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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2021

or

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

For the transition period from to

Commission File Number 001-37565

NovoCure Limited

(Exact Name of Registrant as Specified in Its Charter)

Jersey (State or Other Jurisdiction of Incorporation or Organization)	**98-1057807** (I.R.S. Employer Identification No.)

No. 4 The Forum
Grenville Street
St. Helier, Jersey JE2 4UF
(Address of Principal Executive Offices, including zip code)

Registrant's telephone number, including area code: **+44 (0) 15 3475 6700**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Ordinary shares, no par value per share	NVCR	NASDAQ Global Select Market

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

None
(Title of Class)

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 ☐

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

Large accelerated filer	☒	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. ☒

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

The aggregate market value of the outstanding common equity of the registrant held by non-affiliates as of the last business day of the registrant's most recently completed second fiscal quarter was $9,486,344,138.

The number of shares of the registrant's ordinary shares outstanding as of February 21, 2022 was 104,419,377.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2022 annual meeting of shareholders are incorporated by reference into Items 10, 11, 12, 13, and 14 of Part III of this Form 10-K. Such definitive proxy statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 31, 2021.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

In addition to historical facts or statements of current condition, this report 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. Forward-looking statements contained in this report are based on our current plans, expectations, hopes, beliefs, intentions or strategies concerning future developments and their impact on us. Forward-looking statements contained in this report constitute our expectations or forecasts of future events as of the date this report was filed with the Securities and Exchange Commission and are not statements of historical fact. You can identify these statements by the fact that they do not relate strictly to historical or current facts. Such statements may include words such as "anticipate," "will," "estimate," "expect," "project," "intend," "should," "plan," "believe," "hope," and other words and terms of similar meaning in connection with any discussion of, among other things, future operating or financial performance, strategic initiatives and business strategies, regulatory or competitive environments, our intellectual property and research and development related to our Tumor Treating Fields ("TTFields") devices marketed under various brand names, including "Optune," "Optune Lua," and software, tools and other items to support and optimize the delivery of TTFields (collectively, the "Products"). In particular, these forward-looking statements include, among others, statements about:

- our research and development, clinical study and commercialization activities and projected expenditures;
- the further commercialization of our Products for current and future indications;
- our business strategies and the expansion of our sales and marketing efforts in the United States ("U.S.") and in other countries;
- the market acceptance of our Products for current and future indications by patients, physicians, third-party payers and others in the healthcare and scientific community;
- our plans to pursue the use of our Products for the treatment of indications other than glioblastoma ("GBM") and malignant pleural mesothelioma ("MPM");
- our estimates regarding revenues, expenses, capital requirements and needs for additional financing;
- our ability to obtain regulatory approvals for the use of our Products in indications other than GBM and MPM;
- our ability to acquire from third-party suppliers the supplies needed to manufacture our Products;
- our ability to manufacture adequate supply of our Products;
- our ability to secure and maintain adequate coverage from third-party payers to reimburse us for our Products for current and future indications;
- our ability to receive payment from third-party payers for use of our Products for current and future indications;
- our ability to maintain and develop our intellectual property position;
- our ability to manage the risks associated with business disruptions caused by natural disasters, extreme weather events, pandemics such as COVID-19 (coronavirus) or international conflict or other disruptions outside of our control;
- our cash needs; and
- our prospects, financial condition and results of operations.

These forward-looking statements involve a number of risks and uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from
those projected in these forward-looking statements. Factors which may cause such differences to occur include those risks and uncertainties set forth under Part I, Item IA, Risk Factors, of this Annual Report on Form 10-K, as well as other risks and uncertainties set forth from time to time in the reports we file with the U.S. Securities and Exchange Commission the ("SEC"). We do not intend to update publicly any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by law.

Summary of Risk Factors

The following is a summary of some of the risks and uncertainties that could materially adversely affect our business, financial condition and results of operations. You should read this summary together with the more detailed description of each risk factor contained below.

