer
Harish Shantharam	42	Chief Financial Officer
Klara Dickinson	57	Chief Regulatory and Quality Assurance Officer

Biographical Information

Sujal Shah has served as our President and Chief Executive Officer since November 2017. Prior to that he served as our Interim President and Chief Executive Officer from March 2017 to November 2017. From December 2013 to March 2017, Mr. Shah served as Chief Financial Officer. Prior to that he served as a consultant and acting Chief Financial Officer for us from June 2012 to December 2013. From 2010 to 2012,

Mr. Shah served as Director, Health Care Investment Banking for Citigroup Inc., where he was responsible for managing client relationships and executing strategic and financing related transactions for clients focused in life sciences. From 2004 to 2010 Mr. Shah was employed with Credit-Suisse, last serving in the capacity as Vice President, Health Care Investment Banking Group. Mr. Shah currently serves on the Board of Directors of Tvardi Therapeutics, Inc. Mr. Shah received an M.B.A. from Carnegie Mellon University—Tepper School of Business and M.S. and B.S. degrees in Biomedical Engineering from Northwestern University.

Charles A. McWherter, Ph.D. has served as our President of Research and Development and Chief Scientific Officer since November 2022. Previously, he served as Chief Scientific Officer since 2013. From 2007 to 2013, he served as our Senior Vice President, Research and Preclinical Development. From 2003 to 2007, he served as Vice President and head of the cardiovascular therapeutics areas of Pfizer Inc., a biopharmaceutical company. From 2001 to 2003, Dr. McWherter served as Vice President of Drug Discovery at Sugen, Inc., a biopharmaceutical company acquired by Pfizer Inc. in 2003. Dr. McWherter obtained his Ph.D. from Cornell University.

Paul T. Quinlan has served as our General Counsel, Chief Compliance Officer and Corporate Secretary since October 2020. He was also our General Counsel and Corporate Secretary from December 2017 to February 2020. Previously, Mr. Quinlan served as General Counsel and Secretary at TerraVia Holdings, Inc. (formerly Solazyme, Inc.), a biotechnology company, from 2010 until January 2018, where he was responsible for the general supervision of the company's legal affairs. From 2005 to 2010, Mr. Quinlan was General Counsel and Secretary at Metabolex, Inc., a biopharmaceutical company, and from 2000 to 2005, Mr. Quinlan held various positions in the legal department at Maxygen, Inc., a biopharmaceutical company, most recently that of Chief Corporate Securities Counsel. Prior to joining Maxygen, Mr. Quinlan was an associate at Cooley LLP and Cravath, Swaine & Moore LLP. Mr. Quinlan obtained a law degree from Columbia University Law School and a M.Sc. in Medical Biophysics from the University of Toronto.

Harish Shantharam has served as our Chief Financial Officer since May 2023. Previously, he served as senior finance advisor at Eikon Therapeutics from August 2022. From October 2011 until May 2022, Mr. Shantharam held various positions in the finance department at Gilead Sciences, Inc., a pharmaceutical company, most recently Vice President of Global Commercial Finance. Before joining Gilead, Mr. Shantharam served in various roles of increasing responsibility supporting forecasting, commercial analytics, and business development at Amgen. Mr. Shantharam holds an MBA in finance from UCLA Anderson School of Management and a graduate degree in Industrial Engineering from the University of Texas, Arlington and is also a CFA charter holder.

Klara Dickinson has served as our Chief Regulatory and Quality Assurance Officer since October 2020. Prior to that she was our Chief Regulatory and Compliance Officer since January 2019, and our Senior Vice President, Regulatory Affairs and Compliance since June 2017. Previously, she served as Senior Vice President, Chief Regulatory Officer of Anthera Pharmaceuticals, Inc., a biopharmaceutical company. From 2007 to 2014, she was Senior Vice President of Regulatory Affairs and Compliance at Hyperion Therapeutics Inc, where she was responsible for the general supervision of the company's regulatory affairs and quality assurance. Ms. Dickinson also spent three years at CoTherix, Inc. as Vice President, Regulatory Affairs and Healthcare Compliance Officer, and held various positions at biopharmaceutical companies such as Scios, Inc. and DEY Laboratories (a subsidiary of Mylan, Inc.). Ms. Dickinson holds a B.S. in Biology from the College of Great Falls in Montana and is certified by the Regulatory Affairs Certification Board.

Item 1A. Risk Factors

In addition to the factors discussed elsewhere in this report, the following are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by us or on our behalf. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not currently known to us or that we deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occur, our business could be harmed.

Risks Related to the Proposed Transaction with Gilead

There are uncertainties as to the timing of the Offer and the Merger, including the risk that the Offer or the Merger may not be completed in a timely manner or at all.

As described above, on February 23, 2024, Gilead and Purchaser commenced the Offer, which is scheduled to expire at one minute after 11:59 p.m., Eastern Time, on March 21, 2024, unless extended to permit satisfaction of the conditions to the Offer in accordance with the terms of the Offer and the Merger Agreement and the applicable rules and regulations of the SEC. There can be no assurance that the Offer and the Merger will be completed in the currently contemplated timeframe, or at all. While it is currently expected that the Offer and the Merger will close during the first quarter of 2024, there can be no assurance that all required approvals will be obtained or that all closing conditions will otherwise be satisfied (or waived, if applicable), and, if all required approvals are obtained and all closing conditions are satisfied (or waived, if applicable), we can provide no assurance as to the terms, conditions and timing of such approvals or that the Offer and the Merger will be completed in a timely manner or at all.

The Merger Agreement contains customary mutual termination rights for us and Gilead, as well as customary termination rights for the benefit of each party, in each case which could prevent the consummation of the Offer and the Merger.

If the Offer and the Merger are not completed within the expected timeframe or at all, we may be subject to a number of material risks, including: the trading price of our Shares may significantly decline to the extent that the market price of the Shares reflect positive market assumptions that the Offer and the Merger will be completed, and the related benefits will be realized; if the Merger Agreement is terminated under certain specified circumstances, we will be required to pay Gilead a termination fee of $151.6 million; the obligation to pay significant transaction costs, such as legal, accounting and financial advisory costs that are not contingent on closing of the Offer and the Merger; the diversion of management's attention from our ongoing business operations towards the Offer and the Merger, for which we will have received little or no benefit if completion of the Offer and the Merger does not occur; and reputational harm including relationships with customers and business partners due to the adverse perception of any failure to successfully complete the Offer and the Merger.

Our ability to complete the Merger is subject to certain closing conditions that could adversely affect us or cause the Merger to be abandoned.

The obligation of Purchaser to accept for payment Shares validly tendered pursuant to the Offer is subject to customary closing conditions, including: (i) Shares having been validly tendered and not validly withdrawn that, considered together with all other Shares (if any) beneficially owned by Gilead and its affiliates, represent one more Share than 50% of the total number of Shares outstanding at the time of the expiration of the Offer (including, for the avoidance of doubt, all Shares that become outstanding as a result of the "cashless exercise" of the outstanding pre-funded warrants of the Company, as described above); (ii) the accuracy of the Company's representations and warranties contained in the Merger Agreement (subject to any applicable Material Adverse Effect (as defined in the Merger Agreement) and materiality qualifiers); (iii) the absence of a willful and material breach by the Company of the "no-shop" restrictions described in the Merger Agreement and the Company's performance of its other obligations, covenants and agreements under the Merger Agreement in all material respects; (iv) the absence, since the date of the Merger Agreement, of any Material Adverse Effect; (v) the expiration or early termination of the waiting period applicable to the Offer under the HSR Act, and if Gilead and the Company have entered into an agreement with any governmental body regarding the timing of the consummation of the Offer, such consummation being permitted under such agreement and (vi) the absence of any judgment, temporary restraining order, preliminary or permanent injunction or other order, decree or ruling restraining, enjoining or otherwise preventing the acquisition of or payment for Shares pursuant to the Offer or the consummation of the Offer or the Merger or subsequent integration. There can be no assurance that all closing conditions will be satisfied (or waived, if applicable), and, if all closing conditions are satisfied (or

waived, if applicable), we can provide no assurance as to the terms, conditions and timing of such satisfaction (or waiver, if applicable) or that the Offer and the Merger will be completed in a timely manner or at all. The consummation of the Offer and the Merger is not subject to a financing condition.

The Merger Agreement contains provisions that could discourage a potential competing acquirer of the Company or could result in a competing acquisition proposal being at a lower price than it might otherwise be.

The Merger Agreement contains provisions that, subject to certain exceptions, restrict our ability to solicit or negotiate any alternative acquisition proposal. The Merger Agreement contains certain termination rights for the Company and Gilead, including, among others, the right of (i) the Company to terminate the Merger Agreement in order to enter into a binding written definitive acquisition agreement providing for the consummation of a transaction for a Superior Offer (as defined in the Merger Agreement) and (ii) Gilead to terminate the Merger Agreement as a result of our Board of Directors changing its recommendation with respect to the Offer. Upon termination of the Merger Agreement under specified circumstances, the Company will be required to pay Gilead a termination fee in the amount of $151.6 million. These provisions could discourage a potential competing acquirer that might have an interest in acquiring all or a significant part of our business from considering or making a competing acquisition proposal, even if the potential competing acquirer was prepared to pay consideration with a higher per share cash value than the market value proposed to be received or realized in the Offer and the Merger, or might cause a potential competing acquirer to propose to pay a lower price than it might otherwise have proposed to pay because of the added expense of the termination fee and other costs that may become payable in certain circumstances under the Merger Agreement.

The announcement or pendency of the Transactions may result in disruptions to our business, divert management's attention and/or disrupt our relationships with third parties and employees, any of which could negatively impact our operating results and ongoing business.

The Merger Agreement generally requires us to conduct our business in the ordinary course, subject to certain exceptions, including as required by applicable law, pending consummation of the Transactions, and subjects us to customary interim operating covenants that restrict us, without Gilead's approval (such approval not to be unreasonably withheld, delayed or conditioned), from taking certain specified actions until the Transactions are consummated or the Merger Agreement is terminated in accordance with its terms. These restrictions could prevent us from pursuing certain business opportunities that may arise prior to the consummation of the Transactions and may affect our ability to execute our business strategies and attain financial and other goals and may impact our financial condition, results of operations and cash flows.

Our current and prospective employees may experience uncertainty about their future roles with us following the consummation of the Transactions, which may materially adversely affect our ability to retain and hire key personnel and other employees while the Transactions are pending. The pending Transactions could cause disruptions to our business or business relationships with our existing and potential suppliers and others with whom we do business, and this could have an adverse impact on our operating results and business generally. Parties with which we have business relationships may experience uncertainty as to the future of such relationships and may delay or defer certain business decisions, seek alternative relationships with third parties, or seek to negotiate changes or alter their present business relationships with us. Parties with whom we otherwise may have sought to establish business relationships may seek alternative relationships with third parties.

The pursuit of the Transactions may place a significant burden on management and internal resources, which may have a negative impact on our ongoing business operations. It may also divert management's time and attention from the day-to-day operation of our businesses and the execution of our other strategic initiatives. This could adversely affect our financial results.

Stockholder litigation in connection with the Transactions may result in significant costs of defense, indemnification and liability.

The Company may be subject to stockholder lawsuits challenging the Transactions. No assurance can be made as to the outcome of these and other similar lawsuits, including the amount of costs associated with defending such claims or any other liabilities that may be incurred in connection with the litigation of such claims. If plaintiffs are successful in obtaining an injunction prohibiting completion of the Transactions on the agreed-upon terms, such an injunction may delay the completion of the Transactions in the expected timeframe or may prevent the Transactions from being completed altogether. Whether or not any plaintiff's claim is successful, such litigation may result in significant costs of defense, indemnification and liability, and diverts management's attention and resources, which could adversely affect our ongoing business operations.

Risks Related to Our Financial Condition and Capital Requirements

We will need additional capital in the future to sufficiently fund our operations and research.

We have incurred significant net losses since our inception. We anticipate that we will continue to incur significant losses for the foreseeable future, and we may never achieve or maintain profitability. As of December 31, 2023, we had cash, cash equivalents and marketable securities totaling $416.2 million. To date, we have raised capital primarily through equity financings, licensing transactions and a structured finance arrangement. For example, in January 2023, we entered into a Collaboration and License Agreement with Kaken Pharmaceutical Co., Ltd. (Kaken), granting Kaken an exclusive license to commercialize and market seladelpar for the treatment of primary biliary cholangitis (PBC) in Japan in consideration for an upfront payment to us of $34.2 million that was paid in January 2023, potential milestone payments to us totaling up to ¥17.0 billion (approximately $128.0 million at contract inception date) for the achievement of certain regulatory and sales milestones in Japan and additional payments to us for the supply of seladelpar to Kaken. In September 2023, we sold 14,521,307 shares of common stock at $17.13 per share and a pre-funded warrant to purchase 583,771 shares of common stock in a public equity offering for total gross offering proceeds of approximately $258.7 million. In January 2023, we sold 11,821,428 shares of common stock at $7.00 per share and a pre-funded warrant to purchase 2,142,857 shares of common stock at $6.9999 per share in a public equity offering for total gross offering proceeds of $97.7 million. In July 2021, we entered into a Development Financing Agreement with an affiliate of Abingworth LLP ("Abingworth") pursuant to which Abingworth provided $75 million in funding to us. We may need to raise additional equity and/or debt capital or enter into strategic transactions to fund our continued operations, including clinical trials, other product development and pre-commercialization activities. Our monthly spending levels vary based on new and ongoing development and corporate activities. Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a time-consuming, expensive and uncertain process that takes years to complete.

In the event we do not successfully raise sufficient funds to finance our operations, we will curtail our product development activities and other activities commensurate with the magnitude of the shortfall and our product development activities may cease altogether. To the extent that the costs of our activities exceed our current estimates and we are unable to raise sufficient additional capital to cover such additional costs, we will need to reduce operating expenses, sell assets, enter into strategic transactions, or effect a combination of the above. No assurance can be given that we will be able to enter into any of such transactions on acceptable terms, if at all.

Our future funding requirements and sources will depend on many factors, including but not limited to the following:

- the rate of progress and cost of our clinical studies;
- the need for additional or expanded clinical studies;

- the rate of progress and cost of our Chemistry, Manufacturing and Control development, registration, validation and commercial programs;
- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which we may enter;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of our other development activities;
- the costs and scope of our pre-commercialization activities;
- the costs of filing, prosecuting, defending and enforcing our patent claims and other intellectual property rights;
- macroeconomic conditions that may impact our operations and financial condition; and
- the effect of competing products and market developments.

If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may be prevented from pursuing development and commercialization efforts, which would have a material adverse effect on our business, operating results, prospects, and on our ability to develop and commercialize our product candidates.

Failure to remain in compliance with our obligations under the Development Financing Agreement (the Financing Agreement) with Abingworth could lead to the acceleration of potentially significant payments to Abingworth.

In July 2021, we entered into a Development Financing Agreement with Abingworth, pursuant to which Abingworth has provided $75 million in funding to us to support our development of seladelpar for the treatment of PBC. Pursuant to the Financing Agreement, we are required to use commercially reasonable efforts to develop seladelpar and complete our development program in accordance with the Financing Agreement and an agreed timeline. In return, we are obligated to pay to Abingworth (1) upon the first to occur of regulatory approval of seladelpar for the treatment of PBC in the U.S., U.K., Germany, Spain, Italy or France (Regulatory Approval), fixed success payments equal to 2.0x of the funding provided and (2) variable success payments equal to 1.1x of the funding provided upon first reaching certain U.S. product sales milestones. At the time that Abingworth receives, collectively, an aggregate of 3.1x of the funding provided, our payment obligations under the Financing Agreement will be fully satisfied.

The Financing Agreement terminates upon the payment of all payments owing to Abingworth, unless earlier terminated. The Agreement may be earlier terminated in a number of circumstances including (i) by Abingworth if we fail to use commercially reasonable efforts to develop seladelpar as set forth in the Financing Agreement or if we fail to make required payments (Fundamental Breach) or (ii) by either party if the other party materially breaches the Agreement (Material Breach). In certain instances, upon the termination of the Financing Agreement, we will be obligated to pay Abingworth a multiple of the amounts paid to us under the Agreement, including specifically,

(i) 310% of such amounts in the event that Abingworth terminates the agreement due to (x) a Fundamental Breach, (y) our bankruptcy, or (z) a safety concern resulting from gross negligence on our part or due to a safety concern that was material on the Effective Date and the material data showing such safety concern was not publicly known, disclosed to Abingworth, or in the diligence room made available to Abingworth,

(ii) 200% of such amounts in the event the Agreement is terminated due to (x) our Material Breach or (y) the security interests of Abingworth being invalidated or terminated other than as set forth in the Financing Agreement, and

(iii) 100% of such amounts in the event of certain irresolvable disagreements within the executive review committee overseeing our development of seladelpar.

In addition, if, following certain terminations, we continue to develop seladelpar for the treatment of PBC and obtain Regulatory Approval, we will make the payments to Abingworth as if the Financing Agreement had not been terminated, less any payments made upon termination.

The payments required under the Financing Agreement are significant. Failure to raise sufficient capital or generate sufficient revenue to make such payments if and as they become due, or failure to otherwise finance such payments would have a material adverse effect on our business. In addition, if we are unable to comply with our obligations under the Financing Agreement and/or one of the termination events described above occurs our payments obligations thereunder may be accelerated. The acceleration of payments under the Financing Agreement would have a material impact on our business and we may not be able to make such payments at such time.

Our ability to generate future revenues from product sales is uncertain and depends upon our ability to successfully develop, obtain regulatory approval for, and commercialize product candidates.

Our ability to generate revenue and achieve profitability depends on our ability, alone or with collaborators, to successfully complete the development of, obtain the necessary regulatory approvals for, and commercialize, product candidates. We do not anticipate generating revenues from sales of our product candidates in the immediate future, if ever.

Conducting preclinical testing and clinical trials is a time-consuming, expensive, and uncertain process that takes years to complete, and we may never generate the necessary data required to obtain regulatory approval and achieve product sales. Our anticipated development costs would likely increase if we do not obtain favorable results or if development of our product candidates is delayed. In particular, we would likely incur higher costs than we currently anticipate if development of our product candidates is delayed because we are required by a regulatory authority such as the FDA to perform studies or trials in addition to our current trials. Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to predict the timing or amount of any increase in our anticipated development costs.

In addition, our product candidates, if approved, may not achieve commercial success. Even if one or more of our product candidates is approved for commercial sale, we anticipate incurring significant costs in connection with commercialization. As a result, we cannot assure you that we will be able to generate revenues from sales of any approved products, or that we will achieve or maintain profitability even if we do generate sales.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances, licensing arrangements and marketing and distribution arrangements. We do not have any committed external source of funds. If appropriate opportunities become available, we may seek to raise additional equity and/or debt capital to fund our continued operations.

To raise additional funds to support our operations, we may sell additional equity or debt securities, enter into collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of stockholders. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt,

making capital expenditures, and declaring dividends, and may impose limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business.

If we raise additional funds through collaborations, strategic alliances, licensing arrangements or other marketing or distribution arrangements with third parties, we may have to relinquish valuable rights to our intellectual property, technologies, future revenue streams, research programs or product candidates, or grant licenses on terms that may not be favorable to us.

If we are unable to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts, or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults ornon-performance by financial institutions could adversely affect our current financial condition and projected business operations.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, on March 10, 2023, Silicon Valley Bank (SVB), where we currently hold a portion of our cash and cash equivalents, was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation (FDIC), as receiver. On March 12, 2023, the Department of the Treasury, the Federal Reserve and the FDIC jointly released a statement that depositors at SVB would have access to their funds, even those funds in excess of FDIC insurance limits, under a systemic risk exception. As of March 13, 2023, we had access to our cash and cash equivalents at SVB; however, there is uncertainty in the markets regarding the stability of regional banks and the safety of deposits in excess of the FDIC insured deposit limits. The ultimate outcome of these events cannot be predicted, but these events could have a material adverse effect on our business operations if our ability to access funds at SVB or any other banks we use is compromised.

Risks Related to Clinical Development and Regulatory Approval

After the completion of our clinical trials, we cannot predict whether or when we will obtain regulatory approval to commercialize our product candidates and we cannot, therefore, predict the timing of any future revenue from our product candidates. Regulatory approval of a product candidate is not guaranteed, and the approval process is expensive, uncertain and lengthy.

We cannot commercialize our product candidates until the appropriate regulatory authorities, such as the FDA, have reviewed and approved the product candidate. The regulatory agencies may not complete their review processes in a timely manner, or we may not be able to obtain regulatory approval for our product candidates. Additional delays may result if a product candidate is brought before an FDA advisory committee, which could recommend restrictions on approval or recommend non-approval of the product candidate. In addition, we may experience delays or rejections based upon additional government regulation from future legislation or administrative action, or changes in regulatory agency policy during the period of product development, clinical studies and the review process. As a result, we cannot predict when, if at all, we will receive any future revenue from commercialization of any of our product candidates. The FDA and foreign regulatory authorities have

substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons, including the following:

- we may be unable to demonstrate to the satisfaction of regulatory authorities that a product candidate is safe and effective for any indication;
- regulatory authorities may not find the data from nonclinical studies and clinical studies sufficient or may differ in the interpretation of the data;
- regulatory authorities may require additional nonclinical or clinical studies;
- regulatory authorities might not approve our third-party manufacturers' processes or facilities for clinical or commercial product;
- regulatory authorities may change their approval policies or adopt new regulations;
- regulatory authorities may disagree with the design or implementation of our clinical studies;
- regulatory authorities may not accept clinical data from studies that are conducted in countries where the standard of care is potentially different from the jurisdiction of that regulatory authority;
- the results of clinical studies may not meet the level of statistical significance required by regulatory authorities for approval;
- we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks; or
- the data collection from clinical studies of our product candidates may not be sufficient to support the submission of a new drug application (NDA), marketing authorization or other equivalent submission, or to obtain regulatory approval in the United States or elsewhere.

In addition, events raising questions about the safety of certain marketed pharmaceuticals may result in increased caution by the FDA and other regulatory authorities in reviewing new pharmaceuticals based on safety, efficacy or other regulatory considerations and may result in significant delays in obtaining regulatory approvals.

Even if we obtain regulatory approval for our product candidates, we will still face extensive regulatory requirements and our products may face future development and regulatory difficulties.

Even if we obtain regulatory approval in the United States, the FDA may still impose significant restrictions on the indicated uses or marketing of our products or impose ongoing requirements for potentially costly post-approval studies or post-market surveillance. Our products would be subject to additional ongoing FDA requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, record-keeping and reporting of safety and other post-market information. The holder of an approved NDA is obligated to monitor and report adverse events (AEs) and any failure of a product to meet the specifications in the NDA. The holder of an approved NDA must also submit new or supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. Advertising and promotional materials must comply with FDA rules and are subject to FDA review, in addition to other potentially applicable federal and state laws. Furthermore, promotional materials must be approved by the FDA prior to use for any drug receiving accelerated approval.

In addition, manufacturers of drug products and their facilities are subject to payment of user fees and continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current Good Manufacturing Practices (cGMP), and adherence to commitments made in the NDA. If we, or a regulatory agency, discover previously unknown problems with a product, such as quality issues or AEs of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions relative to that product or the manufacturing facility, including requesting recall or withdrawal of the product from the market or suspension of manufacturing.

If we, or our third-party contractors, fail to comply with applicable regulatory requirements following approval of our product candidate, a regulatory agency may:

- issue an untitled or warning letter asserting violation of the law;
- seek an injunction or impose civil or criminal penalties up to and including imprisonment or monetary fines;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve a pending NDA or supplements to an NDA; or
- request recall and/or seize product.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. The occurrence of any event or penalty described above may inhibit our ability to commercialize our products and inhibit our ability to generate revenues.

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products. If we are found to have improperly promoted our products, we may become subject to significant fines and other liability.

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA or such other regulatory agencies as reflected in the product's approved labeling. The FDA and other regulatory agencies also regulate the pre-approval promotion of an unapproved drug. If we receive marketing approval for our product candidates, physicians may nevertheless prescribe such products to their patients in a manner that is inconsistent with the approved label. If we are found to have promoted such off-label uses, we may become subject to significant government fines and other related liability, such as enforcement letters, inquiries, investigations and civil and criminal sanctions. For example, the federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA also has requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

Even if we obtain FDA approval for our product candidates in the United States, we may never obtain approval for or commercialize our product candidates outside of the United States, which would limit our ability to realize their full market potential.

In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions. In addition, clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country. Approval processes vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking foreign regulatory approval could result in difficulties and costs for us and require additional preclinical studies or clinical trials that could be costly and time consuming. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our products in those countries. We do not have any product candidates approved for sale in any jurisdiction, including international markets, and we do not have experience in obtaining regulatory approval in international markets. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our target market will be reduced and our ability to realize the full market potential of our products will be unrealized.

Coverage and adequate reimbursement may not be available for our future products, which could make it difficult for us to sell profitably, if approved.

Market acceptance and sales of any products that we commercialize will depend in part on the extent to which coverage and adequate reimbursement will be available from third-party payors, including government health administration authorities, managed care organizations and private health insurers. Third-party payors decide which therapies they will pay for and establish reimbursement levels. Third-party payors in the United States often rely upon Medicare coverage policy and payment limitations in setting their own coverage and reimbursement policies. However, decisions regarding the extent of coverage and amount of reimbursement to be provided for any products that we develop will be made on a payor-by-payor basis. One payor's determination to provide coverage for a drug does not assure that other payors will also provide coverage and adequate reimbursement for the drug. Additionally, a third-party payor's decision to provide coverage for a therapy does not imply that an adequate reimbursement rate will be approved. Third-party payors are increasingly challenging the price, examining the medical necessity and reviewing the cost-effectiveness of medical products, therapies and services, in addition to questioning their safety and efficacy. We cannot be sure that coverage and reimbursement in the United States or elsewhere will be available for any product that we may develop, and any reimbursement that may become available may be decreased or eliminated in the future.

Our relationships with health care professionals, customers and payors may be subject to applicable anti-kickback, fraud and abuse and other health care laws and regulations, which could expose us to significant penalties, including criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Health care professionals and third-party payors will play a primary role in the recommendation and prescription of any products for which we obtain marketing approval. Our current and future arrangements with healthcare professionals, third-party payors and customers may expose us to broadly applicable fraud and abuse and other health care laws and regulations that may constrain the business or financial arrangements and relationships through which we research, as well as market, sell and distribute our products. Restrictions under applicable federal and state health care laws and regulations, include the federal Anti-Kickback Statute, the federal False Claims Act, Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, the federal false statements statute, the federal transparency requirements under the PPACA, as amended by the Health Care and Education Reconciliation Act, commonly referred to as the Physician Payments Sunshine Act, and analogous state laws and regulations, such as state anti-kickback and false claims laws.

Efforts to ensure that our business arrangements with third parties will comply with applicable health care laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other health care laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, disgorgement, exclusion from government funded health care programs, such as Medicare and Medicaid, integrity oversight and reporting obligations, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business are found to be not in compliance with applicable laws, they may be subject to significant criminal, civil or administrative sanctions, including exclusions from government funded health care programs.

Current laws and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our product candidates and affect the prices we may obtain.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the health care system that could prevent or delay marketing approval

of our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any products for which we obtain marketing approval.

For example, the PPACA was enacted to broaden access to health insurance, reduce or constrain the growth of health care spending, enhance remedies against fraud and abuse, add new transparency requirements for health care and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. Since its enactment there have been judicial and Congressional challenges to certain aspects of the PPACA as well as efforts to repeal or replace certain aspects of the PPACA. For example, Congress considered legislation that would repeal or repeal and replace all or part of the PPACA. While Congress has not passed comprehensive repeal legislation, it has enacted laws that modify certain provisions of the PPACA. It is unclear how litigation and healthcare reform measures will impact the PPACA and our business.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. In addition, there have been several recent congressional inquiries, proposed bills and other proposals designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products including instituting reference pricing. At the federal level, for example, in July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, HHS released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. Further, on August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (IRA) into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in PPACA marketplaces through plan year 2025. The IRA also eliminates the "donut hole" under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and through a newly established manufacturer discount program. In addition, the IRA, among other things, (1) directs the U.S. Department of Health and Human Services to negotiate the price of certain single-source drugs and biologics covered under Medicare and (2) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. These provisions will take effect progressively starting in fiscal year 2023, although the Medicare drug price negation program is currently subject to legal challenges. However, it is unclear whether the Biden administration will work to reverse these measures or pursue similar policy initiatives. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

We are not sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates and our business, if any, may be.

We depend on the success of our product candidates and we may not obtain regulatory approval or successfully commercialize our product candidates.

We have not marketed, distributed or sold any products. The success of our business depends upon our ability to develop and commercialize our product candidates. A concentration of risk and reliance on one product candidate may develop if we are unsuccessful, or less successful, in developing a product pipeline. The success of any product candidate will depend on many factors, including the following:

- successful enrollment and completion of clinical trials, including, in the case of RESPONSE, sufficient subjects that received liver biopsies;

- the successful and timely collection and analysis of trial data;
- receipt of marketing approvals from the FDA and regulatory authorities outside the United States for the product candidate;
- establishing commercial manufacturing capabilities by making arrangements with third-party manufacturers;
- launching commercial sales of the product, whether alone or in collaboration with others;
- acceptance of the product by patients, the medical community and third-party payors;
- effectively competing with other therapies;
- a continued acceptable safety profile of the product following marketing approval; and
- obtaining, maintaining, enforcing and defending intellectual property rights and claims.

If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize our product candidates, which would materially harm our business.

We depend on the successful completion of clinical trials for our product candidates.

Clinical testing is expensive, difficult to design and implement, can take many years to complete and is uncertain as to outcome. A failure of one or more of our clinical trials can occur at any stage, and interim results of a clinical trial do not necessarily predict final results. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval for their products.

We may experience a number of unforeseen events during clinical trials for our product candidates that could delay or prevent the commencement and/or completion of our clinical trials, including the following:

- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- the clinical study protocol may require one or more amendments delaying study completion;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of subjects required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be insufficient or slower than we anticipate, we may have to compete with other clinical trials to enroll eligible subjects, or subjects may drop out of these clinical trials at a higher rate than we anticipate;
- the number of patients in our RESPONSE clinical trial that received biopsies may be insufficient to satisfy regulatory requirements;
- clinical investigators or study subjects may fail to comply with clinical study protocols;
- trial conduct and data analysis issues may occur, including, but not limited to, failure to collect and analyze data in a timely manner, data entry and/or labeling errors or data analysis errors;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we might have to suspend or terminate clinical trials of our product candidates for various reasons, including a finding that the subjects are being exposed to unacceptable health risks;

- geo-political actions may interfere with our clinical trials;
- regulators or institutional review boards may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements;
- the cost of clinical trials of our product candidates may be greater than we anticipate;
- reports of initial clinical results or topline data may change as additional source validation is undertaken;
- the supply or quality of our clinical trial materials or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators to suspend or terminate the trials.

Because successful development of product candidates is uncertain, we are unable to estimate the actual funds required to complete research and development and commercialize our products under development.

Negative or inconclusive results of our future clinical trials of product candidates could cause the FDA or other regulatory authorities to require that we repeat or conduct additional clinical studies. If later stage clinical trials do not produce favorable results, our ability to obtain regulatory approval for our product candidates may be adversely impacted. For example, we recently filed an NDA seeking approval from the FDA for seladelpar for the second line treatment of PBC. The combined data from our trials may not be sufficient to gain approval from the FDA.

Geo-political turmoil between Russia and Ukraine have caused us to wind down clinical trial activity in Russia.

We had a small number of clinical sites in Russia in our RESPONSE clinical trial. Ongoinggeo-political turmoil and continuing military action in the region, together with widening sanctions imposed on Russia, caused us to wind down clinical trial activity in Russia. Clinical trial activity in Russia concluded in the end of the fourth quarter of 2023.

Delays in clinical trials are common and have many causes, and any delay could result in increased costs to us and jeopardize or delay our ability to obtain regulatory approval and commence product sales.

Clinical testing is expensive, difficult to design and implement, can take many years to complete, and is uncertain as to outcome. We may experience delays in clinical trials at any stage of the development and testing of our product candidates, and any delay could result in increased costs to us. Any clinical trial we undertake may not begin on time, have an effective design, enroll a sufficient number of subjects, or be completed on schedule, if at all.

Events that may result in delays or unsuccessful completion of clinical trials include the following:

- competition for eligible patients from competing clinical trials;
- delays in obtaining regulatory approval to commence a trial;
- delays in reaching agreement with the FDA or other regulatory authorities on final trial design;
- imposition of a clinical hold following a reported safety event;
- an inspection of our clinical trial operations or trial sites by the FDA or other regulatory authorities;
- delays in reaching agreement on acceptable terms with prospective contract research organizations (CROs) and clinical trial sites;

- delays in obtaining required institutional review board (IRB) approval at each site;
- delays in recruiting suitable patients to participate in a trial;
- delays in having subjects complete participation in a trial or return for post-treatmentfollow-up;
- delays caused by subjects dropping out of a trial due to side effects or otherwise;
- changes to treatment guidelines or the introduction of a new standard of care;
- delays caused by clinical sites dropping out of a trial;
- time required to add new clinical sites;
- delays by our contract manufacturers to produce and deliver sufficient supply of clinical trial materials; and
- delays in importing clinical trial materials into foreign countries where our clinical trials are being conducted.

If initiation or completion of any clinical trials we may undertake for our product candidates is delayed for any of the above reasons, our development costs may increase, the approval process could be delayed, any periods during which we may have the exclusive right to commercialize our product candidates may be reduced and our competitors may bring products to market before us. Any of these events could impair our ability to generate revenues from product sales, which would have a material adverse effect on our business.

Our product candidates may cause adverse effects or have other properties that could delay or prevent their regulatory approval or limit the scope of any approved label or market acceptance.

In May 2016, we announced results of a High Dose Phase 2 clinical study of seladelpar in patients with PBC. During the course of this trial three cases of asymptomatic, reversible transaminase elevations occurred, and we made the decision to discontinue the study early after review of safety and efficacy data demonstrated a need for further dose reduction to optimize clinical safety and efficacy. The emergence of AEs and histological observations in subsequent seladelpar clinical trials could prevent us from further developing seladelpar or could result in the denial of regulatory approval.

Furthermore, if any of our approved products cause serious or unexpected side effects after receiving market approval, a number of potentially significant negative consequences could result, including the following:

- regulatory authorities may withdraw their approval of the product or impose restrictions on its distribution in a form of a risk evaluation and mitigation strategy (REMS) plan;
- regulatory authorities may require the addition of labeling statements, such as black box or other warnings or contraindications that could diminish the usage of the product or otherwise limit the commercial success of the affected product;
- we may be required to change the way the product is administered or to conduct additional clinical studies;
- we may choose to discontinue sale of the product;
- patients and the medical community may decide to use a competing drug;
- we could be sued and held liable for harm caused to patients; or
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product and could substantially increase the costs of commercializing our product candidates.

Potential conflicts of interest arising from relationships with principal investigators for our clinical studies and any related compensation with respect to clinical studies could adversely affect the drug approval process.

Principal investigators for our clinical studies may serve as scientific advisors or consultants to us or may be affiliated with our other service providers, including clinical research organizations or site management organizations, and from time to time receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical study site or in the applicable study may be questioned or jeopardized.

We may be subject to costly claims related to our clinical studies and may not be able to obtain adequate insurance.

Because we conduct clinical studies in humans, we face the risk that the use of seladelpar or other product candidates will result in adverse side effects. We cannot predict the possible harms or side effects that may result from our clinical studies. Although we have clinical study liability insurance, our insurance may be insufficient to cover any such events. There is also a risk that we may not be able to continue to obtain clinical study coverage on acceptable terms. In addition, we may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limit of, our insurance coverage. There is also a risk that third parties that we have agreed to indemnify could incur liability. Any litigation arising from our clinical studies, even if we are ultimately successful, would consume substantial amounts of our financial and managerial resources and may create adverse publicity.

Risks Related to Our Reliance on Third Parties

We rely on third-party manufacturers to produce our preclinical and clinical drug supplies, and we intend to rely on third parties to produce commercial supplies of any approved products.

We do not own or operate, and we do not expect to own or operate, facilities for product manufacturing, storage and distribution, or testing. We currently rely on third-party manufacturers for supply of our preclinical and clinical drug supplies. We expect that in the future we will continue to rely on such manufacturers for drug supplies that will be used in clinical trials of our product candidates, and for the commercial sale of any of our approved products.

The facilities used by our contract manufacturers to manufacture the approved product must be approved by the FDA pursuant to inspections that will be conducted only after we submit an NDA to the FDA. A representative from the European Medicines Agency (EMA) or another regulatory authority may also require inspection and approval of such contract manufacturing facilities. We are completely dependent on our contract manufacturing partners for compliance with the FDA's requirements for the manufacture of finished pharmaceutical products. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the FDA's regulatory requirements of safety, purity and potency, we will not be able to secure and/or maintain FDA approval for our product candidates. In addition, we have no direct control over the ability of the contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If our contract manufacturers cannot meet FDA standards, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our products. No assurance can be given that our manufacturers can continue to make clinical and commercial supplies of product candidates, at an appropriate scale and cost to make it commercially feasible.

In addition, we do not have the capability to package and distribute finished products to pharmacies and other customers. If we receive marketing approval from the FDA, we intend to sell pharmaceutical product packaged and distributed by one or more pharmaceutical product packagers/distributors. We may be unable to maintain agreements on commercially reasonable terms with contract manufacturers and pharmaceutical product packagers/distributors, which could have a material adverse impact upon our business.

We rely on limited sources of supply for our product candidates, and any disruption in the chain of supply may cause delay in developing and commercializing for each product candidate.

If supply from an approved vendor is interrupted or suspended, there could be a significant disruption in commercial supply of our products. An alternative vendor would need to be qualified through a supplemental registration, which would be expensive, time consuming and could result in further delay. The FDA or other regulatory agencies outside of the United States may also require additional studies if a new drug substance or drug product supplier is relied upon for commercial production. These factors could cause the delay of clinical trials, regulatory submissions, required approvals or commercialization of our products, and cause us to incur additional costs. Furthermore, if our suppliers fail to deliver the required commercial quantities of the product on a timely basis and at commercially reasonable prices, and we are unable to secure one or more replacement suppliers capable of production at a substantially equivalent cost and in a timely manner, the supply chain for our products may be delayed, which could inhibit our ability to generate revenues.

Manufacturing issues may arise that could increase product and regulatory approval costs or delay commercialization of our products.

As the manufacturing processes are scaled up they may reveal manufacturing challenges or previously unknown impurities that could require resolution in order to proceed with our planned clinical trials and obtain regulatory approval for the commercial marketing of our products. In the future, we may identify manufacturing issues or impurities that could result in delays in the clinical program and regulatory approval for our products, increases in our operating expenses, failure to obtain or maintain approval for our products, or delays in getting our products to market.

Our reliance on third-party manufacturers entails risks, including the following:

- the inability to meet our product specifications, including product formulation, and quality requirements consistently;
- a delay or inability to procure or expand sufficient manufacturing capacity;
- manufacturing and product quality issues, including those related toscale-up of manufacturing;
- costs and validation of new equipment and facilities required for scale-up;
- a failure to comply with cGMP and similar quality standards;
- the inability to negotiate manufacturing agreements with third parties under commercially reasonable terms;
- termination or nonrenewal of manufacturing agreements with third parties in a manner or at a time that is costly or damaging to us;
- the reliance on a limited number of sources, and in some cases, single sources for key materials, such that if we are unable to secure a sufficient supply of these key materials, we will be unable to manufacture and sell our products in a timely fashion, in sufficient quantities or under acceptable terms;
- the lack of qualified backup suppliers for those materials that are currently purchased from a sole or single source supplier;
- operations of our third-party manufacturers or suppliers could be disrupted by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier;
- carrier disruptions or increased costs that are beyond our control; and
- the failure to deliver our products under specified storage conditions and in a timely manner.

Any of these events could lead to delays in any clinical study we may undertake, failure to obtain regulatory approval or impact our ability to successfully commercialize our products. Some of these events could be the basis for FDA or other regulatory authorities' action, including injunction, recall, seizure, or total or partial suspension of production.

We rely on third parties to conduct, supervise and monitor our clinical studies, and if those third parties perform in an unsatisfactory manner, it may harm our business.

We rely on contract service providers (CSPs), including clinical research organizations, clinical trial sites, central laboratories and other service providers to ensure the proper and timely conduct of our clinical trials. While we have agreements governing their activities, we have limited influence over their actual performance. We have relied and plan to continue to rely upon CSPs to monitor and manage data for clinical programs for our product candidates, as well as the execution of nonclinical studies. We control only certain aspects of our CSPs' activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on the CSPs does not relieve us of our regulatory responsibilities.

We and our CSPs are required to comply with the FDA's guidance, which follows the International Council on Harmonisation Good Clinical Practice (ICH GCP), which are regulations and guidelines enforced by the FDA for all of our product candidates in clinical development. The FDA enforces the ICH GCP through periodic inspections of trial sponsors, principal investigators and clinical trial sites. If we or our CSPs fail to comply with the ICH GCP, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. Our CSPs are not our employees, and we cannot control whether or not they devote sufficient time and resources to our ongoing clinical and nonclinical programs. These CSPs may also have relationships with other entities, including our competitors, for whom they may also be conducting clinical studies, or other drug development activities that could harm our competitive position. We face the risk of potential unauthorized disclosure or misappropriation of our confidential information, including our intellectual property, by CSPs, which may reduce our trade secret protection and allow our potential competitors to access and exploit our proprietary technology, among other things. If our CSPs do not successfully carry out their contractual duties or obligations, fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for any other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for, or successfully commercialize our product candidates. As a result, our financial results and the commercial prospects for our product candidates that we develop would be harmed, our costs could increase, and our ability to generate revenues could be delayed.

Risks Related to Commercialization of Our Product Candidates

The commercial success of any product will depend upon the acceptance of these products by the medical community, including physicians, patients and health care payors.

If any of our product candidates receive marketing approval, they may nonetheless be unable to gain sufficient market acceptance by physicians, patients, health care payors and others in the medical community. If these products do not achieve an adequate level of acceptance, we may not generate significant product revenues and we may not become profitable. The degree of market acceptance of any of our products will depend on a number of factors, including the following:

- demonstration of clinical safety and efficacy in our clinical trials;
- the risk/benefit profile of our products;
- the relative convenience, ease of administration and acceptance by physicians, patients and health care payors;

- the prevalence and severity of any side effects;
- the safety of products seen in a broader patient group, including its use in unapproved indications;
- limitations or warnings contained in the FDA and other regulatory authorities approved label for the relevant product;
- acceptance of the product by physicians, other health care providers and patients as a safe and effective treatment;
- the potential and perceived advantages of products over alternative treatments;
- the timing of market introduction of competitive products;
- pricing and cost-effectiveness;
- the effectiveness of our or any future collaborators' sales and marketing strategies;
- manufacturing or product quality;
- our ability to obtain formulary approval;
- our ability to obtain and maintain sufficient third-party coverage or reimbursement, which may vary from country to country; and
- the effectiveness of our or any future collaborators' sales, marketing and distribution efforts.

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product, we may be unable to generate any revenue.

We are currently building an organization for the sales, marketing and distribution of pharmaceutical products and the cost of establishing and maintaining such an organization may exceed the cost-effectiveness of doing so. In order to market any products that may be approved we must build our sales, marketing, operations, managerial and other non-technical capabilities or make arrangements with third parties to perform these services. We may enter into strategic partnerships with third parties to commercialize our products.

If we are unable to successfully manage pre-commercialization activities, including but not limited to building our own sales force (or negotiate one or more strategic partnership(s) for the commercialization of our products) and establish marketing and distribution channels, we may be forced to delay the potential commercialization of the product, or reduce the scope of our sales or marketing activities. If we elect to increase our expenditures to fund commercialization activities ourselves, we will need to obtain additional capital, which may not be available to us on acceptable terms, or at all. If we do not have sufficient funds, we will not be able to bring the product to market or generate product revenue.

If we are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, we may not be able to generate sufficient product revenue and may not become profitable. We will be competing with companies that currently have extensive and well-funded marketing and sales operations and more experience establishing distribution channels. Without an internal team or the support of a third party to perform sales and marketing functions, we may be unable to compete successfully against these more established companies.

In addition, there are risks involved with both establishing our own sales and marketing capabilities and entering into arrangements with third parties to perform these services. For example, recruiting and training a sales force is expensive and time-consuming and could delay any product launch. If the commercial launch of a product for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

If we obtain approval to commercialize any products outside of the United States, a variety of risks associated with international operations could materially adversely affect our business.

If our product candidates are approved for commercialization outside the United States, we expect that we will be subject to additional risks related to international operations, including the following:

- different regulatory requirements for drug approvals in foreign countries;
- compliance with local healthcare and pricing regulations;
- reduced protection for intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- differing payor reimbursement regimes, governmental payors or patientself-pay systems and price controls;
- 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
- ensuring patient access through supply and packaging infrastructure requirements; and
- business interruptions resulting from geopolitical actions, including war and terrorism, pandemics, or natural disasters including earthquakes, typhoons, volcanic eruptions, floods and fires.

We have no prior experience in these areas. In addition, there are complex regulatory, tax, labor and other legal requirements imposed by both the European Union and many of the individual countries in Europe with which we would need to comply. Many U.S.-based biopharmaceutical companies have found the process of marketing their own products in Europe to be very challenging.

If our competitors develop and market products that are more effective, safer or less expensive than our own, our commercial opportunities will be negatively impacted.

The life sciences industry is highly competitive, and we face significant competition from other pharmaceutical, biopharmaceutical and biotechnology companies and possibly from academic institutions, government agencies and private and public research institutions that are researching, developing and marketing products designed to address diseases that we are seeking to treat. Our competitors generally have significantly greater financial, manufacturing, marketing and drug development resources. Large pharmaceutical companies, in particular, have extensive experience in the clinical testing of, obtaining regulatory approvals for, and marketing of, drugs. New developments, including the development of other pharmaceutical technologies and methods of treating disease, occur in the pharmaceutical and life sciences industries at a rapid pace.

These developments may render our product candidates obsolete or noncompetitive. Compared to us, potential competitors may have substantially greater:

- research and development resources, including personnel and technology;
- regulatory experience;

- experience in pharmaceutical development and commercialization;
- ability to negotiate competitive pricing and reimbursement with third-party payors;
- experience and expertise in the exploitation of intellectual property rights; and
- capital resources.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we do or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. The competitors may also develop products that are more effective, better tolerated, more useful and less costly than our products and they may also be more successful in manufacturing and marketing their 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 exposure related to the testing of our product candidates in human clinical studies, and will face an even greater risk if we sell our products commercially. An individual or a group of individuals may bring a liability claim against us if one of our product candidates causes, or merely appears to have caused, an injury. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in the following:

- decreased demand for our products;
- impairment to our business reputation;
- withdrawal of clinical study participants;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- the inability to commercialize our products; and
- loss of revenues.

We carry product liability insurance for our clinical studies. Further, we intend to expand our insurance coverage to include the sale of commercial products if marketing approval is obtained for any of our product candidates. However, we may be unable to obtain this product liability insurance on commercially reasonable terms and with insurance coverage that will be adequate to satisfy any liability that may arise. On occasion, large judgments have been awarded in class action or individual lawsuits relating to marketed pharmaceuticals. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

We may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

The success of our business depends primarily upon our ability to identify, develop and commercialize product candidates. Because we have limited financial and managerial resources, we focus on specific product candidates for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or other indications that later prove to have greater commercial potential. We may focus our efforts and resources on product candidates that ultimately prove to be unsuccessful.

If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been advantageous for us to retain sole development and commercialization rights.

Risks Related to Our Intellectual Property

If we are unable to obtain or protect intellectual property rights related to our products and product candidates, 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 products and product candidates. 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, co-own or in-license may fail to result in issued patents with claims that cover the products in the United States or in other countries. If this were to occur, early generic competition could be expected against our products. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found, which if it exists could be used to invalidate a patent or prevent a patent from issuing from a pending patent application. Even if patents do successfully issue, third parties may challenge their validity, enforceability, scope or ownership, which may result in such patents, or our rights to such patents, being narrowed or invalidated. 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. If the patent applications we hold or license with respect to our product candidates fail to issue or if their breadth or strength of protection is threatened, it could dissuade companies from collaborating with us and threaten our ability to commercialize our products. We cannot offer any assurances about which, if any, patents will issue or whether any issued patents will be found invalid or unenforceable, will be challenged by third parties or will adequately protect our products. Further, if we encounter delays in development or regulatory approvals, the period of time during which we could market our products under patent protection could be reduced. Since patent applications in the United States and most other countries are confidential for a period of time after filing, and some remain so until issued, we cannot be certain that we or our licensors were the first to file any patent application related to our product candidates. Furthermore, if third parties have filed such patent applications, an interference proceeding in the United States can be started by a third party or instituted by us to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license it from the prevailing party, which may not be available on commercially reasonable terms or at all.

In addition to the protection afforded by patents, we rely on trade secret protection and confidentiality agreements to protect proprietaryknow-how that is not patentable, processes for which patents are difficult to enforce and 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 expect all of our employees to assign their inventions to us, and all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed, that such agreements provide adequate protection and will not be breached, that our trade secrets and other confidential proprietary information will not otherwise be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. If we are unable to prevent material disclosure of the non-patented intellectual property related to our technologies to third parties, and there is no guarantee that we will have any such enforceable trade secret protection, we may 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.

Further, the laws of some foreign countries do not protect patents and other 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 abroad. We may also fail to pursue or obtain patents and other intellectual property protection relating to our products and product candidates in all foreign countries.

Third-party claims of intellectual property infringement may prevent or delay our development and commercialization efforts or otherwise affect our business.

Our commercial success depends in part on our avoiding infringement and other violations of the patents and proprietary rights of third parties. There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter party re-examination proceedings before the United States Patent and Trademark Office (U.S. PTO) and its foreign counterparts. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing product candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, and as we gain greater visibility and market exposure as a public company, the risk increases that our product candidates or other business activities may be subject to claims of infringement of the patent and other proprietary rights of third parties.

Third parties may assert that we are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of our product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that our product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product unless we obtained a license under the applicable patents, or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtained a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all. In addition, we may be subject to claims that we are infringing other intellectual property rights, such as trademarks or copyrights, or misappropriating the trade secrets of others, and to the extent that our employees, consultants or contractors use intellectual property or proprietary information owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. We have been involved in the past in legal proceedings alleging the misappropriation of trade secrets.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful infringement or other intellectual property claim against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties, pay royalties or redesign our affected products, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates, and we have done so from time to time. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly. We cannot provide any assurances that third-party patents do not exist that might be enforced against our products or product candidates, resulting in either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

We license certain key intellectual property from third parties, and the loss of our license rights could have a materially adverse effect on our business.

We are a party to a number of technology licenses that are important to our business and may enter into additional licenses in the future. For example, we rely on an exclusive license to certain patents and know-how from Janssen Pharmaceutica NV (Janssen NV), which include seladelpar and certain other PPARd compounds (the PPARd Products). Under the exclusive license with Janssen NV we have full control and responsibility over the research, development and registration of any PPARd Products and are required to use diligent efforts to conduct all such activities. If we fail to comply with our obligations under our agreement with Janssen NV, including our obligations to expend more than a de minimis amount of effort and resources on the research and/or development of at least one PPARd Product, to make any payment called for under the agreement, not to disclose anynon-exempt confidential information related to the agreement, or to use diligent efforts to promote, market and sell any PPARd Product under the agreement, such action would constitute a default under the agreement and Janssen NV may have the right to terminate the license, in which event we would not be able to develop or market products covered by the license, including in the case of the Janssen NV license, seladelpar, which would have a materially adverse effect on our business.

We may be involved in lawsuits to protect or enforce our patents, the patents of our licensors or our other intellectual property rights, which could be expensive, time consuming and unsuccessful.

Competitors may infringe or otherwise violate our patents, the patents of our licensors or our other intellectual property rights. To counter infringement or unauthorized use, we may be required to file legal claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or our licensors is invalid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing. The initiation of a claim against a third party may also cause the third party to bring counter-claims against us.

We may not be able to prevent, alone or with our licensors, misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the United States. Our business could be harmed if in a litigation the prevailing party does not offer us a license on commercially reasonable terms. Any litigation or other proceedings to enforce our intellectual property rights may fail, and even if successful, may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

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.

Periodic maintenance fees on any issued patent are due to be paid to the U.S. PTO and foreign patent agencies in several stages over the lifetime of the patent. The U.S. PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in

abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we or our licensors that control the prosecution and maintenance of our licensed patents fail to maintain the patents and patent applications covering our product candidates, we may lose our rights and our competitors might be able to enter the market, which would have a material adverse effect on our business.

Risks Related to Our Business Operations and Industry

Our future success depends on our ability to retain key executives and to attract, retain and motivate qualified personnel.

We are dependent on principal members of our executive team. While we have entered into employment offer letters with each of our executive officers, any of them could leave our employment at any time, as all of our employees are "at will" employees. We do not maintain "key person" insurance for any of our executives or other employees. Recruiting and retaining other qualified employees for our business, including clinical, scientific, technical and sales and marketing personnel, will also be critical to our success. There is currently a shortage of skilled executives in our industry, which is likely to continue. We also experience competition from universities, competitors and research institutions for the hiring of scientific and clinical personnel. As a result, competition for skilled personnel is intense and the turnover rate can be high. We may not be able to attract and retain personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. In addition, failure of any of our clinical studies may make it more challenging to recruit and retain qualified personnel. If we are unable to successfully recruit key employees or replace key executives or key employees, it may adversely affect the progress of our research, development and commercialization objectives.

In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategies. Our consultants and advisors may be engaged by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us, which could also adversely affect the progress of our research, development and commercialization objectives.

As we continue to build our clinical and drug development and commercial operations, we will need to expand our organization, and we may experience difficulties in managing this growth, which could disrupt our operations.

As we continue to build our clinical and drug development programs, we are expanding our employee base to increase our managerial, clinical, scientific, sales and marketing and other operational teams. Such growth imposes additional responsibilities on our management, including the need to identify, recruit, maintain, motivate and integrate additional employees, consultants and contractors. Also, our management may need to divert a greater amount of attention away from our day-to-day activities and devote a substantial amount of time to managing these growth activities. We may not be able to effectively manage the expansion of our operations, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among current employees. Our expected growth could require greater capital expenditures and may divert financial resources from other projects, such as the development of product candidates. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our ability to create value and/or generate revenues could be reduced, and we may not be able to implement our business strategy. Our future financial performance and our ability to develop and commercialize seladelpar and other potential product candidates and compete effectively will depend, in part, on our ability to effectively manage any future growth.

Our business could be negatively affected as a result of the actions of activist or hostile stockholders.

Our business could be negatively affected as a result of stockholder activism, which could cause us to incur significant expense, hinder execution of our business strategy, and impact the trading value of our securities. For example, in April 2020, a stockholder filed a preliminary proxy statement containing proposed opposition to our preliminarily filed proxy statement, including a proposal to elect three new directors to our Board of Directors and a proposal not to increase to the number of shares of common stock authorized for issuance. While this proxy contest was subsequently suspended, stockholder activism could recur and requires significant time and attention by management and the Board of Directors, potentially interfering with our ability to execute our strategic plan. Stockholder activism could give rise to perceived uncertainties as to our future direction, adversely affect our relationships with key executives and business partners, and make it more difficult to attract and retain qualified personnel. Also, we may be required to incur significant legal fees and other expenses related to activist stockholder matters. Any of these impacts could materially and adversely affect our business and operating results. Further, the market price of our common stock could be subject to significant fluctuation or otherwise be adversely affected by stockholder activism.

Significant disruptions of information technology systems or breaches of data security, affecting our systems or those of third parties upon which we rely, could materially adversely affect our business, results of operations and financial condition. Such disruptions or breaches could result in adverse consequences resulting from such compromise, including but not limited to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; or other adverse consequences.

We collect and maintain information in digital form that is necessary to conduct our business, and we are increasingly dependent on information technology systems and infrastructure to operate our business. In the ordinary course of our business, we collect, store and transmit confidential information, including intellectual property, proprietary business information and personal information. It is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. We have established physical, electronic and organizational measures designed to safeguard and secure our systems to prevent a data compromise, and rely on commercially available systems, software, tools, and monitoring to provide security for our information technology systems and the processing, transmission and storage of digital information. We have also outsourced elements of our information technology infrastructure, and as a result a number of third-party vendors may or could have access to our confidential information. Our internal information technology systems and infrastructure, and those of our current and any future collaborators, contractors and consultants and other third parties on which we rely, are vulnerable to damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication and electrical failures, cyber-attacks or cyber-intrusions over the Internet, attachments to emails, persons inside our organization, or persons with access to systems inside our organization, which may compromise our system infrastructure or lead to the loss, destruction, alteration or dissemination of, or damage to, our data.

The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, foreign governments and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. During times of war and other major conflicts, we, the third parties upon which we rely, may be vulnerable to a heightened risk of these attacks, including retaliatory cyber-attacks, that could materially disrupt our systems and operations, supply chain, and ability to produce, sell and distribute our goods and services. In particular, severe ransomware attacks are becoming increasingly prevalent and can lead to significant interruptions in our operations, ability to provide our products or services, loss of sensitive data and income, reputational harm, and diversion of funds. Extortion payments may alleviate the negative impact of a ransomware attack, but we may be unwilling or unable to make such payments due to, for example, applicable laws or regulations prohibiting such payments.

In addition, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information or other intellectual property. The

costs to us to mitigate network security problems and security vulnerabilities could be significant, and our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service and other harm to our business and our competitive position. If such an event is to occur and cause interruptions in our operations or our vendors, it may result in a material disruption of our product development programs and our reputation could be materially damaged. We could also be exposed to a risk of loss or litigation and potential liability, which could materially adversely affect our business, results of operations and financial condition.

While we have implemented security measures designed to protect against security incidents, there can be no assurance that these measures will be effective. We may be unable in the future to detect vulnerabilities in our information technology systems because such threats and techniques change frequently, are often sophisticated in nature, and may not be detected until after a security incident has occurred. Further, we may experience delays in developing and deploying remedial measures designed to address any such identified vulnerabilities. Applicable data privacy and security obligations may require us to notify relevant stakeholders of security incidents. Such disclosures are costly, and the disclosure or the failure to comply with such requirements could lead to adverse consequences.

We rely on third-party service providers and technologies to operate critical business systems to process sensitive information in a variety of contexts. Our ability to monitor these third parties' information security practices is limited, and these third parties may not have adequate information security measures in place. If our third-party service providers experience a security incident or other interruption, we could experience adverse consequences. While we may be entitled to damages if our third-party service providers fail to satisfy their privacy or security-related obligations to us, any award may be insufficient to cover our damages, or we may be unable to recover such award.

If we (or a third party upon whom we rely) experience a security incident or are perceived to have experienced a security incident, we may experience adverse consequences, such as government enforcement actions (for example, investigations, fines, penalties, audits, and inspections); additional reporting requirements and/or oversight; restrictions on processing sensitive information (including personal data); litigation (including class claims); indemnification obligations; negative publicity; reputational harm; monetary fund diversions; interruptions in our operations (including availability of data); financial loss; and other similar harms. Security incidents and attendant consequences may cause stakeholders (including investors and potential customers) to stop supporting our platform, deter new customers from products, and negatively impact our ability to grow and operate our business.

Our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations. We cannot be sure that our insurance coverage will be adequate or sufficient to protect us from or to mitigate liabilities arising out of our privacy and security practices, that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims.

Changes in and failures to comply with United States and foreign privacy and data protection laws, regulations and standards may adversely affect our business, operations and consolidated financial performance. The actual or perceived failure to comply with such obligations could lead to government enforcement actions (which could include civil or criminal penalties), fines and sanctions, private litigation and/or adverse publicity and could negatively affect our operating results and business.

In the ordinary course of business, we collect, receive, store, process, generate, use, transfer, disclose, make accessible, protect, secure, dispose of, transmit, and share (collectively, process) personal data and other sensitive information, including proprietary and confidential business data, trade secrets, intellectual property, data collected about trial participants in connection with clinical trials, and other sensitive third-party data. These

activities result in our being subject to or affected by numerous federal, state and foreign laws and regulations, as well as regulatory guidance, governing the collection, use, disclosure, retention, and security of personal data, such as information that we collect about patients and healthcare providers in connection with clinical trials in the United States and abroad.

The global data protection landscape is rapidly evolving, and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future. This evolution may create uncertainty in our business, affect our or our vendors' ability to operate in certain jurisdictions or to collect, store, transfer, use and share personal information, necessitate the acceptance of more onerous obligations in our contracts, result in liability or impose additional costs on us. The cost of compliance with these laws, regulations and standards is high and is likely to increase in the future. In many jurisdictions, enforcement actions and consequences for noncompliance are rising.

In the United States, HIPAA imposes, among other things, certain standards relating to the privacy, security, transmission and breach reporting of individually identifiable health information (see "Federal and State HealthCare Laws" above). Certain states also impose stricter requirements for processing certain personal data, including sensitive information, such as conducting data privacy impact assessments. These state laws allow for statutory fines for noncompliance. For example, the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020—collectively, CCPA—applies to personal data of consumers, business representatives, and employees who are California residents, and requires businesses to provide specific disclosures in privacy notices and honor requests of such individuals to exercise certain privacy rights. The CCPA provides for fines of up to $7,500 per intentional violation and allows private litigants affected by certain data breaches to recover significant statutory damages. Although the CCPA exempts some data processed in the context of clinical trials, the CCPA increases compliance costs and potential liability with respect to other personal data we maintain about California residents.

Additionally, in the past few years, numerous U.S. states in addition to California—including Virginia, Colorado, Connecticut, and Utah—have enacted comprehensive privacy laws that impose certain obligations on covered businesses, including providing specific disclosures in privacy notices and affording residents with certain rights concerning their personal data. As applicable, such rights may include the right to access, correct, or delete certain personal data, and to opt-out of certain data processing activities, such as targeted advertising, profiling, and automated decision-making. The exercise of these rights may impact our business and ability to provide our products and services. Similar laws are being considered in several other states, as well as at the federal and local levels, and we expect more states to pass similar laws in the future. While these states, like the CCPA, also exempt some data processed in the context of clinical trials, these developments further complicate compliance efforts, and increase legal risk and compliance costs for us, the third parties upon whom we rely.

Our operations abroad may also be subject to increased scrutiny or attention from data protection authorities. Many countries in these regions have established or are in the process of establishing privacy and data security legal frameworks with which we, our customers, or our vendors must comply. For example, the EU has adopted the General Data Protection Regulation (EU) 2016/679, or GDPR, which went into effect in May 2018 and includes strict requirements for processing the personal information of EU subjects, including clinical trial data. The GDPR has increased compliance burdens on us, including by mandating potentially burdensome documentation requirements and granting certain rights to individuals to control how we collect, use, disclose, retain and process information about them. The processing of sensitive personal data, such as physical health condition, has imposed heightened compliance burdens under the GDPR and is a topic of active interest among foreign regulators. In addition, the GDPR provides for robust regulatory enforcement and fines for a noncompliant company. Under the GDPR, companies may face temporary or definitive bans on data processing and other corrective actions; fines of up to 20 million Euros under the EU GDPR, 17.5 million pounds sterling under the UK GDPR or, in each case, 4% of annual global revenue, whichever is greater; or private litigation related to processing of personal data brought by classes of data subjects or consumer protection organizations authorized at law to represent their interests. As we continue to expand into other foreign countries and jurisdictions, we may be subject to additional laws and regulations that may affect how we conduct business.

Any failure or perceived failure by us to comply with federal, state or foreign laws or regulation, our internal policies and procedures or our contracts governing our processing of personal information could result in negative publicity, diversion of management time and effort and proceedings against us by governmental entities, litigation by private plaintiffs or others, additional reporting requirements and/or oversight, bans on processing personal data, orders to destroy or not use personal data, and imprisonment of company officials. Moreover, despite our efforts, our personnel or third parties on whom we rely may fail to comply with such obligations, which could negatively impact our business operations. In particular, plaintiffs have become increasingly more active in bringing privacy-related claims against companies, including class claims and mass arbitration demands. Some of these claims allow for the recovery of statutory damages on a per violation basis, and, if viable, carry the potential for monumental statutory damages, depending on the volume of data and the number of violations.

Any of these events could have a material adverse effect on our reputation, business, or financial condition, including but not limited to: loss of customers; interruptions or stoppages in our business operations (including, as relevant, clinical trials); inability to process personal data or to operate in certain jurisdictions; limited ability to develop or commercialize our products; expenditure of time and resources to defend any claim or inquiry; adverse publicity; or substantial changes to our business model or operations.

Risks Relating to Owning Our Common Stock

An active trading market for our common stock may not continue and the market price for our common stock may decline in value.

Our common stock was formerly listed on the Nasdaq Capital Market and since the second quarter of 2018 it has been trading on the Nasdaq Global Select Market under the symbol “CBAY”. The historical trading prices of our common stock on the Nasdaq Capital Market and the Nasdaq Global Select Market may not be indicative of the price levels at which our common stock will trade in the future, and we cannot predict the extent to which investor interest in us will continue to support an active public trading market for our common stock or how liquid will be that public market.

Our stock price is volatile, and our stockholders’ investment in our stock could decline in value.

The historical trading price of our common stock has been volatile. Our stock price may continue to be subject to wide fluctuations in response to a variety of factors, including:

- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us or our competitors;
- inability to obtain additional funding;
- any delay in filing an Investigational New Drug (IND) application or NDA for any of our future product candidates and any adverse development or perceived adverse development with respect to the FDA’s review of an IND or NDA;
- failure to enter into new collaborations;
- failure by us or our licensors to prosecute, maintain or enforce our intellectual property rights;
- failure to successfully develop and commercialize our product candidates;
- changes in laws or regulations applicable to future products;
- changes in the structure of health care payment systems;
- inability to obtain adequate product supply for our product candidates or the inability to do so at acceptable prices;

- adverse regulatory decisions;
- introduction of new products, services or technologies by our competitors;
- failure to meet or exceed financial projections we may provide to the public;
- failure to meet or exceed the estimates and projections of the investment community;
- the perception of the pharmaceutical industry by the public, legislatures, regulators and the investment community;
- announcements of significant or potential equity or debt sales by us;
- delays in completing our clinical trials;
- adverse, delayed or inconclusive results in our clinical trials;
- adverse or inconclusive results or delays in preclinical testing;
- announcements of clinical trial plans or results by us or our competitors;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- additions or departures of key scientific or management personnel;
- significant lawsuits, including patent or stockholder litigation;
- changes in the market valuations of similar companies;
- sales of our common stock by us or our stockholders in the future; and
- trading volume of our common stock.

In addition, companies trading in the stock market in general have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Macroeconomic conditions and broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance.

Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.

Significant additional capital may be needed in the future to continue our product development efforts and operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. If in the future we sell common stock, convertible securities or other equity securities, investors may be materially diluted by subsequent sales. These sales may also result in new investors gaining rights superior to our existing stockholders. Pursuant to our equity incentive plans, we are authorized to grant stock options and other equity-based awards to our employees, directors and consultants. The number of shares available for future grant under our equity incentive plans as of December 31, 2023 was 9,189,960 shares.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our certificate of incorporation and our bylaws may delay or prevent an acquisition of us. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our

current management by making it more difficult for stockholders to replace members of our board of directors, who are responsible for appointing the members of our management team. In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits, with some exceptions, stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us. Finally, our charter documents establish advance notice requirements for nominations for election to our board of directors and for proposing matters that can be acted upon at stockholder meetings. Although we believe these provisions together provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board of directors, they would apply even if the offer may be considered beneficial by some stockholders.

We may be unable to utilize our federal and state net operating loss carryforwards to reduce our income taxes.

As of December 31, 2023, we had net operating loss ("NOL") carryforwards of $365.6 million and $214.9 million available to reduce future taxable income, if any, for U.S. federal income tax and state income tax purposes, respectively. If not utilized, $78.4 million of our federal NOL carryforwards will begin to expire in 2034 and our state NOL carryforwards will begin to expire in 2028. Portions of these NOL carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under legislation enacted in 2017, as modified by legislation enacted in 2020, unused U.S. federal NOLs generated in tax years beginning after December 31, 2017, will not expire and may be carried forward indefinitely, but the deductibility of such federal NOLs is limited to 80% of taxable income. At the state level, there may be periods during which the use of NOLs is suspended or otherwise limited. In addition, under Section 382 of the Code, and corresponding provisions of state law, if a corporation undergoes an "ownership change," which generally occurs if the percentage of the corporation's stock owned by 5% stockholders increases by more than 50% over a three-year period, the corporation's ability to use its pre-change NOL carryforwards and other pre-change tax attributes to offset its post-change income may be limited. Our existing NOLs may be subject to limitations arising from previous ownership changes. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change. The Section 382 analysis was rolled forward through December 31, 2023 with no further restrictions on use of net operating loss or credit carryforwards.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.

New tax laws, statutes, rules, regulations or ordinances could be enacted at any time. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted differently, changed, repealed or modified at any time. Any such enactment, interpretation, change, repeal or modification could adversely affect us, possibly with retroactive effect. For instance, the Inflation Reduction Act of 2022 imposes, among other rules, a 15% minimum tax on the book income of certain large corporations and a 1% excise tax on certain corporate stock repurchases. In addition, for certain research and experimental expenses incurred in tax years beginning after December 31, 2021, the Tax Cuts and Jobs Act (the Tax Act) requires the capitalization and amortization of such expenses over five years if incurred in the United States and fifteen years if incurred outside the United States, rather than deducting such expenses currently. Although there have been legislative proposals to repeal or defer the capitalization requirement, there can be no assurance that such requirement will be repealed, deferred, or otherwise modified. Changes in corporate tax rates, the realization of our net deferred tax assets, the taxation of foreign earnings and the deductibility of expenses under the Tax Act, as amended by the CARES Act or any future tax reform legislation, could have a material impact on the value of our deferred tax assets, result in significant one-time charges and increase our future tax expenses.

General Risks

We do not anticipate paying cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.

We do not anticipate paying cash dividends in the future. As a result, only appreciation of the price of our common stock, which may never occur, will provide a return to stockholders. Investors seeking cash dividends should not invest in our common stock.

We may be subject to securities litigation, which is expensive and could divert management attention.

Our share price is volatile, and in the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 1C. Cybersecurity

Risk management and strategy

We have implemented and maintain various information security processes designed to identify, assess and manage material risks from cybersecurity threats to our critical computer networks, third party hosted services, communications systems, hardware and software, and our critical data, including intellectual property, confidential information that is proprietary, strategic or competitive in nature, and data amassed from our clinical trials ("Information Systems and Data").

Our information technology department, with the support of our senior management, assesses and manages the Company's cybersecurity threats and risks. Our information technology department leverages third-party service providers to identify cybersecurity threats by monitoring and evaluating our threat environment, and then assesses these risks. We, and/or our third-party service providers, use various methods in identifying and assessing these risks, including, for example, manual and automated tools to identify and combat cybersecurity threats, analyzing reports of threats, conducting scans and assessments of the threat environment and to identify vulnerabilities, the use of detection and response services (including behavioral analytics and machine learning to identify security threats) and conducting reviews of third-party service providers, among other things. We use third-party service providers to assist us from time to time to identify, assess, and manage material risks from cybersecurity threats, including for example penetration testing, threat intelligence, dark web reporting, cybersecurity consulting and software, and professional services for implementation and security architecture.

Depending on the environment, we implement and maintain various technical, physical, and organizational measures, processes, standards and policies designed to manage and mitigate material risks from cybersecurity threats to our Information Systems and Data, including, for example, physical security and access controls, asset management, systems monitoring, incident detection and response, risk assessment, the implementation of security standards and certifications, encryption of data, network security controls, and a disaster recovery/business continuity plan, among other mitigation tactics.

Our assessment and management of material risks from cybersecurity threats are integrated into the Company's overall risk management processes. For example, our information technology department works with its management and with legal and compliance to evaluate material risks from cybersecurity threats against our overall business objectives, working with other individuals from senior management as needed. Certain cybersecurity issues may then be reported to the board of directors.

Moreover, we use third-party service providers to perform a variety of functions throughout our business, such as application providers, hosting companies, contract research organizations and contract manufacturing organizations. Depending on the nature of the services provided, our information technology department may review certain third-party service providers that include the assessment of the service provider's cybersecurity systems and controls. Depending on the nature of the services provided and the identity of the provider, we may impose contractual obligations related to cybersecurity on the provider.

For a description of the risks from cybersecurity threats that may materially affect the Company and how they may do so, see our risk factors under Part 1. Item 1A. Risk Factors in this Annual Report on Form 10-K, including in *Risks Related to Our Business Operations and Industry.*

Governance

Our board of directors addresses the Company's cybersecurity risk management as part of its general oversight function and is responsible for overseeing the Company's cybersecurity risk management processes, including oversight and mitigation of risks from cybersecurity threats.

Our cybersecurity risk assessment and management processes are implemented and maintained by certain Company management, including the management functions of information technology and legal and compliance, who have combined decades of experience in compliance and managing cybersecurity risks.

Our information technology department is responsible for hiring appropriate personnel, helping to integrate cybersecurity risk considerations into the Company's overall risk management strategy, communicating key priorities to relevant personnel, and is responsible for approving budgets related to cybersecurity. A wider group of personnel, including the management functions of information technology and legal and compliance, help prepare for cybersecurity incidents, work in conjunction with others to approve cybersecurity processes, and review security assessments and other security-related reports.

Our cybersecurity incident response process is designed to escalate certain cybersecurity incidents to members of senior management, depending on the circumstances. Members of senior management may work with the Company's incident response team to help the Company mitigate and remediate cybersecurity incidents of which they are notified. In addition, the Company's incident response process includes reporting to the board of directors for certain cybersecurity incidents.

The board receives periodic reports concerning the Company's significant cybersecurity threats and risk and the processes the Company has implemented to address them. The board also receives periodic reports, summaries or presentations related to cybersecurity threats, risk and mitigation.

Item 2. Properties

Our corporate office is located in Fremont, California. Our office lease for that facility terminates on May 31, 2032. We believe that our current facilities are sufficient for our needs for the foreseeable future.

Item 3. Legal Proceedings

From time to time, we may become involved in legal proceedings relating to claims arising from the ordinary course of business. Our management believes that there are currently no claims or actions pending against us, the ultimate disposition of which could reasonably be expected to have a material adverse effect on our results of operations, financial condition or cash flows. Apart from such incidental matters, the following demand letters and draft complaints relating to the Transactions have been submitted to the Company.

Between February 26 and 27, 2024, the Company received three demand letters from purported holders of Shares, one of which enclosed a draft complaint. The Company also separately received a draft complaint from a

purported holder of Shares that was unaccompanied by a demand letter. Each demand letter alleges disclosure deficiencies in the Schedule 14D-9 and demands an issuance of corrective disclosures. Both of the draft complaints identify as prospective defendants the Company and members of the Company Board. The draft complaints allege that the defendants caused to be filed with the SEC a materially incomplete and misleading Schedule 14D-9 in violation of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and Rule 14D 9 promulgated thereunder. Among other remedies, the draft complaints threaten to seek an order enjoining the defendants from proceeding with or consummating the Offer, unless and until the defendants disclose certain allegedly material information that was allegedly omitted from the Schedule 14D-9; granting rescissory damages; awarding the plaintiff costs and disbursements of its action, including reasonable attorneys' and expert fees and expenses; and granting such other and further relief as the court may deem just and proper. The Company believes that the allegations contained in the demand letters and draft complaints are without merit.

On February 26, 2024, the Company received a demand letter from a purported holder of Shares that requests access to certain books and records of the Company to investigate purported breaches of fiduciary duty, director independence and disinterestedness, corporate wrongdoing and/or inadequate disclosures in connection with the Transactions and related to the transaction documents. The Company is preparing a response.

Additional demand letters and draft complaints may be submitted to the Company and lawsuits may be filed against the Company and its Board of Directors, in each case, challenging the Transactions and/or alleging deficiencies with respect to the Solicitation/Recommendation Statement on Schedule 14D-9 in the future.

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

Market for Common Equity

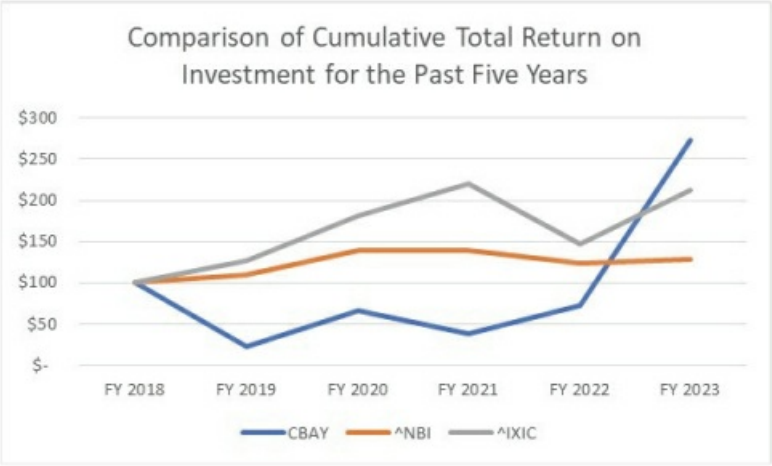
Our common stock is listed on the Nasdaq Global Select Market under the symbol "CBAY". As of January 31, 2024, there were approximately 172 holders of record of our common stock, although there are a substantially greater number of "beneficial holders," whose shares are held of record by banks, brokers and other financial institutions in "street name."

Dividend Policy

We have never declared or paid any cash dividends to our stockholders. Our board of directors will make any future decisions regarding dividends. We currently intend to retain and use any future earnings, if any, for the development and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Under our Development Financing Agreement with Abingworth we are not permitted to pay dividends without the consent of Abingworth. Except for the restrictions under our agreement with Abingworth, our board of directors has complete discretion on whether to pay dividends. Even if our board of directors is able to and decides to pay dividends, the form, frequency and amount will depend upon our future operations and earnings, capital requirements and surplus, general financial condition, contractual restrictions and other factors that the board of directors may deem relevant.

Performance Graph

The following graph assumes an initial investment of $100 in our common stock on January 1, 2019, as well as the stocks comprising the Nasdaq Composite Index (^IXIC), and the stocks comprising the Nasdaq Biotechnology Index (^NBI). All results assume the reinvestment of dividends, if any, and are calculated as of each month end. Historical stockholder return is not necessarily indicative of the performance to be expected for any future periods.



Item 6. [Reserved]

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

Forward-Looking Statements

Some of the statements under in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" are forward-looking statements. See "Cautionary Language Regarding Forward Looking Statements" at the beginning of this Annual Report for cautionary information regarding forward-looking statements. These statements reflect the Company's current views with respect to future events and are based on assumptions and subject to risks and uncertainties and appear throughout this Annual Report on Form 10-K and are statements regarding our current expectation, belief, or intent, primarily with respect to our operations and related industry developments. Examples of these statements include, but are not limited to, statements regarding our expectations with respect to the following: the Offer, the Merger and other related matters; our business and scientific strategies; the progress of our product development programs, and the timing of results; regulatory submissions and approvals; our drug discovery technologies; our research and development expenses; protection of our intellectual property; sufficiency of our cash and capital resources and the need for additional capital; and our operations and legal risks. You should not place undue reliance on these forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements for many reasons. Factors that might cause such a difference include those discussed under the caption "Risk Factors" and elsewhere in this Annual Report on Form 10-K. These and many other factors could affect our future financial and operating results. We undertake no obligation to update any forward-looking statement to reflect events after the date of this Annual Report.

Overview

CymaBay Therapeutics, Inc. is a clinical-stage biopharmaceutical company focused on developing innovative therapies for patients with liver and other chronic diseases with high unmet medical need.

Our lead product candidate, seladelpar, is a potent and selective agonist of peroxisome proliferator activated receptor delta (PPARδ), a nuclear receptor that regulates genes directly or indirectly involved in the synthesis of bile acids/sterols, metabolism of lipids and glucose, inflammation, and fibrosis. We have been focused on developing seladelpar for the treatment of primary biliary cholangitis (PBC), an autoimmune disease that causes progressive destruction of the bile ducts in the liver resulting in impaired bile flow (cholestasis) and inflammation.

On February 11, 2024, we entered into the Merger Agreement with Gilead and Purchaser, which provides for the acquisition of the Company by Gilead in a two-step all cash transaction, consisting of the Offer, followed by the Merger, with the Company continuing as the surviving corporation.

On February 23, 2024, Purchaser commenced the Offer for all of the Company's Shares, other than any Excluded Shares, at the Offer Price, net to the seller in cash, without interest and subject to any required withholding of taxes. The Offer will initially remain open until March 21, 2024 (unless otherwise agreed to in writing by Gilead and us), which period may be extended for additional periods of up to 10 business days per extension (or such other duration as may be agreed to in writing by the Company and Gilead) to permit the conditions to the Offer to be satisfied.

The obligation of Purchaser to accept for payment Shares validly tendered pursuant to the Offer is subject to customary closing conditions, including: (i) Shares having been validly tendered and not validly withdrawn that, considered together with all other Shares (if any) beneficially owned by Gilead and its affiliates, represent one more Share than 50% of the total number of Shares outstanding at the time of the expiration of the Offer (including, for the avoidance of doubt, all Shares that become outstanding as a result of the "cashless exercise" of the outstanding pre-funded warrants of the Company, as described above); (ii) the accuracy of the Company's representations and warranties contained in the Merger Agreement (subject to any applicable Material Adverse Effect (as defined in the Merger Agreement) and materiality qualifiers); (iii) the absence of a willful and material breach by the Company of the "no-shop" restrictions described in the Merger Agreement and the Company's performance of its other obligations, covenants and agreements under the Merger Agreement in all material respects; (iv) the absence, since the date of the Merger Agreement, of any Material Adverse Effect; (v) the expiration or early termination of the waiting period applicable to the Offer under the HSR Act and if Gilead and the Company have entered into an agreement with any governmental body regarding the timing of the consummation of the Offer, such consummation being permitted under such agreement and (vi) the absence of any judgment, temporary restraining order, preliminary or permanent injunction or other order, decree or ruling restraining, enjoining or otherwise preventing the acquisition of or payment for Shares pursuant to the Offer or the consummation of the Offer or the Merger or subsequent integration.

As soon as practicable following the acceptance of the Shares validly tendered and not validly withdrawn pursuant to the Offer and the consummation of the Offer, subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, the Merger will be effected under Section 251(h) of the DGCL without a meeting or vote of the Company's stockholders.

At the Effective Time, each issued and outstanding Share, other than any Excluded Shares, any Tendered Shares or any Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive the Merger Consideration, in cash, without interest and subject to any required withholding of taxes.

At the Effective Time, each stock option to purchase Shares that is then outstanding and unexercised, whether or not vested and which has a per-share exercise price that is less than the Merger Consideration, will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to (i) the excess of (a) the Merger Consideration over (b) the exercise price payable per Share under such stock option, multiplied by (ii) the total number of Shares subject to such stock option immediately prior to the Effective Time.

At the Effective Time, each restricted stock unit award with respect to Shares that is then outstanding will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to the product,

rounded to the nearest cent, of (i) the number of Shares subject to such restricted stock unit award as of the Effective Time and (ii) the Merger Consideration.

At the Offer Acceptance Time, each pre-funded warrant of the Company to purchase Shares that is outstanding immediately prior to the Effective Time will automatically be deemed to be exercised in full in a "cashless exercise" pursuant to the warrant agreement to which such warrant is subject. At the Effective Time, holders of Shares issued pursuant to such "cashless exercise" of the pre-funded warrants of the Company in accordance with the applicable warrant agreements and the Merger Agreement shall become entitled to the Merger Consideration as described above in respect of Shares other than the Excluded Shares, the Tendered Shares and any Dissenting Shares.

The Merger Agreement contains certain termination rights for the Company and Gilead. Upon termination of the Merger Agreement under specified circumstances, the Company will be required to pay Gilead a termination fee in the amount of $151.6 million.

Seladelpar—Primary Biliary Cholangitis (PBC)

In December 2023, we submitted a New Drug Application (NDA) to the U.S. Food and Drug Administration (FDA) for seladelpar, our investigational treatment for the management of PBC, including pruritus in adults without cirrhosis or with compensated cirrhosis (Child Pugh A) who are inadequate responders or intolerant to ursodeoxycholic acid (UDCA). In February 2024, we announced that (i) the FDA accepted our NDA for seladelpar and granted a priority review and set a Prescription Drug User Fee Act (PDUFA) target action date of August 14, 2024 and notified us that it is not currently planning to hold an advisory committee meeting to discuss the application, (ii) the U.K. Medicines and Healthcare products Regulatory Agency accepted for filing the application of the Company for approval of seladelpar for treatment of PBC, including pruritus, in early February 2024 and (iii) the Company submitted a similar application for the approval of seladelpar for the treatment of PBC, including pruritus, with the European Medicines Agency, in early February 2024. Previously, seladelpar was granted Breakthrough Therapy Designation by the FDA in 2019 and in October 2023, the FDA revised the Breakthrough Therapy Designation in recognition of clinical data that indicated seladelpar may provide meaningful improvement over existing therapy based on a reduction in alkaline phosphatase (ALP) and improvement in pruritus in patients without cirrhosis or with compensated cirrhosis.

In September 2023, we announced topline results from our Phase 3 RESPONSE study. The study evaluated the safety and efficacy of seladelpar for the treatment of PBC. The trial achieved the primary and all key secondary endpoints of the trial. A total of 61.7% of patients on seladelpar 10 mg (n=128) met the primary composite endpoint related to serum alkaline phosphatase and bilirubin at 12 months versus 20.0% on placebo (n=65; $p<0.0001$). Alkaline phosphatase at 12 months (key secondary endpoint) normalized in 25.0% of patients on seladelpar vs. zero on placebo ($p<0.0001$). The least-squares mean percent reduction in alkaline phosphatase at 12 months was 42.4% in the seladelpar group vs. 4.3% in the placebo group ($p<0.0001$). Seladelpar treatment compared to placebo also demonstrated a statistically significant reduction in pruritus, or itch (key secondary endpoint), after 6 months of treatment. Seladelpar-treated patients with a baseline Numerical Rating Scale (NRS)$\geq$4 (moderate to severe pruritus) had a least-square mean reduction of 3.2 points in pruritus NRS (n=49) compared to 1.7 points for patients in the placebo group (n=23; $p<0.005$). Overall, the safety profile was comparable between placebo and seladelpar groups and was consistent with previous studies. Treatment-emergent adverse events, serious adverse events, and patient discontinuations were generally balanced across the treatment and placebo arms. There were no treatment-related serious adverse events in the study. Seladelpar's tolerability profile appeared favorable and consistent with previous studies.

In August 2023, we announced the initiation of a 52-week, placebo-controlled, randomized, Phase 3 study — "Intended to Determine the Effects of seladelpar on normalization of Alkaline phosphatase (ALP) Levels in subjects with Primary Biliary Cholangitis (PBC)" (IDEAL). The IDEAL study aims to enroll 150 patients globally with PBC who have an incomplete response or intolerance to ursodeoxycholic acid (UDCA), in each

case with ALP greater than the upper limit of normal (ULN) but less than 1.67xULN, and total bilirubin less than or equal to 2xULN. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar 10 mg or placebo. The primary outcome measure is the normalization greater than or equal to a 15% decrease in ALP at 52 weeks and a key secondary endpoint evaluating the change in pruritus Numerical Rating Scale (NRS) at six months in subjects with moderate to severe pruritus at baseline.

In September 2023, we announced the initiation of the AFFIRM study, a randomized, placebo-controlled confirmatory study to evaluate the effect of seladelpar on clinical outcomes in patients with compensated cirrhosis due to PBC. The AFFIRM study is planned to enroll approximately 192 patients with PBC who have compensated cirrhosis (Child-Pugh A or Child-Pugh B) based on prespecified clinical criteria. Patients will be randomly assigned using a 2:1 ratio to oral, once daily seladelpar or placebo for a fixed duration of three years. The primary outcome measure is the time from start of treatment to the first occurrence of clinical events (all-cause death, liver transplant, hospitalization for other serious liver-related events, and progression to Child-Pugh C decompensated cirrhosis). Additional key outcomes include overall survival, liver transplant-free survival, and time to hospitalization for serious liver-related events.

In addition, we are continuing our ASSURE trial, an open-label, long-term study intended to collect additional long-term safety and efficacy data to support registration. ASSURE is open to patients from our previously completed Phase 2 open label study and our Phase 3 ENHANCE study, patients who completed treatment in RESPONSE, and patients who complete treatment in certain Phase 1 studies. As of December 31, 2023, the ASSURE trial has enrolled over 300 patients.

MBX-2982

In November 2020, we announced a Phase 2aproof-of-pharmacology study led by AdventHealth Translational Research Institute and funded by the Leona M. and Harry B. Helmsley Charitable Trust to evaluate MBX-2982, a G protein-coupled receptor 119 (GPR119) agonist, in subjects with type 1 diabetes (T1D). The study assessed whether MBX-2982 enhanced glucagon secretion during insulin-induced hypoglycemia in subjects with T1D. In November 2023, we announced that while the study found that while MBX-2982 demonstrated pharmacodynamic action, it did not demonstrate the pharmacology needed to benefit the T1D population as there was no change in glucagon secretion during clamps in subjects with T1D dosed with MBX-2982 versus placebo. The Company is not planning any further studies withMBX-2982.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States (GAAP). The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the consolidated financial statements, as well as the reported revenues and expenses during the reporting periods. We base our estimates on historical experience and on various other factors that we believe to be materially reasonable under the circumstances, the results of which form our basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources and evaluate our estimates on an ongoing basis. Actual results may materially differ from those estimates under different assumptions or conditions.

While we describe our significant accounting policies in more detail in*Note 2—Summary of Significant Accounting Policies* of our consolidated financial statements included in this Annual Report, we believe the following accounting policies to be critical to the judgments and estimates used in the preparation and understanding of our consolidated financial statements.

Collaboration Revenues

We enter into collaboration arrangements with third parties, under which we license certain rights to our intellectual property and provide certain services to the party to enable local development of the product, and account for the arrangements as collaboration services revenue when the counterparty is a customer under ASC 606. The terms of these arrangements typically include payment to us for one or more of the following: non-refundable, up-front license fees; development, regulatory and commercial milestone payments; product supply services; development cost reimbursements; profit sharing arrangements; and royalties on net sales of licensed products.

As part of the accounting for these arrangements, we must develop assumptions that require judgment to determine the standalone selling price for each performance obligation identified in the contract. We use assumptions to determine the standalone selling price, which may include forecasts of revenues and costs, clinical development timelines and costs, reimbursement rates for personnel costs, discount rates and probabilities of technical and regulatory success. At the inception of each arrangement that includes development milestone payments, we evaluate whether the milestones are considered probable of being reached and estimate the amount to be included in the transaction price using the most likely amount method. At the end of each subsequent reporting period, we re-evaluate the probability of earning of such development milestones and related constraints, if any, and if necessary, adjust our estimate of the overall transaction price. For arrangements that may include sales-based royalties, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, we recognize revenue at the later of (i) when the related sale occurs or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied). Development milestone adjustments are recorded on a cumulative catch-up basis, which would affect collaboration services revenues in the period of adjustment.

Research and Development Expenses and Related Prepayments and Accruals

Research and development expenses consist of costs incurred in identifying, developing, and testing product candidates. These expenses consist primarily of costs for research and development personnel, including related stock-based compensation; contract research organizations (CRO) and other third parties that assist in managing, monitoring, and analyzing clinical trials; investigator and site fees; laboratory services; consultants; contract manufacturing services; non-clinical studies, including materials; and allocated expenses, such as depreciation of assets, and facilities and information technology that support research and development activities. Research and development costs are expensed as incurred unless there is an alternative future use in other research and development projects.

As part of the process of preparing our consolidated financial statements, we are required to estimate certain research and development expenses. This process involves reviewing contracts, reviewing the terms of our license agreements, communicating with our vendors and applicable 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 either when we have prepaid or when we have not yet been invoiced or otherwise notified of actual cost. Although certain of our vendors require us to prepay in advance of services rendered, the majority of our service providers invoice us monthly in arrears for services performed. We make estimates of prepayments to consume or expenses to be accrued as of each balance sheet date in our consolidated financial statements based on facts and circumstances known to us at that time. Such payments are evaluated for current or noncurrent classification based on when they will be realized. Additionally, if expectations change such that we do not expect goods to be delivered or services to be rendered, such prepayments are charged to expense to the extent they are refundable. Examples of research and development expenses include fees to:

- contract research organizations and other service providers in connection with clinical studies;
- contract manufacturers in connection with the production of clinical trial materials; and
- vendors in connection with preclinical development activities.

We base our expenses related to clinical studies on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and contract research organizations that conduct and manage clinical studies 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 and expense recognition. Payments under some of these contracts depend on factors such as the successful screening and enrollment of patients and the completion of clinical trial milestones. In expensing service fees, we estimate the time period over which services will be performed 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 related prepayment or accrual accordingly. Our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in our reporting changes in estimates in any particular period. Adjustments to prior period estimates have not been material for the years ended December 31, 2023, 2022, and 2021.

Development Financing Agreement

We account for our Development Financing Agreement with Abingworth (the Financing Agreement) as a debt instrument. Accordingly, we have recorded payments received under the Financing Agreement as part of a development financing liability in our consolidated balance sheet. The liability is recorded at amortized cost and accreted to the contractual success fee amounts based on the estimated timing of regulatory approval and attainment of certain sales milestones using an imputed interest rate. Certain transaction fees incurred specifically to complete the Financing Agreement were capitalized and recorded as a reduction to the carrying amount of the development financing liability and are being amortized to interest expense using the effective interest rate method.

There are several factors that could affect the estimated timing of regulatory approval and attainment of sales milestones, some of which are not entirely within our control. Therefore, we periodically reassess the estimated timing of regulatory approval and attainment of sales milestones, and the expected contractual success fee payments due therefrom. If the timing and/or amount of such expected payments is materially different than original estimates, we will prospectively adjust the accretion of the development financing liability and the imputed interest rate.

We identified certain contingent repayment features in the Financing Agreement that are required to be bifurcated from the debt host instrument as embedded derivative liabilities; however, we determined the fair value of these features, both individually and in aggregate, were immaterial at inception and as of December 31, 2023, 2022, and 2021. The fair value of these features will be assessed at each subsequent reporting date and will be marked to market, if material. To determine the amount to record for the embedded derivative liability, we must assess the probability of occurrence of various potential future events that could affect the timing and/or amount of future cash flows related to the Financing Agreement.

Stock-Based Compensation

We measure stock-based compensation cost at the grant date, based on the estimated fair-value of the awards, and we recognize the portion that we ultimately expect to vest as an expense over the related vesting periods, net of actual forfeitures as they occur. We estimate the grant-date fair value based of stock options using the Black-Scholes option pricing model and recognize compensation expense over the service period and forfeitures are accounted for as they occur.

The Black-Scholes option-pricing model requires the input of certain assumptions. These variables include, but are not limited to, our stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. We determine our stock price volatility based on the sufficiency of our historical stock price data. Due to insufficient historical data of exercise behavior, we have used the “simplified method” to determine the expected life of stock options granted with a service condition. Management continually assesses

the assumptions and methodologies used to calculate the estimated fair value of stock-based compensation and evaluates the need to make changes when and if necessary. Any such changes to our valuation assumptions and methodologies could materially impact our fair value determination and the resulting stock-based compensation expense.

Results of Operations

General

To date, we have not generated any income from operations. As of December 31, 2023, we have an accumulated deficit of $978.2 million, primarily as a result of expenditures for research and development, general and administrative expenses and net interest expenses from inception to that date. Currently, our lead product candidate is in late-stage development and will require additional work and regulatory approval before it can be commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future and there can be no assurance that we will ever generate sufficient revenue to achieve and sustain profitability. Until we can generate sufficient product revenue, which we may never do, we will need to finance future cash needs through potential collaborative, partnering or other strategic arrangements, as well as through equity offerings, debt financings or a combination of the foregoing.

Operating Results

This discussion and analysis addresses 2023 and 2022 items and year-over-year comparisons between 2023 and 2022. Discussions of 2021 items and year-over-year comparisons between 2022 and 2021 that are not included in this Annual Report on Form 10-K can be found in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 23, 2023.

Our results of operations for the years ended December 31, 2023 and 2022 are presented below (in thousands):

	Year Ended December 31,		Change
($ in thousands)	2023	2022	2023 vs. 2022
Collaboration revenue	$ 31,073	$ —	$ 31,073
Operating expenses:			
Research and development	80,799	67,995	12,804
General and administrative	51,953	25,116	26,837
Total operating expenses	132,752	93,111	39,641
Loss from operations	(101,679)	(93,111)	(8,568)
Other income (expense), net:			
Interest income	13,490	2,017	11,473
Interest expense	(18,945)	(14,907)	(4,038)
Other income	1,764	—	1,764
Total other income (expense), net	(3,691)	(12,890)	9,199
Net loss	$(105,370)	$(106,001)	$ 631

Collaboration Revenue

On January 6, 2023, we entered into a Collaboration and License Agreement (the License Agreement) with Kaken Pharmaceuticals Co., Ltd (Kaken). Pursuant to this agreement, we granted Kaken an exclusive license to

develop and commercialize seladelpar for the treatment of PBC in Japan. In consideration of the license and other rights granted by us, Kaken made an upfront cash payment to the Company of ¥4.5 billion in January 2023 (or $34.2 million, comprised of $33.7 million of contract consideration).

Of the $33.7 million, we recognized $31.1 million as collaboration revenue during the year ended December 31, 2023. This collaboration revenue principally relates to the license transfer and the delivery of certain underlying technology and know-how associated with the license. The remaining $2.8 million portion of the upfront consideration was deferred, as it relates to our data delivery performance obligation and our CMC development performance obligation which were not delivered as of December 31, 2023.

Research & Development Expenses

Conducting research and development is central to our business model. Research and development expenses increased $12.8 million to $80.8 million from $68.0 million for the years ended December 31, 2023 and 2022, respectively. We expect that our research and development expenses to increase in the near term as we continue to expand our clinical activities related to seladelpar.

Research and development expenses are detailed further in the table below (in thousands):

	Year Ended December 31,		Change
	2023	2022	2023 vs. 2022
Project costs:			
Seladelpar PBC clinical studies	$35,697	$34,143	$ 1,554
Seladelpar drug manufacturing & development	3,689	6,585	(2,896)
Preclinical	1,388	886	502
Seladelpar and non-seladelpar other studies	14	21	(7)
Total project costs	40,788	41,635	(847)
Internal research and development costs	40,011	26,360	13,651
Total research and development	$80,799	$67,995	$ 12,804

Our project costs consist primarily of:

- expenses incurred under agreements with contract research organizations, investigative sites and service providers that conduct our clinical trials and a substantial portion of our preclinical activities;
- the cost of acquiring materials and manufacturing drug products for use in clinical trial and other research activities; and
- other costs associated with development activities, including additional studies.

Internal research and development costs consist primarily of salaries and related fringe benefits costs for our employees (such as workers' compensation and health insurance premiums), stock-based compensation charges, travel costs, and overhead expenses. Internal costs generally benefit multiple projects and are not separately tracked per project.

Comparison of Years Ended December 31, 2023 and 2022

Total project costs, which primarily consisted of clinical trial expenses for seladelpar in PBC, decreased by $0.8 million to $40.8 million from $41.6 million for the years ended December 31, 2023 and 2022, respectively. Project costs for the years ended December 31, 2023 and 2022 primarily consisted of seladelpar-related clinical trial expenses for PBC. The decrease was primarily driven by lower contract research expenses for our RESPONSE

clinical trial following completion of the trial as well as lower drug manufacturing expenses during the year ended December 31, 2023. Internal research and development costs increased by $13.7 million to $40.0 million from $26.4 million for the years ended December 31, 2023 and 2022, respectively, primarily due to an increase in employee compensation, contractor costs, and consultant expenses incurred in the year ended December 31, 2023 compared to the year ended December 31, 2022 as we continued to engage additional research and development personnel to startup our AFFIRM and IDEAL clinical trials and to support other ongoing clinical development activities.

General and Administrative Expenses

General and administrative expenses consist principally of personnel-related costs, professional fees for legal, consulting, and accounting services, rent, and other general operating expenses not otherwise included in research and development.

Comparison of Years Ended December 31, 2023 and 2022

General and administrative expenses increased by $26.8 million to $52.0 million from $25.1 million for the years ended December 31, 2023 and 2022, respectively. The increase was driven primarily by growth in employee headcount and incremental expenditures related to our pre-commercial planning activities for seladelpar and our continued expansion of our operations. We expect these types of general and administrative expenses to continue to increase in the future as we further expand support for our ongoing drug development activities and expand on initiatives to plan and prepare for potential commercialization of seladelpar in PBC.

Other Income (Expense), Net

Other income (expense), net includes interest expense related to the accretion of the development financing liability recorded in connection with the July 2021 Abingworth Development Financing Agreement (the Financing Agreement) using the effective interest method, net of interest income earned on our marketable securities portfolio and other income.

Comparison of Years Ended December 31, 2023 and 2022

Other income (expense), net, decreased $9.2 million to $3.7 million from $12.9 million for the years ended December 31, 2023 and 2022, respectively.

Interest income increased $11.5 million to $13.5 million from $2.0 million for the years ended December 31, 2023 and 2022, respectively, due to higher prevailing interest rates and an increase in investments held in our portfolio.

Interest expense increased $4.0 million to $18.9 million from $14.9 million for the years ended December 31, 2023 and 2022, respectively, primarily due to interest expense from the Abingworth Development Financing Arrangement.