Risks relating to the manufacturing, marketing and sales of our products

- We currently have only two products approved for use for specific indications. Our ability to expand our product line and their uses requires regulatory approval, which is costly and requires significant time and effort to obtain.
- To date, we have generated only limited and intermittent operating profits, and we have a history of incurring substantial operating losses. As we expand, we may experience difficulties managing our growth.
- To obtain approvals for new products and indications and to continue to market our existing products, we are required to conduct preclinical and clinical studies and other testing. Our clinical studies could be delayed or otherwise adversely affected by many factors, including difficulties in enrolling patients and problems with third-party providers. Continued testing of our products may not yield successful results and could reveal currently unknown safety hazards associated with our products. We may choose to, or may be required to, suspend, repeat or terminate our clinical studies if they are not conducted in accordance with regulatory requirements, the results are negative or inconclusive or the studies are not well designed.
- Our products do not have a significant history in the marketplace, as a result we may have difficulty:
    - developing an adequate sales and marketing organization or contracting with third parties to assist us in doing so;
    - achieving market acceptance of our products by healthcare professionals, patients and/or third-party payers; and
    - securing and maintaining adequate coverage and reimbursement from third-party payers, including governmental agencies in the countries where we market our products.
- We depend on single-source suppliers for some of our components, the loss of which could prevent or delay shipments of our products to customers or delay our clinical studies.
- Quality control problems with respect to materials supplied by third-party suppliers could prevent or delay shipments of our products to customers or delay our clinical studies.
- We face competition from numerous competitors.
- Because of the specialized nature of our business, the termination of relationships with our key employees, consultants and advisors may be detrimental to our business.
- Product liability suits, whether or not meritorious, could be brought against us and result in expensive and time-consuming litigation, payment of substantial damages and/or expenses and an increase in our insurance rates.
- Other future litigation and regulatory actions could have a material adverse impact on the Company.
- We are subject to fluctuations in global economic, political, environmental, and industry conditions, some of which may be unfavorable, including as a result of the COVID-19 pandemic.
- Our products and infrastructure face certain risks, including from cyber security breaches and data leakage. We are also subject to privacy and data security laws.

Risks relating to the regulation of our business

- Legislative and regulatory changes in the U.S. and in other countries regarding healthcare and government-sponsored programs may adversely affect us.
- We are subject to extensive post-marketing regulation by the U.S. Federal Drug Administration ("FDA") and comparable authorities in other jurisdictions, which could cause us to incur significant costs to maintain compliance.
- Modifications to our products may require regulatory approvals and our regulators may not agree with our conclusions regarding whether new approvals are required. Regulatory authorities may require us to cease promoting or to recall the modified versions of our products until such approvals are obtained.
- In addition to FDA requirements, we will spend considerable time and money complying with other federal, state, local and foreign rules, regulations and guidance.
- If we, our collaborative partners, our contract manufacturers, or our component suppliers fail to comply with regulations, the manufacturing and distribution of our products could be interrupted.
- Our products could be subject to recalls that could harm our reputation and financial results.
- If our products cause or contribute to a death or a serious injury, or malfunction in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.
- We are not permitted to promote the use of our products for unapproved or off-label uses.
- We pay taxes in multiple jurisdictions and adverse determinations by governmental authorities or changes in tax laws, rates or our status under which tax jurisdictions apply to us could increase our tax burden or subject our shareholders to additional taxes.
- We are affected by and subject to environmental laws and regulations that could be costly to comply with or that may result in costly liabilities.
- Safety issues concerning lithium-ion batteries could have a material adverse impact on our business.

Risks relating to intellectual property

- If we fail to protect, sustain, further build and enforce our intellectual property rights, competitors may be able to develop competing therapies.
- Intellectual property litigation and disputes may cause us to incur substantial costs, divert attention from the management of our business, harm our reputation, or require us to remove certain products from the market.
- Changes in U.S. patent law could impair our ability to protect our devices.

Risks relating to our ordinary shares and capital structure

- The market price for our ordinary shares may be volatile, which could result in substantial losses.
- Our ordinary shares are issued under the laws of Jersey, which may not provide the level of legal certainty and transparency afforded by incorporation in a U.S. state.
- U.S. shareholders may not be able to enforce civil liabilities against us.

- We have borrowed a significant amount of debt and have the ability to borrow additional debt in the future.
- Transactions relating to our convertible notes may dilute the ownership interest of existing shareholders, or may otherwise depress the price of our ordinary shares.

ITEM 1. BUSINESS

Overview

We are a global oncology company with a proprietary platform technology called Tumor Treating Fields ("TTFields"), which are electric fields tuned to specific frequencies that disrupt cancer cell division. Our key priorities are to drive commercial adoption of Optune and Optune Lua, our commercial TTFields devices, and to advance clinical and product development programs intended to extend overall survival in some of the most aggressive forms of cancer.

Optune is approved by the U.S. Food and Drug Administration ("FDA") under the Premarket Approval ("PMA") pathway for the treatment of adult patients with newly diagnosed glioblastoma ("GBM") together with temozolomide, a chemotherapy drug, and for adult patients with GBM following confirmed recurrence after chemotherapy as monotherapy treatment. We also have a CE certificate to market Optune for the treatment of GBM in the European Union ("EU"), as well as approval or local registration in the United Kingdom ("UK"), Japan and certain other countries. Optune Lua is approved by the FDA under the Humanitarian Device Exemption ("HDE") pathway to treatment malignant pleural mesothelioma ("MPM") together with standard chemotherapies. We have also received CE certification in the EU and approval or local registration to market Optune Lua in certain other countries. We market Optune and Optune Lua in multiple countries around the globe with the majority of our revenues coming from the use of Optune in the U.S., Germany and Japan. We are actively evaluating and executing upon opportunities to expand our international footprint.

We believe the physical mechanism of action behind TTFields therapy may be broadly applicable to solid tumor cancers. Currently, we are conducting phase 3 pivotal studies evaluating the use of TTFields in non-small cell lung cancer ("NSCLC"), ovarian cancer, brain metastases from non-small cell lung cancer ("brain metastases") and pancreatic cancer. In 2021, we completed patient enrollment in our phase 3 pivotal NSCLC and ovarian cancer studies with data anticipated in 2022 and 2023, respectively. Additionally, we have multiple ongoing phase 2 pilot studies evaluating the use of TTFields in gastric cancer, for which patient enrollment is complete, and stage 3 NSCLC, as well as testing the potential incremental survival benefit of TTFields delivered using high-intensity arrays versus standard arrays. We are designing several phase 2 pilot studies in partnership with oncology leaders to further explore the capabilities of TTFields. We are also currently conducting a global phase 4 post-marketing study testing the potential survival benefit of initiating Optune concurrent with radiation therapy versus following radiation therapy in patients with newly diagnosed GBM. In 2021, we presented data from our phase 2 pilot study studying the use of TTFields in liver cancer and are currently evaluating protocol design options for a large, randomized study in this indication. We anticipate expanding our clinical pipeline over time to study the safety and efficacy of TTFields for additional solid tumor indications and combinations with other cancer treatment modalities.

Our therapy is delivered through a medical device and we continue to advance our Products with the intention to extend survival and maintain quality of life for patients. We have several product development programs underway that are designed to optimize TTFields delivery to the target tumor and enhance patient ease of use. Our intellectual property portfolio contains hundreds of issued patents and numerous patent applications pending worldwide. We believe we possess global commercialization rights to our Products in oncology and are well-positioned to extend those rights into the future as we continue to find innovative ways to improve our Products.

In 2018, we granted Zai Lab (Shanghai) Co., Ltd. ("Zai") a license to commercialize Optune in China, Hong Kong, Macau and Taiwan ("Greater China") under a License and Collaboration Agreement (the "Zai Agreement"). The Zai Agreement also establishes a development partnership intended to accelerate the development of TTFields in multiple solid tumor cancer indications. For additional information, see Note 12 to the Consolidated Financial Statements.

Our ordinary shares are quoted on the NASDAQ Global Select Market under the symbol "NVCR." We were incorporated in the Bailiwick of Jersey in 2000. Our principal operations are located in Switzerland, the U.S. and Israel.

Our therapy

When cancer develops, rapid and uncontrolled division of unhealthy cells occurs. Electrically charged proteins within the cell are critical for cell division, making the rapidly dividing cancer cells vulnerable to electrical

interference. TTFields therapy is a treatment that uses electric fields tuned to specific frequencies to disrupt cancer cell division.

All cells are surrounded by a bilipid membrane, which separates the interior of the cell, or cytoplasm, from the space around it. This membrane prevents low frequency electric fields from entering the cell. TTFields, however, have a unique frequency range, between 100 to 500 kHz, enabling the electric fields to penetrate the cancer cell membrane. As healthy cells differ from cancer cells in their division rate, geometry and electric properties, the frequency of TTFields can be tuned to specifically affect the cancer cells while leaving healthy cells mostly unaffected.

Whether cells are healthy or cancerous, cell division, or mitosis, is the same. When mitosis starts, charged proteins within the cell, or microtubules, form the mitotic spindle. The spindle is built on electric interaction between its building blocks. During division, the mitotic spindle segregates the chromosomes, pulling them in opposite directions. As the daughter cells begin to form, electrically polarized molecules migrate towards the midline to make up the mitotic cleavage furrow. The furrow contracts and the two daughter cells separate. TTFields can interfere with these conditions. When TTFields are present in a dividing cancer cell, they cause the electrically charged proteins to align with the directional forces applied by the field, thus preventing the mitotic spindle from forming. Electrical forces also interrupt the migration of key proteins to the cell midline, disrupting the formation of the mitotic cleavage furrow. Interfering with these key processes disrupts mitosis and can lead to cell death.

Our track record of fundamental scientific research extends across more than two decades and, in all of our preclinical research to date, the application of TTFields has demonstrated a consistent anti-mitotic effect. Recent preclinical work suggests that the well-established impairment created by the physical effect of TTFields to tumor cells results in a series of changes to cell processes that inhibit DNA damage repair, induce autophagy, reduce cell migration and invasion, and increase anti-tumor immunity. Research is ongoing to further refine and build upon our understanding of TTFields' several mechanisms of action. Beyond our internal research efforts, we provide independent researchers with preclinical laboratory bench systems, known as inovitro™ and inovivo™, and we grant funding to support basic and translational research on TTFields. We also support independent research through our Investigator-Sponsored Trials and Preclinical Material Transfer Agreement programs in order to enhance our understanding of the optimal use of TTFields.