Other income was $1.8 million for the year ended December 31, 2023, primarily due to the recognition of $1.3 million related to certain refundable Employee Retention Tax Credits for the years 2020 and 2021 pursuant to provisions of the CARES Act that were designed to help businesses retain employees and $0.5 million related to foreign currency gains.

Income Taxes

As of December 31, 2023, we had federal net operating loss carryforwards of $365.6 million and state net operating loss carryforwards of $214.9 million to offset future taxable income, if any. In addition, we had federal

research and development tax credit carryforwards of $4.5 million, federal orphan drug tax credit carryforwards of $38.4 million, and state research and development tax credit carryforwards of $11.0 million. If not utilized, the federal net operating losses for the years beginning before January 1, 2018 of $78.4 million will expire beginning in 2034 through 2037, and the federal net operating losses for the tax years beginning after January 1, 2018 of $287.2 million will be carried forward indefinitely (subject to certain utilization limitations). The state net operating loss carryforwards will expire beginning in 2028 through 2043. The federal research and development and federal orphan drug tax credit carryforwards expire 2033 through 2043, and the state tax credit will carry forward indefinitely. Current federal and state tax laws include substantial restrictions on the utilization of net operating losses and tax credits in the event of an ownership change. During 2022, we completed a study and determined historical ownership changes occurred through December 31, 2022 and accordingly, we have reduced our carryforwards to incorporate the effects of these federal and state restrictions. Carryforwards that remain available may be subject to annual limitations, lack of future taxable income, or future ownership changes that could result in the expiration of the carryforwards before they are utilized. The Section 382 analysis was updated through December 31, 2023 with no incremental restrictions on use of net operating loss or credit carryforwards.

As of December 31, 2023, we recorded a full valuation allowance against our deferred tax assets of approximately $169.5 million, as our management believes it is more likely than not that they will not be fully realized. Interest and penalties for the years ended December 31, 2023 and 2022 were not material.

Liquidity and Capital Resources

We have financed our operations primarily through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. As of December 31, 2023, cash, cash equivalents and marketable securities totaled $416.2 million, compared to $135.5 million as of December 31, 2022.

Collaboration and License Agreement

As noted above, on January 6, 2023, we entered into the License Agreement with Kaken. Pursuant to the License Agreement, we granted Kaken an exclusive license to develop and commercialize seladelpar for the treatment of PBC in Japan. In exchange for the license and other rights granted by us, Kaken paid us ¥4.5 billion in January 2023 (or $34.2 million, comprised of $33.7 million of contract consideration and a $0.5 million foreign exchange gain recorded in Other income (expense), net during the year ended December 31, 2023) and is also obligated to make aggregate potential future milestone payments to us totaling up to ¥17.0 billion ($128.0 million at exchange rates in effect at contract inception date) upon Kaken's achievement of certain regulatory and sales milestones. We agreed to manufacture and supply seladelpar to Kaken for use in the territory in exchange for payments from Kaken as set forth in the License Agreement with specific terms defined or to be defined in supply agreements. We will deliver to Kaken data from our clinical trials, nonclinical studies and other pre-clinical data, chemistry manufacturing and controls (CMC) data, and other information (when such data and information becomes available), and know-how that is controlled by us that is reasonably necessary for Kaken to seek regulatory approval in Japan. We may also be requested by Kaken to conduct CMC activities specific to commercialization in Japan and provide other assistance.

Pursuant to the License Agreement, we and Kaken also agreed to establish a joint steering committee to provide strategic oversight of both parties' activities under the License Agreement.

The License Agreement may be early terminated by either party for material breach, upon a party's insolvency or bankruptcy or upon a challenge by one party of any patents of the other party, and Kaken may terminate in specified situations, including for a safety concern, clinical failure or termination of an underlying in-license to us from Janssen Pharmaceutica NV. Kaken may also terminate the License Agreement at its convenience with specified prior notice.

The License Agreement is effective until the date upon which (a) the royalty term has expired in Japan for the final licensed product, or (b) the License Agreement is earlier terminated (the Initial Term). After the Initial

Term, the License Agreement will be automatically renewed for 2-year periods, unless either party has given the other party a written notice not to renew the License Agreement.

Sale of Common Stock and Pre-funded Warrants

On September 11, 2023, we sold 14,521,307 shares of common stock, at $17.13 per share and a pre-funded warrant to purchase 583,771 shares of common stock at $17.1299 per share in a public equity offering (September 2023 public offering), for total net proceeds of $242.8 million, after deducting underwriting discounts and commissions and other offering expenses.

On January 23, 2023, we sold 11,821,428 shares of common stock at $7.00 per share and a pre-funded warrant to purchase 2,142,857 shares of common stock at $6.9999 per share in a public equity offering (January 2023 public equity offering), for total net proceeds of approximately $92.4 million after deducting underwriting discount and other offering expenses.

At-the-Market (ATM) Facility

In March 2023, we filed a registration statement on Form S-3 with the SEC and entered into an at-the-market facility (ATM) to sell up to $100.0 million of common stock under the registration statement pursuant to the Controlled Equity Offering℠ Sales Agreement with Cantor Fitzgerald & Co., dated July 2, 2020. To date, we have not sold any shares of common stock under the ATM.

Cash Flows

The following table sets forth a summary of the net cash flow activity for each of the periods indicated below (in thousands):

	Year Ended December 31,	
	2023	2022
Net cash used in operating activities	$ (72,531)	$ (84,080)
Net cash used in investing activities	(86,569)	(45,985)
Net cash provided by financing activities	345,772	24,550
Net increase (decrease) in cash, cash equivalents and restricted cash	$186,672	$(105,515)

Cash Flows from Operating Activities

Net cash used in operating activities primarily consists of net loss, adjusted for certain non-cash items, including depreciation and amortization, non-cash lease expense, stock-based compensation expense, accretion of development financing liability, write-off of deferred financing costs, net (accretion) amortization of investments in marketable securities, and the effect of changes in working capital and other activities.

Comparison of the Years Ended December 31, 2023 and 2022

Net cash used in operating activities for the year ended December 31, 2023 decreased by $11.5 million to $72.5 million as compared to $84.1 million for the same period in the prior year, primarily due to a lower net loss due to the recognition of $31.1 million of collaboration revenue, changes in working capital in the year ended December 31, 2023, and partially offset by an increase in our operating expenses to $132.8 million from $93.1 million in the prior year primarily due to the expansion of our late-stage clinical trial activities related to the seladelpar development program as well as preparation for potential commercialization of seladelpar in PBC. In addition, cash was used to fund changes in our working capital due to the timing of payments.

Cash Flows from Investing Activities

Our investing activities primarily consist of purchases and redemption of marketable securities and purchases of property and equipment.

Comparison of the Years Ended December 31, 2023 and 2022

Net cash used in investing activities was $86.6 million for the year ended December 31, 2023 compared to $46.0 million used in investing activities in the prior year, primarily due to the timing of our purchases of investments and maturities of marketable securities and portfolio risk management.

Cash Flows from Financing Activities

Comparison of the Years Ended December 31, 2023 and 2022

Net cash provided by financing activities was $345.8 million for the year ended December 31, 2023 compared to $24.6 million in the prior year. During the year ended December 31, 2023, we received net proceeds of approximately $242.8 million from the September 2023 public offering and approximately $92.4 million from the January 2023 public offering. In addition, proceeds of $10.6 million were received from the issuance of common stock pursuant to our equity award plans during the year ended December 31, 2023.

Capital Requirements

We have incurred operating losses since inception and had an accumulated deficit of $978.2 million as of December 31, 2023. As of December 31, 2023, we had cash, cash equivalents and marketable securities of approximately $416.2 million.

We expect to continue to incur substantial expenses related to our development activities for the foreseeable future as we continue product development for seladelpar. Since product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later stage clinical trials, we expect that our research and development expenses will increase in the future. We also expect that our overall operating expenses will increase in the future as we continue to plan and prepare for potential commercialization of seladelpar in PBC. We believe we will continue to require additional financing to develop our products and fund future operating losses, as well as to pay our obligations to Abingworth under our Financing Agreement with Abingworth, and will seek funds through equity financings, debt, collaborative or other arrangements with corporate sources, or through other sources of financing. It is unclear if or when any such financing transactions will occur, on satisfactory terms or at all. Our failure to raise capital as and when needed could have a negative impact on our financial condition and our ability to pursue our business strategies. If adequate funds are not available to us, it could have a material adverse effect on our business, results of operations, and financial condition.

Contractual Obligations and Other Cash Requirements

Our non-current contractual obligations as of December 31, 2023 include minimum lease payments for our current corporate office facility located in Newark, California, and the operating and finance subleases for the new corporate headquarters in Fremont, California, which we entered into in December 2023. Under our current corporate office space lease, we are also obligated to reimburse the lessor for a prorated portion of monthly facility operating expenses during the lease term. As of December 31, 2023, we had an immaterial amount of lease payments due in one year or less, primarily due to a contractual rent abatement period in the new sublease agreement, and $9.1 million due over the remaining lease term.

In addition, we rely on contract research organizations and other research support providers to perform clinical and preclinical studies for us and we contract with firms to supply our drug compounds for use in our

activities. Under the terms of our agreements with these organizations, we are obligated to make future payments as services are provided. However, these agreements are terminable by us upon written notice and we are generally only liable for actual effort expended or cost incurred by the organizations through the termination notice period.

We have entered into commercial supply agreements with our contract manufacturers, where we are contractually committed to minimum purchase amounts and are also subject to payment associated with binding purchase orders in the event of cancellation. In the normal course of business, we are also party to various contracts with our other vendors, which are generally cancellable within ninety days or less.

We have significant potential payment obligations under the Financing Agreement that are contingently payable by us to Abingworth upon regulatory approval of seladelpar in PBC and achievement of certain sales for seladelpar. Specifically, we will pay to Abingworth fixed and variable success payments, including (1) contingent upon the first to occur of regulatory approval of seladelpar for the treatment of PBC in the U.S., U.K., Germany, Spain, Italy or France (Regulatory Approval), fixed success payments equal to 2.0x of the funding provided, consisting of $10 million payable within 90 days after Regulatory Approval and thereafter payments due on the first six anniversaries of the Regulatory Approval in the amounts of $15 million, $22.5 million, $22.5 million, $25.0 million, $27.5 million and $27.5 million, respectively and (2) variable success payments equal to 1.1x of the funding provided, consisting of sales milestone payments of (x) $17.5 million and $27.5 million, respectively upon first reaching certain cumulative U.S. product sales thresholds, and (y) $37.5 million upon first reaching a specified U.S. product sales run rate. See *Note 7—Development Financing Agreement* of our consolidated financial statements in this Annual Report for a more complete description of our financial obligations under the Financing Agreement. We were in compliance with all terms and covenants related to the Financing Agreement as of December 31, 2023.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to cash flow and earnings fluctuations as a result of certain market risks. These market risks primarily relate to credit risk and changes in interest rates. Our investment portfolio is used to preserve our capital until it is required to fund operations, including our research and development activities. None of these market risk-sensitive instruments are held for trading purposes. We do not have derivative financial instruments in our investment portfolio.

Credit Risk

We manage credit risk associated with our investment portfolio through our investment policy, which limits purchases to high-quality issuers and limits the amount of our portfolio that can be invested in a single issuer.

Interest Rate Risk

We invest our cash in a variety of financial instruments, principally securities issued by the U.S. government and its agencies, investment-grade corporate bonds and commercial paper, and money market funds. These investments are denominated in U.S. dollars. All of our interest-bearing securities are subject to interest rate risk and could decline in value if interest rates fluctuate. Substantially all of our investment portfolio consists of marketable securities with active secondary or resale markets to help ensure portfolio liquidity, and we have implemented guidelines limiting the term-to-maturity of our investment instruments. Due to the conservative and short-term nature of these instruments, we do not believe that we have a material exposure to interest rate risk. If market interest rates were to increase or decrease by one percentage point, the fair value of our investment portfolio would increase or decrease by an immaterial amount.

Item 8. Financial Statements and Supplementary Data

The disclosure required in this Item is included in Item 15, which information is incorporated by reference here.

Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

None.

Item 9A. ***Controls and Procedures***

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, and the rules and regulations thereunder, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our chief executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of our disclosure controls and procedures (as defined in Rules13a-15(e) and 15d-15(e) under the Exchange Act), our chief executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, the design and operation of our disclosure controls and procedures were effective at the reasonable assurance level.

Limitations on the Effectiveness of Controls

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met.

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 President and Chief Executive Officer and our Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our President and Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in "Internal Control—Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2023.

The independent registered public accounting firm Ernst & Young, LLP has issued an audit report on our internal controls over financial reporting, which is included below and on the following page.

Changes in Internal Controls

There were no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2023, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Attestation Report of Independent Registered Public Accounting Firm

Our independent registered public accounting firm, Ernst & Young LLP, has audited our Consolidated Financial Statements included in Item 8 of this Annual Report on Form 10-K and have issued a report on our internal control over financial reporting as of December 31, 2023. Their report on the audit of internal control over financial reporting appears below.

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of CymaBay Therapeutics, Inc.

Opinion on Internal Control Over Financial Reporting

We have audited CymaBay Therapeutics, Inc.'s internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, CymaBay Therapeutics, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2023 and 2022, 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, 2023, and the related notes and our report dated February 28, 2024 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

San Mateo, California
February 28, 2024

Item 9B. ***Other Information***

Rule 10b5-1 Trading Plans

The adoption or termination of contracts, instructions or written plans for the purchase or sale of our securities by our Section 16 officers and directors for the three months ended December 31, 2023, each of which is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act, were as follows:

Name	Title	Trading Arrangement	Action	Date Adopted	Expiration Date or Termination Date	Aggregate number of securities to be purchased or sold
Paul Quinlan	General Counsel	Rule 10b5-1 Trading Arrangement	Adopted	December 21, 2023	August 30, 2024	95,000
Lewis Stuart	Chief Commercial Officer	Rule 10b5-1 Trading Arrangement	Termination	August 30, 2024	December 7, 2023	300,000

Other than as disclosed above, none of our directors or Section 16 officers adopted or terminated anon-Rule 10b5-1 trading arrangement as defined in Item 408 of Regulation S-K.

Item 9C. ***Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.***

Not applicable.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

The information required by this item with respect to our executive officers is incorporated herein by reference to the information set forth under the caption "Information about our Executive Officers" in Part I of this Annual Report. The information required by this item with respect to our directors is incorporated herein by reference to the information set forth under the caption "Proposal 1–Election of Directors" in our proxy statement for our 2024 annual meeting of stockholders, or the 2024 Proxy Statement. The information required by this item with respect to late Section 16 filings, if any, is incorporated by reference to the information set forth under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the 2024 Proxy Statement. The information required by this item with respect to the committees of our board of directors is incorporated by reference to the information set forth under the caption "Information Regarding the Board of Directors and Corporate Governance–Information Regarding Committees of the Board" in the 2024 Proxy Statement.

If the 2024 Proxy Statement is not filed within 120 days after the end of the fiscal year covered by this Annual Report onForm 10-K, the omitted information will be included in an amendment to this Annual Report on Form 10-K filed not later than the end of such 120-day period.

Code of Business Conduct

Our Code of Business Conduct and Ethics applies to all officers, directors and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A copy of our Code of Business Conduct and Ethics can be found on our website, http://ir.cymabay.com/governance-docs. The contents of our website are not a part of this Annual Report on Form 10-K. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Business Conduct and Ethics by posting such information on our website, at the address and location specified above.

Item 11. ***Executive Compensation***

Reference is made to the information to be included under the headings "Executive Compensation" and "Director Compensation" in our 2024 Proxy Statement, which information is hereby incorporated by reference.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information required by this item with respect to security ownership of certain beneficial owners and management will be set forth in our 2024 Proxy Statement under the caption "Security Ownership of Certain Beneficial Owners and Management" and is incorporated herein by reference.

Equity Compensation Plan Information

Information concerning our equity compensation plans will be set forth in our 2024 Proxy Statement under the caption "Securities Authorized for Issuance under Equity Compensation Plans—Equity Compensation Plan Information" and is incorporated herein by reference.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***

The information required by this item will be set forth in our 2024 Proxy Statement under the captions "Transactions with Related Persons" and "Information Regarding the Board of Directors and Corporate Governance—Independence of the Board of Directors" and is incorporated herein by reference.

Item 14. ***Principal Accountant Fees and Services***

The information required by this item will be set forth in our 2024 Proxy Statement under the caption "Principal Accountant Fees and Services" in the proposal under the caption "Ratification of Selection of Independent Registered Public Accounting Firm" and is incorporated herein by reference.

PART IV

Item 15. ***Exhibits and Financial Statement Schedules***

(a) Documents filed as part of this report

1. Financial Statements

	Page
Report of Independent Registered Public Accounting Firm (PCAOB ID: 42)	86
Consolidated Balance Sheets as of December 31, 2023 and 2022	88
Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2023, 2022, and 2021	89
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2023, 2022 and 2021	90
Consolidated Statements of Cash Flows for the years ended December 31, 2023, 2022 and 2021	92
Notes to Consolidated Financial Statements	93

2. Financial Statement Schedules

Financial statement schedules have been omitted in this report because they are not applicable, not required under the instructions, or the information requested is set forth in the consolidated financial statements or related notes thereto.

(b) List of Exhibits

The following exhibits are included herein or incorporated herein by reference:

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
3.1	Amended and Restated Certificate of Incorporation.	10/A	000-55021	3.1	10/17/2013
3.2	Certificate of Amendment of the Amended and Restated Certificate of Incorporation.	8-K	001-36500	3.1	6/26/2020
3.3	Amended and Restated By-Laws.	10/A	000-55021	3.2	10/17/2013
4.1	Reference is made to Exhibits 3.1, 3.2 and 3.3.				
4.2	Description of Common Stock.	10-K	001-36500	4.2	3/25/2021
4.3	Form of Warrant to Purchase Shares of Common Stock.	8-K	001-36500	4.1	11/18/2021
4.4	Form of Warrant to Purchase Shares of Common Stock.	8-K	001-36500	4.1	1/25/2023
4.5	Form of Warrant to Purchase Shares of Common Stock.	8-K	001-36500	4.1	9/12/2023
10.1*	2003 Equity Incentive Plan.	10	000-55021	10.1	8/12/2013

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.2*	Form of 2003 Equity Incentive Plan Stock Option Agreement.	10	000-55021	10.2	8/12/2013
10.3*	Form of 2003 Equity Incentive Plan Early Exercise Stock Option Agreement.	10	000-55021	10.3	8/12/2013
10.4*	2013 Equity Incentive Plan.	8-K	001-36500	10.1	6/7/2018
10.5*	Form of Option Grant Notice and Option Agreement under the 2013 Equity Incentive Plan.	10/A	000-55021	10.26	10/17/2013
10.6*	Form of Incentive Award Grant Notice under the 2013 Equity Incentive Plan.	10-K	000-55021	10.22	3/31/2014
10.7*	2020 New Hire Plan.	10-Q	001-36500	10.4	8/10/2023
10.8*	Form of Stock Option Grant Notice and Option Agreement under the 2020 New Hire Plan.	10-K	001-36500	10.8	3/25/2021
10.9	2023 Equity Incentive Plan.	S-8	333-272895	99.1	6/23/2023
10.10	Forms of Stock Option Grant Notice and Stock Option Agreement under the 2023 Equity Incentive Plan.	S-8	333-272895	99.2	6/23/2023
10.11+	Form of RSU Award Grant Notice and RSU Award Agreement under the 2023 Equity Incentive Plan.				
10.12	Form of CymaBay Indemnity Agreement.	10-K	001-36500	10.7	3/15/2018
10.13#	PPAR-d License Agreement, dated June 20, 2006, by and between Metabolex, Inc. and Janssen Pharmaceutical NV.	10-Q	001-36500	10.1	11/14/2022
10.14#	Development Financing Agreement, dated July 30, 2021, by and between CymaBay Therapeutics, Inc. and ABW Cyclops SPV LP.	10-Q	001-36500	10.1	11/10/2021
10.15#+	Collaboration and License Agreement, dated January 6, 2023, between CymaBay Therapeutics, Inc. and Kaken Pharmaceutical Co., Ltd.	10-K	001-36500	10.12	3/23/2023
10.16	Lease, dated November 8, 2013, between CymaBay Therapeutics, Inc. and BMR-Pacific Research Center, L.P.	10-Q	000-55021	10.27	11/25/2013
10.17	First Amendment to Lease, dated April 16, 2018, between CymaBay Therapeutics, Inc. and BMR-Pacific Research Center, LP.	10-Q	001-36500	10.1	5/8/2018
10.18+	Second Amendment to Lease, dated February 6, 2024, between CymaBay Therapeutics, Inc. and BMR-Pacific Research Center, LP.				
10.19+#	Agreement of Sublease, dated December 1, 2023, between CymaBay Therapeutics, Inc. and Meta Platforms, Inc.				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.20*	Offer Letter, dated December 6, 2013, between CymaBay Therapeutics, Inc. and Sujal Shah.	10-K	000-55021	10.24	3/31/2014
10.21*	Offer Letter, dated November 21, 2013, between CymaBay Therapeutics, Inc. and Charles A. McWherter.	10-K	000-55021	10.26	3/31/2014
10.22*	Offer Letter, dated August 2, 2017, between CymaBay Therapeutics, Inc. and Daniel Menold.	10-Q	001-36500	10.4	8/10/2017
10.23*	Offer Letter, dated September 4, 2018, between CymaBay Therapeutics, Inc. and Klara Dickinson.	10-K	001-36500	10.16	2/28/2019
10.24*	Offer Letter, dated August 27, 2020, between CymaBay Therapeutics, Inc. and Paul Quinlan.	10-K	001-36500	10.18	3/25/2021
10.25*	Offer Letter, dated March 24, 2021, between CymaBay Therapeutics, Inc. and Lewis Stuart.	10-Q	001-36500	10.1	8/12/2021
10.26*	Offer Letter, dated April 27, 2023, between CymaBay Therapeutics, Inc. and Harish Shantharam.	8-K	001-36500	10.1	5/9/2023
10.27*	Notice of Resignation and Transition, effective February 20, 2023, between CymaBay Therapeutics, Inc. and Dennis Kim.	8-K	001-35600	10.1	2/23/2023
10.28*	Non-Employee Director Compensation Program.	8-K	001-36500	10.1	1/26/2024
10.29	Controlled Equity Offering℠ Sales Agreement, dated July 2, 2020, between CymaBay Therapeutics, Inc. and Cantor Fitzgerald & Co.	S-3	333-239670	1.2	7/2/2020
21.1+	List of subsidiaries of the Registrant.				
23.1+	Consent of Independent Registered Public Accounting Firm.				
24.1+	Power of Attorney. (Incorporated by reference to the signature page of this Annual Report on Form 10-K.)				
31.1+	Certification of President and Chief Executive Officer (Principal Executive Officer) pursuant to Rule 13-a-14(a) or Rule 15(d)-14(a) of the Exchange Act.				
31.2+	Certification of Chief Financial Officer (Principal Financial Officer) pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act.				
32.1++	Certification of President and Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer) pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
97.1+	Incentive Compensation Recoupment Policy				

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
101.INS+	Inline XBRL Instance Document				
101.SCH+	Inline XBRL Taxonomy Extension Schema Document				
101.CAL+	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF+	Inline XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB+	Inline XBRL Taxonomy Extension Label Linkbase Document				
101.PRE+	Inline XBRL Taxonomy Extension Presentation Document				
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in exhibit 101)				

\+ Filed herewith.
++ Furnished herewith.
* Indicates management contract or compensatory plan.
\# Certain portions of this exhibit have been omitted because the omitted portions are both not material and is the type of information that CymaBay treats as private or confidential.

CymaBay Therapeutics, Inc.
Index to Consolidated Financial Statements

	Page
Report of Independent Registered Public Accounting Firm (PCAOB ID: 42)	86
Consolidated Balance Sheets as of December 31, 2023 and 2022	88
Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2023, 2022 and 2021	89
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2023, 2022 and 2021	90
Consolidated Statements of Cash Flows for the years ended December 31, 2023, 2022 and 2021	92
Notes to Consolidated Financial Statements	93

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of CymaBay Therapeutics, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of CymaBay Therapeutics, Inc. (the Company) as of December 31, 2023 and 2022, 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, 2023, 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, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 28, 2024 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the account or disclosure to which it relates.

Revenue Recognition - Identification of Distinct Performance Obligations

Description of the Matter	As described in Note 2 to the consolidated financial statements, the Company enters into licensing and collaboration arrangements that include multiple performance obligations. Determining the completeness of distinct performance obligations under each arrangement requires significant judgment. Auditing the Company's licensing and collaboration arrangement was complex due to the effort involved in assessing the promises in the arrangement and whether such promises were distinct performance obligations.
How We Addressed the Matter in Our Audit	We obtained an understanding of and evaluated the design and operating effectiveness of controls over the terms of the arrangement and the appropriate identification of performance obligations. Our audit procedures included evaluating management's revenue recognition policy which involved the application of management's judgment in the identification of performance obligations. Among other procedures to evaluate management's identification and determination of distinct performance obligations, we examined the executed agreement and assessed the key terms under the relevant authoritative accounting guidance and evaluated management's conclusion that the agreement contains three distinct performance obligations. We evaluated the accuracy of the Company's contract summary documentation, specifically related to the identification and determination of distinct performance obligations, and the related revenue recognition. We confirmed the terms and conditions of the arrangement with the counterparty to ensure all promises were accounted for in the analysis. Finally, we assessed the appropriateness of the related disclosures in the consolidated financial statements.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1994.

San Mateo, California
February 28, 2024

CymaBay Therapeutics, Inc.
Consolidated Balance Sheets
(In thousands, except share amounts and par value)

	December 31,	
	2023	2022
Assets		
Current assets:		
Cash and cash equivalents	$ 206,535	$ 20,291
Marketable securities	187,720	115,194
Prepaid expenses and other current assets	9,547	2,588
Total current assets	403,802	138,073
Non-current marketable securities	21,932	—
Property and equipment, net	465	701
Right-of-use assets	5,260	169
Other assets	3,227	2,909
Total assets	$ 434,686	$ 141,852
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 3,828	$ 1,096
Accrued research and development expenses	5,633	6,530
Development financing liability - current portion	10,000	—
Deferred collaboration revenue - current portion	1,689	—
Other accrued liabilities	15,693	7,815
Total current liabilities	36,843	15,441
Development financing liability - non-current portion	99,172	90,227
Deferred collaboration revenue - non-current portion	1,100	—
Lease liabilities - non-current portion	5,315	30
Total liabilities	142,430	105,698
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.0001 par value: 10,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, $0.0001 par value: 200,000,000 shares authorized; 113,864,976 and 84,681,063 shares issued and outstanding as of December 31, 2023 and December 31, 2022, respectively	11	8
Additional paid-in capital	1,270,328	909,329
Accumulated other comprehensive income (loss)	144	(326)
Accumulated deficit	(978,227)	(872,857)
Total stockholders' equity	292,256	36,154
Total liabilities and stockholders' equity	$ 434,686	$ 141,852

See accompanying notes to the consolidated financial statements.

CymaBay Therapeutics, Inc.
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share information)

	Year Ended December 31,		
	2023	2022	2021
Collaboration revenue	$ 31,073	$ —	$ —
Operating expenses:			
Research and development	80,799	67,995	64,542
General and administrative	51,953	25,116	23,040
Total operating expenses	132,752	93,111	87,582
Loss from operations	(101,679)	(93,111)	(87,582)
Other income (expense), net:			
Interest income	13,490	2,017	167
Interest expense	(18,945)	(14,907)	(2,583)
Other income	1,764	—	—
Total other income (expense), net	(3,691)	(12,890)	(2,416)
Net loss	$ (105,370)	$ (106,001)	$ (89,998)
Other comprehensive (loss) income:			
Unrealized gain (loss) on marketable securities, net of tax	470	(313)	(21)
Total other comprehensive income (loss)	470	(313)	(21)
Comprehensive loss	$ (104,900)	$ (106,314)	$ (90,019)
Basic and diluted net loss per common share	$ (0.99)	$ (1.21)	$ (1.27)
Weighted average common shares outstanding used to calculate basic and diluted net loss per common share	106,204,273	87,804,063	71,055,331

See accompanying notes to the consolidated financial statements.

CymaBay Therapeutics, Inc.
Consolidated Statements of Stockholders' Equity
(In thousands, except share and per share information)

	Common Stock		Additional Paid-in Capital	Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balances as of December 31, 2020	68,946,092	$ 7	$ 819,549	$ 8	$ (676,858)	$ 142,706
Issuance of common stock upon exercise of stock options	106,847	—	219	—	—	219
Issuance of common stock and pre-funded warrant, net of $4,965 issuance costs	15,625,000	1	70,034	—	—	70,035
Stock-based compensation expense	—	—	9,996	—	—	9,996
Net loss	—	—	—	—	(89,998)	(89,998)
Net unrealized loss on marketable securities	—	—	—	(21)	—	(21)
Balances as of December 31, 2021	84,677,939	$ 8	$ 899,798	$ (13)	$ (766,856)	$ 132,937
Issuance of common stock upon exercise of stock options	3,124	—	9	—	—	9
Issuance costs related to issuance of common stock and pre-funded warrants	—	—	5	—	—	5
Stock-based compensation expense	—	—	9,517	—	—	9,517
Net loss	—	—	—	—	(106,001)	(106,001)
Net unrealized loss on marketable securities	—	—	—	(313)	—	(313)
Balances as of December 31, 2022	84,681,063	$ 8	$ 909,329	$ (326)	$ (872,857)	$ 36,154
Issuance of common stock upon exercise of stock options	2,216,186	—	10,632	—	—	10,632
Issuance of common stock upon exercise of pre-funded warrants	624,992	—	—	—	—	—
Issuance of common stock and pre-funded warrants, net of $21,359 issuance costs	26,342,735	3	335,137	—	—	335,140

	Common Stock		Additional Paid-in Capital	Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Stock-based compensation expense	—	—	15,230	—	—	15,230
Net loss	—	—	—	—	(105,370)	(105,370)
Net unrealized gain on marketable securities	—	—	—	470	—	470
Balances as of December 31, 2023	113,864,976	$ 11	$1,270,328	$ 144	$ (978,227)	$ 292,256

See accompanying notes to the consolidated financial statements.

CymaBay Therapeutics, Inc.
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,		
	2023	2022	2021
Operating activities			
Net loss	$(105,370)	$(106,001)	$ (89,998)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	681	625	669
Non-cash lease expense	215	85	19
Stock-based compensation expense	15,230	9,517	9,996
Accretion of development financing liability	18,945	14,907	2,583
Write-off of deferred financing costs	—	—	312
Net (accretion) amortization of investments in marketable securities	(7,864)	(874)	637
Changes in assets and liabilities:			
Prepaid expenses and other current assets	(6,959)	1,976	386
Other assets	110	(1,189)	(1,513)
Accounts payable	2,732	(1,444)	2,309
Deferred collaboration revenue	2,789	—	—
Accrued research and development expenses	(897)	(3,222)	5,054
Other accrued liabilities	7,857	1,540	115
Net cash used in operating activities	(72,531)	(84,080)	(69,431)
Investing activities			
Purchases of property and equipment	(445)	(148)	(87)
Purchases of marketable securities	(305,674)	(174,977)	(78,084)
Proceeds from maturities of marketable securities	219,550	129,140	126,760
Net cash (used in) provided by investing activities	(86,569)	(45,985)	48,589
Financing activities			
Proceeds from issuance of common stock pursuant to equity award plans	10,632	9	219
Proceeds from issuance of common stock andpre-funded warrants, net of issuance costs	335,140	(459)	70,499
Proceeds from development financing, net of transaction costs	—	25,000	47,737
Net cash provided by financing activities	345,772	24,550	118,455
Net increase (decrease) in cash, cash equivalents and restricted cash	186,672	(105,515)	97,613
Cash, cash equivalents, and restricted cash at beginning of period	20,291	125,806	28,193
Cash, cash equivalents, and restricted cash at end of period	$ 206,963	$ 20,291	$125,806
Supplemental disclosures:			
Supplemental operating activities			
Cash paid for amounts included in the measurement of lease liabilities	$ 762	$ 686	$ 666
Supplemental non-cash investing and financing activities			
Right-of-use assets acquired in exchange for operating lease liabilities	$ 4,833	$ —	$ —
Right-of-use assets acquired in exchange for finance lease liabilities	$ 466	$ —	$ —
Accrued financing costs	$ —	$ —	$ 464

See accompanying notes to the consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

CymaBay Therapeutics, Inc. (the Company or CymaBay) is a clinical-stage biopharmaceutical company focused on developing innovative therapies for patients with liver and other chronic diseases with high unmet medical need. The Company's lead clinical development candidate is seladelpar. Seladelpar has been primarily under development for the treatment primary biliary cholangitis (PBC), a rare liver disease. The Company was incorporated in Delaware in October 1988 as Transtech Corporation. The Company's headquarters and operations are located in Fremont, California and it operates in one segment.

Liquidity

The Company has incurred net operating losses and negative cash flows from operations since its inception. During the year ended December 31, 2023, the Company incurred a net loss of $105.4 million and used $72.5 million of cash in operations. As of December 31, 2023, the Company had an accumulated deficit of $978.2 million.

Historically, the Company has incurred substantial research and development expenses in the course of studying its product candidates in clinical trials. To date, none of the Company's product candidates have been approved for marketing and sale, and the Company has not recorded any revenue from product sales. Generally, the Company's ability to achieve profitability is dependent on its ability to successfully develop, acquire or in-license additional product candidates, conduct clinical trials for those product candidates, obtain regulatory approvals, and support commercialization activities for those product candidates. Any products developed will require approval of the U.S. Food and Drug Administration (FDA) or a foreign regulatory authority prior to commercial sale. The regulatory approval process is expensive, time-consuming, and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company's products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products.

During the year ended December 31, 2023, the Company completed certain transactions as follows:

- On January 6, 2023, the Company entered into a Collaboration and License Agreement with Kaken Pharmaceutical Co., Ltd (Kaken). Pursuant to the agreement, the Company granted Kaken an exclusive license to commercialize seladelpar for the treatment of PBC in Japan and received an upfront cash payment of $34.2 million. For further details, refer to *Note 5—Collaboration and License Agreement*.
- On January 23, 2023, the Company sold 11,821,428 shares of common stock at $7.00 per share and a pre-funded warrant to purchase 2,142,857 shares of common stock at $6.9999 per share in a public equity offering, for total net proceeds of $92.4 million, after deducting underwriting and other offering expenses. For further details, refer to *Note 10—Stockholders' Equity*.
- On September 11, 2023, the Company sold 14,521,307 shares of common stock at $17.13 per share and a pre-funded warrant to purchase 583,771 shares of common stock at $17.1299 per share in a public equity offering, for total net proceeds of $242.8 million, after deducting underwriting and other offering expenses. For further details, refer to *Note 10—Stockholders' Equity*.

As of December 31, 2023, the Company had cash, cash equivalents and marketable securities totaling $416.2 million. As the Company continues to advance its clinical studies of seladelpar, the Company believes its existing funds are sufficient to fund the Company's current operating expenses for at least twelve months from the issuance date of its financial statements.

The Company has historically obtained, and expects to obtain in the future, additional financing to fund its business strategy through: future equity offerings; debt financing; one or more possible licenses, collaborations

or other similar arrangements with respect to development and/or commercialization rights of the Company's product candidates; or a combinationof the above. It is unclear if or when any such transactions will occur, on satisfactory terms or at all. The Company's failure to raise capital as and when needed could have a negative impact on its financial condition and its ability to pursue its business strategies. If adequate funds are not available to the Company, it could have a material adverse effect on the Company's business, results of operations, and financial condition. Market volatility could also adversely impact the Company's ability to access capital when and as needed. Failure to raise sufficient capital when needed could require the Company to significantly delay, scale back or discontinue its product development programs or commercialization efforts or other aspects of its business plans, and its operating results and financial condition would be adversely affected.

2. Summary of Significant Accounting Policies

Basis of Presentation and Use of Estimates

The accompanying consolidated financial statements are comprised of the accounts of CymaBay and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The Company has no unconsolidated subsidiaries or investments accounted for under the equity method.

These consolidated statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP), which requires management to make informed estimates and assumptions that impact the amounts and disclosures reported in the consolidated financial statements and accompanying notes.

Accounting estimates and assumptions are inherently uncertain. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates. Actual results could differ materially from those estimates and assumptions. These estimates form the basis for making judgments about the carrying values of assets and liabilities when these values are not readily apparent from other sources. Estimates are assessed each reporting period and updated to reflect current information.

Revenue Recognition

At the inception of an arrangement, the Company evaluates if a counterparty to a contract is a customer, if the arrangement is within the scope of *ASC 606—Revenue from Contracts with Customers*, and the term of the contract. The Company recognizes revenue when the customer obtains control of promised goods or services in a contract for an amount that reflects the consideration the Company expects to receive in exchange for those goods or services. For contracts with customers, the Company applies the following five-step model in order to determine this amount: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including any constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation. The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer.

Collaboration Revenues

The Company periodically enters into collaboration arrangements with third party collaborators, under which the Company may license certain rights to its intellectual property to permit collaborators to further develop, manufacture and/or commercialize its drug candidates. The terms of these agreements typically include, but are not limited to, payments to the Company for one or more of the following: nonrefundable, upfront license

fees; development and commercial milestones whose payment is typically contingent upon milestone achievement; funding of research and/or development activities; product supply; and royalties on net sales of licensed products.

For each collaboration agreement that results in revenues, the Company identifies all material promised goods and services, which may include, but are not limited to, one or more of the following: a license to intellectual property and know-how, research and development information and or services, and product supply. Promised goods or services are separate performance obligations if they are distinct. To determine the transaction price to be allocated to each performance obligation, in addition to any upfront payment, the Company estimates the amount of variable consideration at the outset of the contract either utilizing the expected value or most likely amount method, depending on the facts and circumstances relative to the contract. The Company constrains the estimates of variable consideration such that it is probable that a significant reversal of previously recognized revenue will not occur in future reporting periods. When determining if variable consideration should be constrained, management considers whether there are factors outside the Company's control that increase the likelihood of a significant reversal of previously recognized revenue and revenue-related amounts in future reporting periods. These estimates are re-assessed each reporting period as necessary depending on the facts and circumstances of each contract.

Once the estimated transaction price is established, amounts are allocated to identified performance obligations. The transaction price is generally allocated to each separate performance obligation based on its estimated standalone selling price (SSP). To determine SSPs, the Company uses various estimation methods, including the adjusted market assessment approach, which utilizes prices observable in the market for similar goods and services, the expected cost plus a margin approach, as well as applies valuation techniques involving projected discounted cash flows. These approaches may include the use of assumptions and estimates requiring significant judgement.

The Company recognizes the amount of the transaction price allocated to each respective performance obligation as revenue when the performance obligation is satisfied or as it is satisfied. If a performance obligation is satisfied over time, the Company applies an appropriate method of measuring progress for purposes of recognizing revenue. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

The Company receives payments from its customers based on payment terms established in each contract. Upfront payments and fees are recorded as deferred revenue upon receipt or when due until the Company performs its obligations under these arrangements. Amounts are recorded as accounts receivable when the Company's right to consideration is unconditional. The Company does not assess whether a contract has a significant financing component if the expectation at contract inception is that the period between payment by the customer and the transfer of the promised goods or services to the customer will be one year or less.

If the arrangement includes optional goods and services, the Company assesses whether delivery of such goods and services requires the customer to pay fees consistent with their standalone selling prices, or if customer may be entitled to incremental discounts that it would not have received without entering into the agreement and committing to purchase the initial goods and services. The presence of such discounts indicates the customer has received material rights which also represent performance obligations.

Upfront License Fees: If a license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from nonrefundable, upfront license fees allocated to the license at a point in time when the license is effective and the underlying intellectual property has been made available to the collaborator and the collaborator is able to use and benefit from the license. For licenses that are not distinct and are bundled with other promised goods and services, the Company utilizes judgment to assess the nature of the performance obligation to determine whether it is satisfied over time or at a point in time.

Development and Regulatory Milestone Payments: Depending on facts and circumstances, the Company may conclude that it is appropriate to include a milestone payment in the estimated transaction price using the most likely amount method or that it is appropriate to fully constrain the milestone. A milestone payment is included in the transaction price in the reporting period when the Company concludes that it is probable that recording revenue in the period will not result in a significant reversal of revenue in future periods. The Company may record revenues from certain milestones in a reporting period before the milestone is achieved if it concludes that achievement of the milestone is probable and that recognition of revenue related to the milestone will not result in a significant reversal in amounts recognized in future periods. Revenue from milestones is recognized to the extent of progress made in satisfying the associated performance obligation(s). The Company records a corresponding contract asset when this conclusion is reached. Milestone payments that have not been included in the transaction price to date are fully constrained. These milestones remain fully constrained until the Company concludes that achievement of the milestone is probable and that recognition of revenue related to the milestone will not result in a significant reversal in amounts recognized in future periods. The Company re-evaluates the probability of achievement of such development and regulatory milestones and any related constraint each reporting period. The Company adjusts its estimate of the overall transaction price, including the amount of licensing revenue that was recorded, if necessary.

Sales-based Milestone and Royalty Payments: The Company's collaborators may be required to pay it sales-based milestone payments or royalties on future sales of commercial products. The Company recognizes revenues related to sales-based milestone and royalty payments upon the later to occur of (i) achievement of the collaborator's underlying sales or (ii) satisfaction of any performance obligation(s) related to these sales, in each case provided that the license to its intellectual property is deemed to be the predominant item to which the sales-based milestones and/or royalties relate.

Fair Value of Financial Instruments

The Company's financial instruments during the periods reported consist of cash, cash equivalents, marketable securities, accounts payable, certain accrued liabilities, and the development financing liability.

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 at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs and is as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2—Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3—Inputs that are significant to the fair value measurement and are unobservable (i.e. supported by little market activity), which requires the reporting entity to develop its own valuation techniques and assumptions.

The carrying amounts of cash equivalents approximate their related fair value due to the short-term nature of these instruments. Cash equivalents are classified as level 1 under the fair value hierarchy.

The following tables present the Company's financial assets that are measured at fair value on a recurring basis using the above input categories (in thousands):

	As of December 31, 2023			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	$ 127,231	$ —	$ —	$ 127,231
U.S. treasury securities	—	15,181	—	15,181
U.S and foreign commercial paper	—	19,916	—	19,916
U.S. agency securities	—	33,207	—	33,207
Total cash equivalents	127,231	68,304	—	195,535
Marketable securities:				
U.S. and foreign commercial paper	—	66,317	—	66,317
U.S. and foreign corporate debt securities	—	5,536	—	5,536
U.S. agency securities	—	40,914	—	40,914
U.S. treasury securities	—	96,885	—	96,885
Total marketable securities	—	209,652	—	209,652
Total assets measured at fair value	$ 127,231	$ 277,956	$ —	$ 405,187

	As of December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	$9,770	$ —	$ —	$ 9,770
Total cash equivalents	9,770	—	—	9,770
Marketable securities:				
U.S. and foreign commercial paper	—	46,121	—	46,121
U.S. and foreign corporate debt securities	—	24,807	—	24,807
Supranational debt securities	—	12,890	—	12,890
U.S. agency securities	—	7,759	—	7,759
U.S. treasury securities	—	23,617	—	23,617
Total marketable securities	—	115,194	—	115,194
Total assets measured at fair value	$9,770	$115,194	$ —	$124,964

The Company estimates the fair value of its money market funds, corporate debt, commercial paper, U.S. treasury and agency securities, and supranational debt securities by taking into consideration valuations obtained from third-party pricing services. The pricing services utilize industry standard valuation models, including both income and market-based approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. These inputs include reported trades of and broker/dealer quotes on the same or similar securities, issuer credit spreads; benchmark securities; prepayment/default projections based on historical data; and other observable inputs.

The fair value of the Company's development financing liability is $98.9 million. The development financing liability is classified as level 3 under the fair value hierarchy as its valuation is based on a discounted cash flow model that uses unobservable inputs such as the estimated timing of regulatory approval, attainment of certain sales milestones and the discount rate.

Cash, Cash Equivalents, and Marketable Securities

The Company considers all highly liquid investments with an original maturity of90 days or less at the time of purchase to be cash equivalents. Cash and cash equivalents consist of deposits with commercial banks in checking, interest-bearing, money market funds, and marketable debt securities which are subject to minimal credit and market risk.

The Company invests excess cash in marketable securities with high credit ratings. These securities consist primarily of corporate debt, commercial paper, U.S. treasury, U.S. agency securities and supranational debt securities and are classified as "available-for-sale." The Company considers marketable securities as current investments if the maturity date is less than or equal to one year from the balance sheet date. The Company considers marketable securities as non-current investments if the maturity date is in excess of one year from the balance sheet date.

Realized gains and losses from the sale of marketable securities, if any, are calculated using the specific-identification method. Expected losses judged to be related partially or in whole to declines in credit risk-related factors of the security issuer are included in interest expense in the consolidated statements of operations and comprehensive loss at the time the factors contributing to the expected losses are identified. Unrealized holding gains and losses are reported in accumulated other comprehensive loss in the consolidated balance sheets. To date, the Company has not recorded any expected losses on its marketable securities related to credit risk-related declines in market value. In determining whether a decline in market value is related to expected credit losses, various factors are considered, including the cause, duration of time and severity of the expected loss, any adverse changes in the investees' financial condition, and the Company's intent and ability to hold the security for a period of time sufficient to allow for an anticipated recovery in market value. Accrued interest receivable is included as part of Prepaid expenses and other current assets in the consolidated balance sheets.

Concentration of Risk

Cash, cash equivalents, and marketable securities consist of financial instruments that potentially subject the Company to a concentration of credit risk to the extent of the fair value recorded on the balance sheet. The Company invests cash that is not required for immediate operating needs primarily in highly liquid instruments that bear minimal risk. The Company has established guidelines relating to the quality, diversification, and maturities of securities to enable the Company to manage its credit risk. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash, cash equivalents and investments and issuers of investments to the extent recorded on the consolidated balance sheets. The Company maintains deposits in excess of FDIC insured deposit limits with its financial institutions.

Certain materials and key components that the Company utilizes in its operations are obtained through single suppliers. Since the suppliers of key components and materials must be named in an NDA filed with the FDA for a product, significant delays can occur if the qualification of a new supplier is required. If delivery of material from the Company's suppliers were interrupted for any reason, the Company may be unable to supply any of its product candidates for clinical trials.

Property and Equipment, Net

Property and equipment are recorded at cost, less accumulated depreciation and amortization. Depreciation and amortization are calculated using the straight-line method, and the costs are amortized over the estimated useful lives of the respective assets, which are generally three to seven years. Leasehold improvements are amortized over the shorter of the useful lives or the non-cancelable term of the related lease. Maintenance and repair costs are charged as expense in the consolidated statements of operations and comprehensive loss as incurred.

Long-Lived Assets

The Company reviews the carrying value long-lived assets, includingright-of-use operating lease assets, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. If a change in circumstance occurs, the Company performs a test of recoverability by comparing the carrying value of the asset or asset group to its undiscounted expected future cash flows. If cash flows cannot be separately and independently identified for a single asset, the Company will determine whether impairment has occurred for the group of assets for which the Company can identify the projected cash flows. If the carrying values are in excess of undiscounted expected future cash flows, the Company measures any impairment by comparing the fair value of the asset or asset group to its carrying value. There were no indicators of impairment of long-lived assets for any periods presented.

Leases

As of December 31, 2023, the Company had two operating leases pertaining to its corporate office space, including the new subleased office space in Fremont, California, and a finance lease pertaining to furniture, fixtures and equipment of the new sublease.

The Company recognizes a lease asset for its right to use the underlying asset and a lease liability for the corresponding lease obligation. The Company determines whether an arrangement is or contains a lease at contract inception. Operating and finance leases are included in lease right-of-use assets, other accrued liabilities, and non-current portion of lease liabilities in the Company's consolidated balance sheets as of December 31, 2023 and 2022. Lease right-of-use assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. In determining the net present value of lease payments, the Company uses its incremental borrowing rate based on the information available at the lease commencement date. The incremental borrowing rate represents the interest rate the Company would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of a lease. The Company considers a lease term to be the noncancelable period that it has the right to use the underlying asset, including any periods where it is reasonably assured the Company will exercise the option to extend the contract.

At lease inception, the Company analyzes the terms of the contract to determine whether its leases should be classified as an operating lease or a finance lease. The right-of-use assets also include any lease payments made plus any initial direct costs and exclude lease incentives. Leases are amortized straight-line as lease expense over the expected lease term (or the end of the asset's useful life if shorter than the lease term). For finance leases, a portion of expense recognized during the lease term is allocated to interest expense, while the remainder is allocated to the related lease liability using the amortized cost method utilizing the discount rate determined at lease commencement. The Company has elected to not separate lease and non-lease components for its leased assets and accounts for all lease and non-lease components of its agreements as a single lease component. The Company does not record leases on its consolidated balance sheets when a lease has a term of one year or less. Lease liabilities and right-of-use assets are classified as current to the extent minimum lease payments are contractually due one year or less from the balance sheet date.

Refer to *Note 8—Leases* for additional information.

Research and Development Expenses

Research and development expenses consist of costs incurred in identifying, developing, and testing product candidates. These expenses consist primarily of costs for research and development personnel, including related stock-based compensation; contract research organizations (CRO) and other third parties that assist in managing, monitoring, and analyzing clinical trials; investigator and site fees; laboratory services; consultants; contract manufacturing services; non-clinical studies, including materials; and allocated expenses, such as depreciation of

assets, and facilities and information technology that support research and development activities. Research and development costs are expensed as incurred. Payments made prior to the receipt of goods or services to be used in research and development are recorded as prepaid assets until the goods are received or services are rendered. Such payments are evaluated for current or non-current classification based on when they will be realized. Additionally, if expectations change such that the Company does not expect goods to be delivered or services to be rendered, and provided such prepayments are nonrefundable, they are charged to expense.

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. Payments under some of these contracts depend on factors such as the successful enrollment of subjects and the completion of clinical trial milestones. In amortizing and 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.

Development Financing Agreement

The Company accounts for the Development Financing Agreement (the Financing Agreement) (See*Note 7—Development Financing Agreement*) with Abingworth as a debt instrument. Accordingly, the Company has recorded payments received under the Financing Agreement as part of a development financing liability in the Company's consolidated balance sheet. The liability is recorded at amortized cost and accreted to the contractual success fee amounts based on the estimated timing of regulatory approval and attainment of certain sales milestones using an imputed interest rate. Certain transaction fees incurred specifically to complete the Financing Agreement were capitalized and recorded as a reduction to the carrying amount of the development financing liability and are being amortized to interest expense using the effective interest rate method.

There are several factors that could affect the estimated timing of regulatory approval and attainment of sales milestones, some of which are not entirely within the Company's control. Therefore, at each reporting date, the Company reassesses the estimated timing of regulatory approval and attainment of sales milestones, and the expected contractual success fee payments due therefrom. If the timing and/or amount of such expected payments is materially different than original estimates, the Company will prospectively adjust the accretion of the development financing liability and the imputed interest rate.