TTFields is intended principally for use together with other standard-of-care cancer treatments. There is a growing body of evidence that supports TTFields' broad applicability with certain other cancer therapies, including radiation therapy, certain chemotherapies and certain immunotherapies. In our clinical research and commercial experience to date, TTFields has exhibited no systemic toxicity, with mild to moderate skin irritation being the most common side effect.

Our technology

TTFields therapy is delivered through a portable medical device. The complete devices, called Optune and Optune Lua (for GBM and MPM treatment, respectively), include a portable electric field generator, arrays, rechargeable batteries and accessories. Sterile, single-use arrays are placed directly on the skin in the region surrounding the tumor and connected to the electric field generator to deliver therapy. Arrays are changed when hair growth or the hydrogel reduces array adhesion to the skin. The therapy is designed to be delivered continuously throughout the day and night, and efficacy is strongly correlated to time on therapy. When the device is turned on, TTFields are continuously generated within the specific region of the body covered by the arrays. Healthy tissues located outside of this region remain unaffected by the therapy. The electric field generator can be run from a standard power outlet or carried with a battery in a specially designed bag that we provide to patients.

We plan to use the same field generator technology across all indications for which our Products are approved. We plan to specifically target individual solid tumor types by optimizing field generator parameters such as frequency and power output. Our arrays have been developed and are in use, either commercially or clinically, for application on the head, thorax and abdomen.

Through engineering efforts, we plan to continue to advance our Products to optimize TTFields therapy for patients. We have several product development programs underway designed to extend survival and enhance quality of life. Our product development programs are primarily focused on enhancements to the field generator, arrays and software applications. Our product development initiatives include, but are not limited to: next generation arrays that are more flexible and deliver higher intensities, next generation array layout planning software, development of a third generation device that optimizes the use of electric fields to treat tumors, and patient-centered software that enables scaled patient support as we prepare to treat larger patient populations across multiple indications. Our

ultimate goal is to optimize the energy delivered to patients' tumors, potentially improving efficacy. Any enhancements will be subject to applicable regulatory reviews and approvals.

Our commercial business

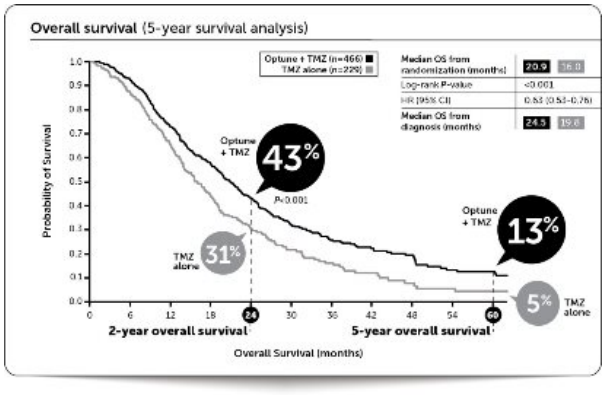
Optune is currently marketed for the treatment of GBM, the most common form of primary brain cancer and an aggressive disease for which there are few effective treatment options. Optune Lua is currently marketed for the treatment of MPM, a rare cancer that has been strongly linked to asbestos exposure. We market Optune and Optune Lua in multiple countries around the globe with the majority of our revenues coming from the use of Optune in the U.S., Germany and Japan.

Treatment of newly diagnosed GBM

In 2015, we received FDA approval to market Optune for the treatment of adult patients with newly diagnosed supratentorial GBM in combination with temozolomide. The FDA approved Optune for newly diagnosed GBM based on the EF-14 study ("EF-14"), which was a randomized, phase 3 pivotal clinical study which compared, post radiation, Optune plus temozolomide versus temozolomide alone for the treatment of newly diagnosed GBM. The primary endpoint of the study was progression-free survival and a powered secondary endpoint was overall survival.

In EF-14, Optune plus temozolomide demonstrated unprecedented five-year survival results. Median overall survival was extended by nearly five months (median overall survival of 20.9 months versus 16.0 months for temozolomide alone). Median progression-free survival was extended by 2.7 months to 6.7 months for Optune plus temozolomide from 4.0 months for temozolomide alone. The final EF-14 data were published in the *Journal of the American Medical Association* in 2017.

The following graph presents the overall survival data in the intent-to-treat population from our five-year analysis:



The extension of progression-free and overall survival in patients receiving Optune in combination with temozolomide in EF-14 was not specific to any prognostic subgroup or tumor genetic marker and was consistent regardless of MGMT methylation status, extent of resection, age, performance status or gender. Optune was safely combined with temozolomide with no significant increase in serious adverse events compared with temozolomide alone. The most common side effect related to Optune was mild to moderate skin irritation.

Quality of life data from a pre-specified analysis of EF-14 demonstrated that patients treated with Optune and temozolomide maintained quality of life over time and across predefined daily-functioning domains. Both healthcare professionals and patients reported stable quality of life evaluation scores up to one year of Optune use. Physical, role, social, emotional and cognitive functioning for patients treated with Optune and temozolomide all remained stable and comparable with patients treated with temozolomide alone.

The National Comprehensive Cancer Network Clinical Practice Guidelines in Oncology® (NCCN Guidelines®) for Central Nervous Systems Cancers were updated to include alternating electric fields therapy (Optune) in combination with temozolomide following standard brain radiation therapy with concurrent temozolomide as a

Category 1 recommended postoperative adjuvant treatment option for patients with newly diagnosed supratentorial GBM.

A post-hoc analysis of EF-14 showed that more time on Optune predicted increased survival in GBM patients. An Optune monthly usage threshold as low as 50 percent correlated with significantly improved outcomes in patients treated with Optune together with temozolomide compared to patients treated with temozolomide alone. The greater the patients' monthly usage of Optune, the better their outcomes. Patients who used Optune more than 90 percent of the time (n=43) had the greatest chance of survival: a median survival of 24.9 months from randomization and a five-year probability of survival of 29.3 percent.

A separate post-hoc analysis of EF-14 showed that higher intensities at the tumor bed were associated with increased survival in GBM patients. Patients treated with Optune at higher intensities (greater than or equal to 1.06 V/cm; n=119) had a median overall survival of 24.3 months compared to a median overall survival of 21.6 months for patients treated with Optune at lower intensities (less than 1.06 V/cm; n=221).

In these analyses, both time on therapy and higher levels of energy (power loss density) were associated with improved overall survival, independent of each other. In addition, patients who used Optune at least 18 hours per day at higher energy levels (n=78) had a median overall survival of 25.1 months (95% CI 20.8-39.4).

Treatment of recurrent GBM

We initially received FDA approval for Optune in 2011 for use as a monotherapy treatment for adult patients with GBM, following confirmed recurrence after chemotherapy. The FDA approved Optune based on the EF-11 study ("EF-11"), a randomized, phase 3 pivotal clinical study.

EF-11 was a multi-center, active controlled clinical study of 237 adults with recurrent GBM. Participants received either Optune as a monotherapy (n=120) or the physician's choice of chemotherapy (n=117). Chemotherapies chosen for the active control arm included mainly bevacizumab, nitrosoureas and temozolomide. The primary endpoint was superiority in overall survival. Overall survival for patients treated with Optune alone and active chemotherapy was 6.6 months and 6.0 months, respectively (p=0.27: HR = 0.86). The study demonstrated that Optune provided clinically comparable survival with an overall better quality of life.

More objective radiological responses were observed in the Optune group than in the active control chemotherapy group (14 patients versus 7 patients). Three patients in the Optune alone arm had a complete response versus no patients in the active chemotherapy arm.

In 2020, the EF-19 post-approval registry, which was a post-approval study required as a condition of FDA approval, confirmed the effectiveness and safety of Optune as monotherapy and further strengthened Optune's clinical profile in recurrent GBM. The EF-19 study studied Optune as a monotherapy for the treatment of recurrent GBM in 192 patients compared to the 117 recurrent GBM patients who received best standard of care chemotherapy in Novocure's EF-11 registration study. Optune as monotherapy reduced the risk of death with fewer adverse events compared to best standard of care chemotherapy. For patients who received at least one course of therapy, Optune prolonged survival by a median 1.7 months. No new safety signals were noted.

Treatment of MPM

In 2019, we received FDA approval via the HDE pathway to market Optune Lua (then known as NovoTTF-100L) for the treatment of adult patients with unresectable, locally advanced or metastatic MPM concurrent with pemetrexed and platinum-based chemotherapy. The FDA approved Optune Lua for MPM based on the STELLAR study ("STELLAR"). STELLAR was a single-arm, open-label, multi-center study designed to test the safety and efficacy of Optune in combination with pemetrexed combined with cisplatin or carboplatin in patients with unresectable, previously untreated MPM. The study was powered to prospectively determine the overall survival in patients treated with Optune Lua plus chemotherapy. Secondary endpoints included overall response rate (per mRECIST criteria), progression-free survival and safety.

STELLAR investigated safety and efficacy among 80 patients treated with Optune Lua plus standard of care chemotherapy. In STELLAR, the median overall survival was 18.2 months (95% CI, 12.1-25.8 months) across all patients treated with Optune Lua plus chemotherapy. The median overall survival was 21.2 months for patients with epithelioid MPM (n=53) and 12.1 months for patients with non-epithelioid MPM (n=27). 62% of patients enrolled in STELLAR who used Optune Lua plus chemotherapy were still alive at one year, with 42% of patients alive at two years. The disease control rate in patients with at least one follow-up CT scan performed (n=72) was 97%. 40% of

patients had a partial response, 57% had stable disease, and 3% had progressive disease. The median progression-free survival was 7.6 months (95% CI, 6.7-8.6 months).