The Company identified certain contingent repayment features in the Financing Agreement that are required to be bifurcated from the debt host instrument as embedded derivative liabilities; however, the Company determined the fair value of these features, both individually and in the aggregate, was immaterial at inception and as of December 31, 2023. The fair value of these features will be assessed at each reporting date and will be marked to market, if material. To determine the amount to record for the embedded derivative liabilities, the Company must assess the probability of occurrence of various potential future events that could affect the timing and/or amount of future cash flows related to the Financing Agreement.

Stock-Based Compensation

Stock-based compensation is measured at fair value on the grant date of the award. Compensation cost is recognized as expense on a straight-line basis over the vesting period for options with service conditions and forfeitures are accounted for as they occur. The Company uses the Black-Scholes option-pricing model to determine the fair value of stock option awards. The determination of fair value for stock-based awards using an

option-pricing model requires management to make certain assumptions regarding subjective input variables such as expected term, dividends, volatility and risk-free rate. If actual results are not consistent with the Company's assumptions used in making these estimates, the Company may be required to increase or decrease compensation expense, which could be material to the Company's results of operations.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting and the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. A valuation allowance is recorded when it is more likely than not that all or part of a deferred tax asset will not be realized. When the Company establishes or reduces the valuation allowance related to the deferred tax assets, the provision for income taxes will increase or decrease, respectively, in the period such determination is made.

The accounting guidance for uncertainty in income taxes prescribes a recognition threshold and measurement attribute criteria for the financial recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination based on the technical merits of the position.

The Company is required to file federal and state income tax returns in the United States. The preparation of these income tax returns requires the Company to interpret the applicable tax laws and regulations in effect that could affect the amount of tax paid to these jurisdictions.

The Company records interest related to income tax reserves, if any, as interest expense, and any penalties would be recorded as other expense in the consolidated statements of operations and comprehensive loss.

Comprehensive Loss

Comprehensive loss includes net loss and net unrealized gains and losses on marketable securities, which are presented in a single continuous statement. Other comprehensive (loss) gain is also disclosed in the consolidated balance sheets and statements of stockholders' equity in accumulated other comprehensive income (loss), and is stated net of related tax effects, if any.

Net Loss Per Common Share

Basic net loss per share of common stock is based on the weighted average number of shares of common stock and common stock equivalents outstanding during the period. The weighted-average common shares outstanding for the years ended December 31, 2023, 2022, and 2021 include pre-funded warrants to purchase common stock, as discussed in*Note 10—Stockholders' Equity*. Diluted net loss per share of common stock is calculated as the weighted average number of shares of common stock outstanding adjusted to include the assumed exercises of stock options, if dilutive. In all periods presented, the Company's outstanding stock options and incentive awards were excluded from the calculation of net loss per share because the effect would be antidilutive.

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share amounts):

	Year Ended December 31,		
	2023	2022	2021
Numerator:			
Net loss	$ (105,370)	$ (106,001)	$ (89,998)
Denominator:			
Weighted average number of:			
Common stock shares outstanding	101,479,061	84,679,063	70,712,865
Pre-funded warrants outstanding	4,725,212	3,125,000	342,466
Total	106,204,273	87,804,063	71,055,331
Net loss per share	$ (0.99)	$ (1.21)	$ (1.27)

The following table shows the total outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net loss per share:

	Year Ended December 31,		
	2023	2022	2021
Common stock options	16,539,905	13,930,195	10,791,431
Incentive awards	—	101,182	101,182
Total	16,539,905	14,031,377	10,892,613

Recently Issued Accounting Pronouncements

ASU 2016-13

In June 2016, the FASB issued ASUNo. 2016-13, Financial Instruments—Credit Losses (Topic 326):*Measurement of Credit Losses on Financial Instruments*, an amendment which modifies the measurement and recognition of credit losses for most financial assets and certain other instruments. The amendment updates the guidance for measuring and recording credit losses on financial assets measured at amortized cost by replacing the "incurred loss" model with an "expected loss" model. Accordingly, these financial assets will be presented at the net amount expected to be collected. The amendment also requires that credit losses related to available-for-sale debt securities be recorded as an allowance through net income rather than reducing the carrying amount under the current, other-than-temporary-impairment model. In November 2019, FASB issued ASU No. 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815) and Leases (Topic 842)*, which deferred the adoption deadline for smaller reporting companies to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted, and entities are required to use a modified retrospective approach, with certain exceptions. The Company adopted this ASU on January 1, 2023 and it did not have a material impact to its consolidated financial statements and related disclosures.

3. Cash Equivalents and Marketable Securities

Cash equivalents and marketable available-for-sale securities consist of the following (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
As of December 31, 2023:				
Cash equivalents:				
Money market funds	$127,231	$ —	$ —	$127,231
U.S. treasury securities	15,179	2	—	15,181
U.S and foreign commercial paper	19,924	—	(8)	19,916
U.S. agency securities	33,219	—	(12)	33,207
Total cash equivalents	195,553	2	(20)	195,535
Current marketable securities:				
U.S. and foreign commercial paper	66,354	3	(40)	66,317
U.S. and foreign corporate debt securities	5,538	—	(2)	5,536
U.S. agency securities	30,595	23	(12)	30,606
U.S. treasury securities	85,210	54	(3)	85,261
Total current marketable securities	187,697	80	(57)	187,720
Non-current marketable securities:				
U.S. agency securities	10,241	67	—	10,308
U.S. treasury securities	11,552	72	—	11,624
Total non-current marketable securities	21,793	139	—	21,932
Total marketable securities	$405,043	$ 221	$ (77)	$405,187
As of December 31, 2022:				
Cash equivalents:				
Money market funds	$ 9,770	$ —	$ —	$ 9,770
Total cash equivalents	9,770	—	—	9,770
Current marketable securities:				
U.S. and foreign commercial paper	46,121	—	—	46,121
U.S. and foreign corporate debt securities	24,964	—	(157)	24,807
Supranational debt securities	12,946	—	(56)	12,890
U.S. agency securities	7,782	16	(39)	7,759
U.S. treasury securities	23,707	2	(92)	23,617
Total current marketable securities	115,520	18	(344)	115,194
Total marketable securities	$125,290	$ 18	$ (344)	$124,964

The Company's commercial paper and corporate debt securities consist of U.S. and foreign securities from issuers in various sectors, including finance and industry and have similar credit quality and risk characteristics. The Company's government securities are issued by the U.S. treasury and certain U.S. government-backed agencies. Supranational debt securities consist of securities issued with funding from various national governments.

There were no realized gains and losses for the years ended December 31, 2023,2022, and 2021. None of our investments have been in a continuous unrealized loss position for more than 12 months as of December 31, 2023 and 2022. The Company may sell some of its marketable securities prior to their stated maturities for reasons including, but not limited to, managing liquidity, credit risk, duration and asset allocation.

The following table shows the fair value of the Company's marketable securities, by contractual maturity, as of December 31, 2023 (in thousands):

Due less than 1 year	$187,720
Due between 1 and 2 years	21,932
Total fair value	$209,652

As of December 31, 2023, we had $0.4 million of restricted cash to collateralize letters of credit related to certain lease commitments. This balance is included in Other assets and was classified as non-current on the consolidated balance sheet as of December 31, 2023.

A reconciliation of cash, cash equivalents and restricted cash reported in the accompanying consolidated balance sheets to the amount reported within the accompanying consolidated statements of cash flows is as follows (in thousands):

	December 31,	
	2023	2022
Cash and cash equivalents	$ 206,535	$ 20,291
Restricted cash (included in Other assets)	428	—
Total cash, cash equivalents, and restricted cash	$ 206,963	$ 20,291

4. Certain Balance Sheet Items

Property and equipment, net are recorded at cost and consist of the following (in thousands):

	December 31,	
	2023	2022
Leasehold improvements	$ 2,429	$ 2,429
Office and computer equipment	958	290
Purchased software	44	44
Furniture and fixtures	464	687
Total	3,895	3,450
Less: Accumulated depreciation and amortization	(3,430)	(2,749)
Property and equipment, net	$ 465	$ 701

Depreciation and amortization expense for the years ended December 31, 2023, 2022 and 2021 was approximately $0.7 million, $0.6 million and $0.7 million, respectively, and was recorded straight-line in both research and development expense and general and administrative expense in the consolidated statements of operations and comprehensive loss. All of the Company's property and equipment is located in the U.S.

Other accrued liabilities consist of the following (in thousands):

	December 31,	
	2023	2022
Accrued compensation	$ 8,980	$5,779
Accrued professional fees and other	6,706	1,372
Current portion of operating lease liabilities	7	664
Total other accrued liabilities	$15,693	$7,815

5. Collaboration and License Agreement

On January 6, 2023, the Company entered into a Collaboration and License Agreement (the License Agreement) with Kaken Pharmaceuticals Co., Ltd (Kaken). The Company granted Kaken an exclusive license to develop and commercialize seladelpar (the Licensed Product) for the treatment of primary biliary cholangitis (PBC) in Japan.

Pursuant to the terms of the License Agreement, Kaken will bear the cost of, and be responsible for, among other things, conducting the clinical studies and other developmental activities for the Licensed Product in PBC in Japan as well as preparing and filing applications for regulatory approval and commercializing the Licensed Product in Japan. Kaken is obligated to use commercially reasonable efforts to develop, obtain regulatory approval for, and commercialize, the Licensed Product in Japan, including obtaining pricing approval for the Licensed Product in Japan.

The License Agreement also obligates the Company to transfer the licensed technology and know-how to Kaken (which was completed during the three months ended June 30, 2023). Such initial technology transfer comprises existing data and information related to the Company's clinical trials, nonclinical studies, and other pre-clinical studies, as well as certain chemistry manufacturing and controls (CMC) data and information. The Company is further obligated to deliver to Kaken data and information from its ongoing clinical trials, CMC data, and other information that is reasonably necessary for Kaken to develop and seek regulatory approval of seladelpar for the treatment of PBC in Japan.

The Company agreed to supply to Kaken its requirements of Licensed Product for clinical and commercial use, which may be terminated upon specified circumstances, and with appropriate technology transfer. The supply of the Licensed Products to Kaken for clinical use will be provided based on the Clinical Manufacturing and Supply Agreement (the Clinical Supply Agreement) which was entered into in October 2023. Per the Clinical Supply Agreement, the Company will supply clinical materials to Kaken as specified in separate written purchase orders, to be used for Kaken's development of the Licensed Product in accordance with the License Agreement. The Company concluded that the Clinical Supply Agreement combined with each purchase order represents a contract with a customer under the scope of ASC 606. The Company identified key performance obligations that primarily include the supply of clinical materials and CMC activities and other assistance. The Company will recognize the amounts allocated to the supply of clinical materials upon delivery of the materials and will recognize any CMC activities and other assistance as revenue over time as these activities are conducted.

The Company is also responsible for the completion of global CMC development activities to enable future commercial supply of the Licensed Product to Kaken. The Company may also be requested by Kaken to conduct CMC activities specific to commercialization in Japan and to provide other assistance.

Pursuant to the License Agreement, the Company and Kaken also agreed to establish a joint steering committee to provide strategic oversight of both parties' activities under the License Agreement.

The License Agreement may be terminated early by either party for material breach, upon a party's insolvency or bankruptcy or upon a challenge by one party of any patents of the other party, and Kaken may terminate in specified situations, including for a safety concern, clinical failure, or termination of an underlying in-license to the Company. Kaken may also terminate the License Agreement at its convenience with specified prior notice.

In consideration of the license and other rights granted by the Company, Kaken made an upfront cash payment to the Company of ¥4.5 billion in January 2023 (or $34.2 million, comprised of $33.7 million of contract consideration and a $0.5 million foreign exchange gain recorded in the three months ended March 31, 2023) and is obligated to pay potential milestone payments to the Company totaling up to ¥17.0 billion (approximately $128.0 million at contract inception date) upon the achievement of certain regulatory and sales milestones

The Company concluded that Kaken is a customer and that the arrangement represents a contract with a customer under the scope of ASC 606. The Company identified the following key promised goods and services that represent performance obligations under the arrangement:

(1) the exclusive license to develop and commercialize seladelpar in Japan, including the initial transfer of the underlying technology and know-how,

(2) delivery of data gathered through the execution of the Company's ongoing development activities for PBC to support Kaken's regulatory filings in Japan which will occur at specific points in time when such information is available, and

(3) completing the Company's global CMC development activities and the reporting of such activities for the manufacture and supply of the Licensed Product to Kaken.

To determine the standalone selling price of each performance obligation above, estimation approaches involving significant estimates and assumptions were used that include but are not limited to, expected market opportunity and pricing, future clinical trial and CMC development costs, timelines, and likelihood of success of clinical and regulatory activities. To determine the standalone selling price of the license, the Company used a discounted cash flow analysis of projected cash flows and potential revenues from the commercial sale of seladelpar in Japan. To determine the standalone selling prices of the Company's obligation to deliver data from ongoing development activities and its obligation to complete global CMC development activities, the expected cost plus margin approach was used.

The Company recognized $31.1 million of collaboration revenue for the year ended December 31, 2023 related to the $33.7 million upfront fee. $31.0 million of the collaboration revenue recognized during the year ended December 31, 2023 relates to the completion of the initial technology transfer associated with the license to develop and commercialize seladelpar in Japan. The remaining $2.7 million portion of the upfront fee is deferred and will be recognized on completion of the Company's ongoing clinical data delivery and CMC development performance obligations. This deferred collaboration revenue is expected to be recognized as the remaining performance obligations are satisfied at different points in time in the future. Of the $2.7 million balance of deferred collaboration revenue, $1.1 million is classified as non-current on the Company's consolidated balance sheet, as this portion of the deferred collaboration revenue balance is expected to be recognized beyond twelve months from the balance sheet date. All future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained as they are contingent on the achievement of development activities, regulatory approvals and sales-based milestones as defined in the License Agreement. Additionally, the Company expects that any consideration related to sales-based milestones will be recognized if/when the subsequent sales occur.

6. In-License Agreement

Janssen Pharmaceutica NV

In June 2006, the Company entered into an exclusive worldwide, royalty-bearing license to seladelpar and certain other PPARd compounds (the PPARd Products) with Janssen Pharmaceutica NV (Janssen NV), with the right to grant sublicenses to third parties to make, use and sell such PPARd Products. Under the terms of the agreement, the Company has full control and responsibility over the research, development and registration of any PPARd Products and is required to use diligent efforts to conduct all such activities. Janssen NV has the sole responsibility for the preparation, filing, prosecution, maintenance of, and defense of the patents with respect to, the PPARd Products. Under the terms of the agreement Janssen NV is entitled to receive up to an 8.0% royalty on net sales of PPARd Products. No amounts were incurred or accrued for this agreement as of and for the years ended December 31, 2023, 2022, and 2021.

7. Development Financing Agreement

On July 30, 2021 (the Effective Date), the Company entered into a Development Financing Agreement (the Financing Agreement) with Abingworth to provide funding to the Company to support its development of

seladelpar for the treatment of primary biliary cholangitis (PBC). The Financing Agreement provided the Company up to $75.0 million in base funding, of which $25.0 million was provided in August 2021, $25.0 million was provided in November 2021, and $25.0 million was provided in January 2022.

The use of proceeds from the funding is limited to PBC "Development Program" costs incurred or paid as defined in the Financing Agreement. In return, the Company will pay to Abingworth:

(1) contingent upon the first to occur of regulatory approval of seladelpar for the treatment of PBC in the U.S., U.K., Germany, Spain, Italy or France (Regulatory Approval), fixed success payments equal to 2.0x of the funding provided, consisting of $10 million payable in 90 days after the Regulatory Approval and thereafter, payments due on the first six anniversaries of the Regulatory Approval in the amounts of $15.0 million, $22.5 million, $22.5 million, $25.0 million, $27.5 million and $27.5 million, respectively and

(2) variable success payments equal to 1.1x of the funding provided, consisting of sales milestone payments of (x) $17.5 million and $27.5 million, respectively upon first reaching certain cumulative U.S. product sales thresholds, and (y) $37.5 million upon first reaching a specified U.S. product sales run rate.

Promptly following receipt of Regulatory Approval, the Company is required to execute a note agreement and deliver a promissory note to Abingworth within two business days to convert the fixed and variable success payments into a note payable. At the time that Abingworth receives, collectively, an aggregate of 3.1x of the funding provided (approximately $232.5 million), the Company's payment obligations under the Financing Agreement will be fully satisfied. The Company has the option to satisfy its payment obligations to Abingworth upon Regulatory Approval, or a change of control of the Company, by paying an amount equal to the remaining payments payable to Abingworth subject to a mid-single-digit discount rate. Upon a change of control of the Company, an acceleration payment of 1.35x of the funding provided is payable, net of payments already made to Abingworth and creditable against future payments to Abingworth.

Pursuant to the Financing Agreement, the Company granted Abingworth a security interest in all its assets (other than intellectual property not related to seladelpar), provided that the Company is permitted to incur certain indebtedness. The security interest will terminate when the Company has paid Abingworth 2.0x of the funding provided or upon termination of the Financing Agreement.

The Financing Agreement provides for negative, affirmative and additional covenants, which the Company must comply with for the duration of the Financing Agreement term. As of December 31, 2023, the Company was in compliance with all covenants stipulated in the Financing Agreement.

In certain instances, upon the termination of the Financing Agreement, the Company will be obligated to pay Abingworth a multiple of the amounts paid to the Company under the Financing Agreement, including specifically:

(i) 310% of such amounts in the event that Abingworth terminates the Financing Agreement due to (x) a Fundamental Breach, as defined in the Financing Agreement, (y) the bankruptcy of the Company, or (z) a safety concern resulting from gross negligence on the part of the Company or due to a safety concern that was material on the Effective Date and the material data showing such safety concern was not publicly known, disclosed to Abingworth, or in the diligence room made available to Abingworth,

(ii) 200% of such amounts in the event the Financing Agreement is terminated due to (x) Material Breach, as defined in the Financing Agreement, by the Company or (y) the security interests of Abingworth being invalidated or terminated other than as set forth in the Financing Agreement, and

(iii) 100% of such amounts in the event of certain irresolvable disagreements within the executive review committee overseeing the Company's development of seladelpar.

In addition, if, following certain terminations, the Company continues to develop seladelpar for the treatment of PBC and obtains regulatory approval, it will make the payments to Abingworth as if the Financing Agreement had not been terminated, less any payments made upon termination.

The Company shall not be obligated to make any payments to Abingworth under certain instances of technical or regulatory failure of the PBC development program as defined in the Financing Agreement.

As part of the arrangement, an executive review committee was established between the Company and Abingworth to discuss the Company's development of seladelpar.

The Company evaluated the Financing Agreement and determined it to be a research and development funding arrangement with the characteristics of a debt instrument as the transfer of financial risk to Abingworth was not considered substantive and genuine. Accordingly, the Company has recorded payments received under the Financing Agreement as part of a development financing liability in its consolidated balance sheets. The Company accounts for the overall development financing liability at amortized cost based on the estimated timing of regulatory approval and attainment of certain sales milestones and the contractual success fee payments expected to be due therefrom, as discounted using an imputed interest rate. The development financing liability is being accreted as interest expense to its expected future repayment amount over the expected life of the agreement using the effective interest rate method. Certain legal and financial advisory fees incurred specifically to complete the Financing Agreement were capitalized and recorded as a reduction to the carrying amount of the development financing liability and are also being amortized to interest expense using the effective interest method.

There are several factors that could affect the estimated timing of regulatory approval and attainment of sales milestones, some of which are not entirely within the Company's control. Therefore, the Company periodically reassesses the estimated timing of regulatory approval and attainment of sales milestones, and the expected contractual success fee payments due therefrom. If the timing and/or amount of such expected payments is materially different than original estimates, the Company will prospectively adjust the accretion of the development financing liability and the imputed interest rate.

The Company identified certain contingent repayment features in the agreement that are required to be bifurcated from the debt host instrument as embedded derivative liabilities; however, the fair value of these features was immaterial at the Effective Date and as of December 31, 2023, 2022, and 2021. The fair value of the embedded derivative liabilities will be assessed at subsequent reporting dates if material.

The following table sets forth a summary of the changes in the carrying value of the Company's development financing liability (in thousands):

Balance at December 31, 2020	$ —
Cash received	50,000
Debt discount	(2,263)
Accretion of development financing liability	2,583
Balance at December 31, 2021	$ 50,320
Cash received	25,000
Accretion of development financing liability	14,907
Balance at December 31, 2022	$ 90,227
Accretion of development financing liability	18,945
Balance at December 31, 2023	$109,172

As of December 31, 2023, $10.0 million of the development financing liability was classified as a current liability based on the Company's expectation of achieving the regulatory approval milestone within twelve

months. The remaining balance of $99.2 million is classified as a non-current liability as the Company expects the related repayments to take place between 2025 and 2030 for purposes of the model used to calculate its carrying value. The imputed interest rate on the unamortized portion of the development financing liability was approximately 19.2% as of December 31, 2023.

8. Leases

The Company had one non-cancelable operating lease agreement for its corporate office in Newark, California, pertaining to17,698 square feet of corporate office space, that commenced January 16, 2014, was amended on April 16, 2018, and was extended to March 15, 2024 in February 2024. The Company also signed a non-cancellable sublease agreement with a new lessor on December 1, 2023 for its new corporate office, which is located in Fremont, California. This sublease encompasses a total of 52,416 square feet of building space. The sublease has a rent abatement period for the first 13 full months from the date the premises were made available to the Company, which began in December 2023. In addition to fixed monthly rent payments, the Company must also pay variable operating expenses, which consist of (i) Parcel Operating Expenses, (ii) Parking Operating Expenses and (iii) Campus Operating Expenses (all as defined in the Sublease). The sublease also includes furniture, fixtures, and equipment ("FF&E") transferred to the Company in December 2023. In assessing the lease classification of the Fremont sublease, the office component (building and land) met the criteria for classification as an operating lease and the FF&E component of the sublease met the criteria for classification as a finance lease. As of December 31, 2023, the Company's operating and finance lease portfolio each had a weighted average remaining term of 8.4 years. As of December 31, 2022, the Company's operating lease portfolio had a weighted average remaining term of 1.1 years.

The Company cannot determine the implicit rate in itsleases, and therefore the Company uses its incremental borrowing rate of12.6% for the Newark, California lease and 10.7% for the new sublease in Fremont, California as the discount rate when measuring operating lease liabilities. The incremental borrowing rate represents an estimate of the interest rate the Company would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of a lease within a particular currency environment. The Company used an incremental borrowing rate as of the lease commencement date.

For the years ended December 31, 2023, 2022, and 2021, the Company incurred $0.7 million, $0.7 million and $0.6 million, respectively, of lease costs included in operating expenses in the consolidated statements of operations and comprehensive loss in relation to its operating lease, a portion of which was variable rent expense and not included within the measurement of the Company's operating ROU assets and lease liabilities. The variable rent expense consists primarily of the Company's proportionate share of operating expenses, property taxes, and insurance and is classified as lease expense due to the Company's election to not separate lease and non-lease components. Short-term lease costs were not material.

The balance sheet classification of our operating lease assets and liabilities were as follows (in thousands):

	Operating leases	Finance lease	Total leases
Assets:			
Right-of-use assets	$ 4,802	$ 458	$ 5,260
Liabilities:			
Current portion included in other accrued liabilities	7	—	7
Non-current portion of lease liabilities	4,848	467	5,315
Total lease liabilities	$ 4,855	$ 467	$ 5,322

As of December 31, 2023, the maturities of the Company's operating and finance lease liabilities were as follows (in thousands):

	Operating leases	Finance lease	Total leases
Lease commitments:			
Year ending December 31,			
2024	$ 30	$ —	$ 30
2025	527	51	578
2026	867	84	951
2027	894	86	980
2028	961	93	1,054
Thereafter	5,085	491	5,576
Total undiscounted future minimum lease payments	8,364	805	9,169
Less imputed interest	(3,509)	(338)	(3,847)
Total lease liabilities	4,855	467	5,322
Less: current portion of lease liabilities	(7)	—	(7)
Non-current portion of lease liabilities	$ 4,848	$ 467	$ 5,315

9. Commitments and Contingencies

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made against the Company that may be, but have not yet been, made. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations, and no amounts have been accrued in the accompanying consolidated balance sheets related to these indemnification obligations.

The Company has agreed to indemnify its officers and directors for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits, and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2023 and 2022. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

Legal Proceedings

From time to time, we may become involved in legal proceedings relating to claims arising from the ordinary course of business. Our management believes that there are currently no claims or actions pending against us, the ultimate disposition of which could reasonably be expected to have a material adverse effect on our results of operations, financial condition or cash flows. Apart from such incidental matters, the following demand letters and draft complaints relating to the Transactions have been submitted to the Company.

Between February 26 and 27, 2024, the Company received three demand letters from purported holders of Shares, one of which enclosed a draft complaint. The Company also separately received a draft complaint from a purported holder of Shares that was unaccompanied by a demand letter. Each demand letter alleges disclosure deficiencies in the Schedule 14D-9 and demands an issuance of corrective disclosures. Both of the draft complaints identify as prospective defendants the Company and members of the Company Board. The draft complaints allege that the defendants caused to be filed with the SEC a materially incomplete and misleading Schedule 14D-9 in violation of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and Rule 14D 9 promulgated thereunder. Among other remedies, the draft complaints threaten to seek an order enjoining the defendants from proceeding with or consummating the Offer, unless and until the defendants disclose certain allegedly material information that was allegedly omitted from the Schedule 14D-9; granting rescissory damages; awarding the plaintiff costs and disbursements of its action, including reasonable attorneys' and expert fees and expenses; and granting such other and further relief as the court may deem just and proper. The Company believes that the allegations contained in the demand letters and draft complaints are without merit.

On February 26, 2024, the Company received a demand letter from a purported holder of Shares that requests access to certain books and records of the Company to investigate purported breaches of fiduciary duty, director independence and disinterestedness, corporate wrongdoing and/or inadequate disclosures in connection with the Transactions and related to the transaction documents. The Company is preparing a response.

10. Stockholders' Equity

Preferred and Common Stock Authorized

The Company is authorized to issue 10,000,000 shares of preferred stock as of December 31, 2023 and 2022, and200,000,000 shares of common stock as of December 31, 2023 and 2022.

Common Stock Reserved for Future Issuance

As of December 31, 2023 and 2022, the Company had reserved shares of common stock for future issuances as follows:

	December 31,	
	2023	2022
Pre-funded warrants to purchase common stock	5,226,628	3,125,000
Equity award plans:		
Options and incentive awards outstanding, all equity plans	16,539,905	14,031,377
Equity awards available for future grant - 2023 Plan	8,637,460	—
Equity awards available for future grant - 2013 Plan	—	2,680,621
Equity awards available for future grant - 2020 Plan	552,500	—
Total shares of common stock reserved for future issuance	30,956,493	19,836,998

Sale of Common Stock and Pre-funded Warrants

On September 11, 2023, pursuant to a shelf registration statement on FormS-3, the Company issued a total of14,521,307 shares of its common stock at $17.13 per share and a pre-funded warrant to purchase up to an aggregate of583,771 shares of common stock at a purchase price of $17.1299 per share in an underwriting public offering (September 2023 public offering). The pre-funded warrant has an exercise price of $0.0001 per share,

was fully exercisable upon issuance and has no expiration date. The aggregate net proceeds to the Company from this offering was approximately $242.8 million, after deducting underwriting discounts and commissions and other offering expenses.

The pre-funded warrant was determined to be equity-classified; accordingly, proceeds received from its issuance were recorded as a component of stockholders' equity within additional paid-in capital. The Company determined that the pre-funded warrant should be equity classified because it is a freestanding financial instrument, is immediately exercisable, does not embody an obligation for the Company to repurchase its shares, permits the holders to receive a fixed number of shares of common stock upon exercise, is indexed to the Company's common stock and meets the equity classification criteria. The September 2023 pre-funded warrant was not exercised and therefore remains outstanding as of December 31, 2023.

On January 23, 2023, pursuant to a shelf registration statement on Form S-3, the Company issued a total of 11,821,428 shares of its common stock at $7.00 per share in an underwritten public offering (January 2023 public offering). Concurrently, the Company sold a pre-funded warrant to purchase up to an aggregate of 2,142,857 shares of common stock at a purchase price of $6.9999 per share. The pre-funded warrant has an exercise price of $0.0001 per share, was fully exercisable upon issuance, and has no expiration date. The aggregate net proceeds to the Company from this offering was $92.4 million, after deducting underwriting discounts and commissions and other offering expenses.

The pre-funded warrant was determined to be equity classified; accordingly, proceeds received from its issuance were recorded as a component of stockholders' equity within additional paid-in capital. The January 2023 pre-funded warrant was not exercised and therefore remains outstanding as of December 31, 2023.

Pursuant to the Company's public equity offering completed in November 2021, the Company issued pre-funded warrants to purchase 3,125,000 shares of common stock at a price of $3.9999 per share (November 2021 public offering). These pre-funded warrants have an exercise price of $0.0001 per share, were fully exercisable upon issuance, and have no expiration date. The pre-funded warrants were determined to be equity classified; accordingly, proceeds received from their issuance were recorded as a component of stockholders' equity within additional paid-in capital. In February 2023, pre-funded warrants to purchase 625,000 shares of common stock from the November 2021 equity financing were net exercised, resulting in 624,992 shares of common stock being issued to the holders of the pre-funded warrants.

In total, pre-funded warrants from the above November 2021, January 2023, and September 2023 public offerings to purchase up to an aggregate of 5,226,628 shares of common stock remain outstanding as of December 31, 2023.

At-the-Market (ATM) Facility

In March 2023, we filed a registration statement on Form S-3 with the SEC and entered into an at-the-market facility (ATM) to sell up to $100.0 million of common stock under the registration statement pursuant to the Controlled Equity Offering℠ Sales Agreement with Cantor Fitzgerald & Co., dated July 2, 2020. To date, we have not sold any shares of common stock under the ATM.

11. Stock Plans and Stock-Based Compensation

Stock Plans

2023 Equity Incentive Plan

In June 2023, the Company's stockholders approved the Company's 2023 Equity Incentive Plan (the 2023 Plan), pursuant to which the Company may grant incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance stock awards, and other

stock awards to its directors, employees and consultants (each, a Participant), with certain limitations. The 2023 Plan is the successor to and continuation of the Company's 2013 Equity Incentive Plan and returning and remaining shares under the 2013 Plan will become available for issuance pursuant to awards granted under the 2023 Plan.

The 2023 Plan permits the Company to grant options and stock appreciation rights at an exercise price not less than 100% of the Fair Market Value (as defined in the 2023 Plan) on the grant date of the underlying award. With certain exceptions, (i) no option or stock appreciation right may be exercised after the expiration of ten years from the grant date of such award and (ii) the vesting of options and stock appreciation rights will cease upon termination of the Participant's Continuous Service (as defined in the 2023 Plan).

Restricted stock awards and restricted stock unit awards will be subject to terms and conditions as determined by the Company's Board. Except as otherwise provided pursuant to agreement or by the determination of the Board, the vesting of restricted stock awards and restricted stock unit awards will cease upon termination of the Participant's Continuous Service. A restricted stock unit award may be settled by the issuance of shares of common stock or cash (or any combination thereof) or in any form of payment as determined by the Board and specified in the restricted stock unit award agreement.

The Board will determine factors related to the achievement of performance and other terms and conditions when granting performance awards pursuant to the 2023 Plan.

The aggregate number of shares of common stock that may be issued under the 2023 Plan will not exceed 25,883,628 shares; provided, that, the aggregate maximum number of shares of common stock that may be issued pursuant to the exercise of incentive stock options is 9,500,000 shares. The share reserve under the 2023 Plan may be increased upon approval by the Company's stockholders.

2020 New Hire Plan

In October 2020, the Company's board of directors approved the 2020 New Hire Plan, as amended in July 2023 (the 2020 New Hire Plan), under which shares of common stock are reserved for the granting of nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance stock awards, performance cash awards and other stock awards by the Company as an inducement to prospective new hire employees of the Company. The 2020 New Hire Plan has a term of ten years. The 2020 New Hire Plan permits the Company to (i) grant nonqualified options to new hire employees at not less than 85% of fair value; (ii) award stock bonuses; and (iii) grant rights to acquire restricted stock at not less than 85% of fair value. Options generally vest over a four-year period and have a term of ten years. The share reserve under the 2020 New Hire Plan may be increased at the discretion of and approval by the board of directors.

Stock Plan Summary

As of December 31, 2023, there were 8,637,460 and 552,500 common stock shares available for future grants under the 2023 Plan and the 2020 New Hire Plan, respectively. During the years ended December 31, 2023 and 2022, the Company granted to its employees and directors stock options to purchase 5,685,135 and 3,692,868 shares of common stock, respectively from all plans.

In September 2013, the Company's stockholders approved the 2013 Equity Incentive Plan (the 2013 Plan), under which shares of common stock are reserved for the granting of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance stock awards, performance cash awards and other stock awards by the Company. These awards may be granted to employees, members of the Board of Directors, and consultants. The 2013 Plan has a term of ten years and replaced the 2003 Equity Incentive Plan, which had similar terms. The 2013 Plan permits the Company to (i) grant incentive stock options to directors and employees at not less than 100% of the fair value of common

stock on the date of grant; (ii) grant nonqualified options to employees, directors, and consultants at not less than 85% of fair value; (iii) award stock bonuses; and (iv) grant rights to acquire restricted stock at not less than 85% of fair value. Options generally vest over a four-year period and have a term of ten years. Options granted to 10% stockholders have a maximum term of five years and require an exercise price equal to at least 110% of the fair value on the date of grant. The exercise price of all options granted to date has been at least equal to the fair value of common stock on the date of grant. Stock option exercises are settled with shares reserved under the 2013 Plan. The share reserve under the 2013 Plan will automatically increase on January 1st of each year, for a period of not more than ten years, in an amount equal to 5% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, unless the Board determines otherwise prior to December 31st of such calendar year.

In October 2020, the Company's board of directors approved the 2020 New Hire Plan (the 2020 Plan), under which shares of common stock are reserved for the granting of nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance stock awards, performance cash awards and other stock awards by the Company as an inducement to prospective new hire employees of the Company. The 2020 Plan has a term of ten years. The 2020 Plan permits the Company to (i) grant nonqualified options to new hire employees at not less than 85% of fair value; (ii) award stock bonuses; and (iii) grant rights to acquire restricted stock at not less than 85% of fair value. Options generally vest over a four-year period and have a term of ten years. The share reserve under the 2020 Plan may be increased at the discretion of and approval by the board of directors.

Stock Plan Activity

As of December 31, 2023, there were 8,637,460, 552,500, and no shares available for grant under the 2023, 2020, and 2013 Plans, respectively.

The following table summarizes activity in the Company's stock option grants:

	Shares Subject to Outstanding Options	Weighted Average Exercise Price of Options	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of December 31, 2022	13,930,195	$ 5.26		
Options granted	5,685,135	9.46		
Options exercised	(2,115,004)	4.79		
Options forfeited	(930,421)	5.91		
Options expired	(30,000)	12.72		
Outstanding as of December 31, 2023	16,539,905	$ 6.71	6.87	$ 279,610
Vested and expected to vest as of December 31, 2023	16,539,905	$ 6.71	6.87	$ 279,610
Exercisable as of December 31, 2023	10,096,612	$ 5.97	5.64	$ 178,177

The total intrinsic value of options exercised was $19.7 million, immaterial and $0.2 million for the years ended December 31, 2023, 2022, and 2021, respectively.

The total fair value of options vested was $3.1 million, $0.6 million and $0.7 million for the years ended December 31, 2023, 2022, and 2021, respectively.

As of December 31, 2023, unamortized stock-based compensation expense of $37.8 million is expected to be recognized over a weighted average period of 2.7 years.

Incentive Awards

In December 2013, January 2014, and April 2014, as permitted by the 2013 Plan, the Company issued certain incentive awards to directors, employees and a consultant which are subject to 252,752 shares of the Company's common stock and are exercisable at a weighted average price of $5.21 per share when vested. The Company may determine at its option whether to settle exercised awards in shares of common stock or in cash. The incentive awards were fully vested as of December 31, 2023 and 2022 and have a term of 10 years.

Incentive awards outstanding totaled 0 and 101,182 as of December 31, 2023 and 2022, respectively.

Stock-Based Compensation Expense

Stock-based compensation expense is included in the consolidated statements of operations and comprehensive loss and is as follows (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Research and development	$ 5,758	$4,274	$4,470
General and administrative	9,472	5,243	5,526
Total stock-based compensation expense	$15,230	$9,517	$9,996

Valuation Assumptions

The following table presents the weighted-average assumptions the Company used in the Black-Scholes option-pricing model to derive the grant date fair values of stock options granted in each of the years presented along with the resulting estimated weighted-average grant date fair values per share:

	Year Ended December 31,		
	2023	2022	2021
Expected term (years)	6.1	6.0	6.1
Expected volatility	96%	101%	104%
Risk-free interest rate	3.8%	1.8%	0.9%
Expected dividend yield	—	—	—
Weighted-average grant date fair value per share	$7.50	$2.33	$3.91

Expected Term

The Company does not believe it can currently place reliance on its historical exercise and post-vesting termination activity to provide accurate data for estimating the expected term due to the lack of sufficient prior exercise data available. Therefore, for stock option grants made during the years ended December 31, 2023, 2022, and 2021, the Company has elected to use the simplified method for estimating the expected term, which is an average of the contractual term of the options and its ordinary vesting period. The Company will reevaluate this methodology at a point in time when sufficient exercise data becomes available. The expected term represents the period of time that options are expected to be outstanding.

Expected Volatility

The Company estimates expected volatility by measuring the historical volatility of its common stock price over a historical period commensurate with the expected term of the related award.

Risk-Free Interest Rate

The risk-free interest rate assumption was based on U.S. treasury instruments with constant maturities whose term was consistent with the expected term of stock options granted by the Company.

Expected Dividend Yield

The Company has never declared or paid cash dividends and does not plan to pay cash dividends in the foreseeable future. Consequently, the Company uses an expected dividend yield of zero.

12. 401(k) Plan

The Company provides a qualified 401(k) savings plan for its employees. All employees are eligible to participate, provided they meet the requirements of the plan. As is permitted under the plan, the Company has elected to match employee contributions up to $2,500, $750 and $750, for the years ended December 31, 2023, 2022, and 2021, and accordingly matching contributions totaling an insignificant amount were made in the years ended December 31, 2023, 2022, and 2021.

13. Income Taxes

No provision for U.S. income taxes exists due to tax losses incurred in all periods presented. All losses incurred were U.S. basedSignificant components of the Company's deferred tax assets are as follows (in thousands):

	December 31,	
	2023	2022
Deferred tax assets:		
Federal and state net operating loss carryforwards	$ 91,783	$ 87,681
Federal and state research and development tax credit carryforwards	41,714	32,016
Intangibles	4,365	5,040
Capitalized research and development	26,101	11,872
Stock-based compensation	3,358	6,624
Other	3,329	1,574
Total deferred tax assets	170,650	144,807
Deferred tax liabilities:		
Depreciation and amortization	—	(79)
Other	(1,135)	(36)
Total deferred tax liabilities	(1,135)	(115)
Valuation allowance	$(169,515)	$ (144,692)
Net deferred tax assets	$ —	$ —

Realization of the net deferred tax assets is dependent upon future taxable income, if any, the amount and timing of which is uncertain. Based on the weight of available positive and negative objective evidence, management believes it more likely than not that the Company's deferred tax assets are not realizable. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $24.8 million primarily due primarily to the Company's capitalized research and development expenditures, federal and state tax credit carryforwards, and the taxable loss incurred during the year ended December 31, 2023. These valuation allowance increases were offset by the reduction of stock-based

compensation deferred tax assets as of December 31, 2023. For the year ended December 31, 2022, the valuation allowance decreased by $29.2 million due primarily to a $38.4 million write-off of tax attributes pursuant to certain Section 382 limitations and to a lesser extent the utilization of net operating losses during the year. These valuation allowance reductions were offset by the increases to the Company's capitalized research and development expenses and other deferred tax assets during the year ended December 31, 2022.

The following is a reconciliation of the expected statutory federal income tax provision to the actual income tax provision (in thousands):

	Year Ended December 31,		
	2023	2022	2021
Income tax benefit at federal statutory tax rate	$(22,128)	$(22,260)	$(18,900)
Change in valuation allowance	24,852	(29,165)	14,739
Impairment of tax attributes	4,905	38,398	—
Research credits	(8,622)	(2,640)	(2,802)
Development financing liability	3,978	12,301	6,654
Permanent differences	(2,230)	511	429
State income taxes, net of federal benefit	(1,132)	2,806	(267)
Other, net	377	49	147
Income tax (benefit) expense	$ —	$ —	$ —

Pursuant to Internal Revenue Code (IRC) Sections 382 and 383 and similar state laws, use of the Company's U.S. federal and state net operating loss and research and credit carryforwards may be limited in the event of a cumulative change in ownership of more than 50% within a three-year period. In 2022, the Company completed an ownership change analysis and determined that its net operating losses and research and development credits were subject to limitations due to historical changes in ownership that occurred through December 31, 2022. Accordingly, the net operating loss carryforwards reflected in the deferred tax assets as of December 31, 2022 have been reduced to reflect Section 382 limitations resulting from these changes. The Section 382 analysis was updated through December 31, 2023 with no further restrictions on use of net operating loss or credit carryforwards. As the Company is expected to incur additional losses in the future, any future ownership changes that might occur could further restrict the Company's ability to utilize its net operating loss and research and development carryforwards.

As of December 31, 2023, the Company had federal net operating loss carryforwards of $365.6 million and state net operating loss carryforwards of $214.9 million to offset future taxable income, if any. In addition, the Company had federal research and development tax credit carryforwards of $4.5 million, federal orphan drug tax credit carryforwards of $38.4 million, and state research and development tax credit carryforwards of $11.0 million. If not utilized, the federal net operating losses for the years beginning before January 1, 2018 of $78.4 million will expire beginning in 2034 through 2037, and the federal net operating losses for the tax years beginning after January 1, 2018 of $287.2 million will be carried forward indefinitely (subject to certain utilization limitations). The state net operating loss carryforwards will expire beginning in 2028 through 2043. The federal research and development and federal orphan drug tax credit carryforwards expire 2033 through 2043, and the state tax credit will carry forward indefinitely. The following table summarizes activity related to the Company's gross unrecognized tax benefits (in thousands):

Balances as of December 31, 2020	$ 7,205
Increases related to prior year tax positions	9
Increases related to 2021 tax positions	783
Balances as of December 31, 2021	7,997
Decreases related to prior year tax positions	(1,223)
Increases related to 2022 tax positions	730
Balances as of December 31, 2022	7,504
Decreases related to prior year tax positions	(14)
Increases related to 2023 tax positions	2,514
Balances as of December 31, 2023	$10,004

The unrecognized tax benefits, if recognized, would not have an impact on the Company's effective tax rate assuming the Company continues to maintain a full valuation allowance position. Based on prior year's operations and experience, the Company does not expect a significant change to its unrecognized tax benefits over the next twelve months. The unrecognized tax benefits may increase or change in the future for unexpected or unusual items for items that may arise in the ordinary course of business.

The Company's major income tax filing jurisdictions are the U.S. federal and California state and is not currently under examination by federal, state, or local taxing authorities for any open tax years. Due to net operating loss carryforwards, the tax years 2004 to 2022 remain open for income tax examination by tax authorities in the U.S. and states in which the Company files tax returns. Interest and penalties for the years ended December 31, 2023 and 2022 were not material.

In August 2022, the Inflation Reduction Act of 2022 (IRA) was signed into law. The IRA provides several tax incentives, including the expanded Internal Revenue Code (IRC) Section 179D deduction, increased ability to leverage the R&D credit to offset payroll taxes for eligible start-up businesses, and 15% alternative minimum tax (AMT) for corporations with average income of more than $1 billion for the past three tax periods. The IRA did not have a material impact on the Company's consolidated financial statements; however, the Company continues to examine the impacts the above-mentioned tax legislations may have on its business, results of operations, financial condition and liquidity.

14. Subsequent Event

Pending Acquisition by Gilead

On February 11, 2024, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") with Gilead Sciences, Inc. ("Gilead") and Pacific Merger Sub, Inc., a wholly owned subsidiary of Gilead ("Purchaser"). The Merger Agreement provides for the acquisition of the Company by Gilead in a two-step all cash transaction, consisting of a tender offer (the "Offer"), followed by a subsequent merger of Purchaser

with and into the Company (the "Merger" and, together with the Offer and the other transactions contemplated by the Merger Agreement, the "Transactions"), with the Company continuing as the surviving corporation.

On February 23, 2024, Purchaser commenced the Offer for all of the Company's issued and outstanding shares of common stock, par value $0.0001 per share ("Shares"), other than any Shares owned by the Company (including those held in the Company's treasury), Gilead or Purchaser ("Excluded Shares"), at a purchase price of $32.50 per Share (the "Offer Price"), net to the seller in cash, without interest and subject to any required withholding of taxes. The Offer will initially remain open until March 21, 2024 (unless otherwise agreed to in writing by Gilead and us), which period may be extended for additional periods of up to 10 business days per extension (or such other duration as may be agreed to in writing by the Company and Gilead) to permit the conditions to the Offer to be satisfied.

The obligation of Purchaser to accept for payment Shares validly tendered pursuant to the Offer is subject to customary closing conditions, including: (i) Shares having been validly tendered and not validly withdrawn that, considered together with all other Shares (if any) beneficially owned by Gilead and its affiliates, represent one more Share than 50% of the total number of Shares outstanding at the time of the expiration of the Offer (including, for the avoidance of doubt, all Shares that become outstanding as a result of the "cashless exercise" of the outstanding pre-funded warrants of the Company, as described below); (ii) the accuracy of the Company's representations and warranties contained in the Merger Agreement (subject to any applicable Material Adverse Effect (as defined in the Merger Agreement) and materiality qualifiers); (iii) the absence of a willful and material breach by the Company of the "no-shop" restrictions described in the Merger Agreement and the Company's performance of its other obligations, covenants and agreements under the Merger Agreement in all material respects; (iv) the absence, since the date of the Merger Agreement, of any Material Adverse Effect; (v) the expiration or early termination of the waiting period applicable to the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and if Gilead and the Company have entered into an agreement with any governmental body regarding the timing of the consummation of the Offer, such consummation being permitted under such agreement and (vi) the absence of any judgment, temporary restraining order, preliminary or permanent injunction or other order, decree or ruling restraining, enjoining or otherwise preventing the acquisition of or payment for Shares pursuant to the Offer or the consummation of the Offer or the Merger or subsequent integration.

As soon as practicable following the acceptance of the Shares validly tendered and not validly withdrawn pursuant to the Offer and the consummation of the Offer, subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, the Merger will be effected under Section 251(h) of the Delaware General Corporation Law, as amended, without a meeting or vote of the Company's stockholders.

At the effective time of the Merger (the "Effective Time"), each issued and outstanding Share, other than any Excluded Shares, any Shares irrevocably accepted for purchase pursuant to the Offer ("Tendered Shares") or any Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive the Offer Price (the "Merger Consideration"), in cash, without interest and subject to any required withholding of taxes.

At the Effective Time, each stock option to purchase Shares that is then outstanding and unexercised, whether or not vested and which has a per-share exercise price that is less than the Merger Consideration, will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to (i) the excess of (a) the Merger Consideration over (b) the exercise price payable per Share under such stock option, multiplied by (ii) the total number of Shares subject to such stock option immediately prior to the Effective Time.

At the Effective Time, each restricted stock unit award with respect to Shares that is then outstanding will be automatically canceled and converted into the right to receive a lump-sum cash payment equal to the product, rounded to the nearest cent, of (i) the number of Shares subject to such restricted stock unit award as of the Effective Time and (ii) the Merger Consideration.

At the Offer Acceptance Time, each pre-funded warrant of the Company to purchase Shares that is outstanding immediately prior to the Effective Time will automatically be deemed to be exercised in full in a "cashless exercise" pursuant to the warrant agreement to which such warrant is subject. At the Effective Time, holders of Shares issued pursuant to such "cashless exercise" of the pre-funded warrants of the Company in accordance with the applicable warrant agreements and the Merger Agreement shall become entitled to the Merger Consideration as described above in respect of Shares other than the Excluded Shares, the Tendered Shares and any Dissenting Shares.

The Merger Agreement contains certain termination rights for the Company and Gilead. Upon termination of the Merger Agreement under specified circumstances, the Company will be required to pay Gilead a termination fee in the amount of $151.6 million.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CymaBay Therapeutics, Inc.
Registrant

February 28, 2024
Date

/s/ Sujal Shah
Sujal Shah
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Sujal Shah and Harish Shantharam, as his or her true and lawful attorney-in-fact and agent, with full power of substitution for him or her, and in his or her name in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, and any of them or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this report has been signed by the following persons on behalf of the Registrant in the capacities indicated on the date set forth below:

Name and Signature	Title	Date
/s/ Sujal Shah Sujal Shah	President, Chief Executive Officer and Director *(Principal Executive Officer)*	February 28, 2024
/s/ Harish Shantharam Harish Shantharam	Chief Financial Officer *(Principal Financial and Accounting Officer)*	February 28, 2024
/s/ Robert J. Wills Robert J. Wills	Director	February 28, 2024
/s/ Kurt von Emster Kurt von Emster	Director	February 28, 2024
/s/ Caroline Loewy Caroline Loewy	Director	February 28, 2024
/s/ Thomas G. Wiggans Thomas G. Wiggans	Director	February 28, 2024
/s/ Janet Dorling Janet Dorling	Director	February 28, 2024
/s/ Éric Lefebvre Éric Lefebvre	Director	February 28, 2024

Exhibit 10.11

CYMABAY THERAPEUTICS, INC.
RSU AWARD GRANT NOTICE
(2023 EQUITY INCENTIVE PLAN)

CymaBay Therapeutics, Inc. (the ***"Company"***) has awarded to you (the ***"Participant"***) the number of restricted stock units specified and on the terms set forth below (the ***"RSU Award"***). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company's 2023 Equity Incentive Plan (the ***"Plan"***) and the RSU Award Agreement (the "***Agreement***"), both of which are incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement, as applicable.

Participant: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Restricted Stock Units: _____

Vesting Schedule: [_____]. Notwithstanding the foregoing, except as set forth below, vesting shall terminate upon the Participant's termination of Continuous Service.

Issuance Schedule: One share of Common Stock will be issued for each restricted stock unit that vests at the time set forth in Section 5 of the Agreement.

Participant Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the "***Grant Notice***"), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the "***RSU Award Agreement***") may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the Prospectus. In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

CYMABAY THERAPEUTICS, INC.