There was no increase in serious systemic adverse events when Optune Lua was added to chemotherapy. Mild-to-moderate skin irritation was the only device-related side effect with Optune Lua. The STELLAR data were published in *The Lancet Oncology* in 2019.

Our commercial markets

We have built a commercial organization and market Optune and Optune Lua for the treatment of GBM and MPM in multiple countries in North America, Europe and Asia.

In 2022, we estimate that approximately:

- 15,000 people will be diagnosed with GBM or tumors that typically progress to GBM in the U.S. Of this population, we estimate that approximately 8,200 patients who are candidates for treatment with Optune based upon the rate of disease progression and medical eligibility will actively seek treatment.
- 4,600 people will be diagnosed with GBM or tumors that typically progress to GBM in Germany. Of this population, we estimate that approximately 2,500 patients who are candidates for treatment with Optune based upon the rate of disease progression and medical eligibility will actively seek treatment.
- 2,200 people will be diagnosed with GBM or tumors that typically progress to GBM in Japan. Of this population, we estimate that approximately 1,200 patients who are candidates for treatment with Optune based upon the rate of disease progression and medical eligibility will actively seek treatment.

In 2022, we estimate that approximately 3,000 people are diagnosed with malignant mesothelioma in the U.S. each year. Of this population, we estimate that approximately 1,600 patients are candidates for treatment with Optune Lua based upon the rate of disease progression and medical eligibility.

We believe there are many more patients who could benefit from treatment with TTFields than are currently on therapy. We continue to focus on increasing penetration for GBM and MPM. In the future, we anticipate strategically expanding into additional geographic markets and additional indications, pending regulatory approval.

Commercial execution

As of December 31, 2021, we had 87 sales force colleagues globally. Healthcare providers must undergo a certification training in order to prescribe our Products.

With respect to the treatment of GBM, our sales and marketing efforts are principally focused on driving adoption with both neuro-oncologists and radiation oncologists. In certain countries, neurosurgeons and medical oncologists also drive adoption. We continue to focus on driving key academic center engagements.

With respect to the treatment of MPM, our sales and marketing efforts are principally focused on certification training, supporting the required Institutional Review Board approval process in certain geographies, and driving awareness among radiation oncologists and thoracic oncologists. We believe the benefit of our education efforts will extend beyond MPM to future indications treated by the same prescribers and that radiation oncologists will continue to play an increasingly important role in driving adoption of our Products in both current and future indications.

We currently operate as a direct-to-patient distributor of our Products, except for Japan. In Japan, we distribute Optune through hospitals and provide patient support services under a contractual arrangement with the hospital. Once an eligible patient is identified by a certified prescriber, the healthcare provider’s office submits a prescription order form and supporting documentation to us. We employ a team of Device Support Specialists who provide technical training to the patient and any caregivers. Once treatment is initiated, we provide 24/7 technical support for patients and caregivers as well as assistance with insurance reimbursement. We also provide the healthcare provider and the patient with a usage report for monitoring patient time on therapy. We believe we have the experience and expertise to scale our sales and marketing efforts.

Billing and reimbursement

We provide our Products directly to patients following receipt of a prescription order and a signed patient service agreement (except in Japan as described above). The number of active patients on therapy and the amount of net revenue recognized per active patient are our principal revenue drivers. An active patient is a patient who is receiving treatment under a commercial prescription order as of the measurement date, including patients who may be on a temporary break from treatment and who plan to resume treatment in less than 60 days. Growth in the number of active patients is a factor of both new patient starts and treatment duration. Median treatment duration differs based upon the patient's clinical diagnosis.

We bill payers a single monthly fee for a month of therapy and we bear the financial risk of securing payment from third-party payers and patients in all markets except for Japan. We distribute our Products through hospitals in Japan with the hospitals receiving reimbursement from the government-mandated insurance program and in turn contracting with us for the equipment, supplies and services necessary to treat patients with our Product.

Currently, the monthly list price for our therapy in the U.S. is $21,000 and we have set list prices outside of the United States that are approximately equivalent to this price, subject to currency fluctuations. We typically negotiate discounts from our list price with healthcare payers, and in certain cases we accept government-mandated discounts from our list prices in order to secure reimbursement for our Products.

We continue to work with payers to expand access to Optune for patients with GBM. As of December 31, 2021, we have received national reimbursement for Optune in Austria, Germany, Israel, Japan, Sweden and Switzerland.