By: _____
Signature

Title: _____

Date: _____

PARTICIPANT:

_____
Signature

Date: _____

CYMABAY THERAPEUTICS, INC.
2023 EQUITY INCENTIVE PLAN

RSU AWARD AGREEMENT

As reflected by your RSU Award Grant Notice ("***Grant Notice***"), CymaBay Therapeutics, Inc. (the "***Company***") has granted you a RSU Award under its 2023 Equity Incentive Plan (the "***Plan***") for the number of restricted stock units as indicated in your Grant Notice (the "***RSU Award***"). The terms of your RSU Award as specified in this RSU Award Agreement for your RSU Award (the "***Agreement***") and the Grant Notice constitute your "***RSU Award Agreement***". Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

1. GOVERNING PLAN DOCUMENT. Your RSU Award is subject to all the provisions of the Plan. Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. GRANT OF THE RSU AWARD. This RSU Award represents your right to be issued on a future date the number of shares of the Company's Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice subject to your satisfaction of the vesting conditions set forth therein (the "***Restricted Stock Units***"). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 3 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

3. DIVIDENDS. You shall receive no benefit or adjustment to your RSU Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your RSU Award after such shares have been delivered to you.

4. RESPONSIBILITY FOR TAXES.

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the "***Service Recipient***") with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items associated with the grant or vesting of the RSU Award or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable or deemed applicable to you (the "***Tax Liability***"), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service

Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this RSU Award, including, but not limited to, the grant or vesting of the RSU Award, the issuance of Common Stock pursuant to such vesting, the subsequent sale of shares of Common Stock, and the payment of any dividends on the shares; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSU Award to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by one or a combination of the following methods: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company and/or the Service Recipient; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award; *provided*, however, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company's Compensation Committee; (iv) permitting or requiring you to enter into a "same day sale" commitment, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "***FINRA Dealer***"), pursuant to this authorization and without further consent, whereby you irrevocably elect to sell a portion of the shares of Common Stock to be delivered in connection with your Restricted Stock Units to satisfy the Tax Liability and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Tax Liability directly to the Company or the Service Recipient; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay or reimburse the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company and/or the Service Recipient (as applicable), you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

(c) The Company and/or the Service Recipient may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s). In the event of over-withholding, you may receive a refund of any over-withheld amount in cash from the Company or the Service Recipient (with no entitlement to the Common Stock equivalent), or if not refunded, you may seek a refund from the local tax authorities. In the event of under-withholding, you may be required to pay any Tax Liability directly to the applicable tax authority or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the vested portion of the RSU Award, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.

(d) You acknowledge that you may not participate in the Plan and the Company shall have no obligation to issue or deliver shares of Common Stock until you have fully satisfied any applicable Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to issue or deliver to you any Common Stock in respect of the RSU Award.

5. DATE OF ISSUANCE.

(a) The issuance of shares in respect of the Restricted Stock Units is intended to comply with U.S. Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the Tax Liability withholding obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each vested Restricted Stock Unit on the applicable vesting date. Each issuance date determined by this paragraph is referred to as an "***Original Issuance Date***."

(b) If the Original Issuance Date falls on a date that is not a business day, delivery shall instead occur on the next following business day. In addition, if:

(i) the Original Issuance Date does not occur (1) during an "open window period" applicable to you, as determined by the Company in accordance with the Company's then-effective Insider Trading Policy, or (2) on a date when you are otherwise permitted (under the Company's then-effective Insider Trading Policy, federal law, or otherwise) to (A) sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company's policies (a "***10b5-1 Arrangement***) or (B) acquire shares of Common Stock),*and*

(ii) either (1) a Tax Liability withholding obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Tax Liability withholding obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a "same day sale" commitment with a broker-dealer (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Tax Liability in cash,

then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Common Stock in the open public market or acquiring shares of Common Stock, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with U.S. Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a "substantial risk of forfeiture" within the meaning of U.S. Treasury Regulations Section 1.409A-1(d).

6. NATURE OF GRANT. In accepting the RSU Award, you acknowledge, understand and agree that the RSU Award and your participation in the Plan shall not create a right to employment or other service relationship with the Company, and the RSU Award and your participation in the Plan shall not be interpreted as forming or amending an employment or service contract with the Company or the Service Recipient, and shall not interfere with the ability of the Company or the Service Recipient, as applicable, to terminate your Continuous Service (if any).

7. TRANSFERABILITY. Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution.

8. CORPORATE TRANSACTION. Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

9. NO LIABILITY FOR TAXES. As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to any Tax Liability arising from the RSU Award and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

10. NO ADVICE REGARDING GRANT. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your participation in the Plan, or your acquisition or sale of the underlying shares of Common Stock. You should consult with your own personal tax, legal and financial advisors regarding your participation in the Plan before taking any action related to the Plan.

11. GOVERNING LAW AND VENUE. The RSU Award and the provisions of this Agreement are governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the conflict of law principles that would result in any application of any law other than the law of the State of Delaware. For purposes of any action, lawsuit or other proceedings brought to enforce this Agreement, relating to it, or arising from it, the parties hereby submit to and consent to the sole and exclusive jurisdiction of the courts of the State of Delaware, and no other courts, where this grant is made and/or to be performed.

12. SEVERABILITY. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

13. COMPLIANCE WITH LAW. Notwithstanding any other provision of the Plan or this Agreement, unless there is an exemption from any registration, qualification or other legal

requirement applicable to the shares of Common Stock, the Company shall not be required to deliver any shares issuable upon settlement of the Restricted Stock Units prior to the completion of any registration or qualification of the shares under any local, state, federal or foreign securities or exchange control law or under rulings or regulations of the U.S. Securities and Exchange Commission ("***SEC***") or of any other governmental regulatory body, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. You understand that the Company is under no obligation to register or qualify the shares with the SEC or any state or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the shares. Further, you agree that the Company shall have unilateral authority to amend the Agreement without your consent to the extent necessary to comply with securities or other laws applicable to issuance of shares of Common Stock.

14. ELECTRONIC DELIVERY AND PARTICIPATION. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and agree to participate in the Plan through an online or electronic system established and maintained by the Company or a third party designated by the Company.

15. IMPOSITION OF OTHER REQUIREMENT. The Company reserves the right to impose other requirements on your participation in the Plan, on the RSU and on any shares of Common Stock acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require you to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

16. WAIVER. You acknowledge that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by you or any other participant.

17. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Insider Trading Policy.

18. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

* * * *

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "Amendment") is entered into as of this 6th day of February, 2024, by and between BMR-PACIFIC RESEARCH CENTER LP, a Delaware limited partnership ("Landlord"), and CYMABAY THERAPEUTICS, INC., a Delaware corporation ("Tenant").

RECITALS

A. WHEREAS, Landlord and Tenant are parties to that certain Lease dated as of November 8, 2013, as amended by that certain First Amendment to Lease dated as of April 16, 2018 (collectively, and as the same may have been further amended, amended and restated, supplemented or modified from time to time, the "Existing Lease"), whereby Tenant leases certain premises (the "Premises") from Landlord at 7575 Gateway Boulevard in Newark, California (the "Building");

B. WHEREAS, Landlord and Tenant desire to extend the Term of the Lease; and

C. WHEREAS, Landlord and Tenant desire to modify and amend the Existing Lease only in the respects and on the conditions hereinafter stated.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Definitions. For purposes of this Amendment, capitalized terms shall have the meanings ascribed to them in the Existing Lease unless otherwise defined herein. The Existing Lease, as amended by this Amendment, is referred to collectively herein as the "Lease." From and after the date hereof, the term "Lease," as used in the Existing Lease, shall mean the Existing Lease, as amended by this Amendment.

2. Second Amendment Extension Term. The Term of the Lease is hereby extended until, and the Term Expiration Date is hereby amended to mean, March 15, 2024. The period commencing on January 16, 2024, and ending on such amended Term Expiration Date shall be referred to herein as the "Second Amendment Extension Term."

3. Base Rent. During the Second Amendment Extension Term, Base Rent shall be equal to **$90,786.99** per month.

4. Condition of Premises. Tenant acknowledges that (a) it is in possession of and is fully familiar with the condition of the Premises and, notwithstanding anything contained in the Lease to the contrary, agrees to take the same in its condition "as is" as of the first day of the Second Amendment Extension Term, and (b) Landlord shall have no obligation to alter, repair or otherwise prepare the Premises for Tenant's continued occupancy for the Second Amendment Extension Term or to pay for any improvements to the Premises, except as may be expressly provided in the Lease.

5. Broker. Tenant represents and warrants that it has not dealt with any broker or agent in the negotiation for or the obtaining of this Amendment and agrees to reimburse, indemnify, save, defend (at Landlord's option and with counsel reasonably acceptable to Landlord, at Tenant's sole cost and expense) and hold harmless the Landlord Indemnitees for, from and against any and all cost or liability for compensation claimed by any such broker or agent employed or engaged by it or claiming to have been employed or engaged by it.

6. No Default. Tenant represents, warrants and covenants that, to the best of Tenant's knowledge, Landlord and Tenant are not in default of any of their respective obligations under the Existing Lease and no event has occurred that, with the passage of time or the giving of notice (or both) would constitute a default by either Landlord or Tenant thereunder.

7. Notices. Notwithstanding anything in the Lease to the contrary, any notice, consent, demand, invoice, statement or other communication required or permitted to be given under the Lease shall be in writing and shall be given by (a) personal delivery, (b) overnight delivery with a reputable international overnight delivery service, such as FedEx, or (c) email transmission, so long as such transmission is followed within one (1) business day by delivery utilizing one of the methods described in (a) or (b), provided that, for purposes of this clause (c), if delivery utilizing one of the other methods described in clauses (a) or (b) is not reasonably practicable due to an event of Force Majeure (as defined in the Existing Lease), then such requirement shall be waived for deliveries by email transmission so long as either the receiving party responds to the sending party confirming receipt of the applicable email transmission, or the sending party receives other electronic confirmation that the email transmission was received and read by the receiving party, such as a "read receipt" notice. Any such notice, consent, demand, invoice, statement or other communication shall be deemed delivered (x) upon receipt, if given in accordance with subsection (a); (y) one business (1) day after deposit with a reputable international overnight delivery service, if given if given in accordance with subsection (b); or (z) upon transmission, if given in accordance with subsection (c). Tenant confirms that, notwithstanding anything in the Lease to the contrary, notices delivered to Tenant pursuant to the Lease should be sent to:

CymaBay Therapeutics, Inc.
7575 Gateway Boulevard
Newark, California 94560
Email: pomara@cymabay.com

8. Effect of Amendment. Except as modified by this Amendment, the Existing Lease and all the covenants, agreements, terms, provisions and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. In the event of any conflict between the terms contained in this Amendment and the Existing Lease, the terms herein contained shall supersede and control the obligations and liabilities of the parties.

9. Successors and Assigns. Each of the covenants, conditions and agreements contained in this Amendment shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns and sublessees. Nothing in this section shall in any way alter the provisions of the Lease restricting assignment or subletting.

10. Miscellaneous. This Amendment becomes effective only upon execution and delivery hereof by Landlord and Tenant. The captions of the paragraphs and subparagraphs in this Amendment are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof. All exhibits hereto are incorporated herein by reference. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for a lease, and shall not be effective as a lease, lease amendment or otherwise until execution by and delivery to both Landlord and Tenant.

11. Authority. Tenant guarantees, warrants and represents that the individual or individuals signing this Amendment have the power, authority and legal capacity to sign this Amendment on behalf of and to bind all entities, corporations, partnerships, limited liability companies, joint venturers or other organizations and entities on whose behalf such individual or individuals have signed.

12. Counterparts; Facsimile and PDF Signatures. This Amendment may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document. A facsimile or portable document format (PDF) signature on this Amendment shall be equivalent to, and have the same force and effect as, an original signature.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date and year first above written.

LANDLORD:

BMR-PACIFIC RESEARCH CENTER LP,
a Delaware limited partnership

By: /s/ Dawn Saunders
Name: Dawn Saunders
Title: Vice President, Legal

TENANT:

CYMABAY THERAPEUTICS, INC.,
a Delaware corporation

By: /s/ Sujal Shah
Name: Sujal Shah
Title: CEO

Exhibit 10.19

CERTAIN INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE OF INFORMATION THAT CYMABAY TREATS AS PRIVATE OR CONFIDENTIAL.

SUBLEASE

AGREEMENT OF SUBLEASE ("Sublease") dated as of the 1st day of December, 2023 (the "Effective Date"), by and between **META PLATFORMS, INC.**, a Delaware corporation having an office at 1 Hacker Way, Menlo Park, California 94025 ("Sublandlord"), and **CYMABAY THERAPEUTICS, INC.**, a Delaware corporation having an office at 7575 Gateway Blvd., Suite 110, Newark, California 94560 ("Subtenant").

WHEREAS:

I. Sublandlord leases certain premises ("Premises") situated in the building commonly known as ArdenwoodI-1 located at 7601 Dumbarton Circle, Fremont, California 94555 (the "Building"), pursuant to that certain Lease Agreement, dated as of May 1, 2018 (the "Lease"), as amended by that certain Amendment No. 1 to Lease, dated as of September 17, 2018 (the "First Amendment") and that certain Amendment No. 2 to Lease, dated as of May 1, 2018 (the "Second Amendment", together with the First Amendment and Lease hereinafter referred to as the "Overlease") as the same may be amended from time to time, by and between **JOHN ARRILLAGA**, Trustee, or his Successor Trustee UTA dated 7/20/77 (JOHN ARRILLAGA SURVIVOR'S TRUST) as amended, and **RICHARD T. PEERY**, Trustee, or his Successor Trustee UTA dated 7/20/77 (RICHARD T. PEERY SEPARATE PROPERTY TRUST) as amended (collectively, "Overlandlord"), as landlord, and Sublandlord, as tenant. A redacted copy of the Overlease is attached hereto asExhibit A; and

II. Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Premises, comprising approximately 52,416 rentable square feet, as more particularly shown on Exhibit B attached hereto (the "Sublease Premises"), upon the terms and conditions set forth herein. The term "Sublease Premises" as used throughout this Sublease is hereby defined to include the entire Premises as described in the Overlease.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, conditions and agreements hereinafter contained, do hereby agree as follows:

W I T N E S S E T H:

1. Sublease; Term.

A. Upon and subject to the terms, covenants and conditions hereinafter set forth, as of the Commencement Date (as defined below), Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Sublease Premises. This Sublease shall be effective and binding upon Sublandlord and Subtenant as of the Effective Date upon execution by both Sublandlord and Subtenant. The parties hereby stipulate that the Sublease Premises contains 52,416 rentable square feet, and that, notwithstanding anything to the contrary contained in the Overlease (including to the extent the Overlease is incorporated into this Sublease), such square footage amount is not subject to adjustment or remeasurement by Subtenant or Sublandlord at any time during the Term (as defined below).

B. The term (the "Term") of this Sublease shall commence on the later of (i) December 1, 2023, (ii) the date that Overlandlord consents in writing to this Sublease and (iii) the date the Sublease Premises are delivered to Subtenant in the condition required herein (the "Commencement Date"). The Term shall expire on the earlier of (a) May 31, 2032 and (b) the termination of Sublandlord's rights to the Sublease Premises under the Overlease (the "Expiration Date"), unless sooner terminated in accordance with the provisions of this Sublease. Except as otherwise expressly provided herein, if delivery of the Sublease Premises is delayed for any reason, this Sublease shall not be void or voidable (or terminable by Subtenant), the Term of this Sublease shall not be extended, and Sublandlord shall not be liable to Subtenant for any loss or damage resulting from such delay or from the failure of the delivery of possession of the Sublease Premises to occur on any particular date. Notwithstanding the foregoing, provided Overlandlord has consented to this Sublease in writing, if Sublandlord fails to deliver the Sublease Premises to Subtenant [***], following which Sublandlord shall promptly return any prepaid rent and the Letter of Credit (herein defined) and neither party shall have any further obligations under this Sublease excepting those which expressly survive termination. Promptly following the Commencement Date, Sublandlord and Subtenant shall execute a Confirmation of Commencement Date Certificate substantially in the form of Exhibit C attached hereto confirming the Commencement Date (the "Confirmation of Commencement Date Certificate"). If Subtenant fails to sign and deliver the Confirmation of Commencement Date Certificate to Sublandlord within ten (10) business days of its receipt from Sublandlord (unless Subtenant objects to the contents thereof within such ten (10) business day period), Sublandlord shall have the right to issue a second notice, and if Subtenant fails to sign and deliver the Confirmation of Commencement Date Certificate to Sublandlord within three (3) business days of receipt of such second notice from Sublandlord, the Confirmation of Commencement Date Certificate sent by Sublandlord shall be deemed to have correctly set forth the matters addressed in it.

C. Provided (i) Subtenant is not in default under this Sublease beyond any applicable notice and cure period, (ii) Subtenant has delivered to Sublandlord all required certificates of insurance, any prepaid Rent, and the Letter of Credit, and (iii) Overlandlord's consent has been obtained (the foregoing items (i), (ii) and (iii), the "Early Access Conditions"), Subtenant shall be permitted to enter the Sublease Premises for the sole purpose of, subject to the terms and conditions of this Sublease, preparing the Sublease Premises for Subtenant's occupancy and making improvements and installations (but not for occupancy) during the Early Access Period in accordance with the terms hereof. The "Early Access Period" shall commence on the date that Sublandlord delivers the Sublease Premises to Subtenant following the date that all three (3) Early Access Conditions and shall continue until the Commencement Date. Such early entry by Subtenant shall be subject to all of the terms and conditions of this Sublease other than Rent (as defined below), provided that Subtenant shall reimburse Sublandlord for any out-of-pocket electricity, water, and HVAC expenses in connection with Subtenant's use of the Premises during the Early Access Period.

2. Annual Fixed Rent and Additional Rent.

A. Subtenant covenants and agrees that, from and after the date that is thirteen (13) months after the Commencement Date (the "Rent Commencement Date") and through and including the Expiration Date, Subtenant shall pay to Sublandlord fixed rent ("Fixed Rent") at the rates set forth on Schedule 1. Fixed Rent shall be payable in equal monthly installments in advance on the first day of each calendar month during the Term, without any deduction, offset, abatement, defense and/or counterclaim whatsoever, except as otherwise expressly set forth in this Sublease. Simultaneously with the execution and delivery of this Sublease, Subtenant shall pay the sum of Fifty Five Thousand Three Hundred Sixty-Two and 50/100 Dollars ($55,362.50), which shall be applied to the first full monthly installment of Fixed Rent due on the Rent Commencement Date (i.e., Month 14). The monthly installment of Fixed Rent payable on account of any partial calendar month during the Term, if any, shall be prorated (based on the actual number of days in the month). If the Rent Commencement Date occurs on a date other than the first day of a calendar month, then on the Rent Commencement Date, Subtenant shall pay to Sublandlord the monthly installment of Fixed Rent for such partial month on a pro rata basis (based on the actual number of days in the commencement month). Subtenant's obligations to pay all other charges due pursuant to this Sublease shall commence on the Commencement Date.

B. In addition to the Fixed Rent payable hereunder, Subtenant covenants to pay to Sublandlord, for periods occurring wholly or in part within the Term, as additional rent ("Additional Rent"), without any deduction, offset, abatement, defense and/or counterclaim whatsoever, except as otherwise expressly set forth in this Sublease, (i) Subtenant's Share of Sublease Operating Expenses (as defined and in accordance with the terms set forth in Paragraph 4 below), (ii) all amounts that are required to be paid to Overlandlord pursuant to the Overlease (other than the basic rent under the Overlease) with respect to the Sublease Premises, as calculated and payable in the manner provided for in the Overlease, including, but not limited to the Management Fee described in Paragraph 4E of the Overlease and (iii) within thirty (30) days of written demand from Sublandlord, after Sublandlord's delivery of a written invoice therefor, all amounts payable with respect to any utilities furnished to the Sublease Premises and that are paid by Sublandlord (if any such amounts are not sub-metered, they will be reasonably allocated by Sublandlord). The parties agree that the Sublease Premises comprise one hundred percent (100%) of the Premises.

C. In the event that Subtenant fails to make timely payment to Sublandlord of any installment of Fixed Rent or Additional Rent, Subtenant shall pay to Sublandlord, as Additional Rent, a late fee equal to three percent (3%) of the late payment and interest at the same rate and in the same manner as provided in Paragraph 18 of the Overlease with respect to the late payment of Rent (as defined below). Notwithstanding the foregoing, on the first occasion during any calendar year that any installment of Fixed Rent or Additional Rent is not timely paid when due hereunder, no late fee or interest will be assessed until Sublandlord has delivered a notice regarding such late installment to Subtenant and Subtenant has failed to cure the same within three (3) business days of such notice.

D. All payments of (i) Fixed Rent and Additional Rent (with Fixed Rent and Additional Rent being collectively referred to herein as "Rent") shall be made by wire transfer of immediately available federal funds as directed by Sublandlord (or as otherwise directed by

Sublandlord in writing) and (ii) in the case of all other sums, either by wire transfer as aforesaid or as otherwise directed by Sublandlord in writing. Notwithstanding the foregoing, to the extent Overlandlord requires that Subtenant make payment of Rent directly to Overlandlord as a condition of granting Overlandlord's consent hereto, then with respect to any such payments, Subtenant shall make payment of Rent to Overlandlord in the form and method required by Overlandlord. Subtenant's covenant to pay Rent shall be independent of every other covenant in this Sublease.

E. In the event that any sums are due under the Overlease with respect to any period that precedes the Commencement Date or follows the Expiration Date, Subtenant's obligations hereunder on account of such sums shall be appropriately prorated.

F. Notwithstanding anything to the contrary contained in this Sublease, all sums of money, other than Fixed Rent, as shall become due and payable by Subtenant to Sublandlord under this Sublease shall be deemed to be Additional Rent, and Sublandlord shall have the same rights and remedies in the event of non-payment of Additional Rent as are available to Sublandlord for the non-payment of Fixed Rent.

G. Subtenant shall have the right to pay all rent and other sums owing by Subtenant to Sublandlord hereunder for those items that also are owed by Sublandlord to Overlandlord under the Overlease directly to Overlandlord, provided (a) Subtenant has reasonable written evidence that Sublandlord has failed to make any payment required to be made by Sublandlord to Overlandlord under the Overlease and Sublandlord fails to provide adequate proof of payment within ten (10) business days after Subtenant's written demand requesting such proof; and (b) Subtenant has demanded, in writing, that Sublandlord confirm within ten (10) business days following such demand that such amounts are under dispute between Sublandlord and Overlandlord and Sublandlord has failed to confirm that such amounts are under dispute. Subtenant shall provide to Sublandlord concurrently with any payment to Overlandlord reasonable evidence of such payment. Any sums paid directly by Subtenant to Overlandlord in accordance with this paragraph shall be credited toward the amounts payable by Subtenant to Sublandlord under this Sublease. In the event Subtenant tenders payment directly to Overlandlord in accordance with this paragraph and Overlandlord refuses to accept such payment, Subtenant shall have the right to deposit such funds in an account with a national bank for the benefit of Overlandlord and Sublandlord, and the deposit of said funds in such account shall discharge Subtenant's obligation under this Sublease to make the payment in question.

3. Use of the Sublease Premises.

Subtenant shall use the Sublease Premises exclusively for the uses described in Paragraph 1A of the Overlease and for no other purpose and further covenants not to use the Sublease Premises in any manner that will result in a violation of the Overlease.

4. Maintenance of the Exterior Improvements on the Parcel; Sublease Operating Expenses

A. During the Sublease Term, notwithstanding Section 9.C of the Overlease, Sublandlord shall maintain, repair and replace as needed the Common Areas of the Parcel (as

defined in the Overlease) and perform all of the obligations of "Tenant" under Section 9.C of the Overlease, subject to Subtenant's reimbursement of Subtenant's Share of Sublease Operating Expenses as set forth in Paragraph 4.B below. Subtenant acknowledges that Sublandlord, in its sole discretion, shall have the right to enter onto the Common Areas of the Parcel for any reason at any time without advance notice to Subtenant, and that Sublandlord may from time to time: (i) change the shape, size, location, number and/or extent of any Common Areas of the Parcel, (ii) modify, eliminate and/or add to the Common Areas of the Parcel and/or make any other changes thereto affecting the same or (iii) make any other changes, additions and/or deletions in any way affecting the Common Areas of the Parcel and/or any portion thereof as Sublandlord may elect from time to time; provided such changes or modifications do not materially and adversely affect Subtenant's use or access to the Sublease Premises. Subtenant acknowledges and agrees that construction noise, vibrations and dust associated with normal construction activities in connection therewith are to be expected during the course of such construction and Subtenant shall have no right to seek damages (including without limitation abatement of Rent) or to cancel or terminate this Sublease because of any proposed changes, expansion, renovation or reconfiguration of the Common Areas of the Parcel, nor shall Subtenant have the right to restrict, inhibit or prohibit any such changes, expansion, renovation or reconfiguration; provided, however, Sublandlord shall use commercially reasonable efforts to minimize interference with Subtenant's business operations at the Sublease Premises during Sublandlord's exercise of the rights set forth herein.

B. Subtenant's share of (i) Parcel Operating Expenses (defined below) is one hundred percent (100%) ("Parcel Share"), (ii) Parking Operating Expenses (defined below) is ninety percent (90%) ("Parking Share") and (iii) Campus Operating Expenses (defined below) is six and 86/100 percent (6.86%) ("Campus Share", collectively with the Parcel Share and Parking Share, "Subtenant's Share"). Subtenant covenants to pay to Sublandlord, commencing on the Commencement Date and continuing through the Term, as Additional Rent, without any deduction, offset, abatement, defense and/or counterclaim whatsoever, except as otherwise expressly set forth in this Sublease, Subtenant's Share of Sublease Operating Expenses. On or before the Commencement Date and before the beginning of each calendar year thereafter during the Term, Sublandlord shall deliver to Subtenant a written estimate (reasonably detailed and on a line-item basis) of Sublease Operating Expenses for the succeeding calendar year during the Term ("Annual Estimate"), which may be revised by Sublandlord once per calendar year. Commencing on the Commencement Date, and on the first day of each month thereafter, Subtenant shall pay Sublandlord an amount equal to one-twelfth ($1/12^{th}$) of the Sublease Operating Expenses as set forth in the applicable Annual Estimate. Payments for any fractional calendar month shall be prorated. The term "Parcel Operating Expenses" means all actual, out-of-pocket third-party costs and expenses of any kind or description whatsoever incurred or accrued by Sublandlord with respect to the Common Areas of the Parcel (excluding Parking Operating Expenses), including, without limitation, Additional Rent (as defined in the Overlease) and rent under the Overlease applicable to the Common Areas of the Parcel. The term "Campus Operating Expenses" means all actual, out-of-pocket third-party costs and expenses of any kind or description whatsoever incurred or accrued by Sublandlord with respect to the areas of the Project (defined in the Overlease) operated by Sublandlord (or Sublandlord's affiliates) and which benefit the Parcel ("Campus Common Areas") including, without limitation, any costs incurred in connection with Sublandlord's obligations under the Stormwater Agreement. Campus Operating Expenses will not include any expenses for services or amenities which do not benefit the Parcel or Subtenant (including, but not limited to, landscaping located on other parcels of the Project). The term

"Parking Operating Expenses" means all actual, out-of-pocket third-party costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Sublandlord with respect to the parking located on the Parcel. The term "Sublease Operating Expenses" means Parcel Common Area Operating Expenses, Parking Operating Expenses and Campus Common Area Operating Expenses.

C. Within one hundred twenty (120) days after the end of each calendar year (or such longer period as may be reasonably required by Sublandlord), Sublandlord shall furnish to Subtenant a statement (an "Annual Statement") showing in reasonable detail (a) the total actual Sublease Operating Expenses for the previous calendar year, and (b) the total of Subtenant's payments with respect to the estimated Sublease Operating Expenses for such year. If the actual Sublease Operating Expenses for such year exceed Subtenant's payments of estimated Sublease Operating Expenses for such year, the excess shall be due and payable by Subtenant as Additional Rent within thirty (30) days after delivery of such Annual Statement to Subtenant. If Subtenant's payments of Sublease Operating Expenses for such year exceed Subtenant's Share of the estimated Sublease Operating Expenses according to the Annual Estimate for said year, Sublandlord shall pay the excess to Subtenant or credit the same against Rent, except that after the expiration or earlier termination of the Term or if Subtenant is delinquent in its obligation to pay Rent, Sublandlord shall pay the excess to Subtenant only after deducting all other amounts due Sublandlord.

An Annual Statement shall be final and binding upon Subtenant (except that any such statement that may contain material misrepresentations shall not be binding and conclusive on Subtenant) unless Subtenant, within sixty (60) days after Subtenant's receipt thereof, shall contest any item therein by giving written notice to Sublandlord, specifying each item contested and the reason therefor. If, during such sixty (60)-day period, Subtenant reasonably and in good faith questions or contests the accuracy of the Annual Statement, Sublandlord will provide Subtenant with access to Sublandlord's books and records relating to the operation of the Sublease Premises and such information as Sublandlord reasonably determines to be responsive to Subtenant's questions (the "Expense Information"). If after Subtenant's review of such Expense Information, Sublandlord and Subtenant cannot agree upon the amount of the Sublease Operating Expenses, then Subtenant shall have the right, at Subtenant's sole cost and expense, to have a regionally or nationally recognized independent public accounting firm selected by Subtenant and approved by Sublandlord, working pursuant to a fee arrangement other than a contingent fee, audit and/or review the Expense Information for the year in question (the "Independent Review"). If the Independent Review shows that the payments actually made by Subtenant with respect to the Sublease Operating Expenses for the calendar year in question exceeded the Sublease Operating Expenses for such calendar year, Sublandlord shall at Sublandlord's option either (1) credit the excess amount to the next succeeding installments of Rent or (2) pay the excess to Subtenant, except that after the expiration or earlier termination of this Sublease or if Subtenant is delinquent in its obligation to pay Rent, Sublandlord shall pay the excess to Subtenant after deducting all other amounts due Sublandlord. If the Independent Review shows that Subtenant's payments with respect to Sublease Operating Expenses for such calendar year were less than the Sublease Operating Expenses for the calendar year, Subtenant shall pay the deficiency to Sublandlord within thirty (30) days after delivery of such statement. Any Independent Review that discloses a discrepancy of more than three percent (3%) in the annual Sublease Operating Expenses shall be at Sublandlord's expense and Sublandlord shall reimburse Subtenant for such cost (including

reasonable attorneys' fees) within thirty (30) days of the result of the Independent Review. In the event Sublandlord shall fail to invoice Subtenant for any Additional Rent pursuant to this section within eighteen (18) months (except for any tax reassessments, which shall not be subject to such limitation), then Sublandlord shall be deemed to have waived its right to collect such Additional Rent. In addition, in the event that Sublandlord shall fail to invoice Subtenant for any Additional Rent pursuant to this section within one (1) year following the expiration or termination of the term of this Sublease (except for any tax reassessments, which shall not be subject to such limitation), then Sublandlord shall be deemed to have waived its right to collect such Additional Rent.

D. Notwithstanding the foregoing, Sublandlord shall have the right to deliver to Subtenant any statement of account or reconciliation delivered to Sublandlord by Overlandlord, promptly following Sublandlord's receipt thereof (which Subtenant acknowledges that Overlandlord may deliver quarterly or annually, at Overlandlord's option). Following receipt thereof, the Additional Rent shall be adjusted as set forth in the Overlease, and Subtenant shall pay any amounts set forth thereon (to the extent Subtenant is responsible for the same hereunder) within the periods set forth in the Overlease.

5. Incorporation of Overlease Terms.

A. All capitalized and other terms not otherwise defined herein shall have the meanings ascribed to them in the Overlease unless the context clearly requires otherwise.

B. In addition to the obligations of Subtenant under the terms of this Sublease as set forth in the other Paragraphs of this Sublease (and except as otherwise expressly provided to the contrary in this Sublease), Subtenant shall also have and perform for the benefit of Sublandlord all obligations of the "Tenant" as are set forth in the Overlease, which are hereby incorporated into this Sublease as though set forth herein in full, substituting "Subtenant" wherever the term "Tenant" appears, and "Sublandlord" wherever the term "Landlord" appears; provided, however, that Subtenant's obligations under the Overlease shall be limited to the extent of the Sublease Premises and for the duration of the Term. As between Sublandlord and Subtenant, in the event of a conflict between the terms of this Sublease and the terms of the Overlease, the terms of this Sublease shall control.

C. Any non-liability, release, waiver, indemnity or hold harmless provision in the Overlease for the benefit of Overlandlord that is incorporated herein by reference shall be deemed to inure to the benefit of Sublandlord, Overlandlord and any other person intended to be benefited by said provision. Any right of Overlandlord under the Overlease of access or inspection and any right of Overlandlord under the Overlease with respect to rules and regulations, which are incorporated herein by reference, shall be deemed to inure to the benefit of Sublandlord, Overlandlord and any other person intended to be benefited by said provision. In any case where the consent or approval of Overlandlord shall be required pursuant to the Overlease, Sublandlord's consent shall also be required hereunder.

D. The benefit of all repairs, restoration, legal compliance and services to be provided to the Sublease Premises by Overlandlord shall accrue to Subtenant. Subtenant recognizes that except as otherwise expressly provided to the contrary in this Sublease,

Sublandlord shall not be required to render any of the services or utilities; to make or perform repairs, maintenance, replacements, restorations, alterations, additions or improvements; to provide any of the insurance; or to perform any of the obligations required of Overlandlord by the terms of the Overlease. Sublandlord shall have no liability to Subtenant by reason of the default of Overlandlord under the Overlease, and no such default shall excuse Subtenant from the performance or observance of any obligation of Subtenant under this Sublease or entitle Subtenant to terminate this Sublease. Subject to Subparagraph 5(E) below, Sublandlord shall use good faith commercially reasonable efforts to obtain the performance and diligent prosecution of such performance by Overlandlord of Overlandlord's obligations under the Overlease. Subtenant acknowledges that the failure of Overlandlord to provide any services or comply with any obligations under the Overlease shall not entitle Subtenant to any abatement or reduction in Rent payable hereunder, except to the extent that Sublandlord actually receives a rent abatement with respect to the Sublease Premises pursuant to the Overlease.

E. Sublandlord shall not be liable to Subtenant for any failure in performance resulting from the failure in performance by Overlandlord under the Overlease of the corresponding covenant of the Overlease (unless due to Sublandlord's default under the Overlease), and Sublandlord's obligations hereunder are accordingly conditional where such obligations require such parallel performance by Overlandlord. Under no circumstances will Sublandlord have any obligation to commence any legal, arbitration or audit proceedings against Overlandlord; utilize any self-help rights; or make any payment of money or other consideration other than as expressly required of Sublandlord under the Overlease.

F. In connection with the incorporation by reference of notice and other time limit provisions of the Overlease into this Sublease (and except with respect to actions to be taken by Subtenant for which shorter time limits are specifically set forth in this Sublease, which time limits shall control for the purposes of this Sublease), the time limits provided in the Overlease for (i) the giving or making of any notice by the tenant thereunder to Overlandlord, the holder of any mortgage, the lessor under any ground or underlying lease, or any other party, (ii) the performance of any act, condition or covenant or the curing of any default by the tenant thereunder or (iii) the exercise of any right, remedy or option by the tenant thereunder are changed for the purposes of this Sublease to be the following (provided that in no event shall the foregoing operate to reduce any period to less than three (3) business days, except that Subtenant shall be obligated to provide Sublandlord notice of any emergency affecting the Sublease Premises promptly upon the occurrence thereof): (a) for all periods of longer than sixty (60) days, to be thirty (30) days shorter than the corresponding period applicable to "Tenant" under the Overlease (so that Sublandlord shall always have at least thirty (30) days within which to give its own notice or performance to Overlandlord), (b) for all periods of less than sixty-one (61) days but longer than fourteen (14) days, to be ten (10) days shorter than the corresponding period applicable to "Tenant" under the Overlease (so that Sublandlord shall always have at least ten (10) days within which to give its own notice or performance to Overlandlord), and (c) for all periods less than fifteen (15) days, to be three (3) days shorter than the corresponding period applicable to "Tenant" under the Overlease (so that Sublandlord shall always have at least three (3) days within which to give its own notice or performance to Overlandlord). Further, wherever any period for notice from "Landlord" to "Tenant" is specified under the Overlease, Sublandlord shall similarly have an additional period of at least seven (7) days within which to give notice to Subtenant under this Sublease.

G. Except as set forth in Paragraph 5(H) below, all of the terms, conditions and provisions contained in the Overlease are incorporated herein as terms and conditions of this Sublease. For purposes of incorporation herein, the terms of the Overlease are subject to the following additional modifications:

1. Wherever the Overlease refers to "Landlord", such references for purposes hereof shall be deemed to refer to Sublandlord.

2. Wherever the Overlease refers to "Tenant", such references for purposes hereof shall be deemed to refer to Subtenant.

3. Wherever the Overlease refers to the "Premises", such references for the purposes hereof shall be deemed to refer to the Sublease Premises.

4. Wherever the Overlease refers to the "Lease", such references for the purposes hereof shall be deemed to refer to this Sublease.

5. Wherever the Overlease refers to the "Lease Term", such references for the purposes hereof shall be deemed to refer to the Term.

6. Wherever the Overlease refers to the "Basic Rent" such references for the purposes hereof shall be deemed to refer to the Fixed Rent.

7. Wherever the Overlease refers to the "Additional Rent", such references for the purposes hereof shall be deemed to refer to the Additional Rent hereunder.

8. Wherever the Overlease refers to the "Scheduled Lease Expiration Date", the "Lease Termination Date" or the "Revised Lease Termination Date", such references for the purposes hereof shall be deemed to refer to the Expiration Date hereunder.

9. Wherever the Overlease refers to a notice, demand, statement, consent, approval or request, or any other communication between the parties thereto, such references for the purposes hereof shall be deemed to refer to a notice described in Subparagraph 11.A of this Sublease.

10. Wherever the Overlease refers to an obligation commencing on the "Fixed Lease Commencement Date" or "Lease Commencement Date", such obligation shall be deemed to commence on the Commencement Date of this Sublease (unless otherwise stated herein).

11. Wherever the Overlease refers to "CC&Rs", such references for the purposes hereof shall be deemed to include the terms of that certain Stormwater Agreement.

12. Wherever there is a requirement to pay the costs and expenses of "Landlord," in connection with (a) approval of plans or drawings or (b) assignment or subleasing, such references for the purposes hereof shall be deemed to refer to Overlandlord only (excepting any reference to attorney's fees or expenses in the event of a dispute).

13. Wherever the Overlease refers to work to be performed by Overlandlord, such obligations to perform work shall not be incorporated as to Sublandlord, and Sublandlord's only obligation hereunder in connection with such work shall be to use commercially reasonable efforts to enforce its rights under the Overlease in relation thereto.

14. Subject to Section 6.B hereof, Sublandlord's sole obligations to Subtenant in connection with Paragraphs 24 and 25 of the Overlease shall be to use commercially reasonable efforts to enforce Sublandlord's rights as Tenant thereunder. In the event that Subtenant is entitled to receive an abatement of rent under the Overlease pursuant to Paragraph 24 or Paragraph 25 of the Overlease, the Rent due hereunder shall be proportionally abated.

H. Notwithstanding anything in this Sublease to the contrary, the following provisions of the Overlease shall not be incorporated in this Sublease by reference: the word "exclusive" from the 3rd recital, Paragraph 2, Paragraph 3, Paragraph 4A, Paragraph 4B, the 8th through 12th sentences of the first full paragraph following subclause (d) of Paragraph 4D, Paragraph 4F, Paragraph 4G, the 1st sentence of Paragraph 5, Paragraph 6A, Paragraph 8(H),the second clause of the 7th sentence of Paragraph 11A, the statement in Paragraph 19A which states "in no event shall Landlord consent to a sub-Sublease"; Paragraph 19C; Paragraph 20, Paragraph 27, Paragraph 28, Paragraph 34, the last paragraph of Paragraph 39, Paragraph 42F, Paragraph 42G excluding the last sentence thereof, Paragraph 43, Paragraph 45, Paragraph 46(F), Paragraph 46(G), Paragraph 46(N), Exhibit E; the First Amendment; Paragraph 1, Paragraphs 3-6, Paragraph 8, and Paragraph 9of the Second Amendment; any and all references to the "Facebook Leases".

I. Notwithstanding anything in this Sublease to the contrary, references in the following provisions of the Overlease, as incorporated into this Sublease, to "Landlord" shall mean "Overlandlord" only: Paragraph 8D, Paragraph 9B, the first paragraph of Paragraph 15, Paragraph 19A(iv), and Paragraph 30.

J. Sublandlord represents that, as of the date hereof, (i) the Overlease annexed hereto asExhibit A and made a part hereof is a true and complete copy of the Overlease, except as to certain redacted or intentionally omitted provisions, which provisions are expressly made inapplicable to Subtenant and the Sublease Premises; (ii) the Overlease is in full force and effect and unmodified except as provided herein; (iii) To Sublandlord's knowledge, there are no defaults by Sublandlord beyond applicable notice and cure periods under the Overlease and Sublandlord has not received any notices of default by Sublandlord from Overlandlord that remain uncured; (iv) to Sublandlord's knowledge, there are no defaults by Overlandlord beyond applicable notice and cure periods under the Overlease; (v) Sublandlord has not received written notice of any material noncompliance with applicable laws and codes affecting the Premises; (v) to the best knowledge of Sublandlord, no Hazardous Materials are present in or about the Sublease Premises and no action, proceeding, or claim is pending or threatened concerning any Hazardous Materials or pursuant to any laws. Notwithstanding anything to the contrary contained herein, Sublandlord hereby agrees and acknowledges that Subtenant shall have no liability, whether by way or monetary or restorative action, to cure any violations of or comply with any applicable laws in

connection with Hazardous Materials that were not in compliance as of the Sublease Commencement Date (except to the extent exacerbated by Subtenant or except to the extent any enforcement is triggered by Subtenant's alterations or Subtenant's particular manner of use of the Sublease Premises). Notwithstanding anything contained in this Sublease or the incorporated provisions of the Overlease, Subtenant shall have no liability or responsibility with respect to any Hazardous Materials existing at the Sublease Premises as of the Effective Date or any Hazardous Materials to the extent that Sublandlord or Sublandlord's agents, employees, contractors, vendors or invitees introduced the same to the Sublease Premises.

6. Sublease Subject to Overlease.

A. Except as specifically provided to the contrary in this Sublease, this Sublease is expressly made subject and subordinate to all the terms and conditions of the Overlease and to all items and matters to which the Overlease is subject and subordinate. Subtenant covenants that Subtenant shall not do any act, matter or thing that will be, result in or constitute a violation or breach of or a default under the Overlease; it being expressly agreed by Subtenant that any such violation, breach or default shall constitute a breach by Subtenant of a substantial obligation under this Sublease. Subtenant hereby agrees that Subtenant shall defend, indemnify and hold Sublandlord harmless from and against all claims (including claims by Overlandlord), liabilities, penalties and expenses, including, without limitation, reasonable attorneys' fees and disbursements, arising from or in connection with any default (beyond any applicable notice and cure period) by Subtenant in Subtenant's performance of those terms, covenants and conditions of the Overlease that are applicable to Subtenant, as stated above; provided, however, that such indemnifications shall not extend to any claims, liabilities, penalties or expenses to the extent arising out of Sublandlord's negligence or willful misconduct or breach or default of this Sublease by Sublandlord. All amounts payable by Subtenant to Sublandlord on account of such indemnity shall be deemed to be Additional Rent hereunder and shall be payable upon demand. Sublandlord hereby agrees that Sublandlord shall defend, indemnify and hold Subtenant harmless from and against all claims (including claims by Overlandlord), liabilities, penalties and expenses, including, without limitation, reasonable attorneys' fees and disbursements, arising from or in connection with any default (beyond any applicable notice and cure period) by Sublandlord in Sublandlord's performance of those terms, covenants and conditions of the Overlease that are applicable to Sublandlord (as modified herein), as stated above; provided, however, that such indemnifications shall not extend to any claims, liabilities, penalties or expenses to the extent arising out of Subtenant's negligence or willful misconduct or breach or default of this Sublease.

B. Provided that Subtenant is not in default hereunder beyond any applicable notice and cure period, and notwithstanding Section 7.C. of Overlandlord's Consent (defined below), Sublandlord agrees not to cause any breach or default by Sublandlord under the Overlease that remains uncured beyond applicable cure periods, or consent to amend, modify or terminate the Overlease in any way that would (i) have a material adverse effect on Subtenant, (ii) materially increase Subtenant's obligations hereunder, shorten the term hereof or materially decrease Subtenant's rights with respect to the Sublease Premises or (iii) otherwise have a material adverse effect on Subtenant's rights or obligations hereunder or permit this Sublease to be canceled or terminated, without Subtenant's prior written consent (each, a "Prohibited Termination or Amendment"), provided that Sublandlord may, without the consent of Subtenant, terminate the Overlease provided that Overlandlord permits Subtenant to attorn to Overlandlord directly on the

terms and conditions of this Sublease without any shortening of the term of this Sublease. If the Overlease is terminated for any reason, this Sublease shall be deemed terminated effective as of the date of the termination of the Overlease (and any provisions of this Sublease that survive the termination hereof shall survive). For the avoidance of doubt, a termination of the Overlease as a result of the default by Sublandlord thereunder (including, but not limited to, pursuant to Section 45 of the Overlease) shall terminate this Sublease and shall be a Prohibited Termination or Amendment. A Prohibited Termination or Amendment shall be deemed a material default of Sublandlord hereunder and entitle Subtenant to make a claim for damages to the extent otherwise permitted hereunder, which damages may include, without limitation (a) any holdover rent assessed by Overlandlord pursuant to the Overlease, (b) the difference between the rent due hereunder and rent due under the Overlease or under any replacement lease (applicable to the period from the date of termination of this Sublease to the scheduled expiration date of this Sublease), and (c) the out-pocket cost to Subtenant of constructing tenant improvements in a new location, to the extent amortized over the period from the date of termination of this Sublease to the scheduled expiration date of this Sublease, provided in each event that Subtenant shall (other than with respect to a Prohibited Termination or Amendment) use commercially reasonable efforts to mitigate damages).

7. Assignment and Subletting.

A. Subtenant, on its own behalf and on behalf of its heirs, distributees, executives, administrators, legal representatives, successors and assigns, covenants and agrees that Subtenant shall not, by operation of law or otherwise, (i) assign, whether by merger, consolidation or otherwise, mortgage or encumber its interest in this Sublease, in whole or in part, (ii) sublet, or permit the subletting of, the Sublease Premises or any part thereof or (iii) permit the Sublease Premises or any part thereof to be occupied or used for desk space or for mailing privileges or otherwise, in each case, by, to or with any person or entity other than Subtenant without complying with the provisions of Paragraph 19 of the Overlease and obtaining the prior written consent of (1) Sublandlord, which shall not be unreasonably withheld, conditioned or delayed provided Subtenant is not in default hereunder beyond any applicable notice and cure periods and Overlandlord shall have provided its consent, and (2) Overlandlord, to be granted or withheld in accordance with Paragraph 19 of the Overlease as incorporated herein. Without limiting the foregoing, Sublandlord shall have the same rights and options available to it under this Sublease that Overlandlord has under Paragraph 19 of the Overlease. For the avoidance of doubt the parties agree that Sublandlord (and Overlandlord) are required to provide consent to an assignment resulting from a Permitted Transfer if the requirements of Section 19.E(i)(a) and (c) (excluding (b)) of the Overlease are met, as described in Overlandlord's Consent. Any violation of the provisions of this Paragraph 7 by Subtenant shall constitute a default under this Sublease.

B. Subtenant shall reimburse Sublandlord as Additional Rent for all actual, reasonable out-of-pocket costs (including, without limitation, all reasonable legal fees and disbursements, as well as the costs of making investigations as to the acceptability of the proposed assignee or subtenant and any and all costs payable by Sublandlord to Overlandlord) incurred by Sublandlord in connection with a request by Subtenant that Sublandlord and/or Overlandlord consent to any proposed assignment or sublease.

C. Any attempted assignment or subletting made contrary to the provisions of this Paragraph 7 shall be null and void. Notwithstanding any assignment or subletting, Subtenant shall remain fully liable for the payment of Rent due and to become due hereunder and the performance of all of Subtenant's other obligations under this Sublease. In no event will Subtenant have any right to sub-sublease the Sublease Premises or assign this Sublease if any default has occurred hereunder and remains uncured. No consent by Sublandlord or Overlandlord to any assignment or subletting shall in any manner be considered to relieve Subtenant from obtaining Sublandlord's and Overlandlord's express written consent to any further assignment or subletting. The provisions of this Paragraph 7 shall apply to each and every assignment or sublease that Subtenant proposes to enter into during the Term. For the purposes of this Paragraph 7, "sublettings" shall be deemed to include all sub-sublettings as well as sublettings.

8. Insurance.

A. Subtenant shall, at its own cost and expense, obtain, maintain and keep in force, from and after the Effective Date, for the benefit of Sublandlord, Overlandlord and such other parties as are named in the Overlease, all insurance that "Tenant" is required to maintain pursuant to the Overlease with respect to the Sublease Premises and/or the common areas.

B. Sublandlord, Overlandlord and such other parties as are required to be named pursuant to the Overlease shall be named as additional insureds in said policies and shall be protected against all liability occasioned by an occurrence insured against. All of said policies shall satisfy all requirements set forth in the Overlease. Subtenant shall deliver to Sublandlord certificates of insurance evidencing compliance with the requirements hereof prior to the Commencement Date and thereafter upon Sublandlord's request. Subtenant will furnish to Sublandlord, prior to expiration of any policy of insurance required to be carried hereunder a new certificate evidencing continued coverage in compliance with the requirements hereof.

C. Subtenant shall pay all premiums and charges for all of said policies, and, if Subtenant shall fail to make any payment when due or carry any such policy, Sublandlord may, upon two (2) business days' notice to Subtenant, but shall not be obligated to, make such payment or carry such policy, and the amount paid by Sublandlord, with interest thereon at the maximum legal rate of interest from the date of such payment or the issuance of such policy, shall be repaid to Sublandlord by Subtenant on demand, and all such amounts so repayable, together with such interest, shall be deemed to constitute Additional Rent hereunder. Payment by Sublandlord of any such premium, or the carrying by Sublandlord of any such policy, shall not be deemed to waive or release the default of Subtenant with respect thereto.

D. Subtenant's insurance required hereunder shall be primary to the insurance of Sublandlord in all respects. Subtenant shall cause its insurer to issue any endorsements required to cause such insurance to be primary to that of Sublandlord.

E. Sublandlord and Subtenant waive and release each other, and the agents, employees and contractors of each other, for any loss or damage sustained to each other to the extent such claims are covered by insurance policies in place under this Sublease (or to the extent such claims would have been covered by an insurance policy which the waiving party was required to obtain and maintain hereunder but did not obtain or maintain). Each party waives the right of

subrogation as to the other as to damages to the extent such claims are covered by insurance (or to the extent such claims would have been covered by an insurance policy which the waiving party was required to obtain and maintain hereunder but did not obtain or maintain, and both Sublandlord and Subtenant shall each cause its property insurance policy to contain a waiver of subrogation clause as to the other as to damages and as otherwise required by the Overlease.

F. Subtenant acknowledges and agrees that security devices and services at the Building, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Sublandlord is not providing any security services with respect to the Sublease Premises. Subtenant agrees that Sublandlord shall not be liable to Subtenant for, and Subtenant waives any claim against Sublandlord with respect to, any loss by theft or any other damage suffered or incurred by Subtenant in connection with any unauthorized entry into the Sublease Premises or any other breach of security with respect to the Sublease Premises, except to the extent (i) caused by the conduct of Sublandlord, its agents or employees and (ii) as a result thereof, insurance coverage is not available. Subtenant shall be solely responsible for the personal safety of Subtenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Sublease Premises and/or the Building. Subtenant may, at Subtenant's cost, obtain insurance coverage to the extent Subtenant desires protection against such criminal acts.

9. Brokerage.

Each of Subtenant and Sublandlord represents and warrants to the other that no broker other than Jones Lang LaSalle and Savills (collectively, the "Brokers") was instrumental in consummating this Sublease, and that no conversations or prior negotiations were had with any other broker concerning the subletting of the Sublease Premises. Each of Subtenant and Sublandlord shall indemnify and hold harmless the other from and against any claims for brokerage commissions or similar fees claimed by any person or entity (other than the Brokers) in connection with this Sublease. Sublandlord shall pay the Brokers their commission (if any) pursuant to separate agreement.

10. Assignment of the Overlease.

The term "Sublandlord" as used in this Sublease means only the tenant under the Overlease, at the time in question, so that if Sublandlord's interest in the Overlease is properly assigned in accordance with the Overlease, Sublandlord shall be thereupon released and discharged from all covenants, conditions and agreements of Sublandlord hereunder accruing with respect to the Overlease from and after the date of such assignment, but such covenants, conditions and agreements shall be binding on the assignee until thereafter assigned.

11. Notices.

A. All notices hereunder to Sublandlord or Subtenant shall be given in writing and delivered by hand or national overnight courier, or mailed by certified or registered mail, return receipt requested, to the addresses set forth below:

If to Sublandlord:

Meta Platforms, Inc.
1 Hacker Way
Menlo Park, CA 94025
Attn: Director of Real Estate

Meta Platforms, Inc.
1 Hacker Way
Menlo Park, CA 94025
Attn: Real Estate Counsel
Email: recelegal@fb.com

If to Subtenant:

Prior to the Commencement Date:

CymaBay Therapeutics, Inc.
7575 Gateway Blvd., Suite 110
Newark, CA 94560
Attn: SVP, Business Development

CymaBay Therapeutics, Inc.
7575 Gateway Blvd., Suite 110
Newark, CA 94560
Attn: General Counsel

After the Commencement Date:

At the Sublease Premises
Attn: SVP, Business Development

And:

At the Sublease Premises
Attn: General Counsel

At all times with a copy to:

Cooley LLP
55 Hudson Yards
New York, New York 10001
Attn: Daniel A. Goldberger
Email: dgoldberger@cooley.com

B. By notice given in the aforesaid manner, either party hereto may notify the other as to any change as to where and to whom such party's notices are thereafter to be addressed.

C. The effective date of any notice shall be the date such notice is delivered (or the date that such receipt is refused, if applicable).

12. Binding Effect.

The covenants, conditions and agreements contained in this Sublease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns (to the extent permitted hereunder).

13. Condition of the Sublease Premises.

A. It is understood and agreed that all understandings and agreements heretofore had between the parties are merged in this Sublease, which alone fully and completely expresses their agreements, and that the same are entered into after full investigation. Neither party is relying upon any statement or representation made by the other and not embodied in this Sublease. Notwithstanding anything to the contrary contained in the Overlease, Subtenant acknowledges that Subtenant has inspected the Sublease Premises and agrees to accept possession of the Sublease Premises in "as is, where is and with all faults" condition as of the Effective Date and Sublandlord is not required to perform work of any kind, nature or description to prepare the Sublease Premises for Subtenant's occupancy, or, subject to Paragraph 16C, make any contribution for work to be performed by Subtenant. In the event any Building systems serving the Sublease Premises installed by Sublandlord are not in good operating order and repair when the Sublease Premises are delivered to Subtenant, then, Sublandlord shall make or cause to be made such necessary repairs to such Building systems, at Sublandlord's sole cost without the inclusion of such costs as Additional Rent or Sublease Operating Expenses, provided that Subtenant has notified Sublandlord of the need to repair such Building systems within ninety (90) days after the Commencement Date.

B. Subtenant acknowledges and agrees that any and all alterations, installations, renovations or other items of work necessary to prepare the Sublease Premises for Subtenant's initial occupancy shall be performed by Subtenant (subject to the provisions of Paragraph 15 below and the applicable provisions of the Overlease), at Subtenant's sole cost and expense, and, except as otherwise expressly set forth herein, Subtenant releases all rights, liabilities, and claims against Sublandlord in connection with the condition of the Sublease Premises, the Premises, or the Building (or any system serving the same).

C. Within thirty (30) days following the Effective Date, Subtenant will deliver to Sublandlord a list of (i) any items of gym equipment currently located at the gym at the Project ("Gym Items") and (ii) any furniture, fixtures and equipment currently located within the Sublease Premises (collectively with the Gym Items, the "FF&E") which Subtenant desires to use at and within the Sublease Premises for Sublandlord's reasonable consent. Following Sublandlord's agreement to the list of FF&E, Subtenant, at no additional cost to Subtenant, may use such FF&E during the term of this Sublease. Subtenant specifically acknowledges that Sublandlord shall have no obligation to alter, maintain, repair, dis-assemble, re-assemble, move or install any FF&E, and Subtenant accepts the FF&E in its "as-is, where-is and with all faults" condition without representation, warranty or liability of any kind by Sublandlord. From and after the Commencement Date, Subtenant, at Subtenant's sole cost and expanse, shall be responsible for

maintenance, repair and operation of the FF&E. In the event that Subtenant desires to dispose of any FF&E during the Term, Subtenant shall provide notice thereof to Sublandlord and Sublandlord shall, within ten (10) business days following such notice either (a) consent to Subtenant's disposal of such FF&E or (b) notify Subtenant that Sublandlord desires to remove such FF&E. Sublandlord's failure to either (x) timely notify Subtenant that Sublandlord consents to Subtenant's disposal of the applicable FF&E or that Sublandlord desires to remove the applicable FF&E or (y) remove the applicable FF&E within twenty (20) days following Subtenant's notice shall be deemed Sublandlord's consent to Subtenant's disposal of the applicable FF&E. Any FF&E provided to Subtenant is at Subtenant's sole risk and responsibility, and Subtenant hereby waives and releases any and all claims against Sublandlord in connection with any FF&E. Upon expiration or the sooner termination of this Sublease, at Subtenant's option, Subtenant shall either (i) leave the remaining FF&E at the Sublease Premises in its "as-is, where-is and with all faults" condition, or (ii) purchase the remaining FF&E from Sublandlord for the consideration of $1, without warranty or representation of any kind, and remove the same from the Sublease Premises. The total number of Gym Items shall be a reasonable number and shall not be a majority of the items of gym equipment located in the gym at the Project. Subtenant, at Subtenant's sole cost and expense, shall move the agreed Gym Items to the Sublease Premises within two months following the Commencement Date, provided that Subtenant shall schedule the moving of such equipment with Sublandlord in advance and shall be solely responsible for any damage to such equipment, the Premises, the gym, or any other portion of the Project caused by Subtenant in connection with moving such equipment. Subtenant shall not have any right to move the Gym Items to any location other than the Sublease Premises.

14. End of Term.

A. Upon the expiration or sooner termination of this Sublease, Subtenant shall vacate and surrender the Sublease Premises in good condition and repair, reasonable wear and tear and casualty excepted, with all furniture (other than the FF&E unless elected by Subtenant to purchase pursuant to Paragraph 13(C)(ii) above), moveable trade fixtures, improvements and any other personal property of Subtenant and, subject to the terms hereof, all Subtenant's Alterations (as defined below) removed and all damage caused by such removal repaired. Without limiting the foregoing, Subtenant shall forthwith repair any damage to the Sublease Premises caused by any removal from the Sublease Premises of any Subtenant's Alterations or of any of Subtenant's furniture, moveable trade fixtures, improvements or other property so removed from the Sublease Premises. Notwithstanding the foregoing, Sublandlord shall not require the removal or restoration of any of Subtenant's Alterations, except if and to the extent that Overlandlord shall require the removal or restoration thereof pursuant to the terms of the Overlease, in which case Subtenant shall remove and restore the same. Notwithstanding anything herein to the contrary, upon the expiration or earlier termination of this Sublease, in no event shall Subtenant be required to remove or restore (i) any alterations or improvements existing in the Sublease Premises as of the Commencement Date (including without limitation, any charging stations); (ii) restore the Sublease Premises to any condition existing prior to the Commencement Date.

B. The parties recognize and agree that the damage to Sublandlord resulting from any failure by Subtenant to timely surrender possession of the Sublease Premises as required by this Sublease will be substantial and will exceed the amount of the monthly installments of the Fixed Rent payable hereunder. Subtenant therefore agrees that if possession of the Sublease

Premises is not surrendered to Sublandlord in accordance with the terms of this Sublease on the Expiration Date, or sooner termination of this Sublease, in addition to any other right or remedy Sublandlord may have hereunder or at law or in equity, Subtenant shall pay to Sublandlord for each month (or portion thereof) during which Subtenant holds over in the Sublease Premises after the Expiration Date, or sooner termination of this Sublease, a sum equal to one and one-half (1.5) times the Fixed Rent, and one hundred percent (100%) of the Additional Rent that was payable under this Sublease with respect to the last full month of the Term. In addition to making all required payments under this Subparagraph 14(B), Subtenant shall, in the event of Subtenant's failure to surrender the Sublease Premises, also indemnify and hold Sublandlord harmless from and against any and all cost, expense, damage, claim, loss or liability resulting from any delay or failure by Subtenant in so surrendering the Sublease Premises, including any consequential damages suffered by Sublandlord by reason of claims made by Overlandlord, and any and all reasonable attorneys' fees, disbursements and court costs incurred by Sublandlord in connection with any of the foregoing. Nothing herein contained shall be deemed to permit Subtenant to retain possession of the Sublease Premises after the Expiration Date, or sooner termination of this Sublease, and no acceptance by Sublandlord of payments from Subtenant after the Expiration Date, or sooner termination of this Sublease, shall be deemed to be other than on account of the amount to be paid by Subtenant in accordance with the provisions of this Paragraph 14, which provisions shall survive the Expiration Date, or sooner termination of this Sublease.

C. To the extent of any inconsistency between the provisions of the Overlease and the provisions of thisParagraph 14, the provisions of this Paragraph 14 shall control.

15. Parking. Subtenant and its employees, and invitees shall have, during the Term hereof, an exclusive license to use all of the parking spaces which may now or from time to time be located within the parking area of the Parcel as outlined in Green on Exhibit A to the Overlease at no additional cost to Subtenant, subject any reasonable rules and regulations provided to Tenant in writing governing use set forth in the Overlease or as promulgated from time to time by Overlandlord, as applicable, with the exception of any handicap parking spaces on the Parcel, which handicap spaces Subtenant shall have the non-exclusive right to use in common with other occupants of the Project. Subtenant acknowledges and agrees that Sublandlord shall have the right to restripe the parking area of the Parcel and relocate the drive aisles located thereon from time to time and that, as a result of such restriping the actual number of parking spaces located on the Parcel is subject to change. Notwithstanding the foregoing, in no event may Sublandlord restripe or modify the parking area of the Parcel in a manner that would reduce the number of parking spaces available to Subtenant (other than to a de minimis extent), except to the extent required by law. Subtenant shall have the exclusive right to use the charging stations located in front of the Premises, provided that Subtenant enters into an agreement with the operator of such charging stations ("**Charging Operator**") in connection with the operation thereof and pays any and all fees of Charging Operator in connection with such charging stations. Sublandlord shall have no liability hereunder for any failure of Charging Operator to operate or maintain the charging stations, and Subtenant shall look solely to Charging Operator in the event of any claims in connection with such charging stations.

16. Subtenant's Alterations.

A. Any and all Alterations proposed to be made by Subtenant (hereinafter collectively referred to as 'Subtenant's Alterations") in the Sublease Premises shall be subject to (i) Overlandlord's prior written consent in accordance with the provisions of the Overlease and (ii) Sublandlord's prior written consent, which shall not be unreasonably withheld, provided Overlandlord has consented to such Alteration. In any instance where Overlandlord shall withhold consent to a Subtenant's Alteration, then Sublandlord's consent to such Subtenant's Alteration shall be deemed withheld.

B. Sublandlord shall not charge Subtenant a fee for reviewing Subtenant's plans for any proposed Subtenant's Alterations, provided, however, Subtenant shall reimburse Sublandlord on demand for (a) all costs payable by Sublandlord to Overlandlord in connection with a request by Subtenant that Sublandlord and/or Overlandlord consent to any proposed Subtenant's Alterations and (b) all reasonable out-of-pocket costs (including, without limitation, all reasonable legal fees and disbursements) incurred by Sublandlord in connection with a request by Subtenant that Sublandlord review and consent to any plans for proposed Subtenant Alterations, not to exceed Five Thousand and No/Dollars ($5000.00) excluding the costs of any engineer review.

C. Subject to the terms of this Paragraph 16, Sublandlord shall reimburse Subtenant an amount (the "Sublease Improvement Allowance") equal to the lesser of (x) actual hard and soft out-of-pocket costs incurred by Subtenant in connection with the design and construction of Subtenant's improvements to the Sublease Premises (the "Subtenant Work") or (y) $786,240.00 (calculated as $15.00 per each of 52,416 rentable square feet). Sublandlord's obligations to pay all or any portion of the Sublease Improvement Allowance shall be conditioned upon (1) Sublandlord's inspection and approval of the Subtenant Work and (2) Sublandlord's receipt of written notice (which notice shall be accompanied by invoices and documentation set forth below) from Subtenant that the Subtenant Work (or portion thereof) has been completed. Sublandlord shall pay the Sublease Improvement Allowance to Subtenant within thirty (30) days following Sublandlord's receipt of (i) third-party invoices for costs incurred by Subtenant in designing or constructing the Subtenant Work (or portion thereof); (ii) evidence that Subtenant has paid the invoices for such costs; and (iii) lien waivers from any contractor or supplier who has constructed or supplied materials for the Subtenant Work (or portion thereof); provided that in no event shall Sublandlord be required to pay the Sublease Improvement Allowance to Subtenant more frequently than once per month. If the costs incurred by Subtenant in constructing the Subtenant Work exceed the amount of the Sublease Improvement Allowance to which Subtenant is entitled, then Subtenant shall pay all such excess costs. Subtenant agrees to keep the Sublease Premises and the Property free from any liens arising out of the non-payment of such costs. All installations and improvements now or hereafter placed in the Sublease Premises shall be for Subtenant's account and at Subtenant's cost, subject to Subtenant's right to receive the Sublease Improvement Allowance pursuant to the terms and conditions of this Paragraph 16. Subtenant shall pay ad valorem taxes and increased insurance thereon or attributable thereto, which cost shall be payable by Subtenant to Sublandlord as Additional Rent within thirty (30) days after receipt of an invoice therefor. Subtenant's failure to pay such cost shall constitute a default under the Sublease.

D. Sublandlord's obligation to pay the Sublease Improvement Allowance shall arise on the Commencement Date and continue until [***]. Any portion of the Sublease

Improvement Allowance not requested by Subtenant on or before the Sunset Date (as may be extended) shall be forfeited with no further obligation on the part of Sublandlord. Notwithstanding the foregoing or anything to the contrary in this Sublease, in no event shall Sublandlord have any obligation to pay the Sublease Improvement Allowance unless and until Sublandlord delivers the Sublease Premises to Subtenant. Notwithstanding anything in this Sublease or the Overlease to the contrary, in no event shall Sublandlord be required to pay any portion of the Sublease Improvement Allowance during the continuance of an event of default (beyond any applicable notice and cure periods) hereunder.

E. Subtenant hereby assumes any and all risks involved with respect to the Subtenant Work and hereby releases and discharges Sublandlord and all Landlord Parties from any and all liability or loss, damage or injury suffered or incurred by Subtenant or third parties in any way arising out of or in connection with the Subtenant Work except to the extent caused by the negligence or willful misconduct of Sublandlord.

F. As used herein, "Force Majeure" means of acts of God, sinkholes or subsidence, region-wide or nationwide strikes, lockouts, or other labor disputes, region-wide or nationwide embargoes, quarantines, extreme weather, national, regional, or local disasters, calamities, or catastrophes, governmental actions (including, without limitation, public health directives), governmental restrictions, orders, limitations, regulations, or controls, national emergencies, local, regional or national epidemic or pandemic, enemy or hostile governmental action, terrorism, insurrection, riots, civil disturbance or commotion, fire or other casualty, in each event to the extent beyond Subtenant's reasonable control. If Subtenant contends that Force Majeure has occurred, then Subtenant shall notify Sublandlord in writing (a "Force Majeure Notice"). A Force Majeure Notice shall identify (a) the action, inaction or circumstance which constitutes such Force Majeure, (b) the date upon which the Subtenant contends such Force Majeure commenced, along with reasonable evidence thereof, (c) the date upon which such Force Majeure is anticipated to end if and to the extent Subtenant is reasonably able to make such determination, and (d) a description of all steps that the Subtenant is taking or intends to take to mitigate the effects and reduce the duration of such Force Majeure.

G. To the extent of any inconsistency between the provisions of the Overlease and the provisions of thisParagraph 16, the provisions of this Paragraph 16 shall control.

17. Rules and Regulations.

Subtenant shall, and shall use commercially reasonable efforts to cause all of Subtenant's agents, employees, licensees and invitees to, fully and promptly comply with all requirements of Overlandlord's rules and regulations of the Building and related facilities, as may be changed from time to time and which are provided to Subtenant in writing.

18. No Recording.

Neither party shall have the right to record this Sublease, and the same shall not be recorded.

19. Waiver of Trial by Jury.

The respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other in connection with any matters whatsoever arising out of or in any way connected with this Sublease, the relationship of Sublandlord and Subtenant, or Subtenant's use or occupancy of the Sublease Premises, or for the enforcement of any remedy under any statute, emergency or otherwise. If Sublandlord commences any summary proceeding against Subtenant, Subtenant will not interpose any counterclaim of whatever nature or description in any such proceeding (unless failure to impose such counterclaim would preclude Subtenant from asserting in a separate action the claim that is the subject of such counterclaim) and will not seek to consolidate such proceeding with any other action that may have been or will be brought in any other court by Subtenant.

20. Miscellaneous.

This Sublease is made in the State of California and shall be governed by and construed under the laws thereof. This Sublease supersedes any and all other or prior understandings, agreements, covenants, promises, representations or warranties of or between the parties (which are fully merged herein). The headings in this Sublease are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Whenever necessary or appropriate, the neuter gender as used herein shall be deemed to include the masculine and feminine; the masculine to include the feminine and neuter; the feminine to include the masculine and neuter; the singular to include the plural; and the plural to include the singular. This Sublease may be executed in counterparts that, when assembled, shall form one document, and signatures executed via facsimile, .pdf or electronic signature shall have the same force and effect as originals.

21. Damage or Destruction.

A. Subtenant shall be entitled to a rent abatement as a result of all or a portion of the Sublease Premises being damaged or rendered untenantable by fire or other casualty, solely to the extent Sublandlord, as tenant under the Overlease, actually receives a rent abatement with respect to such damaged portion of the Sublease Premises pursuant to the terms of the Overlease, it being understood and agreed that Subtenant shall not be entitled to any abatement under this Sublease if the abatement granted to Sublandlord under the Overlease is on account of any portion of the Premises that is not part of the Sublease Premises.

B. Sublandlord's sole obligation with respect to delivering any notice, statement and/or estimate required by the Overlease shall be limited to the obligation to deliver to Subtenant a copy of any such notice, statement or estimate prepared by or on behalf of Overlandlord (which relates to the Sublease Premises), if and to the extent the same are received by Sublandlord from Overlandlord.

C. Subtenant acknowledges and agrees that any and all obligations of "Landlord" described in the Overlease to repair or pay the cost of repairs in the event of a fire or other cause shall be the obligation of Overlandlord (and not of Sublandlord).

D. To the extent of any inconsistency between the provisions of the Overlease and the provisions of thisParagraph 21, the provisions of this Paragraph 21 shall control.

22. Sublandlord's Remedies. If Subtenant fails to pay any sum of money under this Sublease, or fails to perform any other act on its part to be performed hereunder, which failure remains uncured beyond any applicable notice and cure periods, then, in addition to the remedies available to Sublandlord at law, in equity or under the Overlease, as incorporated herein (including without limitation Paragraph 22 and Paragraph 31 of the Overlease), Sublandlord may, but shall not be obligated to, after passage of any applicable notice and cure periods, make such payment or perform such act. All such sums paid, and all reasonable costs and expenses of performing any such act, shall be payable by Subtenant to Sublandlord upon demand, together with interest thereon the same rate and in the same manner as provided in Paragraph 18 of the Overlease from the date of the expenditure until repaid.

23. Subtenant's Remedies.

Except as otherwise expressly set forth in, and limited by, the terms of this Sublease, Subtenant hereby waives and relinquishes any and all rights that Subtenant may have to terminate this Sublease or to withhold Rent for any reason whatever, including, without limitation on account of any default by Sublandlord of its obligations under this Sublease or any damage to, or condemnation, destruction or state of disrepair of, the Sublease Premises (specifically including, but not limited to, those rights under California Civil Code Sections 1932, 1933(4), 1941, 1941.1 and 1942). Except as otherwise expressly set forth herein, Subtenant's sole remedy for a breach of this Sublease shall be limited to an action for damages, injunctive relief or specific performance of this Sublease. Under no circumstances shall Sublandlord be liable for special damages, indirect damages or other consequential damages, including, without limitation, injury to Subtenant's business or for any loss of income or profit therefrom.

Notwithstanding the foregoing, in the event that Sublandlord defaults in the performance or observance of any of Sublandlord's remaining obligations under the Overlease or fails to perform Sublandlord's stated obligations under this Sublease, then Subtenant may give Sublandlord notice specifying in what manner Sublandlord has defaulted, and if such default shall not be cured by Sublandlord within thirty (30) days thereafter (except that if such default cannot be cured within said thirty (30) day period, this period shall be extended for an additional reasonable time, provided that Sublandlord commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure as quickly as possible), then [***]. Sublandlord shall promptly send to Subtenant copies of all notices and other communications it shall send to and receive from Overlandlord with regard to the Premises, the Overlease or this Sublease to the extent the same are not confidential.

24. Valid Authority.

Each of Subtenant and Sublandlord hereby represents and warrants as to itself:

A. It is duly organized, validly existing and in good standing under the laws of Delaware, and has the full right and authority to enter into this Sublease;

B. The execution, delivery and performance of this Sublease (i) have been duly authorized, (ii) do not conflict with any provisions of any instrument to which it is a party or by which it is bound and (iii) constitute its valid, legal and binding obligation;

C. Subject to receipt of Overlandlord's consent, it has the right and power to execute and deliver this Sublease and to perform its obligations hereunder; and

D. It is authorized to conduct business in the state where the Sublease Premises are located.

25. Omitted.

26. Security.

A. Provided this Sublease has been fully executed by Sublandlord and Subtenant, within two (2) business days of receipt of Overlandlord's Consent (defined below), Subtenant shall deliver to Sublandlord a letter of credit in the amount of [***] (the "Initial Letter of Credit"), as security for the payment and performance by Subtenant of all Subtenant's obligations, covenants, conditions and agreements under this Sublease, subject to the terms and conditions of this Section 26. The Initial Letter of Credit shall be in the form attached hereto as Exhibit E, and (i) shall be issued by a branch of Wells Fargo Bank, N.A., located in the County of San Francisco or County of San Mateo, California and (ii) shall provide for automatic annual extensions unless the issuer provides at least forty-five (45) calendar days prior written notice that it elects not to extend.

B. The following requirements (collectively, "Letter of Credit Requirements") shall apply to all letters of credit that replace the Initial Letter of Credit (each, a "Replacement Letter of Credit", and collectively with the Initial Letter of Credit, a "Letter of Credit"):

1. The Replacement Letter of Credit shall be in the form of the Initial Letter of Credit or, if Subtenant desires to use a different form, Subtenant shall submit a proposed sample of each Replacement Letter of Credit to Sublandlord at least ten (10) days prior to the date that Subtenant is required to deliver the Replacement Letter of Credit to Sublandlord under the terms of this Sublease for Sublandlord's review and approval in its reasonable discretion. Any submission of a proposed sample Replacement Letter of Credit to Sublandlord shall include the name and contact information of a bank officer at the proposed issuer. Subtenant authorizes Sublandlord to contact and negotiate with the proposed issuing bank regarding any proposed Replacement Letter of Credit.

2. The issuer of the Replacement Letter of Credit shall be a solvent U.S. bank or financial institution under the supervision of the Superintendent of Banks of the State of California or a National Banking Association having a long-term senior debt rating of not less than "BBB+" Rating from at least one major credit rating agency and having a full-service branch located in the County of San Francisco or San Mateo, California, capable of honoring the presentation of a sight draft on any business day or which provides for draw elsewhere by facsimile and/or overnight courier presentation of sight drafts.

3. The Replacement Letter of Credit shall be automatically unconditionally renewable on an annual basis with an initial expiration of approximately one (1) year after the date of this Sublease, subject to a final expiry date that is one hundred eighty (180) days after the expiration date of this Sublease.

4. The Replacement Letter of Credit shall be irrevocable by Subtenant.

5. The Replacement Letter of Credit shall name Sublandlord as sole beneficiary.

6. The Replacement Letter of Credit shall incorporate and shall be interpreted using International Standby Practices 1998 (ISP98), International Chamber of Commerce Publication No. 590.

7. The Replacement Letter of Credit shall permit full or partial draws at any time, and from time to time, by a representative of Sublandlord, without condition. Subtenant shall be solely responsible for any fees or charges incurred by Sublandlord in drawing on any Letter of Credit.

8. Subtenant shall, at its sole cost and expense, cooperate with Sublandlord and take such actions as Sublandlord may request to replace any lost, stolen or mutilated Letter of Credit. Subtenant hereby grants Sublandlord the power, coupled with an interest, to cause the issuer to replace a lost, stolen or mutilated Letter of Credit. Any Replacement Letter of Credit shall be otherwise acceptable to Sublandlord in its reasonable discretion.

C. If there is an Event of Default on the part of Subtenant under this Sublease, Sublandlord may, but without obligation to do so, draw upon the Letter of Credit, in part or in whole, to cure any Event of Default of Subtenant and/or to compensate Sublandlord for any and all damages of any kind or nature sustained or which may be sustained by Sublandlord resulting from such Event of Default. Subtenant agrees not to interfere in any way with payment to Sublandlord of the proceeds of the Letter of Credit, either prior to or following a "draw" by Sublandlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Subtenant and Sublandlord as to Sublandlord's right to draw from the Letter of Credit. No condition or term of this Sublease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a drawing upon such Letter of Credit in a timely manner.

D. If, at any time, any Letter of Credit shall fail to satisfy the Letter of Credit Requirements or if the issuer shall send a notice of non-renewal, then within thirty (30) days from Sublandlord's demand, but in no event later than ten (10) business days prior to the then-current expiration date, Subtenant shall replace the Letter of Credit with a Replacement Letter of Credit that satisfies the Letter of Credit Requirements. If Subtenant fails to timely replace the Letter of Credit with a Replacement Letter of Credit as set forth above, then (i) Sublandlord shall have the right to draw down the full amount of the Letter of Credit or to demand from Subtenant a cash security deposit in the full amount of the Letter of Credit and (ii) at the sole and absolute option of Sublandlord, an Event of Default shall be deemed to have occurred on the part of Subtenant under this Sublease.

E. With respect to any Letter of Credit, Subtenant acknowledges, covenants, warrants and agrees as follows: (i) Subtenant is not a third-party beneficiary of the Letter of Credit,

(ii) Subtenant shall not assign or encumber all or any part of the Letter of Credit, and neither Sublandlord nor its successors and assigns shall be bound by any assignment or encumbrance by Subtenant, (iii) when making a draw request, Sublandlord shall not be required to produce or present to the issuer any documents, instruments or certificates, other than as expressly set forth in the Letter of Credit, and shall not be required to produce or present any copies or other documents regarding the draw request to Subtenant, (iv) Subtenant shall not take any action or fail to take any action which might, directly or indirectly, interfere with or delay the presentation or honoring of a sight draft and (v) Subtenant shall, at its sole cost and expense, cooperate with Sublandlord and take such actions as Sublandlord may request with respect to the Letter of Credit, including (a) notifying Sublandlord if Subtenant has knowledge that any Letter of Credit no longer satisfies the Letter of Credit Requirements, (b) using best efforts to cause the issuance of a Replacement Letter of Credit if required pursuant to any provision of this Sublease and (c) delivering any amendments, modifications, documents, certificates or affidavits requested by Sublandlord to give effect to the provisions of this Paragraph 26.

F. In the event of any transfer of Sublandlord's interest in the Sublease Premises, if requested by any such transferee, Subtenant shall obtain an amendment to the Letter of Credit that names such transferee as the beneficiary thereof in lieu of Sublandlord. Except in connection with a permitted assignment of this Sublease, Subtenant shall not assign or encumber or attempt to assign or encumber any Letter of Credit and Sublandlord shall not be bound by any such assignment, encumbrance or attempted assignment or encumbrance.

G. On the third anniversary of the Commencement Date (or, if as of the third anniversary of the Commencement Date a material non-monetary default on the part of Subtenant exists but is thereafter cured, then as of the date of such cure), provided (a) that no materialnon-monetary default on the part of Subtenant then exists, (b) no monetary default on the part of Subtenant then exists or has previously existed hereunder (regardless of whether the same has been cured) and (c) that Subtenant has provided a Replacement Letter of Credit (or amendment to the then-existing Letter of Credit) in the amount of [***] (which Replacement Letter of Credit or amendment to the then-existing Letter of Credit, as applicable, shall conform with the terms of this Section 26), the Letter of Credit then being held by Sublandlord shall be returned to Subtenant (and Sublandlord shall cooperate, as reasonably requested by the issuing bank, in causing the termination of the Letter of Credit or permitting an amendment to the Letter of Credit, as applicable).

H. Provided that no monetary or material non-monetary default on the part of Subtenant then exists hereunder the Letter of Credit then being held by Sublandlord shall be returned to Subtenant after the expiration or termination of this Sublease and the surrender of the Sublease Premises to Sublandlord in accordance herewith (and Sublandlord shall cooperate, as reasonably requested by the issuing bank, in causing the termination of the Letter of Credit). The provisions of this Section 26(H) shall survive the expiration or termination of this Sublease.

27. Consent of Overlandlord under the Overlease.

Except for Paragraph 29 below, this Sublease shall have no effect unless and until Overlandlord shall have given written consent hereto ("Overlandlord's Consent"). If Overlandlord does not consent to this Sublease for any reason whatsoever within forty-five (45) days after the

date hereof, then either Sublandlord or Subtenant may elect to cancel this Sublease by giving notice to the other party after the expiration of said forty-five (45)-day period, but prior to the giving of said consent by Overlandlord to this Sublease. Subtenant acknowledges that Subtenant may be required to execute and deliver a consent agreement as a condition precedent to Overlandlord consenting to this Sublease. Subtenant agrees that Subtenant shall promptly review, execute and deliver to Sublandlord such consent agreement, provided that such consent agreement is commercially reasonable. If either party shall have given notice of cancellation to the other party (in accordance with the provisions of this Paragraph 27), then (i) Sublandlord shall not be obligated to take any further action to obtain Overlandlord's consent, (ii) Sublandlord shall refund to Subtenant the installment of Fixed Rent paid by Subtenant at the execution of this Sublease and (iii) this Sublease shall thereupon be deemed null and void and of no further force and effect, and neither of the parties hereto shall have any rights or claims against the other.

28. Quiet Enjoyment. Subject to the provisions of this Sublease, Sublandlord covenants and agrees with Subtenant that, provided no default by Subtenant continues under this Sublease after notice and the expiration of the applicable grace period, Subtenant may peaceably and quietly enjoy the Sublease Premises without interference by Sublandlord or any party claiming by, through or under Sublandlord, subject to the terms of this Sublease.

29. Confidentiality of Sublease. Each of Sublandlord and Subtenant acknowledges that the content of this Sublease (including the Overlease exhibit) and any related documents are confidential information. Sublandlord and Subtenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity without the other party's written consent, other than (i) with respect to Subtenant, to Subtenant's financial, legal or space planning advisors or consultants; a potential assignee of this Sublease; or a potential Subtenant of the Sublease Premises, (ii) with respect to Sublandlord, to Sublandlord's financial, legal or other advisors or consultants or contractors; potential purchasers, partners, joint venturers, lenders or other financing parties of Sublandlord; Sublandlord's affiliates; or to an assignee or potential assignee of the Overlease or its affiliates, (iii) to Overlandlord or to any party to whom Overlandlord is permitted to disclose the Overlease in accordance with the terms of the Overlease, (iv) to the extent required in the enforcement of this Sublease (including to a court of competent jurisdiction, arbitrator or mediator in connection with a dispute between Sublandlord and Subtenant) and (v) to the extent required by applicable law, legal process or stock exchange rule or regulation, provided that if either party is required to publicly file the Sublease by applicable law or stock exchange rule or regulation due to such party's status as a public company, then the filing party will redact those portions of this Sublease (including the exhibits hereto) that the other party reasonably requests be redacted to the extent that the filing party's counsel believes there is a good faith justification to redact such portions in accordance with applicable law or applicable stock exchange rule or regulation. The obligations set forth in this Paragraph will not apply to any information (a) that is rightfully known by a party prior to disclosure by the other party or (b) that is rightfully obtained by a party from a third party without restrictions on disclosure. Sublandlord acknowledges that Subtenant is a public company and this Sublease constitutes a "material lease" for Subtenant as set forth in Regulation S-K of the Securities and Exchange Commission ("SEC") Standard Instructions for Filing Forms under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975 (17 CFR § 229.601(b)(10)(ii)(D)) ("Regulation S-K Item 601") and that in connection therewith Subtenant shall have the right to file this Sublease pursuant to Regulation S-K Item 601 and Paragraph 46(Q) of the Overlease.

30. Publicity/Trademarks. Without limiting the generality of Paragraph 28 above, Subtenant will not make any public announcement, issue any press release or advertising or otherwise that mentions Sublandlord's name or the name of any Sublandlord affiliate (either directly or indirectly) or otherwise use Sublandlord's name or that of any of Sublandlord's affiliates for any purpose or use any of Sublandlord's trademarks or logos in each case, without the express prior written consent of Sublandlord to be granted or withheld in Sublandlord's sole and absolute discretion. In addition, Sublandlord will not make any public announcement, issue any press release or advertising or otherwise that mentions Subtenant's name (either directly or indirectly), without the express prior written consent of Subtenant to be granted or withheld in Subtenant's sole and absolute discretion.

31. Omitted.

32. Liability.

NOTWITHSTANDING ANYTHING IN THIS SUBLEASE OR ANY APPLICABLE LAW TO THE CONTRARY, NEITHER SUBLANDLORD NOR SUBTENANT, NOR ANY OF ITS CONSTITUENT MEMBERS, NOR ANY OF THEIR RESPECTIVE AFFILIATES, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR STOCKHOLDERS SHALL HAVE ANY PERSONAL LIABILITY THEREFOR, AND SUBLANDLORD AND SUBTENANT, FOR ITSELF AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER SUBTENANT, EXPRESSLY WAIVES AND RELEASES EACH OTHER AND SUCH RELATED PERSONS AND ENTITIES FROM ANY AND ALL PERSONAL LIABILITY.

33. OFAC Compliance.

A. Each of Sublandlord and Subtenant represents and warrants that Sublandlord or Subtenant (as applicable) (i) is not a person that is the target of any economic sanctions administered or enforced by the United States (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State) and (ii) is not owned or controlled by such a person (collectively, "Sanctioned Persons").

B. Each of Sublandlord and Subtenant covenants and agrees (i) to comply with all requirements of applicable law relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, now or hereafter in connection with this Sublease, and (ii) to immediately notify the other party in writing if any of the representations, warranties or covenants set forth in this Subparagraph or the preceding Subparagraph are no longer true or have been breached, or if Sublandlord or Subtenant has a reasonable basis to believe that they may no longer be true or have been breached.

C. Sublandlord and Subtenant hereby agree to indemnify, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party against any and all claims, losses, damages (for the avoidance of doubt, expressly excluding indirect, special, incidental, punitive or consequential damages (including loss of profits, production, anticipated savings, goodwill or business opportunities, or business interruption)) and expenses arising out of or related to a breach of any of the representations, warranties or obligations set forth in Subparagraphs 33(A) and (B) above.

If Subtenant breaches any of the representations, warranties or obligations set forth in thisParagraph 33, Sublandlord may terminate this Sublease upon delivery of written notice to Subtenant.

34. TPA Request. From time to time, Sublandlord may request (each a "TPA Request") that Subtenant complete a third-party assessment to address privacy and security requirements. If Sublandlord delivers a TPA Request to Subtenant, Subtenant will complete the third-party assessment within five (5) business days of its receipt of the TPA Request. Sublandlord may make multiple TPA Requests throughout the Term; however, Sublandlord may not make more than one (1) TPA Request per calendar year.

35. Anti-Corruption. In connection with the negotiation and performance of this Sublease, Subtenant, on behalf of itself and Subtenant Parties (as defined below), represents and warrants that they have not engaged in and covenants that they shall refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting or accepting money or Anything of Value (as defined below), directly or indirectly, to or from (i) any Government Official (as defined below) to (a) influence any act or decision of a Government Official in his or her official capacity, (b) induce a Government Official to use his or her influence with a government or instrumentality thereof or (c) otherwise secure any improper advantage or (ii) any person in any manner that would constitute bribery or an illegal kickback or would otherwise violate applicable anti-corruption law and commercial bribery laws. The following definitions shall apply for purposes of this Paragraph:

"Anything of Value" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments); discounts; rebates; gifts; meals; entertainment; hospitality; use of materials, facilities or equipment; transportation; lodging; or promise of future employment.

"Government Official" shall refer to any official or employee of any multinational, national, regional or local government in any country, including any official or employee of any government department, agency, commission or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family or household members of any of those listed above.

"Subtenant Parties" shall refer to Subtenant's affiliates, all entities that it owns or controls and all of Subtenant's owners, directors, officers, employees, representatives, agents and authorized subcontractors providing services in connection with this Sublease.

36. Signs. Subject to the Overlease and Overlandlord's consent as provided therein, Subtenant may, in compliance with the Overlease and all applicable laws, install signage upon the existing monument sign for the Building and upon the exterior glass adjacent to the entrance to the main lobby of the Building at Subtenant's sole cost and expense. Notwithstanding anything to the contrary herein or in the Overlease, any modifications to the signage shall be at Subtenant's sole cost and expense and Subtenant shall be responsible for any repair or restoration costs provided for in the Overlease or as otherwise required by Overlandlord.

37. Food Subsidy. For each month in which Subtenant is operating in the Sublease Premises for business, Tenant shall be entitled to a monthly credit in the amount of [***] against the next installment of Fixed Rent coming due ("Food Subsidy"). The Food Subsidy shall be prorated for any business day in a calendar month in which Subtenant does not operate in the Sublease Premises.

38. §1938 CASp Disclosure. Sublandlord hereby discloses to Subtenant, and Subtenant hereby acknowledges, that the Sublease Premises have not undergone inspection by a Certified Access Specialists (CASp). As required by Section 1938(e) of the California Civil Code, Subtenant hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Sublandlord and Subtenant hereby agree that Subtenant, at its sole cost and expense, shall be responsible for making any improvements or repairs within the Sublease Premises to correct violations of construction-related accessibility standards.

39. Stormwater Management Agreement. Notwithstanding anything to the contrary herein or in the Overlease, Subtenant acknowledges that the Premises is subject to the terms of that certain Stormwater Management Measures Operation & Maintenance Agreement dated March 9, 2023 by and among the City of Fremont, a municipal corporation, Overlandlord and Sublandlord (the "Stormwater Agreement"). Notwithstanding anything to the contrary herein, except to the extent due to the breach of the Stormwater Agreement by Sublandlord, or otherwise due to the conduct of Sublandlord, its agents or employees, any costs incurred by Sublandlord in connection with the Stormwater Agreement shall be included in Campus Operating Expenses and passed through to Subtenant pursuant to terms of Paragraph 4 hereof. Subtenant hereby grants to Sublandlord a license to access the Sublease Premises at all times in order to comply with its obligations under the Stormwater Agreement provided, however, Sublandlord shall provide reasonable prior written notice to Subtenant except in the event of an emergency. Subtenant shall not do or cause to be done any action or inaction that would cause a violation of the Stormwater Agreement, including, without limitation, the disposal of sediment as described in the Stormwater Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Sublandlord and Subtenant have duly executed this Sublease as of the day and year first written above.

SUBLANDLORD:

META PLATFORMS, INC.,
a Delaware corporation

By: /s/ Nick Raby
Name: Nick Raby
Title: Global Real Estate Portfolio Director

SUBTENANT:

CYMABAY THERAPEUTICS, INC.,
a Delaware corporation

By: /s/ Sujal Shah
Name: Sujal Shah
Title: CEO

SCHEDULE 1
Fixed Rent

Months	NNN Base Rent/Mo
1 - 12	$53,750.00
13 - 24	$55,362.50
25 - 36	$79,832.73
37 - 48	$82,227.71
49 - 60	$84,694.54
61 - 72	$130,643.70
73 - 84	$134,563.01
85 – 96	$138,750.40
97 – end of Sublease Term	$142,757.89

EXHIBIT A
Overlease

[Attach]

[***]

LEASE AGREEMENT
("AGREEMENT")

THIS "LEASE", dated May 1, 2018, is effective on May 1, 2018 (the "Effective Date"), between JOHN ARRILLAGA, Trustee, or his Successor Trustee, **UTA dated 7/20/77 (JOHN ARRILLAGA SURVIVOR'S TRUST) as amended, and RICHARD T. PEERY,** Trustee, or his Successor Trustee, **UTA dated 7/20/77 (RICHARD T. PEERY SEPARATE PROPERTY TRUST)** as amended **(collectively, "Peery/Arrillaga")**, hereinafter called Landlord, and **FACEBOOK, INC., a Delaware corporation,** hereinafter called Tenant.

WITNESSETH:

Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord those certain premises (the "**Premises**") outlined in Red on Exhibit A attached hereto and incorporated herein by this reference thereto more particularly described as follows:

All of that certain **52,416 ± square foot**, one-story building ("**Building**") located at **7601 Dumbarton Circle, Fremont, California 94555**. The Building is located within the Peery/Arrillaga Ardenwood Business Park ("**Project**") as more particularly shown within the area outlined in Red on Exhibit A attached hereto. The entire Parcel, of which the Building is a part is shown within the area outlined in Green on Exhibit A attached hereto ("**Parcel**"). Except as otherwise expressly set forth in this Lease, the Premises **is leased on an "As-Is**" basis, in its present condition, and in the Building configuration as shown in Red on Exhibit B attached hereto.

The word "**Premises**" as used throughout this Lease is hereby defined to include the Building (interior and exterior), Parcel and the exclusive use of parking, the landscaped areas, sidewalks and driveways located on the Parcel, and the nonexclusive use of the area directly over such sidewalks and driveways and the common ingress and egress areas reflected in Yellow on Exhibit A that serve the Premises and the adjacent property known as 34800 Campus Drive, Fremont, CA 94555. Recorded easements for the Parcel are shown on Exhibit A- 1 ("**Recorded Easements Map**") attached hereto.

Said letting and hiring is upon and subject to the terms, covenants and conditions hereinafter set forth and Tenant covenants as a material part of the consideration for this Lease to perform and observe each and all of said terms, covenants and conditions. This Lease is made upon the conditions of such performance and observance.

1. USE

A. *Permitted Use.* Tenant shall use the Premises only in conformance with applicable governmental laws, regulations, rules and ordinances for the purpose of general office, storage, training, conference rooms, fitness center, research and development laboratories, and related ancillary uses, included, without limitation, operation of kitchens and cafeterias serving Tenant's employees and guests necessary for Tenant to conduct Tenant's business (collectively, "**Permitted Use**"), provided that such approved uses shall be in accordance and must comply with all current and future applicable governmental laws and ordinances and zoning restrictions, and for no other purpose. [***]

[***] In the event any such Conditional Use interferes with any such Third Party's Use, Tenant shall immediately take corrective action to eliminate any such nuisance upon receipt of written notice from Landlord; in the event Tenant fails to eliminate such interference within ten (10) business days of receipt of said written notice, Landlord, shall have the right to rescind the respective Conditional Use(s). Notwithstanding anything to the contrary in this Lease, Tenant shall indemnify and hold Landlord harmless and defend Landlord, with counsel reasonably acceptable to Landlord, for any and all claims, costs and expenses of any kind whatsoever related to such Conditional Use and employees who use the childcare facilities shall also sign an agreement provided by Tenant that requires such employee to waive the right to file claims of any type whatsoever against Landlord related to its use of the childcare facilities.

B. *Use Restrictions.* Notwithstanding anything to the contrary herein, Tenant shall not do or knowingly permit to be done in or about the Premises nor bring or keep or knowingly permit to be brought or kept in or about the Premises anything which is prohibited by applicable law or this Lease. Tenant shall not do or knowingly permit to be done in or about the Premises that will in any way materially increase the rate of fire or any insurance covering the Premises or any part thereof, or any of its contents, or will cause a cancellation of any insurance covering the Premises or any part thereof, or any of its contents. Tenant shall not do or knowingly permit to be done anything in, on or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Premises, if any, and/or of neighboring premises in the Project or injure them, or use or knowingly allow the Premises to be used for any unlawful purpose; nor shall Tenant cause, maintain or knowingly permit any nuisance in, on or about the Premises. No sale by auction shall be permitted on the Premises. No waste materials or refuse shall be dumped upon or knowingly permitted to remain upon any part of the Premises or outside of the Building in which the Premises are a part, except in existing exterior enclosures, if any, or enclosures reasonably designated by Landlord and installed by Tenant for that purpose. Tenant shall not commit or knowingly suffer to be committed any waste in or upon the Premises. Tenant shall comply with any covenant, condition, or restriction ("**CC&R's**") affecting the Premises and Tenant acknowledges that Landlord has provided a copy of the CC&R's to Tenant. The provisions of this Paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of Tenant and/or any other tenant and/or occupant of the buildings in the Project. Tenant shall indemnify, defend and hold Landlord harmless against any claims including those from a third party, and any loss, expense, damage, reasonable attorneys' fees, or liability (collectively "**Premises Claims**") arising out of failure of Tenant to comply with the terms of this Paragraph and any applicable law for which Tenant is obligated to comply under the terms of this Lease.

2. [***]

3. [***]

4. [***]

A. [***]

B. [***]

C. *Late Charge* Notwithstanding any other provision of this Lease, if Landlord (or Landlord's agent if Landlord has instructed Tenant to make any payment of Rent and/or other amounts due under the Lease directly to Landlord's agent) does not receive payment of Rent as set forth in this Paragraph 4 and/or other amounts due under the Lease within ten (10) days of the due date, or any part thereof, Tenant agrees to pay Landlord, in addition to the delinquent Rent and/or other amounts that may be due, a late charge for each Rent and/or other payment not received by Landlord (or Landlord's agent if Landlord has instructed Tenant to make any payment of Rent and/or other amounts due under the Lease directly to Landlord's agent) within ten (10)

days of the due date ("**Grace Period**"). Said late charge shall equal ten percent (10%) of the amount of each payment not received by Landlord or its agent prior to the expiration of the Grace Period ("**Late Charge**"). Said Late Charge shall be paid by Tenant within thirty (30) days after presentation of an invoice from Landlord or Landlord's agent setting forth the amount of said Late Charge. Landlord's failure to issue a Late Charge invoice in the month of any late payment shall not be considered a waiver of Landlord's right to collect said Late Charge. Notwithstanding anything to the contrary above, Landlord shall waive the first incurred Late Charge assessed in a calendar year (except for any Late Charge applicable for Taxes and/or Property Insurance premiums), provided said waived delinquent payment is paid within five (5) business days of Tenant's receipt of written notice from Landlord.

D. *Additional Rent*. Beginning on the Lease Commencement Date and continuing throughout the Lease Term, Tenant shall pay to Landlord (or to Landlord's designated agent) in addition to the Basic Rent and as Additional Rent the following:

(a) All Taxes relating to the Premises as set forth in Paragraph 11 (Taxes), and

(b) All insurance premiums for the respective insurance year and deductibles relating to the Premises, as set forth in Paragraph 15 (Property Insurance), and

(c) Tenant's proportionate share of all prorated costs and expenses related to the Ardenwood Technology Park Property Owners' Association as set forth in Paragraph 44 (Association Dues), and

(d) All charges, costs and expenses, which are applicable to the Premises and which Tenant is required to pay hereunder, including, without limitation, utilities, together with all interest and penalties, reasonable costs and expenses including reasonable attorneys' fees and legal expenses, that may accrue thereto in the event of Tenant's failure to pay such amounts (subject to all applicable notice) and damages arising therefrom, reasonable costs and expenses which Landlord may incur by reason of an Event of Default (as defined in Paragraph 45 (Cross Default)) of Tenant Subject to all applicable notices, in the event of nonpayment by Tenant of Additional Rent, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of Rent under this Lease.

The Additional Rent due hereunder shall be paid to Landlord or Landlord's agent (i) within thirty (30) days for Taxes and Property Insurance premiums and within thirty (30) days for all other Additional Rent items after presentation of invoice from Landlord or Landlord's agent setting forth such Additional Rent and/or (ii) at the option of Landlord, Tenant shall pay to Landlord monthly, in advance, Tenant's Proportionate Share of an amount estimated by Landlord to be Landlord's approximate average monthly expenditure for such Additional Rent items. Said estimated Additional Rent amounts shall be reconciled against actual Additional Rent expenditures (i) within ninety (90) days of the end of each calendar year or within forty-five (45) days of the end of each quarter (as determined by Landlord) and (ii) within ninety (90) days of the Lease Termination Date (or as soon thereafter as reasonably possible if, for whatever reason, the Landlord cannot complete the reconciliation within said ninety (90) day period). Notwithstanding anything to the contrary herein, Landlord shall not be required to submit ongoing monthly statements to Tenant reflecting amounts owed as Additional Rent. Landlord will, however, inform Tenant by invoice when a previously estimated Additional Rent amount changes. In the event of any underpayment by Tenant of Additional Rent items, Tenant shall pay to Landlord, within thirty (30) days of Tenant's receipt of an invoice therefor, any amount of actual expenses permitted under this Lease and expended by Landlord in excess of said estimated amount. In the event of any overpayment by Tenant, Landlord shall credit any amount of estimated payments made by Tenant in excess of Landlord's actual expenditures for said Additional Rent items to Tenant (provided Landlord may withhold any portion thereof and credit Tenant to

cure Tenant's default in the performance of any of the terms, covenants and conditions of this Lease). Notwithstanding anything to the contrary above, any credit due Tenant for a reconciliation of Additional Rent expenses that occurs after the Lease Termination Date shall be refunded to Tenant; provided however, that Landlord may withhold therefrom the amount necessary to cover any amounts due on Tenant's account. [***]

Landlord shall, upon request by Tenant, provide Tenant with copies of individual invoices related to the foregoing actual expenses, either by facsimile, email or by U.S. mail; however, in no event shall Landlord be obligated to provide duplicate copies of any invoice or other Lease documentation to Tenant and/or Tenant's representative (if any) for an audit of Tenant's records outside of Landlord's office. Within a reasonable time period following the Lease Commencement Date, Landlord shall provide an invoice to Tenant reflecting the estimated Additional Rent amounts to be paid monthly in advance and Tenant shall pay said amounts monthly in advance until otherwise informed in writing that the monthly estimated Additional Rent amounts have changed and Landlord shall not otherwise submit monthly estimated Additional Rent invoices to Tenant.