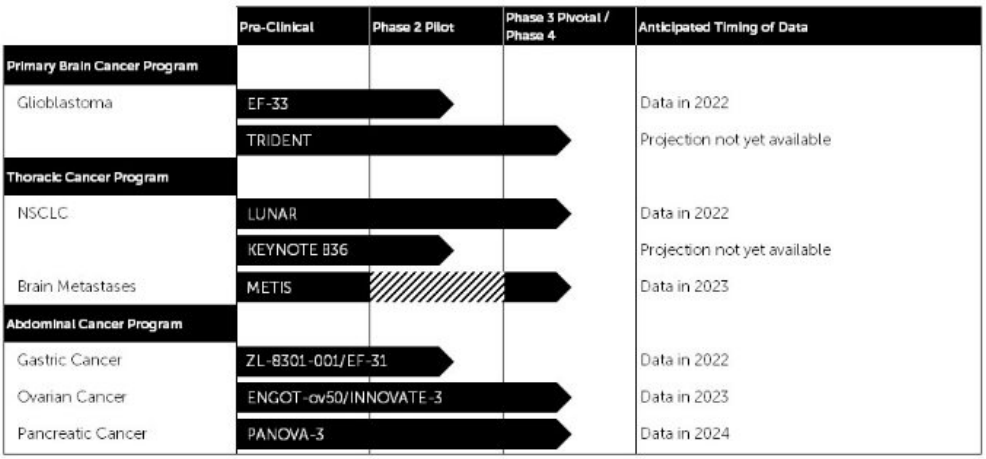
In the U.S., a substantial majority of Americans with private health insurance had coverage of Optune for newly diagnosed GBM and/or recurrent GBM as of December 31, 2021. As of September 2019, Americans who are beneficiaries of the Medicare fee-for-service program also have coverage of Optune for newly diagnosed GBM. We believe we have completed our administrative ramp-up towards processing Medicare claims and are efficiently pursuing appeals. We are actively appealing Medicare fee-for-service coverage denials up to and including the Administrative Law Judge ("ALJ") process with Centers for Medicare and Medicaid Services ("CMS").

We are engaged in an initial dialogue with certain payers regarding access to Optune Lua for patients with MPM. We anticipate that MPM claims during initial commercialization will go through an appeal process with payers, similar to our early experience with GBM. We anticipate that our ability to gain meaningful coverage for Optune Lua will be dependent on inclusion in the relevant clinical guidelines for MPM.

Our development pipeline

Based on the results of our preclinical research, we have developed a pipeline strategy to advance TTFields through phase 2 pilot, phase 3 pivotal studies and phase 4 post-marketing studies across multiple solid tumor types. We anticipate expanding our clinical pipeline over time to include additional solid tumor cancer indications.

Current Development Pipeline



The solid tumor cancers subject to our phase 2 pilot, phase 3 pivotal, and phase 4 post-marketing studies, as well as the studies themselves, are described in greater detail below.

Glioblastoma

We continue to conduct research in our approved indications to further advance the scientific evidence supporting the use of TTFields in GBM and to gather additional information about our therapy's optimal use.

2-THE-TOP phase 2 pilot study

In November 2021, Dr. David Tran, Chief of the Division of Neuro-Oncology at the McKnight Brain Institute at the University of Florida, presented updated data from the phase 2 pilot 2-THE-TOP study testing the safety and efficacy of TTFields together with pembrolizumab and temozolomide for the treatment of adult patients with newly diagnosed GBM. As of May 24, 2021 25 patients with a median age of 61 years were enrolled in the study, with a median follow-up of 14.7 months. 32% had biopsy only and 16% had partial resection. 72% had unmethylated MGMT and 12% had an IDH mutation. 48% were progression-free, and 60% were still alive. Of the 19 patients with follow-up greater than 9 months, the median progression-free survival was at least 11.2 months compared to 6.7 months from the historical control study, EF-14, in which patients received TTFields and adjuvant temozolomide. 24% patients with measurable tumors achieved partial or complete response. 193,760 peripheral blood mononuclear cells were sequenced in 12 patients before pembrolizumab and detected robust post-TTFields T cell activation in 11 of 12 patients via the T1IFN trajectory with a strong correlation with the TCRαβ clonal expansion Simpson index (Spearman coefficient r=-0.8, P=0.014). The study defined a T cell-based gene signature of TTFields effects on TCRαβ clonal expansion. The most common adverse events were thrombosis (16%), seizure (12%), and metabolic disturbances (8%). 2-THE-TOP concluded that the triple combination of TTFields, temozolomide, and pembrolizumab is well tolerated and shows early evidence of efficacy in newly diagnosed GBM patients. Patients will continue follow-up with survival and molecular data to be updated.

EF-33 phase 2 pilot study

In 2020, we enrolled the first patient in our EF-33 study, an open-label, single-arm phase 2 pilot clinical study to study if Optune delivered at 200 kHz to the brain using high-intensity arrays in the treatment of recurrent GBM significantly improves the clinical outcomes of patients compared to using standard transducer arrays. The primary endpoint is progression-free survival. Secondary endpoints include overall survival, progression-free survival rate at six months, overall survival rate at one year and two years, overall radiological response, and severity and

frequency of adverse events. All comparisons will be made against historical control data from the EF-11 study. EF-33 is expected to enroll 25 patients and we anticipate data will be available in 2022.