E. *Management Fee.* Beginning on May 1, 2019, and on the first day of each month thereafter during the Lease Term, Tenant shall pay to Landlord, a monthly management fee ("**Management fee**") equal to [***] due for the respective month. During the Lease Term, said Management Fee shall be paid pursuant to the schedule below. Tenant's failure to pay the monthly Management Fee by the due date will result in a Late Charge being assessed pursuant to the terms of Paragraph 4.C (Rent: Late Charge) above.

Monthly Management Fee Due During the Lease Term.

[***]

The reference to "**Rent**" in this Paragraph 4 includes Basic Rent and Additional Rent; the reference to Additional Rent also includes, but is not limited to, Late Charge and Management Fee. Notwithstanding anything to the contrary herein, Tenant shall not pay any Rent on the Premises prior to the date said Premises is delivered to Tenant. The respective obligations of Landlord and Tenant under this Paragraph shall survive the expiration or other termination of the Lease Term, and if the Lease Term hereof shall expire or shall otherwise terminate on a day other than the last day of a calendar year, the actual Additional Rent incurred for the calendar year in which the Lease Term hereof expires or otherwise terminates shall be determined and settled on the basis of the statement of actual Additional Rent for such calendar year and shall be prorated in the proportion which the number of days in such calendar year preceding such expiration or termination bears to 365.

F. [***]

G. [***]

5. PARKING. Tenant shall have the right to the exclusive use of all of the parking area of the Parcel located within the area outlined in Green on Exhibit A attached hereto including the use of valet parking of the cars of employees who work at the Premises and Tenant's visitors to the Premises. Tenant agrees that Tenant. Tenant's employees, agents, visitors, representatives, and/or invitees shall not use parking spaces in excess of said parking spaces allocated to Tenant hereunder (except as may otherwise be permitted by the City and further provided such use does not conflict with the terms of the CC&R's or interfere with other tenants' ingress and egress rights and/or decrease the parking allocated to other parcels located in the Project). Tenant shall not, at any time, park, or permit to be parked by Tenant's employees, vendors and/or visitors, any trucks or vehicles, in any areas not designated by Landlord for use by Tenant. Tenant shall not park nor permit to be parked, any inoperative vehicles or equipment on any portion of the parking lot. Tenant agrees to assume responsibility for compliance by its employees and/or Tenant's visitors with the parking provision contained

herein. Tenant shall use the parking area for vehicle parking only and shall not use the parking areas for storage. Notwithstanding the above, Tenant may use valet parking and allow shuttle buses for the transportation of employees who work in this Building, providing Tenant obtains the approval from the respective governing agencies.

6. ACCEPTANCE AND SURRENDER OF PREMISES.

A. *Acceptance of Premises*. Except as otherwise expressly set forth in this Lease, by entry hereunder, Tenant accepts the Premises in itsas-is condition as referenced in Paragraph 7 ("**As-Is**" Basis).

B. *Surrender of Premises*. Tenant agrees on the last day of the Lease Term, or on the sooner termination of this Lease, to surrender the Premises promptly and peaceably to Landlord (i) in good condition and repair (damage by Acts of God, fire, normal wear and tear, casualty and condemnation excepted) and (ii) in broom clean condition. All of Tenant's trade fixtures, furniture, furnishings, supplies, wall decorations and other personal property ("**Tenant's Property**") and all Alterations (as defined below) shall remain unless Landlord required in the related Consent to Alterations Agreement (defined in Paragraph 8 (Alterations and Additions)) and/or plans that any such Alteration(s) he removed from the Premises. Tenant shall be responsible for repairing any and all damage to the Premises resulting from the installation and/or removal of such (i) Alterations and/or (ii) Tenant's Property With respect to any communications wiring and cabling that remains, all such wiring and cabling shall be appropriately identified and marked at each end so that a subsequent user may reasonably determine the purpose of the same, and method of connecting such wiring and cabling for such subsequent user's business. If Alteration(s) were installed that did not require Landlord consent at the time of installation and/or if Tenant failed to obtain Landlord's written Consent to Alterations Agreement ("**Non-Consented Alterations**"), then Tenant shall request in writing, no more than one hundred twenty (120) days prior to the Lease Termination Date, but not less than sixty (60) days prior to the Lease Termination Date, that Landlord identify which of such Non-Consented Alterations Landlord desires Tenant to remove in which event Tenant shall be required to remove suchNon-Consented Alterations and shall be responsible for repairing all damages to the Premises resulting from the installation and/or removal of said Non-Consented Alterations. Landlord shall respond to Tenant's request for Landlord's consent for Tenant's pending alterations request in writing within thirty (30) days of receipt of a complete request package from Tenant as described in Paragraph 8 (Alterations and Additions) and if Landlord does not respond within said thirty (30) day period or does not require the removal of any applicable Alterations in said Consent to Alterations Agreement, Tenant shall not be required to remove the same. If Tenant does not remove any of such (i) Alterations required to be removed in the respective Consent to Alterations Agreement and/or (ii) any Non-Consented Alterations required by Landlord to be removed, then Landlord may, at Tenant's sole cost and expense, remove and/or discard such Alterations and restore the Premises, and Tenant shall reimburse Landlord for any reasonable out-of-pocket costs and expenses incurred in removing and discarding such Alterations and restoring the Premises within thirty (30) days following Landlord's written statement therefore. As to any Alterations required to be removed by Tenant, Tenant shall restore the area to the condition existing prior to the installation and repair all damage caused by such installation and removal. If the Premises is not surrendered to Landlord in the condition required by this Paragraph 6 at the expiration or sooner termination of this Lease, Landlord may, at Tenant's expense, so remove Tenant's Property and/or Alterations not so removed and make such repairs and replacements not so made or hire, at Tenant's expense, independent contractors to perform such work. Tenant shall be liable to Landlord for all reasonable out-of-pocket costs and expenses that will be incurred by Landlord in returning the Premises to the required condition that shall be payable by Tenant to Landlord within thirty (30) days after receipt of a statement therefor from Landlord. If any personal property remains, or is left, at the Premises after the expiration or sooner termination of this Lease, then Landlord may, in its sole discretion, sell such personal property upon such terms and conditions as Landlord shall in its sole discretion decide. Landlord shall have all right, title and interest in and to all proceeds from said sale. Landlord may also discard, throw away or otherwise dispose of

such personal property and Landlord shall have no liability to Tenant or any other third party regarding such personal property and in such event, Tenant shall reimburse Landlord for the cost and expense Landlord incurred related thereto.

7. "AS-IS" BASIS.

A. *Leased on "As Is" Basis.* It is hereby agreed that the Premises leased hereunder is leased strictly on an "**As-Is**" basis and in its present condition, and in the configuration as shown on Exhibit B attached hereto, and by reference made a part hereof. Except as noted herein and in Paragraphs 9.B (Maintenance: Replacement of HVAC Unit) and 9.D (Maintenance: Structural Repairs and Structural Replacements to the Building), it is specifically agreed between the parties that Landlord shall not be required to make, nor be responsible for any cost, in connection with any repair, restoration, and/or improvement to the Premises in order for this Lease to commence, or thereafter, throughout the Lease Term. Notwithstanding anything to the contrary within this Lease, Landlord makes no warranty or representation of any kind or nature whatsoever as to the condition or repair of the Premises. nor as to the use or occupancy which may be made thereof.

8. ALTERATIONS AND ADDITIONS.

A. [***]

B. *Plans and Specifications*. As a pre-condition to Landlord granting its consent to any Alterations, Tenant shall deliver to Landlord a written description of the pending Alterations, hard and soft copies of the complete and detailed plans and specifications reflecting said Alterations for Landlord's review and approval and the related work order executed between Tenant and its licensed contractor, that describes in detail said Alterations (the "**Work Order**"). Each Tenant request for Alterations submitted to Landlord must include all of the following data: (i) a detailed written scope of Alterations. (ii) a detailed plan reflecting existing items to be removed in one color or colors and items to be added in another color or colors on a floor plan, (iii) the estimated cost of the Alterations and (iv) the name of the licensed contractor who will perform the Alterations work (collectively, the "**Plans and Specifications**"). Within five (5) business days of completion of said Alterations, Tenant shall deliver to Landlord an original 1/8 scaled drawing (or other size as to be determined by Landlord) on bond paper and also in electronic format as solely determined by Landlord reflecting the revised respective floor plan. All heating, lighting, electrical, air conditioning, security systems, floor to ceiling partitioning, drapery, carpeting, and floor installations made by Tenant, together with all property that has become an integral part of the Premises, shall not be deemed trade fixtures.

C. *Owner's Approval*. Except as noted herein, Tenant shall not make, or suffer to be made, any Alterations to the Premises, or any part thereof, except for cosmetic improvements (i.e., painting the interior of the Building, re-carpeting the interior of the Premises, adding light switches and/or changing light fixtures in the Premises) without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Such consent to Alterations shall not be valid until such time as said consent is executed by both Landlord and Tenant and a fully executed copy is delivered by Landlord to Tenant ("**Consent to Alterations Agreement**"). Within fifteen (15) business days of Landlord's receipt of Tenant's complete and detailed construction Plans and Specifications, Landlord shall inform Tenant of any questions and/or comments it may have in writing and/or have a meeting of the parties' respective representatives or approve said Plans and Specifications. If Landlord disapproves such request, such disapproval shall include specific reasons for such disapproval and changes that, if made by Tenant, would result in approval. If Landlord fails to respond with its approval or disapproval within this fifteen (15) business day period after receipt of Tenant's complete and detailed request for approval of the proposed Alterations, then the Alteration for which Tenant requested

Landlord's approval shall be deemed approved by Landlord. Upon Landlord's actual or deemed approval (which approval shall not be unreasonably withheld) of said Plans and Specifications, Landlord shall prepare, and Landlord and Tenant shall execute, a Consent to Alterations Agreement in the form similar to the form attached hereto as Exhibit C, and the Alterations shall not be subject to restoration, unless otherwise stated on said Plans and Specifications and/or as stated in the related Consent to Alterations Agreement pursuant to this Paragraph 8.C. Notwithstanding the foregoing, Landlord's approval of any Alterations shall not be construed as approval of any construction detail with respect to conformance to any applicable City or governmental ordinance or code, and by approving such Alterations, Landlord assumes no liability or responsibility therefor, or for any defect in any modification constructed by and/or for Tenant. Tenant shall be responsible for (i) obtaining any and all permits required by the governing agencies for (a) the Alterations and (b) the subsequent reconfiguration(s) (if any), (ii) insuring that (a) the Alterations meet current building codes and that (b) the subsequent reconfiguration(s) (if any) meets the current building codes, (iii) paying one hundred percent (100%) of all costs and expenses related thereto and (iv) providing Landlord with a copy of all required permits prior to the commencement of the Alterations and Tenant shall, upon completion of the Alterations, provide to Landlord a copy of the final sign off by the respective agency within thirty (30) days of obtaining the same (if applicable) and a copy of the certificate of occupancy, if applicable, and Tenant shall use commercially reasonable efforts to obtain written confirmation from Tenant's architect or contractor that the Alterations were constructed pursuant to the approved and permitted plans, and in the event Tenant is unable to obtain such confirmation, Tenant shall provide its written confirmation to Landlord that to the best of its actual knowledge, the Alterations were constructed pursuant to the Landlord approved and the permitted plans in the related Consent to Alterations Agreement. Landlord reserves the right to reasonably approve all contractors and mechanics proposed by Tenant to make such Alterations.

D. *Requirements as to Alterations.* Tenant agrees that it will not commence such Alterations until five (5) business days from the receipt of a copy of the fully executed Consent to Alterations Agreement, to provide Landlord time to record and post Landlord's Notice of Non-Responsibility. Tenant will at all times permit such notices to be posted and to remain posted until the completion of work. Any alterations and/or modifications, and/or improvements to the Premises (collectively "**Tenant Work**") made by Tenant shall require that Tenant enter into a written contract with the licensed contractor or the respective vendor, whereby both parties specifically acknowledge that mechanic's liens will not be effective against the Landlord/owner of the Premises. Tenant is required to submit its executed Consent to Alterations Agreement to Landlord with a copy of the fully executed Work Order. As a condition of Landlord's Consent to Alterations to the Premises and subject to the terms herein, Landlord may, at its sole and absolute discretion, require Tenant to secure and provide to Landlord at Tenant's sole cost and expense, (i) a completion and lien indemnity letter of credit, satisfactory to Landlord and fulfilling the requirements set forth on Exhibit D attached hereto ("**Letter of Credit Requirements**"), in the amount of one hundred fifty percent (150%) of the cost to fund the construction of any Alterations ("**Letter of Credit A**") and, (ii) if Landlord does not agree in the Consent to Alterations Agreement that said Alterations are to remain at the end of the Lease Term, **an additional letter of credit** in the amount of one hundred fifty percent (150%) of the cost to fund the subsequent cost of the removal of said Alterations and the restoration of the Premises at the Lease Termination Date ("**Letter of Credit B**") (Letter of Credit A and Letter of Credit B arc collectively referred to as "**Letters of Credit**"). The respective Letters of Credit shall provide that the Letters of Credit be kept in place as follows: (l) for Letter of Credit A, for ninety-two (92) days after the later of the date (a) completion of the construction of said Alterations occurs and (b) Tenant provides to Landlord a full non-conditional lien release executed by the general contractor; and (2) for Letter of Credit B, for ninety-two (92) days after the later of the date (x) the completion of the restoration work of said Alterations occurs (if applicable) and (y) Tenant provides Landlord with proof of payment to the general contractor and a copy of the recorded full unconditional lien release related to the Alterations and/or restoration work. Provided Tenant is not in default of this Lease at the time Landlord processes Tenant's Consent to Alterations Agreement, notwithstanding anything to the contrary above, Landlord shall not require Tenant to provide the above referenced Letter of Credit A and/or Letter of Credit B if at the time Tenant requests Landlord's consent to Alterations, [blacked out] as of the Effective Date of the Lease.

E. *Disposition of Alterations*. Unless otherwise stated in the Consent to Alterations Agreement, at the expiration or sooner termination of this Lease, all Alterations (other than Tenant's personal property, inventory, movable furniture and furnishings, and trade fixtures) shall automatically become the property of Landlord and shall be surrendered to Landlord as a part of the Premises. Tenant shall be required to remove any Alterations that depict or incorporate Tenant's name and logo or other proprietary and/or confidential property by the Lease Termination Date. Landlord shall further have the right to sell all items remaining at the Premises upon the expiration or earlier termination of this Lease. During and at the expiration or sooner termination of this Lease, all lighting, plumbing, electrical. data, telecom, mechanical, heating, ventilating and air conditioning fixtures, partitioning, window coverings, wall coverings and floor coverings installed by Tenant shall be deemed Alterations to the Premises, and not Tenant's inventory, movable furniture and furnishings, or trade fixtures, and shall not be removed by Tenant unless required to do so by Landlord in the related Consent to Alterations Agreement.

F. *Liens*. Tenant further covenants and agrees that in the event any liens are filed against the Premises for work claimed to have been done for or by Tenant, and/or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after notice of filing thereof, at the cost and expense of Tenant.

G. *Processing and Administration Fees for Consent Documentation*. As a further condition to its consent to Alterations to the Premises, Landlord shall require Tenant to pay all Landlord expenses in connection with any and all requests for Alterations and Landlord's Consent to Alterations Agreement related thereto, including, but not limited to, Landlord's costs, fees and expenses for the processing and administration of the consent documentation and Landlord's attorneys' fees (if any). Landlord's fees for the in-house preparation of a related consent document shall not exceed Five Thousand and No/100 Dollars ($5,000.00) plus, the out of pocket costs for outside consultant's costs, if any. per consent (collectively "**Landlord's Consent Fees**"). **Any exceptions to the foregoing must be made in writing and executed by both Landlord and Tenant**

H. [***]

9. MAINTENANCE.

A. *Tenant Maintenance of the Building.* During the Lease Term, Tenant shall, at its sole cost and expense, keep and maintain the Building (including appurtenances) and every part thereof in good standard of maintenance and repair, or replacement (except as expressly set forth in this Lease to the contrary), and in good and sanitary condition. Tenant's maintenance, repair and replacement responsibilities and obligations include, but are not limited to, janitorial, all windows (interior and exterior), window frames, plate glass and glazing (destroyed by any cause including, but not limited to, accident or act of third parties but expressly excluding damages to the Building to the extent caused by Landlord Parties during the Lease Term), truck doors, plumbing systems (such as water and drain lines, sinks, toilets, faucets, drains, showers and water fountains), electrical systems (such as panels, conduits, outlets, lighting fixtures, lamps, bulbs, tubes and ballasts), heating and air conditioning systems (such as compressors, fans, air handlers, ducts, mixing boxes, thermostats, time clocks, boilers, heaters, supply and return grills) (subject to Paragraph 9.B (Maintenance: Replacement of HVAC Unit)); structural elements (subject to Paragraph 9.D (Maintenance: Structural Repairs and Structural Replacements to the Building)) and exterior surfaces of the Building, store fronts, roofs, downspouts, all interior improvements within the Building including, but not limited to, wall coverings, window

coverings, carpet, floor coverings, partitioning, ceilings, doors (both interior and exterior), including closing mechanisms, latches and locks, skylights (if any), automatic fire extinguishing systems, and elevators (if any) and all other interior improvements of any nature whatsoever in the Building. Tenant agrees to have the HVAC system inspected and serviced by a licensed HVAC contractor reasonably approved by Landlord on a quarterly basis and timely have all recommended repairs and replacements made and Tenant shall provide copies of said inspection and repair reports to Landlord within forty-five (45) days of the end of each quarter.

In addition to Tenant's maintenance responsibilities, Tenant shall, subject to the terms of the Lease, be required and obligated to have third party licensed contractors, reasonably approved by Landlord and Tenant, inspect, service, and timely repair and replace as necessary the following building components and systems: (i) the HVAC systems, (ii) the roof membrane and (iii) the fire system. The HVAC systems and fire system are to be inspected and serviced no less than quarterly with the recommended repairs and replacements made within thirty (30) days following said inspection date; and the roof and gutters arc to be cleaned and inspected no less than once per year throughout the Lease Term with the recommended repairs and replacements made within thirty (30) days following said inspection date. Tenant shall submit to Landlord copies of said inspection, service, repair and replacement reports within forty-five (45) days of the end of each quarter.

Tenant hereby waives all rights under, and benefits of, Subsection 1 of Section 1932 and Section 1941 and 1942 of the California Civil Code and under any similar law, statute or ordinance now or hereafter in effect. In the event any of the above maintenance responsibilities apply to any other tenant(s) of Landlord where there is common usage with other tenant(s), such maintenance responsibilities and charges shall be allocated to the Premises by square footage or other equitable basis as calculated and determined by Landlord.

B. [***]

C. *Tenant Maintenance of the Exterior Improvements on the Parcel including the Common Areas.* The main driveway entrance to the Premises and landscaping, if any, between this Building and the 34800 Campus Drive building, in said areas are considered common area ("**Common Areas of the Parcel**"). During the Lease Term, Tenant shall maintain, repair and replace as needed said Common Area improvements on the Parcel, at Tenant's sole cost and expense; provided, however, that Tenant shall have no obligation or responsibility to maintain, repair or replace (i) any damage to or destruction of the Common Areas of the Parcel subject to the provisions of Paragraph 24 (Destruction) of this Lease after destruction occurs and prior to the repairs being made, (ii) any condemnation of the Common Areas of the Parcel subject to the provisions of Paragraph 25 (Eminent Domain) of this Lease, (iii) any damage to the extent arising from the gross negligence or willful misconduct of Landlord Parties that occurs during the Lease Term unless Landlord pays to Tenant the reasonable and actual out-of-pocket cost of such repair or replacement paid by Tenant for damages addressed in item (iii) above. During the Lease Term, Tenant shall also, at its sole cost and expense, maintain the landscape, the asphalt paved areas (including the parking lot repairs, replacement, resealing and restriping) and sidewalks on the Premises in good condition; provided, however, that Tenant shall have no obligation or responsibility to maintain or repair (w) any damage to or destruction of said landscape, asphalt paved areas and sidewalks subject to the provisions of Paragraph 24 (Destruction) of this Lease after destruction occurs and prior to the repairs being made, (x) any condemnation of said landscape, asphalt paved areas and sidewalks subject to the provisions of Paragraph 25 (Eminent Domain) of this Lease, and (y) any damage to the extent arising from the gross negligence or willful misconduct of Landlord Parties that occurs during the Lease Term unless Landlord pays to Tenant the reasonable and actual out-of-pocket cost of such repair or replacement paid by Tenant for damages addressed in items (w), (x) and (y) above. Except as expressly set forth in this Lease to the contrary; the above referenced cost and expense includes, but is not limited to, license, permit and inspection fees; utility charges associated with exterior landscaping and lighting, all charges incurred by Tenant in the maintenance, repair and replacement as necessary, of the following to the extent located on the Premises: landscaped areas, water features

(if any), parking lots, parking lot lighting, sidewalks, driveways, maintenance, repair and replacement of all water features (if any) and the related fixtures thereto and electrical, mechanical and plumbing systems; supplies, materials, equipment and tools. Tenant hereby waives all rights hereunder, and benefits of, subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and under any similar law, statute or ordinance now or hereafter in effect.

Said costs for services, if any, provided by Landlord, shall be paid by Tenant as Additional Rent in accordance with Paragraph 4. D (Rent: Additional Rent).

D. *Structural Repairs and Structural Replacements to the Building.* Notwithstanding anything to the contrary in this Lease, if during the Lease Term, the Building leased herein is not demolished by and/or for Tenant and/or the footprint of the Building is not modified by and/or for Tenant and provided Tenant provides Landlord with a written report prepared by a reputable third party structural engineer, who has been pre-approved by Landlord, stating that a section of the Building structure (but not the interior improvements, roof membrane or glazing) (the "**Building Structure**") requires repair or replacement and the cost related thereto (the "**Structural Work**"), and such Structural Work is not necessitated due to (i) the weight of Tenant's equipment and/or alterations to the Building, or (ii) any code requirements related to Tenant's improvements, modifications and/or Alterations to the Premises, or (iii) damage or destruction resulting from an insured peril (in which event the provisions of Paragraph 24 (Destruction) shall apply), or (iv) damage to the extent caused by the Tenant Parties, or (v) Tenant improvements and/or Alterations, or (vi) Tenant's failure to maintain the Building Structure in good condition pursuant to the terms of the Lease, or (vii) Tenant's particular use of the Building (as opposed to general office and general R&D use) (items (i) through (vii) are collectively referred to as "**Tenant's Structural Obligations**"), Landlord shall have such Structural Work completed, however, Landlord (a) may challenge, in good faith, the necessity of such Structural Work and/or (b) after reasonably determining that Landlord is responsible to complete the Structural Work and that said Structural Work is required, Landlord will reasonably determine the proper scope of Structural Work to be performed and select and employ the licensed contractor to perform such Structural Work. Notwithstanding anything to the contrary herein, the Structural Work is limited to the following items: (i) the structural components of the Building foundations, columns, footings, load-bearing walls, and sub-flooring (excluding the roof membrane); and (ii) the non-glass, structural elements of the curtain wall systems (excluding mullions) of the Building, if any. [***]

The following procedure shall be followed regarding said repairs and/or replacement of the Building Structure referenced above.

(l) Tenant, at its sole cost and expense, shall provide Landlord with a report prepared by a qualified third party licensed structural engineer stating the reason for the Structural Work as well as the cost of the same before proceeding with any said repair and/or replacement. If Landlord does not agree that the Structural Work is necessary, Landlord, at its sole cost and expense, shall select a qualified third party licensed structural engineer to determine if the Structural Work is necessary. If the structural engineer selected by Landlord agrees that the Structural Work is required and is not due to Tenant's Structural Obligations, then the parties shall promptly proceed with the Structural Work as provided below. If the structural engineer selected by Landlord does not agree that the Structural Work is necessary or is necessary due to Tenant's Structural Obligations, then Landlord and Tenant shall, within ten (10) days of Tenant's request, select an independent qualified licensed third-party structural engineer which has not performed work for either Landlord or Tenant within five (5) years of the date of the request to determine if the Structural Work is necessary and the cause for the need of the Structural Work. The determination of the independent

structural engineer so selected shall be binding on the parties. If the structural engineer so selected determines that the Structural Work is necessary and was not due to Tenant's Structural Obligations subject to the terms herein, the parties shall promptly proceed with the replacement as set forth in this Paragraph 9.D.

(2) Landlord shall have the right to perform such Structural Work for which Landlord is responsible or require that the Tenant perform the same.

(3) If Tenant performs the Structural Work for which Landlord is responsible Landlord shall reimburse Tenant for the replacement [***] within thirty (30) days after Landlord's receipt of Tenant's demand accompanied by the underlying invoices and full lien release from the respective structural engineer. Landlord's obligation to pay shall survive the expiration or earlier termination of this Lease.

(4) If Landlord performs the Structural Work for which Tenant is responsible, Tenant shall reimburse Landlord for Tenant's Cost of such repair and/or replacement within thirty (30) days after its receipt of Landlord's written demand accompanied by the underlying invoices and full lien release from the respective contractor and (ii) Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of and operations in the Premises in performing such Structural Work. [***]

(5) Notwithstanding anything to the contrary herein, if the Structural Work is necessitated as a result of Tenant's Structural Obligations, Tenant shall be responsible for completing the Structural Work at its sole cost and expense.

In the event of an emergency not caused by an insured peril and/or by Tenant Parties, Tenant shall immediately notify Landlord and Tenant may take steps and/or actions reasonably necessary, if any, to prevent further structural damage, including, without limitation, by bracing and/or shoring the structural area so affected and recover the reasonable costs thereof, net of Tenant's Cost, from Landlord. Subject to the terms herein, Landlord shall reimburse Tenant for the reasonable costs, net of Tenant's Cost, incurred and paid by Tenant to complete such work within thirty (30) days after receipt of Tenant's written demand therefor, together with copies of the paid checks, invoices and final and unconditional lien releases from all general contractors, subcontractors and suppliers that have served twenty (20) day preliminary lien notices with respect to the particular work, evidencing the costs incurred and paid by Tenant (the "**Required Documents**").

Tenant hereby waives all rights under, and benefits of ordinance now subsection I of Section 1932 and Sections 1941 and 1942 of California Civil Code and under any similar law, statute or ordinance now or hereafter in effect.

10. UTILITIES.

A. *In General*. Effective on the Lease Commencement Date and throughout the Lease Term, Tenant shall be responsible for selecting (in its sole and absolute discretion), furnishing and paying, directly to the service provider, for all utilities servicing the Premises. Prior to or on the actual Lease Commencement Date, Landlord shall notify utility companies servicing the Premises and request that Landlord's accounts be closed as of the Lease Commencement Date ("**Account Closure Date**"), and Landlord concurrently shall notify Tenant of the Account Closure Date. Tenant shall be responsible for contacting the service provider and having all utilities servicing the Building and Premises transferred into Tenant's name prior to the Account

Closure Date in order to avoid the utilities to the Building and Premises being terminated. Tenant understands and acknowledges that Landlord shall not be liable to Tenant if the utilities to the Building and/or Premises are disconnected and/or terminated for any reason whatsoever, except in the event of a Landlord Parties' intentional act to disrupt the source of utilities for Tenant's use, in which event, Tenant shall have the right to abate Rent on the portion of the Building that is unusable until the utilities arc restored if Tenant reasonably determines that the interruption in utilities has substantially interfered with Tenant's use of the Premises and Tenant's conduct of business for more than ten (10) consecutive business days.

Upon the Lease Commencement Date, Tenant shall pay promptly, as the same become due, all charges for water, gas, electricity, telephone, telex, fiber and other electronic communication service, sewer service, waste pick-up and any other utilities, materials or services furnished directly to or used by Tenant on or about the Building and/or Premises during the Lease Term, including, without limitation, any temporary or permanent utility surcharge or other exactions whether or not hereinafter imposed.

B. *Interruption of Use.* Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of Rent by reason of any interruption or failure of utility services to the Premises when such interruption or failure is caused by (i) Tenant Parties' activities, (ii) Tenant's failure (a) to transfer said utilities into its name and/or (b) to pay the respective utility bills by the respective due dates, (iii) accident, breakage, repair, strikes, lockouts, or other labor disturbances or labor disputes of any nature, or (iv) any other cause, similar or dissimilar which are beyond the reasonable control of Landlord and not caused by Landlord Parties during the Lease Term.

11. TAXES.

A. *Real Property Taxes.* As Additional Rent and in accordance with Paragraph 4.D (Rent: Additional Rent) of this Lease, Tenant shall pay to Landlord, monthly in advance or as they become due pursuant to statements submitted by Landlord, Tenant's proportionate share, or other equitable basis, as calculated by Landlord, of all Real Property Taxes relating to the Premises accruing with respect to the Premises commencing on the Lease Commencement Date and throughout the Lease Term and the extended Lease Term (if any). The term "**Real Property Taxes**" shall also include supplemental taxes related to the period of Tenant's Lease Term whenever levied, including any such taxes that may be levied after the Lease Term has expired. Landlord may require Tenant to pay to Landlord said taxes, (i) monthly in advance or (ii) as they become due, pursuant to statements submitted to Tenant by Landlord. Landlord may choose to have Tenant pay said real estate taxes directly to the Tax Collector, then in such event it shall be the responsibility of Tenant to obtain the tax and assessments bills and pay, prior to delinquency, the applicable real property taxes and assessments pertaining to the Premises, and failure to receive a bill for taxes and/or assessments shall not provide a basis for cancellation of or non responsibility for payment of penalties for nonpayment or late payment by Tenant. In any event, it shall be Tenant's responsibility to obtain directly from the Tax Assessor all supplemental tax notices and related supplemental tax bills related to alterations and/or improvements to the Building and process the same in a timely manner as required by the Tax Assessor. Landlord will use commercially reasonable efforts to provide Tenant copies of any supplemental notices and/or tax bills Landlord actually receives; however, any failure of Landlord to provide any such supplemental notices and/or tax bills shall not be considered a default by Landlord under the Lease, and Landlord shall not be liable in such event for the payment of late penalties and/or Tenant's loss of right to appeal any such supplemental assessments. The term "**Real Property Taxes**," as used herein, shall mean (x) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership of the Premises) now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed

against, or with respect to the value, occupancy or use of, all or any portion of the Parcel (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed) that accrue and/or occur during the Lease Term or Landlord's interest therein; any improvements located within the Parcel (regardless of ownership); the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located on the Parcel; or parking areas, public utilities, or energy within the Parcel; (y) all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the Parcel and (z) all reasonable costs and fees (including reasonable attorneys' fees) incurred by Landlord in reasonably contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax. Notwithstanding anything to the contrary herein, [***]. Each party shall coordinate their appeal with the other. If at any time during the Lease Term the taxation or assessment of the Parcel and/or improvements thereon prevailing as of the Lease Commencement Date shall be altered so that in lieu of or in addition to any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment and/or creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (1) on the value, use or occupancy of the Parcel or Landlord's interest therein or (2) on or measured by the gross receipts, income or rentals from the Parcel, on Landlord's business of leasing the Parcel, or computed in any manner with respect to the operation of the Parcel, then any such tax or charge, however designated, shall be included within the meaning of the term "**Real Property Taxes**" for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Parcel, then only that part of such Real Property Tax that is equitably allocable to the Parcel shall be included within the meaning of the term "**Real Property Taxes**." Notwithstanding anything to the contrary in the foregoing, the term "**Real Property Taxes**" shall not include estate, inheritance, gift or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord's income from all sources.

B. *Taxes on Tenant's Property.*

Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises, If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based on such increased assessment, which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall within thirty (30) days after written demand and invoice setting forth the amount of such taxes paid by Landlord, as the case may be, repay to Landlord the taxes so levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment; provided that in any such event Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, but at no expense to Landlord, to bring suit in any court of competent jurisdiction to recover the amount of such taxes so paid under protest, and any amount so recovered shall belong to Tenant provided Tenant paid the taxes subject to refund.

12. INTENTIONALLY OMITTED.

13. LIABILITY INSURANCE. Tenant, at Tenant's expense, agrees to keep in force during the Lease Term a policy of commercial general liability insurance with combined single limit coverage of not less than Five Million Dollars ($5,000,000) per occurrence for bodily injury and property damage occurring in, on or about the Premises or the Parcel, including, but not limited to, parking and landscaped areas. Such insurance shall be primary and noncontributory as respects any insurance carried by Landlord. The policy or policies

effecting such insurance shall name Landlord, Richard T. Peery, as Trustee of the Richard T. Peery Separate Property Trust dated July 20, 1977, as amended; the Richard T. Peery Separate Property Trust; Richard T. Peery as an individual; John Arrillaga, as Trustee under the John Arrillaga Survivor's Trust dated July 20, 1977, as amended; the John Arrillaga Survivor's Trust; John Arrillaga, as an individual; and any beneficiaries, trustees and successor trustees, other partners or co-venturers of Landlord or said trusts as additional insureds (collectively "**Landlord Entities**"), and shall insure any liability of the Landlord Entities, contingent or otherwise, as respects acts or omissions of Tenant, its agents, employees or invitees or otherwise by any conduct or transactions of any of said persons in or about or concerning the Premises, including any failure of Tenant to observe or perform any of its obligations hereunder; shall be issued by an insurance company admitted to transact business in the State of California; and shall provide that the insurance effected thereby shall not be canceled, except upon thirty (30) days' prior written notice to Landlord except for a cancellation related to Tenant's failure to timely pay the premium due. In the event Tenant's insurance company fails to give such notice to Landlord, Tenant is obligated to do so. Tenant's insurance shall be primary as respects to the Landlord Entities, or if excess, shall stand in an unbroken chain of coverage. In either event, any other insurance maintained by the Landlord Entities shall be in excess of Tenant's insurance and shall not be called upon to contribute with any insurance required to be provided by Tenant. **The required insurance shall be reflected on a certificate of insurance of said policy, which certificate shall be delivered to Landlord concurrently with Tenant's return of this executed Lease to Landlord**. If, during the Lease Term, in the reasonable considered opinion of Landlord's Lender, insurance advisor, or counsel, the amount of insurance described in this Paragraph 13 is not adequate, Tenant agrees to increase said coverage to such reasonable amount as Landlord's Lender, insurance advisor, or counsel shall deem adequate.

14. TENANT'S PERSONAL PROPERTY INSURANCE AND WORKMAN'S COMPENSATION INSURANCE. Tenant shall maintain a policy or policies of fire and property damage insurance in "**Special Form**" with a sprinkler leakage endorsement insuring the personal property, inventory, trade fixtures (and leasehold improvements paid for by Tenant) within the Premises for the full replacement value thereof. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured.

Tenant shall also maintain a policy or policies of workman's compensation insurance and any other employee benefit insurance sufficient to comply with all applicable laws.

15. PROPERTY INSURANCE. Throughout the Lease Term, Landlord shall purchase and keep in force, and Tenant shall pay to Landlord (or Landlord's agent if so directed by Landlord), as Additional Rent and in accordance with Paragraph 4.D (Rent: Additional Rent) of this Lease, Tenant's proportionate share (allocated to the Premises by square footage or other equitable basis, as reasonably calculated and determined by Landlord) of the deductibles on insurance claims and the cost of, policy or policies of insurance covering loss or damage to the Building and Parcel (excluding routine maintenance and repairs and incidental damage or destruction caused by accidents or vandalism for which Tenant Parties are responsible in the amount of the full replacement value thereof, providing protection against those perils included within the classification of "all risks" "special form" insurance [***], if available, plus a policy of Rent income insurance in the amount of one hundred (100%) percent of twelve (12) months Basic Rent, plus twelve (12) months Additional Rent. In addition, if such insurance cost is increased due to Tenant's use of the Premises, Tenant agrees to also pay to Landlord the full cost of such increase within thirty (30) days of receipt of the related invoice. Tenant shall have no interest in nor any right to the proceeds of any insurance procured by Landlord for the Building and/or Parcel. Insurance premiums for the full insurance year are due from Tenant within thirty (30) days of receipt of invoice from Landlord and/or its agent and insurance deductibles are payable to Landlord within thirty (30) days of receipt of invoice from Landlord. Landlord shall use commercially reasonable efforts to obtain such insurance at competitive rates.

In addition and notwithstanding anything to the contrary in this Paragraph 15, each party to this Lease hereby waives all rights of recovery against the other party or its officers, employees, agents and representatives for loss or damage to its property or the property of others under its control, arising from any cause insured against under the fire and extended "special form" property coverage (excluding, however, any loss resulting from Hazardous Material contamination of the Property) required to be maintained by the terms of this Lease to the extent full reimbursement of the loss/claim is received by the insured party. Each party required to carry property insurance hereunder shall cause the policy evidencing such insurance to include a provision permitting such release of liability ("waiver of subrogation endorsement"); provided, however, that if the insurance policy of either releasing party prohibits such waiver, then this waiver shall not take effect until consent to such waiver is obtained. If such waiver is so prohibited, the insured party affected shall promptly notify the other party thereof. In the event the waivers arc issued to the parties and arc not valid under current policies and/or subsequent insurance policies, the non-complying party will provide, to the other party, thirty (30) days' advance notification of the cancellation of the subrogation waiver, in which case neither party will provide such subrogation waiver thereafter and this Paragraph. will be null and void. Notwithstanding anything to the contrary herein, the foregoing waiver of subrogation shall not include any loss resulting from Hazardous Material contamination of the Property or any insurance coverage relating thereto.

16. INDEMNIFICATION. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of any person or damage to or destruction of property in or about the Premises or the Parcel by or from any cause whatsoever, including, without limitation, gas, fire, oil, electricity or leakage of any character from the roof, walls, basement or other portion of the Premises or the Parcel but excluding, however, the willful misconduct or gross negligence of Landlord, its successors and assigns, and their respective agents, servants. employees, invitees or contractors (all such parties, including Landlord, are hereinafter referred to individually and/or collectively as '"**Landlord Parties**" or "**Landlord Party**") employed by Landlord to do work at the Premises during the Lease Term. Except as to injury to persons or damage to property to the extent arising from the willful misconduct or the gross negligence of Landlord or any Landlord Party, Tenant shall indemnify and hold Landlord harmless from and defend Landlord against any and all expenses, including reasonable attorneys' fees and court costs related thereto, in connection therewith, arising out of any injury to or death of any person or damage to or destruction of property that occurred in, on or about the Premises, or any part thereof, that was not caused by the Landlord Parties during the Lease: Term. Notwithstanding anything to the contrary herein, Landlord's indemnity and hold harmless provisions as provided herein specifically excludes Landlord's obligations under Paragraph 42.F (Hazardous Materials). Except as to injury to persons or damage to property to the extent arising from the willful misconduct or the gross negligence of Tenant or any Tenant Party, Landlord shall indemnify and hold Tenant harmless from and defend Tenant against any and all third party expenses, including reasonable attorneys' fees, in connection therewith, arising out of any injury to or death of any person or damage to or destruction of property occurring in, on or about the Premises, or any part thereof, caused by the willful misconduct or the gross negligence of Landlord Parties that accrue and/or occur during the Lease Term. The provisions of this Paragraph 16 shall survive the expiration or termination of this Lease.

17. COMPLIANCE. Tenant, at its sole cost and expense, shall promptly comply with all applicable laws, statutes, ordinances and governmental rules, regulations or requirements now or hereafter in effect governing use or occupancy of the Premises including compliance required by the governing agency(ies) due to any improvements to the Building and/or Premises made by and/or for Tenant; except to the extent such

compliance is inconsistent with Tenant's permitted uses hereunder, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted; and with any direction or occupancy certificate issued pursuant to law by any public officer; provided, however, that no such failure shall be deemed a breach of the provisions if Tenant, within thirty (30) days following written notification, commences to remedy or rectify said failure. A final, non-applicable judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision, shall be conclusive of that fact as between Landlord and Tenant. Except to the extent such compliance is inconsistent with Tenant's permitted uses hereunder, Tenant shall, at its sole cost and expense, comply in all aspects with any and all requirements pertaining to said Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance covering requirements pertaining to said Premises. The provisions of this Paragraph 17 shall survive the expiration or termination of this Lease.

18. LIENS. Tenant shall not suffer or permit any mechanic's, laborer's or materialman's lien to be filed against the Property, or any part thereof, by reason of work, labor services or materials supplied or claimed to have been supplied to or at the request of Tenant and/or on behalf of Tenant and/or for any reason whatsoever; and if any such lien shall at any time be filed, Tenant, within thirty (30) days after receiving written notice of the filing thereof, shall cause it to be discharged of record. This obligation shall survive the expiration or any termination of this Lease. In the event that Tenant shall not, within thirty (30) days following notice of the imposition of such lien, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper. including payment of the claim giving rise to such lien. All sums reasonably paid by Landlord for such purpose, and all expenses incurred by it in connection therewith, shall be payable to Landlord by Tenant on demand with interest at the higher of the (i) prime rate of interest as quoted by the Bank of America or (ii) Landlord's borrowing rate (the "**Interest Rate**").

19. ASSIGNMENT AND SUBLETTING.

A. *Requirements.* Tenant shall not assign, transfer, or hypothecate the leasehold estate under this Lease, or any interest therein, and shall not sublet the; Premises, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person or entity to occupy or use the Premises, or any portion thereof, without, in each case, the prior written consent of Landlord which consent will not be unreasonably withheld. Notwithstanding the above, in the event Tenant enters into a merger and/or acquisition agreement whereby fifty percent (50%) or more of Tenant's stock and/or assets are transferred to a third party entity, not including any offering of Tenant's stock on any nationally recognized public stock market and any subsequent purchases and sales of such stock thereon ("**Change in Control**"), said Change in Control will require Landlord's consent pursuant to the terms of this Paragraph 19.A but subject to Paragraph 19.E (Assignment and Subletting: Permitted Transfers), and Landlord may, at Landlord's option. require that said acquiring entity also be named as a Tenant under this Lease; however, a sale of Tenant's capital stock through any public or over-the-counter exchange shall not be deemed an assignment or a Change in Control Tenant shall not sublet the Premises, or any part thereof, to more than two subtenants at any one point in time without Landlord's prior written consent, which consent may be withheld at Landlord's sole and absolute discretion. Tenant's failure to obtain Landlord's prior written consent before entering into any such assignment, transfer and/or subletting shall be considered a default under this Lease and Landlord shall retain all of its rights under the Lease, including the right to elect, at Landlord's sole and absolute discretion, to terminate either the Lease and/or the related sublease. As a condition for granting its consent to any assignment, transfer or subletting, unless otherwise approved by Landlord in its reasonable discretion, in writing, Landlord shall require: (i) the sublease be a **triple net sublease** and that the basic rent due under any such sublease be no less than the then current market basic rent for subleases with annual increases at the then prevailing market rent for subleases; (ii) the sublease shall require that the

security deposit due under the sublease be in the form of a letter of credit drawn upon an institutional lender acceptable and accessible to Landlord in form and content reasonably satisfactory to Landlord, with the letter of credit being assignable to Landlord, at no cost to Landlord, upon notice to said financial institution of a default by Tenant under the Lease; (iii) the sublease shall not provide for subtenant to have an option to extend the term of the sublease beyond the Lease Termination Date or an option to expand the sublet space; and (iv) the Tenant shall pay to Landlord, monthly throughout the term of any approved sublease, fifty percent (50%) (or one hundred percent (100%) during the Basic Rent Abatement Period) of all rents and/or additional consideration due Tenant from the assignees, transferees, or subtenants in excess of the Rent payable by Tenant to Landlord hereunder for the assigned, transferred and/or subleased space ("**Excess Rent**") (with said Excess Rent subject to the terms of Paragraph 4.C (Rent: Late Charge) and Paragraph 22 (Bankruptcy and Default); provided, however, that before payment to Landlord of such Excess Rent, Tenant shall first be entitled to recover from such Excess Rent the amount of the reasonable leasing commission related to said transaction paid by Tenant to a third party broker not affiliated with Tenant and the costs of the tenant improvements specifically made for said subtenant. Tenant shall, by thirty (30) days written notice, advise Landlord of its intent to assign or transfer Tenant's interest in the Lease or sublet the Premises or any portion thereof for any part of the Lease Term hereof. Tenant may proceed to locate an acceptable sublessee, assignee, or other transferee for presentment to Landlord for Landlord's approval, all in accordance with the terms, covenants, and conditions of this Paragraph 19. Tenant shall provide Landlord with (a) a copy of the assignment and/or other transfer agreement and a copy of the certification of the change in corporate identity from the Secretary of State in the case of an assignment, or (b) a copy of the sublease in the case of a sublease for Landlord's review, and upon Landlord's approval of Tenant's request to sublease and/or assign, Tenant and the assignee, transferee or subtenant shall execute Landlord's standard written consent. If Tenant intends to sublet the entire Building and Landlord shall have the right to terminate this Lease, in such event this Lease shall be terminated on the date specified in Landlord's notice of its election to so terminate the Lease; however, if Tenant does not have an uncured default at the time of its request to sublease and/or before the commencement date of said sublease, Landlord agrees that Tenant may sublease up to one hundred percent (100%) of three (3) of the Facebook Leases buildings for a total sublease term of three (3) years for each such sublease, and in such event, [***]. In the event Tenant is allowed to assign, transfer or sublet the whole or any part of the Building, with the prior written consent of Landlord, no assignee, transferee or subtenant shall assign or transfer this Lease, either in whole or in part, or sublet the whole or any part of the Premises, without also having obtained the prior written consent of Landlord. [***] A consent of Landlord to one assignment, transfer, hypothecation, subletting, occupation or use by any other person shall not release Tenant from any of Tenant's obligations hereunder or be deemed to be a consent to any subsequent similar or dissimilar assignment, transfer, hypothecation, subletting, occupation or use by any other person. Any such assignment, transfer, hypothecation, subletting, occupation or use without such consent shall be void and shall constitute a breach of this Lease by Tenant and shall, at the option of Landlord exercised by written notice to Tenant, terminate this Lease. The leasehold estate under this Lease shall not, nor shall any interest therein, be assignable for any purpose by operation of law without the written consent of Landlord. As a condition to its consent. Landlord shall require Tenant to pay all Landlord expenses in connection with any and all subleases and/or assignments and/or any amendments related thereto, including, but not limited to, Landlord's costs, fees and expenses for the processing and administration of the consent documentation and Landlord's attorneys' fees (if any). Landlord shall require Tenant's subtenant, assignee or transferee (or other assignees or transferees) to assume in writing all of the obligations under this Lease and for Tenant to remain liable to Landlord under the Lease. For all such consents required in this Paragraph 19.A, Tenant shall pay to Landlord, the Landlord's Consent Fees as defined in Paragraph 8.G (Alterations and Additions: Processing and Administration Fees for Consent Documentation). Notwithstanding anything to the contrary herein, under no event will Landlord consent to an assignment or transfer of less than one hundred percent (100%) of the Leased Premises.

B. *Ground to Refuse Proposed Transfer*. Notwithstanding the foregoing, Landlord and Tenant agree that it shall not be unreasonable for Landlord to refuse to consent to a proposed assignment,

sublease or other transfer ("**Proposed Transfer**") if the Building or any portion of the Parcel would become subject to additional or different government requirements and/or regulations as a direct or indirect consequence of the Proposed Transfer and/or the Proposed Transferee's use and occupancy of the Premises. However, Landlord may, in its sole discretion, consent to such a Proposed Transfer where Landlord is indemnified by Tenant and (i) the subtenant or (ii) the assignee, in form and substance satisfactory to Landlord and to Landlord's counsel, from and against any and all costs, expenses, obligations and liability arising out of the Proposed Transfer and/or the Proposed Transferee's use and occupancy of the Premises.

C. [***]

D. *State of Incorporation Change; Name Change*. Notwithstanding anything to the contrary above, Tenant'sre-incorporation in another jurisdiction and/or the act of Tenant changing Tenant's legal name shall not be considered an assignment; however, (i) Tenant shall provide Landlord with notice of such change in Tenant's name and/or state of incorporation, which notice shall include a copy of the certification from the Secretary of State and (ii) Tenant and Landlord shall execute Landlord's standard acknowledgement for any such change in Tenant's name and/or state of incorporation.

E. *Permitted Transfers*. In addition to and notwithstanding anything to the contrary in Paragraph 19.A (Assignment and Subletting: Requirements) above, and provided Tenant is not in default of this Lease beyond the applicable cure period, Landlord hereby agrees that: (1) Landlord shall consent to Tenant's assigning or subletting said Lease to: (i) any parent or subsidiary corporation, or corporation with which Tenant merges or consolidates provided said entity's use of the Premises is the same as Tenant's use and that (a) said affiliate or successor owns all or substantially all of the assets of Tenant and becomes jointly and severally liable with Tenant for the Lease Term from the Lease Commencement Date through the Lease Termination Date (or the extended Lease Termination Date if said date is extended), (b) [blacked out] (collectively Permitted Transfers), and (c) Tenant shall give Landlord written notice at least thirty (30) days prior to the effective date of the proposed purchase, merger, consolidation or reorganization; or (ii) any third party or entity to whom Tenant, as an ongoing concern, sells all or substantially all of its assets; provided that (a) said affiliate or successor owns all or substantially all of the assets of Tenant, (b) the net worth of the resulting or acquiring corporation has a net worth after the merger, consolidation or acquisition equal to or greater than the net worth of Tenant (x) at the time of Lease execution or (y) at the time of such merger, consolidation or acquisition, whichever is greater ((i) and (ii) above collectively referred to as "**Permitted Transfers**"), and (c) Tenant shall give Landlord written notice at least thirty (30) days prior to the effective date of the proposed purchase, merger, consolidation or reorganization; and (2) subject to Tenant complying with the terms and conditions referenced herein, Landlord shall waive its right to terminate the Lease due to a Permitted Transfer.

In the event Tenant transfers fifty percent (50%) or more of Tenant's stock to a third party entity and such transfer does not include the sale of Tenant's assets and assumptions of Tenant's liabilities, said transfer of stock shall not require Landlord's approval provided that (a) the net worth of Tenant following such stock transfer is equal to or greater than the net worth of Tenant (x) at the time of Lease execution or Lease Commencement Date or (y) immediately before the stock transfer, whichever is greater ((x) or (y)), and any such transfer does not leave the Tenant as a shell organization and (b) Tenant provides Landlord written notice at least thirty (30) days prior to the effective date of the proposed stock transfer (unless such thirty (30) day notice would be in violation of applicable law, in which case, said notice will be given immediately following the expiration date of any such legal restriction).

F. *Landlord Consent*. No such assignment, merger (including a triangular merger) (collectively "**Mergers**" and/or "**Merger Entity**") or subletting or sale of stock and/or Permitted Transfer will release the Tenant from its liability and responsibility under this Lease and any assignment and/or Mergers will

result in the Tenant and said assignee and/or Merger Entity being jointly and severally liable for the terms and condition in this Lease. Notwithstanding anything to the contrary in this Paragraph 19, Tenant shall be required to (a) give Landlord written notice prior to such assignment, merger (including a triangular merger), subletting, sale of stock to any party as described in Paragraph 19.E (Assignment and Subletting: Permitted Transfers), (b) execute Landlord's consent document prepared by Landlord reflecting the assignment, Merger or subletting or Permitted Transfer and (c) pay Landlord's costs for processing said consent prior to the effective date of said Permitted Transfer, Merger, assignment or sublease. Nothing herein shall be deemed to permit (i) any assignee and/or Permitted Transferee to further assign this Lease or sublet all or any portion of the Premises or (ii) any subtenant to assign its interest in the sublease to any other party without Landlord's prior written consent. For all such consents required in this Paragraph 19.F, Tenant shall pay to Landlord, the Landlord's Consent Fees as defined in Paragraph 8.G (Alterations and Additions: Processing and Administration Fees for Consent Documentation).

20. [***]

21. ENTRY BY LANDLORD. Landlord reserves, and shall at all reasonable times after at least forty-eight (48) business hours' notice (except in emergencies) have the right to enter the Premises to inspect them; to perform any services to be provided by Landlord hereunder; to make repairs or provide any services to a contiguous tenant(s) (if any); to submit the Premises to prospective purchasers, mortgagers or tenants; to post notices of non-responsibility; and to alter, improve or repair the Premises or other parts of the Building, all without abatement of Rent, and may erect scaffolding and other necessary structures in or through the Premises where reasonably required by the character of the work to be performed; provided, however that the business of Tenant shall be interfered with to the least extent that is reasonably practical and Landlord shall comply with Tenant's reasonable security measures. Tenant may, as a condition of such entry, further require that any visitors or entrants to the Premises be accompanied by a Tenant representative and sign a commercially reasonable nondisclosure agreement. Further, Tenant may by written notice to Landlord, designate one or more "secure areas" where Landlord and such permitted entrants may not enter under any circumstances. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises, but Landlord may not enter the secure areas; however, the related emergency agencies' personnel may enter said areas if needed to address the emergency. Any entry to the Premises by Landlord for the purposes provided for herein shall be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

22. BANKRUPTCY AND DEFAULT. The commencement of a bankruptcy action or liquidation action or reorganization action or insolvency action or an assignment of or by Tenant for the benefit of creditors, or any similar action undertaken by Tenant, or the insolvency of Tenant, shall, at Landlord's option, constitute a breach of this Lease by Tenant. If the trustee or receiver appointed to serve during a bankruptcy, liquidation, reorganization, insolvency or similar action elects to reject Tenant's unexpired Lease, the trustee or receiver shall notify Landlord in writing of its election within thirty (30) days after an order for relief in a liquidation action or within thirty (30) days after the commencement of any action.

Within thirty (30) days after the court approval of the assumption of this Lease, the trustee or receiver shall cure (or provide adequate assurance to the reasonable satisfaction of Landlord that the trustee or receiver shall cure) any and all previous defaults under the unexpired Lease and shall compensate Landlord for all actual pecuniary loss and shall provide adequate assurance of future performance under said Lease to the reasonable satisfaction of Landlord. Adequate assurance of future performance, as used herein, includes, but shall not be limited to: (i) assurance of source and payment of Rent, and other consideration due under this Lease; (ii) assurance that the assumption or assignment of this Lease will not breach substantially any provision, such as radius, location, use, or exclusivity provision, in any agreement relating to the above described Premises.

Nothing contained in this Paragraph shall affect the existing right of Landlord to refuse to accept an assignment upon commencement of or in connection with a bankruptcy, liquidation, reorganization or insolvency action or an assignment of Tenant for the benefit of creditors or other similar act. Nothing contained in this Lease shall be construed as giving or granting or creating an equity in the demised Premises to Tenant. In no event shall the leasehold estate under this Lease, or any interest therein, be assigned by voluntary or involuntary bankruptcy proceeding without the prior written consent of Landlord. In no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

The failure to perform or honor any covenant, condition or representation made under this Lease shall constitute a default under this Lease by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of ten (10) clays from the date of written notice ("**Written Notice**") from Landlord within which to cure any default in the payment of Rent or adjustment thereto. Tenant shall have a period of thirty (30) days from the date of Written Notice from Landlord within which to cure any other non-monetary default under this Lease; provided, however, that with respect to non-monetary defaults not involving Tenant's failure to pay Rent, Tenant shall not be in default if (i) more than thirty (30) days is required to cure such non-monetary default and (ii) Tenant commences cure of such default as soon as reasonably practicable after receiving Written Notice of such default from Landlord and thereafter continuously and with due diligence prosecutes such cure to completion. Upon an uncured default of this Lease by Tenant, Landlord shall have the following rights and remedies in addition to any other rights or remedies available to Landlord at law or in equity:

(a) The rights and remedies provided for by California Civil Code Section 1951.2 including, but not limited to, recovery of the worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of said Section 1951.2. Any proof by Tenant under subparagraphs (2) and (3) of Section 1951.2 of the California Civil Code of the amount of rental loss that could be reasonably avoided shall be made in the following manner: Landlord and Tenant shall each select a licensed real estate broker in the business of renting property of the same type and use as the Premises and in the same geographic vicinity. Such two real estate brokers shall select a third licensed real estate broker, and the three licensed real estate brokers so selected shall determine the amount of the Rent loss that could be reasonably avoided from the balance of the Lease Term after the time of award. The decision of the majority of said licensed real estate brokers shall be final and binding upon the parties hereto. As part of such damages, Landlord shall have the right to recover that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Lease Term.

(b) The rights and remedies provided by California Civil Code Section 1951.4, which allows Landlord to continue the Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due. for so long as Landlord does not terminate Tenant's right to possession; acts of maintenance or preservation. efforts to relet the Premises, or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.

(c) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law.

(d) To the extent permitted by law, the right and power to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply such proceeds therefrom pursuant to

applicable California law. Landlord may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Lease Term) and at such Rent and such other terms as Landlord in its reasonable sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each subletting, (i) Tenant shall be immediately liable to pay Landlord, in addition to indebtedness other than Rent due hereunder, the reasonable cost of such subletting, including, but not limited to, reasonable attorneys' fees, and any real estate commissions actually paid, and the cost of such reasonable alterations and repairs incurred by Landlord and the amount, if any, by which the Rent hereunder for the period of such subletting (to the extent such period does not exceed the Lease Term hereof) exceeds the amount to be paid as Rent for the Premises for such period or (ii) at the option of Landlord, rents received from such subletting shall be applied first to payment of indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such subletting and of such alterations and repairs; third, to payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same becomes due hereunder. If Tenant has been credited with any Rent to be received by such subletting under option (i) and such Rent shall not be promptly paid to Landlord by the subtenant(s), or if such rentals received from such subletting under option (ii) during any month be less than that to be paid during the month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach.

(e) The right to have a receiver appointed for Tenant upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord pursuant to subparagraph (d) above.

23. ABANDONMENT. Tenant shall not vacate or abandon the Premises at any time during the Lease Term and if Tenant shall abandon, vacate or surrender said Premises, or be dispossessed by the process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord. Notwithstanding the above, Tenant shall not be in default under the Lease if it leaves all or any part of Premises vacant so long as (i) Tenant is performing all of its other obligations under the Lease including the obligation to pay Rent, (ii) Tenant provides on-site security during normal business hours for those parts of the Premises left vacant, (iii) such vacancy does not adversely affect the validity or coverage of any policy of insurance carried by Landlord with respect to the Premises, (iv) the utilities and heating and ventilation systems are operated and maintained to the extent necessary to prevent damage to the Premises or its systems and (v) Tenant complies with all other provisions of the Lease.

24. DESTRUCTION. In the event the Building is destroyed in whole or in part from any cause, Landlord may, at its option:

(a) Rebuild or restore the Building to the condition prior to the damage or destruction, or (b) Terminate this Lease if either (i) the Building is damaged to the extent of thirty-three and one third percent (33 1/3%) or more of the replacement cost, exclusive of footings, foundations and floor slabs or (ii) in the event of an uninsured event or if insurance proceeds arc insufficient to cover one hundred percent (100%) of the rebuilding costs net of the deductible ("**Shortfall**"). However, in such event of Landlord's election to terminate for a Shortfall, Tenant shall have the right to elect to pay to Landlord the Shortfall I provided it provides Landlord with written notification of its commitment to do so within ten (10) business days of receipt of Landlord's notice to terminate the lease as provided in this section (ii) and pays the Shortfall by delivering to Landlord within thirty (30) days of receipt of Landlord's invoice for said Shortfall either (x) payment in the

amount of said Shortfall or (y) a stand-by-letter of credit in the amount of said Shortfall (if (x) is selected, the terms of the letter of credit must meet the Letter of Credit Requirements referenced in Paragraph 8.D (Alterations and Additions: Requirements as to Alterations).

If Landlord does not give Tenant notice in writing within thirty (30) days from the destruction of the Building of its election to either rebuild and restore the damaged areas, or to terminate this Lease, Landlord shall be deemed to have elected to rebuild or restore the damaged areas, in which event Landlord agrees, at its expense net of the insurance proceeds, and the deductible, which is the responsibility of the Tenant, promptly to rebuild or restore the Building to its condition prior to the damage or destruction. Tenant shall be entitled to a reduction in Rent from the date of such damage or destruction, provided Tenant is not using any portion of such damaged area, while such repair is being made, in the proportion that the area of the Building rendered untenantable by such damage bears to the total area of the Premises. If Landlord initially estimates that the rebuilding or restoration will exceed one hundred eighty (180) days or if Landlord does not complete the rebuilding or restoration within two hundred ten (210) days following the date of destruction (such period of time to be extended for delays caused by the fault or neglect of Tenant Parties or because of Acts of God, acts of public agencies, labor disputes, strikes, fires, freight embargos, rainy or stormy weather, inability to obtain materials, supplies or fuels, acts of contractors or subcontractors, or delay of the contractors or subcontractors due to such causes or other contingencies beyond the control of Landlord) (the "**Allowed Restoration Period**"), then, provided the Premises is damaged to the extent of 33 1/3% or more of the replacement cost (exclusive of footings, foundations and floor slabs) and provided the damage or destruction does not result from routine maintenance and repairs or damage or destruction caused by any of the Tenant Parties or by vandalism and/or accidents for which Tenant is responsible, Tenant shall have the right to terminate this Lease by giving written notice to Landlord within five (5) days following the date Tenant receives Landlord's written notice stating that the restoration will exceed the Allowed Restoration Period. Regardless of whether Landlord and/or Tenant elects to terminate this Lease early as provided herein, Tenant shall remain liable for the insurance deductible as it relates to the Premises. Notwithstanding anything herein to the contrary, Landlord's obligation to rebuild or restore shall be limited to the Building and improvements and shall not include (i) restoration of Tenant's trade fixtures, equipment, merchandise, or (ii) any of the improvements, alterations or additions made by Tenant to the Building (that are not covered by the Property Insurance), which Tenant shall forthwith replace or fully repair at Tenant's sole cost and expense provided this Lease is not canceled according to the provisions above.

Unless this Lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect. Tenant hereby expressly waives the provision of Section 1932, Subdivision 2, in Section 1933, Subdivision 4 of the California Civil Code.

Notwithstanding anything to the contrary herein, (i) provided Tenant is leasing and occupying one hundred percent (100%) of all the Facebook Leases and Tenant does not have an uncured Event of Default as of the date of damage to the Premises and provided the Tenant Parties are not responsible in whole or in party for said destruction, Landlord may not terminate this Lease during the first six (6) years of the Lease Term as provided above, if the Building is damaged to the extent of thirty-three and one third percent (33 l/3%) or more of the replacement cost, exclusive of footings, foundations and floor slabs; however, Landlord may terminate this Lease in the event of (i) an uninsured event or (ii) if insurance proceeds are insufficient to cover one hundred percent (100%) of the rebuilding costs net of the deductible (subject to Tenant's right to pay the Shortfall as provided in Paragraph 24(b) above).

In the event the Building is destroyed and said destruction interferes with the delivery of the Premises to Tenant, the following shall apply:

- If the destruction of the Building occurs prior to the Lease Commencement Date of July 1, 2018, the provisions of Paragraph 3 (Possession) shall apply and Tenant shall have the right to rescind the Lease if Landlord cannot deliver the Premises to Tenant within ninety (90) days (subject to the terms of said Paragraph 3) of the Lease Commencement Date.

Without regard to whether this Lease is terminated pursuant to the foregoing, Tenant shall pay to Landlord the deductibles from any casualty policy Landlord carries pursuant to Paragraph 15 (Property Insurance) within thirty (30) days following Landlord's written demand therefore.

25. EMINENT DOMAIN. If all or any part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and if such condemnation results in a material and adverse impact on the use of the Premises, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the date when title vests in the condemnor, and Landlord shall be entitled to any and all payment, income, rent, award, current market value of the Premises or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance ("**Landlord Award**"), and Tenant shall have no claim against Landlord or otherwise or the condemning authority for the value of any unexpired Lease Term. Notwithstanding the foregoing sentence, any compensation specifically awarded Tenant for loss of business, Tenant's Property, moving costs or loss of goodwill, shall be and remain the property of Tenant provided Tenant's claim does not reduce the Landlord Award.

If any action or proceeding is commenced for such taking of the Premises or any part thereof, or if Landlord is advised in writing by any entity or body having the right or power of condemnation of its intention to condemn the Premises or any part thereof, then Landlord shall have the right (provided such condemnation results in a material and adverse impact on the use of the Premises) to terminate this Lease by giving Tenant written notice thereof within sixty (60) days of the date of receipt of said written advice, or commencement of said action or proceeding, or taking conveyance, which termination shall take place as of the first to occur of the last day of the calendar month next following the month in which such notice is given or the date on which title to the Premises shall vest in the condemnor.

In the event of such a partial taking or conveyance of the Premises, if the portion of the Premises taken or conveyed is so substantial that the Tenant can no longer reasonably conduct its business, Tenant shall have the privilege of terminating this Lease within sixty (60) days from the date of such taking or conveyance, upon written notice to the Landlord of its intention so to do, and upon giving of such notice this Lease shall terminate on the last day of the calendar month next following the month in which such notice by Tenant is given, upon payment by Tenant of the Rent to the date of termination of the Lease.

If a portion of the Premises be taken by condemnation or conveyance in lieu thereof and neither Landlord nor Tenant shall terminate this Lease as provided herein, this Lease shall continue in full force and effect as to the part of the Premises not so taken or conveyed, and the Rent herein shall be apportioned as of the date of such taking or conveyance so that thereafter the Rent to be paid by Tenant shall be in the ratio that the area of the portion of the Building not so taken or conveyed bears to the total area of the Building prior to such taking.

26. SALE OR CONVEYANCE BY LANDLORD. In the event of a sale or conveyance of the Premises or any interest therein, by any owner of the reversion then constituting Landlord, the transferor shall thereby be released from any further liability upon any of the terms, covenants or conditions herein contained in favor of Tenant provided that the transferee has agreed in writing to be bound by all such terms, covenants or conditions in this Lease, and in such event, insofar as such transfer is concerned, Tenant agrees to look solely to the responsibility of the successor in interest of such transferor in and to the Parcel and this Lease for any

obligations of Landlord first accruing after the date of such transfer, unless the successor in interest has also agreed in writing to assume any prior obligations of Landlord, in which event Tenant shall look to the successor in interest for any obligations of Landlord that may have accrued prior to as well as after said sale or conveyance by Landlord. This Lease shall not be affected by any such sale or conveyance, and Tenant agrees to attorn to the successor in interest of such transferor.

27. [***]

28. [***]

29. CERTIFICATE OF ESTOPPEL. Tenant shall at any time within fifteen (15) days of receipt of prior written notice from Landlord execute, acknowledge and deliver to Landlord a factually accurate estoppel statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying to its actual knowledge that this Lease, as so modified, is in full force and effect) and the date to which the Basic Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. In the event Tenant fails to return to Landlord said Estoppel Certificate within said fifteen (15) day period, Landlord shall issue a second written notice to Tenant and Tenant shall have five (5) days thereafter in which to return the Estoppel Certificate to Landlord, and Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord; that there are no uncured defaults in Landlord's performance, and that not more than one month's Basic Rent has been paid in advance.

30. POTENTIAL LANDLORD MODIFICATIONS TO PARCEL AND BUILDING.

A. *Construction Changes*. It is understood that the description of the Premises and the location of ductwork, plumbing and other facilities therein may be subject to such minor changes as Landlord or Landlord's architect determines to be desirable in the course of any of Landlord's construction of the Premises, and no such changes shall affect this Lease or entitle Tenant to any reduction of Rent hereunder or result in any liability of Landlord to Tenant. Landlord does not guarantee the accuracy of any drawings supplied to Tenant and verification of the accuracy of such drawings rests with Tenant.

B. *Parcel and/or Building Modifications*. It is understood that Landlord has the right, but not the obligation, to reasonably install additional underground conduits and irrigation pipes, and gas and electrical lines (collectively "**Lines**") and/or to relocate any such existing Lines on the Parcel and in the Building that may serve the Premises and/or other parcels, or buildings located in the Project, provided the installation of such Lines does not unreasonably interfere with Tenant's current or future use of the Premises. Tenant shall not incur any cost related thereto unless any such Lines also serve the Premises in which case Tenant shall pay its Proportionate Share of said cost which shall be paid by Tenant as an Additional Rent expense item. Landlord shall also have the right, at no cost or expense to Tenant, to reasonably reconfigure the Parcel, and its ingress and egress areas, provided such reconfiguration does not unreasonably interfere with Tenant's current or future use of the Premises, including, but not limited to, Tenant's parking rights.

31. RIGHT OF LANDLORD TO PERFORM. Except as otherwise expressly set forth in this Lease, all terms, covenants and conditions of this Lease to be performed or observed by Tenant shall be performed or observed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall fail to pay any sum of money, or other Rent, required to be paid by it hereunder and such failure shall continue for ten (10) days after Written Notice thereof by Landlord or shall fail to perform any other term or

covenant hereunder on its part to be performed, and such failure shall continue for thirty (30) days after Written Notice thereof by Landlord (or such longer grace period as provided under Paragraph 22 (Bankruptcy and Default)), Landlord, without waiving or releasing Tenant from any obligation of Tenant hereunder, may, but shall not be obliged to, make any such payment or perform any such other term or covenant on Tenant's part to be performed. All sums so paid by Landlord and all reasonable costs of such performance by Landlord together with interest thereon at the Interest Rate (as defined in Paragraph 18 (Liens) above) from the date of such payment or performance by Landlord, shall be paid (and Tenant covenants to make such payment) to Landlord within thirty (30) days after written demand (including an invoice therefor) by Landlord, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of nonpayment by Tenant as in the case of failure by Tenant in the payment of Rent hereunder.

32. ATTORNEYS' FEES.

A. In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease, or for any other relief against the other party hereunder, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

B. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its out of pocket costs and expenses incurred in such suit, including reasonable attorneys' fees.

C. Any deposition of Landlord and/or its agents, whether initiated by Landlord or Tenant, shall be administered and taken at Landlord's place of business.

33. WAIVER. The waiver by either party of the other party's failure to perform or observe any term, covenant or condition herein contained to be performed or observed by such waiving party shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of the party failing to perform or observe the same or any other such term, covenant or condition therein contained, and no custom or practice which may develop between the parties hereto during the Term hereof shall be deemed a waiver of, or in any way affect, the right of either party to insist upon performance and observance by the other party in strict accordance with the terms hereof.

34. [***]

35. EXAMINATION OF LEASE. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for a lease, and this instrument is not effective as a lease or otherwise until its execution and delivery by both Landlord and Tenant.

36. DEFAULT BY LANDLORD. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than (30) days (except (i) for Force Majeure Delays as referenced herein and (ii) as referenced in Paragraph 24 (Destruction) or elsewhere in the Lease) after Landlord's receipt of written notice from Tenant and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period, as may be extended pursuant to the terms of the Lease, and thereafter diligently prosecutes the same to completion.

37. CORPORATE AUTHORITY. If Tenant is a corporation (or a partnership), each individual executing this Lease on behalf of said corporation (or partnership) represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation (or partnership) in accordance with the by-laws of said corporation (or partnership in accordance with the partnership agreement) and that this Lease is binding upon said corporation (or partnership) in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord either (i) a certified copy of the resolution of the Board of Directors of said corporation authorizing or ratifying the specific execution of this Lease by the individual executing this Lease or (ii) a certification by the Secretary or the Assistant Secretary of the corporation which certification certifies by said party on behalf of the corporation, that the person executing this Lease is authorized to sign the Lease on behalf of the corporation (i.e., on behalf of Facebook, Inc., a Delaware corporation). In lieu of said corporate resolution or the above described certificate, Tenant may provide Landlord with outside legal opinion stating that the party executing this Lease on behalf of Tenant is authorized to do so by the Board of Directors.

38. LIMITATION OF LIABILITY. In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

(a) the sole and exclusive remedy shall be against Landlord's interest in the Premises leased herein;

(b) no partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

(c) no service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);

(d) no partner of Landlord shall be required to answer or otherwise plead to any service of process;

(e) no judgment will be taken against any partner of Landlord;

(f) any judgment taken against any partner of Landlord may be vacated and set aside at any time without hearing;

(g) no writ of execution will ever be levied against the assets of any partner of Landlord;

(h) these covenants and agreements are enforceable both by Landlord and also by any partner of Landlord.

Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or at common law.

39. SIGNS. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside of the Building or any exterior windows of the Building without the written consent of Landlord (which consent shall not be unreasonably withheld). Landlord shall have the right to remove any non-approved sign, placard, picture, advertisement, name or notice without notice to Tenant and at the expense of Tenant. If Tenant is allowed to print or affix or in any way place a sign in, on, or about the Premises, upon expiration or other sooner termination of this Lease, Tenant, at Tenant's sole cost and expense, shall both remove all Tenant signs and repair all damage in such a manner as to restore all aspects of the appearance of the Premises and the monument signs to the condition prior to the placement of said signs.

All approved signs and/or lettering on sign monuments shall be printed, painted, affixed or inscribed at the sole cost and expense of Tenant by a licensed contractor

Notwithstanding anything to the contrary in this Paragraph 39 and subject to (i) Tenant complying with the Design Guidelines of the Ardenwood Corporate Commons, a copy of which has been provided to Tenant and obtaining the required permits from the City of Fremont and (ii) Landlord's approval of Tenant's signage, Tenant shall be entitled to install, at Tenant's sole cost and expense, Tenant's name on (a) one hundred percent (100%) of the existing monument sign for the Building (the exact placement to be approved by Landlord) and (b) on the exterior glass adjacent to the entrance to the main lobby of the Building (the exact placement and size of Tenant's sign is to be approved by Landlord), with the understanding that Tenant shall be liable for repairing any damage to said monument and door resulting from the installation and/or removal of said signs upon Lease termination.

[***]

40. CONSENT. Except when the express terms in this Lease provide otherwise, whenever the consent of one party to the other is required hereunder, such consent shall not be unreasonably withheld.

41. AUTHORITY TO EXECUTE. Each person executing this Lease hereby warrants and represents that the individual signing on behalf of such party is properly authorized to execute this Lease and bind such party on behalf of whom each individual executes this Lease and to all of the terms, covenants and conditions of this Lease as they relate to the respective party hereto.

42. HAZARDOUS MATERIALS. Landlord and Tenant agree as follows with respect to the existence or use of "**Hazardous Materials**" (as defined herein) on, in, under or about the Premises and real property located beneath said Premises and the Parcel (hereinafter collectively referred to as the "**Property**"):

A. As used herein, the term "**Hazardous Materials**" shall mean any material, waste, chemical, mixture or byproduct which is or hereafter is defined, listed or designated under Environmental Laws (defined below) as a pollutant, or as a contaminant, or as a toxic or hazardous substance, waste or material, or any other unwholesome, hazardous, toxic, biohazardous, or radioactive material, waste, chemical, mixture or byproduct, or which is listed, regulated or restricted by any Environmental Law (including, without limitation, petroleum hydrocarbons or any distillates or derivatives or fractions thereof, polychlorinated biphenyls, or asbestos). As used herein, the term "**Environmental Laws**" shall mean any applicable Federal, State of California or local government law (including common law), statute, regulation, rule, ordinance, permit, license, order, requirement, agreement, or approval, or any determination, judgment, directive, or order of any executive or judicial authority at any level of Federal, State of California or local government (whether now existing or subsequently adopted or promulgated) relating to pollution or the protection of the environment, ecology, natural resources, or public health and safety.

B. Tenant shall obtain Landlord's written consent, which may reasonably be withheld in Landlord's discretion, prior to the occurrence of any Tenant's Hazardous Materials Activities (defined below) (and Tenant shall first provide Landlord with a list of said materials used and specify the location in the Premises where said materials arc used and stored, the method of storage and disposal of the same, and a copy of the related permits); provided, however, that Landlord's consent shall not be required for normal use in compliance with applicable Environmental Laws of customary household and office supplies, such as mild cleaners, lubricants and copier toner. As used herein, the term "**Tenant's Hazardous Materials Activities**" shall mean any and all use, handling, generation, storage, disposal, treatment, transportation, release, discharge, or emission of any Hazardous Materials on, in, beneath, to, from, at or about the Property, or by Tenant or by any of Tenant's agents, employees, contractors, vendors, invitees. visitors or its future subtenants or assignees. Tenant agrees that any and all Tenant's Hazardous Materials Activities shall be conducted in strict, full compliance with applicable Environmental Laws at Tenant's expense, and shall not result in any contamination of the Property or the environment. Tenant shall not discharge any Hazardous Materials in the plumbing, sewer and/or storm drains in the Premises and/or Parcel. Tenant agrees to provide Landlord with prompt written notice of any spill or release of Hazardous Materials at the Property during the Lease Term of which Tenant becomes aware, and further agrees to provide Landlord with prompt written notice of any violation of Environmental Laws in connection with Tenant's Hazardous Materials Activities of which Tenant becomes aware. In the event Tenant's Hazardous Materials Activities includes radioactive materials, Tenant acknowledges and agrees that all such radioactive materials use shall cease in sufficient time **prior** to the Lease Termination Date to enable Tenant to obtain complete closure and complete decommissioning of the Premises by all applicable governing agencies (local and State) by no later than the Lease Termination Date. Tenant shall provide Landlord with copies of the written confirmation by the governing agencies that closure and decommission have been completed. If Tenant's Hazardous Materials Activities involve Hazardous Materials other than normal use of customary household and office supplies, Tenant also agrees that Tenant shall at Tenant's cost and expense: (i) install such Hazardous Materials monitoring, storage and containment devices as required by applicable Environmental Law and/or the governing agencies (however, in no event shall Tenant discard any Hazardous Materials in the Building plumbing system and/or the Building sewer system) and (ii) deliver to Landlord by April 1, 2019 and on April 1 of each year thereafter during the Lease Term and any extended Lease Term thereof, a written report prepared by a licensed, qualified environmental consultant, reasonably acceptable to Landlord, which confirms that Tenant is in compliance with all applicable Environmental Laws with respect to Tenant's Hazardous Materials Activities at the Premises or if not in compliance, the corrective action required; said report shall include a list of the Hazardous Materials used, stored and/or disposed at the Premises and the location(s) within the Premises of such Hazardous Materials use, storage and/or disposal. Tenant, at its expense, shall promptly undertake and complete any and all steps necessary to be in full compliance with applicable Environmental Laws and to fully correct any and all problems or deficiencies addressed in said report; and Tenant shall promptly provide Landlord with documentation of all such corrective action taken.

C. Prior to termination or expiration of the Lease, Tenant, at its expense, shall (i) properly remove from the Property all Hazardous Materials which come to be located at the Property during the Lease Term in connection with Tenant's Hazardous Materials Activities, and (ii) fully comply with and complete all facility closure requirements of applicable Environmental Laws regarding Tenant's Hazardous Materials Activities, including, but not limited to, (y) properly restoring and repairing the Property to the extent damaged by such closure activities and Tenant's Hazardous Materials Activities, and (z) obtaining from the local Fire Department or other appropriate governmental authority with jurisdiction a written concurrence that closure has been completed in compliance with applicable Environmental Laws. Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any such closure activities.

D. If Landlord, in its reasonable discretion, believes that the Property has become contaminated as a result of Tenant's Hazardous Materials Activities, Landlord at its sole cost and expense and in addition to any other rights it may have under this Lease or under Environmental Laws or other laws, may upon ten (10) business days' prior written notice enter upon the Property and conduct inspection, sampling and analysis, including, but not limited to, obtaining and analyzing samples of soil and groundwater, for the purpose of determining the nature and extent of such contamination. Tenant shall (within thirty (30) days following Landlord's presentation of written documentation of the expense to Tenant) reimburse Landlord for the reasonable out-of-pocket costs of such an investigation, including, but not limited to, reasonable attorneys' fees and court costs Landlord incurs with respect to such investigation, but only to the extent such investigation concludes that the Property has become contaminated as a result of Tenant's Hazardous Materials Activities. Notwithstanding the above, Landlord may, at its option and in its sole and absolute discretion, choose to perform remediation and obtain reimbursement for cleanup costs as set forth herein from Tenant. Any cleanup costs reasonably incurred by Landlord as the result of Tenant's Hazardous Materials Activities and/or Tenant's closure activities shall be reimbursed by Tenant within thirty (30) days of presentation of written documentation of the expense to Tenant by Landlord. Such reimbursable costs shall include, but not be limited to, any reasonable consultants' and attorneys' fees incurred by Landlord. Tenant shall take all actions necessary to preserve any claims it has against third parties, including, but not limited to, its insurers, for claims related to its operation, management of Hazardous Materials or contamination of the Property. Except as may be required of Tenant by applicable Environmental Laws, Tenant shall not perform any sampling, testing, or drilling to identify the presence of any Hazardous Materials at the Property, without Landlord's prior written consent which consent shall not be unreasonably withheld. Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any sampling, testing or drilling performed pursuant to the preceding sentence.

E. Tenant shall indemnify, defend (with legal counsel acceptable to Landlord, whose consent shall not unreasonably be withheld) and hold harmless Landlord, its employees, assigns, successors, successors-in-interest, agents and representatives from and against any and all claims (including, but not limited to, third party claims from a private party or a government authority), liabilities, obligations, losses, causes of action, demands, governmental proceedings or directives, fines, penalties, expenses, costs (including, but not limited to, reasonable attorneys', consultants' and other experts' fees and costs), and damages, which arise from or relate to: (i) Tenant's Hazardous Materials Activities and/or (ii) any Hazardous Materials contamination caused by Tenant; and/or (iii) the breach of any obligation of Tenant under this Paragraph 42 (collectively, "**Tenant's Environmental Indemnification**"). Tenant's Environmental Indemnification shall include but is not limited to the obligation to promptly and fully reimburse Landlord for losses in or reductions to rental income, and diminution in fair market value of the Property. Tenant's Environmental Indemnification shall further include, but is not limited to, the obligation to diligently and properly implement to completion, at Tenant's expense, any and all environmental investigation, removal, remediation, monitoring, reporting, closure activities, or other environmental response action (collectively, "**Response Actions**"). Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any Response Actions.

F. [***]

G. [***]

It is agreed that the Tenant's responsibilities related to Hazardous Materials will survive the expiration or termination of this Lease and that Landlord may obtain specific performance of Tenant's responsibilities under this Paragraph 42.

43. [***]

44. ASSOCIATION DUES. The Premises is part of the Ardenwood Technology Park Property Owners' Association (the "**Association**") and is subject to Association dues to fund the cost of the Association's obligations and expenses as authorized under the By-Laws of said Association ("**Association Dues**"). As of the date of this Lease, Tenant's current proportionate share of the Association Dues is currently estimated at **SIXTY-FIVE AND 50/100 DOLLARS ($65.50)** per month and is calculated based upon the Parcel size of 4.88 ± acres as a percent of the total acres included in the Association and is further subject to adjustment as provided for by said Association. Said Association Dues are payable by Tenant to Landlord as Additional Rent on a monthly basis throughout the Lease Term. Tenant understands that it will not be a direct member of the Association.

45. [***]

46. MISCELLANEOUS AND GENERAL PROVISIONS.

A. *Use of Building Name.* Tenant shall not, without the written consent of Landlord, which consent will not be unreasonably withheld, use the name of the building for any purpose other than as the address of the business conducted by Tenant in the Premises without the prior written consent of Landlord. The foregoing will not be deemed to prohibit the use of photos taken in or about the Premises in Tenant's annual report, or require Landlord's consent for such use.

B. *Premises Address*. It is understood that (i) the current address for the Premises is shown on page 1 of this Lease, and that (ii) the address for the Premises is subject to change at any time by the City in which the Premises are located (the "**City**"). In the event the address assigned to the Premises is changed by the City, this Lease shall thereafter be amended to reflect the assigned address for the Premises leased hereunder and Landlord shall not be liable to Tenant for any costs or expenses incurred by Tenant as a result of said address change.

C. *Choice of Law/Venue.* This Lease shall in all respects be governed by and construed in accordance with the laws of the County of Alameda in the State of California and each party specifically stipulates to venue in Alameda County.

D. *Definition of Terms.* The term "**Premises**" includes the Parcel and the improvements thereon; the space leased hereby and any improvements now or hereafter installed therein or attached thereto. The term "**Landlord**" or any pronoun used in place thereof includes the plural as well as the singular and the successors and assigns of Landlord. The term "**Tenant**" or any pronoun used in place thereof includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations, and their and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof, and the provisions of this Lease shall inure to the benefit of and bind such heirs, executors, administrators, successors and permitted assigns.

The term "person" includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations. Words used in any gender include other genders. If there be more than one Tenant the obligations of Tenant hereunder are joint and several. The Paragraph headings of this Lease are for convenience of reference only and shall have no effect upon the construction or interpretation of any provisions hereof.

E. *Time Of Essence*. Time is of the essence of this Lease and of each and all of its provisions.

F. [***]

G. [***]

H. *Incorporation of Prior Agreements; Amendments.* This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this agreement.

I. *Recording*. Neither Landlord nor Tenant shall record this Lease or a short form memorandum hereof without the consent of the other.

J. *Amendments for Financing.* Tenant further agrees to execute any commercially reasonable amendments required by a lender to enable Landlord to obtain financing, so long as Tenant's rights hereunder are not substantially adversely impacted.

K. *Clauses, Plats and Riders*. Clauses, plats and riders, if any, signed by Landlord and Tenant and endorsed on or affixed to this Lease are a part hereof.

L. *Diminution of Light, Air or View*. Tenant covenants and agrees that no diminution or shutting off of light, air or view by any structure which may be hereafter erected (whether or not by Landlord) shall in any way affect this Lease, entitle Tenant to any reduction of Rent hereunder or result in any liability of Landlord to Tenant.

M. *Performance Under Protest*. In the event that a dispute shall arise as to any obligation of Landlord or Tenant under this Lease, such party shall have the right to perform "under protest." Such performance shall not be regarded as voluntary and there shall survive the right on the part of the performing party to contest such obligation.

N. [***]

O. *Severability*. If any clause, sentence or other portions of this Lease shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

P. [***]

Q. [***]

R. [***]

S. *Trademarks*. Except for any Building signage approved by Tenant, Landlord acknowledges and agrees that Landlord and its agents shall not use any of Tenant's trademarks or service marks without Tenant's prior written consent, which may be granted or withheld in Tenant's sole and absolute discretion.

T. *Cooperation*. Landlord agrees at no cost and/or expense to Landlord to reasonably cooperate with Tenant in conjunction with Tenant in Tenant obtaining permits or filings with government authorities having jurisdiction over any of Tenant Improvements or the Leased Premises, including, without limitation, Tenant's filing for any California state sales tax exemption in connection with the design, construction and/or use of the Premises. Notwithstanding anything to the contrary herein, Landlord shall not be the party under any such permits and/or filings.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease.

LANDLORD:

JOHN ARRILLAGA SURVIVOR'S TRUST

By: /s/ John Arrillaga
John Arrillaga, Trustee

RICHARD T. PEERY SEPARATE PROPERTY TRUST

By: /s/ Richard T. Peery
Richard T. Peery, Trustee

TENANT:

FACEBOOK, INC.
a Delaware corporation

By: /s/ John Tenanes
John Tenanes, Vice President
Global Facilities and Real Estate

Exhibit A

EXHIBIT B
Sublease Premises

[***]

Exhibit B

EXHIBIT C
Confirmation of Commencement Date Certificate

This Acknowledgment of Commencement Date ("**Acknowledgment**") is made this ____ day of _____, 202__, between META PLATFORMS, INC., a Delaware corporation ("**Sublandlord**") and CYMABAY THERAPEUTICS, INC., a Delaware corporation ("**Subtenant**"), and is attached to and made a part of the Sublease dated _____ ("**Sublease**"), by and between Sublandlord and Subtenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Sublease.

Sublandlord and Subtenant hereby acknowledge and agree, for all purposes of the Sublease, that the Commencement Date of the Sublease is _____ and the Expiration Date of the Sublease is May 31, 2032. In case of a conflict between the terms of the Sublease and the terms of this Acknowledgment, this Acknowledgment shall control for all purposes.

In witness whereof, Sublandlord and Subtenant have executed this Acknowledgment to be effective on the date first above written.

SUBLANDLORD:

META PLATFORMS, INC.,
a Delaware corporation

By: _____
Name:
Title:

SUBTENANT:

CYMABAY THERAPEUTICS, INC.,
A Delaware corporation

By: _____
Name:
Title:

EXHIBIT D

Intentionally Omitted

Exhibit D

EXHIBIT E
Form of Letter of Credit

[***]

Exhibit 21.1

List of Subsidiaries

Name of Subsidiary	State or Jurisdiction in Which Incorporated or Organized
CymaBay UK, Ltd.	United Kingdom
CymaBay Ireland, Limited	Ireland
CymaBay Canada, Ltd.	Canada

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

(1) Registration Statements (Form S-3 Nos. 333-270796 and 333-272893) of CymaBay Therapeutics, Inc., and

(2) Registration Statements (Form S-8 Nos. 333-195211, 333-198289, 333-202941, 333-210453, 333-216905, 333-223687, 333-226741, 333-229953, 333-254697, 333-263644, 333-270795, 333-272895 and 333-273887) pertaining to the CymaBay Therapeutics, Inc. 2013 Equity Incentive Plan, the CymaBay Therapeutics, Inc. 2020 New Hire Plan, and the CymaBay Therapeutics, Inc. 2023 Equity Incentive Plan;

of our report dated February 28, 2024, with respect to the consolidated financial statements of CymaBay Therapeutics, Inc. included in this Annual Report (Form 10-K) of CymaBay Therapeutics, Inc. for the year ended December 31, 2023.

/s/ Ernst & Young LLP

San Mateo, California
February 28, 2024

Exhibit 31.1

CERTIFICATIONS

I, Sujal Shah, certify that:

1. I have reviewed this Annual Report on Form 10-K of CymaBay Therapeutics, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: February 28, 2024

/s/ Sujal Shah
Sujal Shah
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Harish Shantharam, certify that:

1. I have reviewed this Annual Report on Form 10-K of CymaBay Therapeutics, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: February 28, 2024

/s/ Harish Shantharam
Harish Shantharam
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Sujal Shah., President and Chief Executive Officer and Harish Shantharam, Chief Financial Officer of CymaBay Therapeutics, Inc. (the "Company"), each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023, to which this Certification is attached as Exhibit 32.1 (the "Annual Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In **Witness Whereof**, the undersigned have set their hands hereto as of the 28th day of February, 2024.

/s/ Sujal Shah
Sujal Shah
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Harish Shantharam
Harish Shantharam
Chief Financial Officer
(Principal Financial and Accounting Officer)

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

Exhibit 97.1

CYMABAY THERAPEUTICS, INC.

INCENTIVE COMPENSATION RECOUPMENT POLICY

1. INTRODUCTION

The Compensation Committee (the "***Compensation Committee***") of the Board of Directors (the "***Board***") of CymaBay Therapeutics, Inc., a Delaware corporation (the "***Company***"), has determined that it is in the best interests of the Company and its stockholders to adopt this Incentive Compensation Recoupment Policy (this "***Policy***") providing for the Company's recoupment of Recoverable Incentive Compensation that is received by Covered Officers of the Company under certain circumstances. Certain capitalized terms used in this Policy have the meanings given to such terms in Section 3.

This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder ("***Rule 10D-1***") and Nasdaq Listing Rule 5608 (the "***Listing Standards***").

2. EFFECTIVE DATE

This Policy shall apply to all Incentive Compensation that is received by a Covered Officer on or after October 2, 2023 (the "***Effective Date***"). Incentive Compensation is deemed "***received***" in the Company's fiscal period in which the Financial Reporting Measure specified in the Incentive Compensation award is attained, even if the payment or grant of such Incentive Compensation occurs after the end of that period.

3. DEFINITIONS

"***Accounting Restatement***" means an accounting restatement that the Company is required to prepare due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"***Accounting Restatement Date***" means the earlier to occur of (a) the date that the Board, a committee of the Board authorized to take such action, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (b) the date that a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement.

"***Administrator***" means the Compensation Committee or, in the absence of such committee, the Board.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"***Covered Officer***" means each current and former Executive Officer.

"***Exchange***" means the Nasdaq Stock Market.

"***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended.

"***Executive Officer***" means the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of the Company's parent(s) or subsidiaries are deemed executive officers of the Company if they perform such policy-making functions for the Company. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this Policy would include at a minimum executive officers identified pursuant to Item 401(b) of Regulation S-K promulgated under the Exchange Act.

"***Financial Reporting Measures***" means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures derived wholly or in part from such measures, including Company stock price and total stockholder return ("***TSR***"). A measure need not be presented in the Company's financial statements or included in a filing with the SEC to be a Financial Reporting Measure.

"***Incentive Compensation***" means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure.

"***Lookback Period***" means the three completed fiscal years immediately preceding the Accounting Restatement Date, as well as any transition period (resulting from a change in the Company's fiscal year) within or immediately following those three completed fiscal years (except that a transition period of at least nine months shall count as a completed fiscal year). Notwithstanding the foregoing, the Lookback Period shall not include fiscal years completed prior to the Effective Date.

"***Recoverable Incentive Compensation***" means Incentive Compensation received by a Covered Officer during the Lookback Period that exceeds the amount of Incentive Compensation that would have been received had such amount been determined based on the Accounting Restatement, computed without regard to any taxes paid (*i.e.*, on a gross basis without regard to tax withholdings and other deductions). For any compensation plans or programs that take into account Incentive Compensation, the amount of Recoverable Incentive Compensation for purposes of this Policy shall include, without limitation, the amount contributed to any notional account based on Recoverable Incentive Compensation and any earnings to date on that notional amount. For any Incentive Compensation that is based on stock price or TSR, where the Recoverable Incentive Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement, the Administrator will determine the amount of Recoverable Incentive Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive Compensation was received. The Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange in accordance with the Listing Standards.

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

4. RECOUPMENT

(a) Applicability of Policy. This Policy applies to Incentive Compensation received by a Covered Officer (i) after beginning services as an Executive Officer, (ii) who served as an Executive Officer at any time during the performance period for such Incentive Compensation, (iii) while the Company had a class of securities listed on a national securities exchange or a national securities association, and (iv) during the Lookback Period.

(b) Recoupment Generally. Pursuant to the provisions of this Policy, if there is an

Accounting Restatement, the Company must reasonably promptly recoup the full amount of the Recoverable Incentive Compensation, unless the conditions of one or more subsections of Section 4(c) of this Policy are met and the Compensation Committee, or, if such committee does not consist solely of independent directors, a majority of the independent directors serving on the Board, has made a determination that recoupment would be impracticable. Recoupment is required regardless of whether the Covered Officer engaged in any misconduct and regardless of fault, and the Company's obligation to recoup Recoverable Incentive Compensation is not dependent on whether or when any restated financial statements are filed.

(c) Impracticability of Recovery. Recoupment may be determined to be impracticable if, and only if:

(i) the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount of the applicable Recoverable Incentive Compensation; provided that, before concluding that it would be impracticable to recover any amount of Recoverable Incentive Compensation based on expense of enforcement, the Company shall make a reasonable attempt to recover such Recoverable Incentive Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange in accordance with the Listing Standards; or

(ii) recoupment of the applicable Recoverable Incentive Compensation would likely cause an otherwisetax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Code Section 401(a)(13) or Code Section 411(a) and regulations thereunder.

(d) Sources of Recoupment. To the extent permitted by applicable law, the Administrator shall, in its sole discretion, determine the timing and method for recouping Recoverable Incentive Compensation hereunder, provided that such recoupment is undertaken reasonably promptly. The Administrator may, in its discretion, seek recoupment from a Covered Officer from any of the following sources or a combination thereof, whether the applicable compensation was approved, awarded, granted, payable or paid to the Covered Officer prior to, on or after the Effective Date: (i) direct repayment of Recoverable Incentive Compensation previously paid to the Covered Officer; (ii) cancelling prior cash or equity-based awards (whether vested or unvested and whether paid or unpaid); (iii) cancelling or offsetting against any planned future cash or equity-based awards; (iv) forfeiture of deferred compensation, subject to compliance with Code Section 409A; and (v) any other method authorized by applicable law or contract. Subject to compliance with any applicable law, the Administrator may effectuate recoupment under this Policy from any amount otherwise payable to the Covered Officer, including amounts payable to such individual under any otherwise applicable Company plan or program, *e.g.*, base salary, bonuses or commissions and compensation previously deferred by the Covered Officer. The Administrator need not utilize the same method of recovery for all Covered Officers or with respect to all types of Recoverable Incentive Compensation.

(e) No Indemnification of Covered Officers. Notwithstanding any indemnification agreement, applicable insurance policy or any other agreement or provision of the Company's certificate of incorporation or bylaws to the contrary, no Covered Officer shall be entitled to indemnification or advancement of expenses in connection with any enforcement of this Policy by the Company, including paying or reimbursing such Covered Officer for insurance premiums to cover potential obligations to the Company under this Policy.

(f) Indemnification of Administrator. Any members of the Administrator, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be indemnified by the

Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit any other rights to indemnification of the members of the Board under applicable law or Company policy.

(g) No "Good Reason" for Covered Officers. Any action by the Company to recoup or any recoupment of Recoverable Incentive Compensation under this Policy from a Covered Officer shall not be deemed (i) "good reason" for resignation or to serve as a basis for a claim of constructive termination under any benefits or compensation arrangement applicable to such Covered Officer, or (ii) to constitute a breach of a contract or other arrangement to which such Covered Officer is party.

5. ADMINISTRATION

Except as specifically set forth herein, this Policy shall be administered by the Administrator. The Administrator shall have full and final authority to make any and all determinations required under this Policy. Any determination by the Administrator with respect to this Policy shall be final, conclusive and binding on all interested parties and need not be uniform with respect to each individual covered by this Policy. In carrying out the administration of this Policy, the Administrator is authorized and directed to consult with the full Board or such other committees of the Board as may be necessary or appropriate as to matters within the scope of such other committee's responsibility and authority. Subject to applicable law, the Administrator may authorize and empower any officer or employee of the Company to take any and all actions that the Administrator, in its sole discretion, deems necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

6. SEVERABILITY

If any provision of this Policy or the application of any such provision to a Covered Officer shall be adjudicated to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Policy, and the invalid, illegal or unenforceable provisions shall be deemed amended to the minimum extent necessary to render any such provision or application enforceable.

7. NO IMPAIRMENT OF OTHER REMEDIES

Nothing contained in this Policy, and no recoupment or recovery as contemplated herein, shall limit any claims, damages or other legal remedies the Company or any of its affiliates may have against a Covered Officer arising out of or resulting from any actions or omissions by the Covered Officer. This Policy does not preclude the Company from taking any other action to enforce a Covered Officer's obligations to the Company, including, without limitation, termination of employment and/or institution of civil proceedings. This Policy is in addition to the requirements of Section 304 of the Sarbanes-Oxley Act of 2002 ("**SOX 304**") that are applicable to the Company's Chief Executive Officer and Chief Financial Officer and to any other compensation recoupment policy and/or similar provisions in any employment, equity plan, equity award, or other individual agreement, to which the Company is a party or which the Company has adopted or may adopt and maintain from time to time; provided, however, that compensation recouped pursuant to this Policy shall not be duplicative of compensation recouped pursuant to SOX 304 or any such compensation recoupment policy and/or similar provisions in any such employment, equity plan, equity award, or other individual agreement except as may be required by law.

8. AMENDMENT; TERMINATION

The Administrator may amend, terminate or replace this Policy or any portion of this Policy at any time and from time to time in its sole discretion. The Administrator shall amend this Policy as it deems necessary to comply with applicable law or any Listing Standard.

9. SUCCESSORS

This Policy shall be binding and enforceable against all Covered Officers and, to the extent required by Rule 10D-1 and/or the applicable Listing Standards, their beneficiaries, heirs, executors, administrators or other legal representatives.

10. REQUIRED FILINGS

The Company shall make any disclosures and filings with respect to this Policy that are required by law, including as required by the SEC.

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CYMABAY THERAPEUTICS, INC.

INCENTIVE COMPENSATION RECOUPMENT POLICY

FORM OF EXECUTIVE ACKNOWLEDGMENT

I, the undersigned, agree and acknowledge that I am bound by, and subject to, the CymaBay Therapeutics, Inc. Incentive Compensation Recoupment Policy, as may be amended, restated, supplemented or otherwise modified from time to time (the "***Policy***"). In the event of any inconsistency between the Policy and the terms of any employment agreement, offer letter or other individual agreement with CymaBay Therapeutics, Inc. (the "***Company***") to which I am a party, or the terms of any compensation plan, program or agreement, whether or not written, under which any compensation has been granted, awarded, earned or paid to me, the terms of the Policy shall govern.

If the Administrator (as defined in the Policy) reasonably determines that any compensation granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company pursuant to the Policy, I will engage with the Administrator to discuss a reasonable method of providing reimbursement of appropriate compensation and will thereafter promptly take any agreed action necessary to effectuate such forfeiture and/or reimbursement. I further agree and acknowledge that I am not entitled to indemnification, and hereby waive any right to advancement of expenses, in connection with any enforcement of the Policy by the Company.

Agreed and Acknowledged:

_____

Name: _____

Title: _____

Date: _____