TRIDENT phase 4 post-marketing study

In 2020, we enrolled the first patient in our TRIDENT study ("TRIDENT"), a phase 4 post-marketing study testing the potential survival benefit of initiating Optune concurrent with radiation therapy in patients with newly diagnosed GBM. The primary endpoint is overall survival. Secondary endpoints include progression-free survival, survival rates at one and two years, overall radiological response, severity and frequency of adverse effects, pathological changes in resected GBM tumors post treatment, quality of life, and correlation of overall survival to TTFields dose. TRIDENT is designed to accrue 950 patients with 24 months minimum follow-up after the last patient enrolled.

Non-small cell lung cancer

Lung cancer is the most common cause of cancer-related death worldwide, and NSCLC accounts for approximately 85% of all lung cancers. It is estimated that approximately 193,000 patients are diagnosed with NSCLC each year in the U.S.

Physicians use different combinations of surgery, radiation and pharmacological therapies to treat NSCLC, depending on the stage of the disease. Surgery, which may be curative in a subset of patients, is usually used in early stages of the disease. Since 1991, radiation with a combination of platinum-based chemotherapy drugs has been the first line standard of care for locally advanced or metastatic NSCLC. Certain immune checkpoint inhibitors have recently been approved for the first line treatment of NSCLC and the standard of care in this setting appears to be evolving rapidly. The standard of care for second line treatment is also evolving and may include platinum-based chemotherapy for patients who received immune checkpoint inhibitors as their first line regimen, pemetrexed, docetaxel or immune checkpoint inhibitors.

EF-15 phase 2 pilot study

In 2013, we published the results of our phase 2 pilot study, the EF-15 study ("EF-15"), evaluating the safety and efficacy of TTFields in the treatment of advanced NSCLC. EF-15 focused on the effects of treatment with TTFields in combination with standard of care pemetrexed chemotherapy. Results of the pemetrexed phase 3 pivotal FDA registration study were used as a historical control in this study.

A total of 42 patients were recruited to the study with a minimum follow-up of six months. Efficacy results based on 41 evaluable patients showed both progression-free survival and overall survival for patients receiving TTFields in combination with pemetrexed increased compared to historical control data for pemetrexed alone. Median time to in-field progression in the TTFields-treated group was 6.5 months (compared to 2.9 months in the historical control) and median overall survival was 13.8 months (compared to 8.3 months in the historical control). Adverse events reported in this combination study were comparable to those reported with pemetrexed alone, suggesting minimal added toxicities due to TTFields.

LUNAR phase 3 pivotal study

In 2017, we enrolled the first patient in our LUNAR study ("LUNAR"), a phase 3 pivotal study testing the effectiveness of TTFields in combination with immune checkpoint inhibitors or docetaxel versus immune checkpoint inhibitors or docetaxel alone for patients with stage 4 NSCLC who progressed during or after platinum-based therapy. It is estimated that approximately 46,000 patients receive second-line treatment for stage 4 NSCLC each year in the U.S. The primary endpoint is superior overall survival of patients treated with TTFields plus immune checkpoint inhibitors or docetaxel versus immune checkpoint inhibitors or docetaxel alone. We believe our protocol incorporates the evolving standard of care for second-line treatment of NSCLC. TTFields is intended principally for use in combination with other standard-of-care treatments, and LUNAR was designed to generate data that contemplates multiple outcomes, all of which we believe will be clinically meaningful.

In April 2021, we announced that an independent Data Monitoring Committee ("DMC") informed us that the pre-specified interim analysis for the LUNAR study was accelerated given the length of accrual and the number of events observed, to date. The interim analysis included data from 210 patients accrued through February 2021. After review of the interim analysis, the DMC concluded that the LUNAR study should continue with no evidence of increased systemic toxicity. The DMC went on to comment that the continued accrual to 534 patients as proposed in the original protocol, given the current rate of accrual and the interim data presented, is likely unnecessary and

possibly unethical for patients randomized to control. For this reason, the DMC recommended an adjustment of accrual to approximately 276 patients with a 12-month follow-up following the enrollment of the last patient. The DMC believed this amended protocol would provide adequate data regarding toxicity and efficacy, providing sufficient overall power, as well as potentially providing important information regarding efficacy within treatment subgroups. In May 2021, the FDA approved our investigational device exemption supplement incorporating the recommended protocol changes and we enrolled our last LUNAR patient in November 2021. We anticipate data in 2022.

KEYNOTE B36 phase 2 pilot study

In July 2020, we entered into a clinical study collaboration with MSD, a trade name of Merck & Co., Inc. through a subsidiary, to study TTFields together with MSD's anti-PD-1 therapy pembrolizumab for treatment of first-line NSCLC, expanding our research in the lung cancer space. In April 2021, the FDA approved our IDE application to initiate the KEYNOTE B36 phase 2 pilot study to study TTFields with pembrolizumab in first-line NSCLC. As of December 31, 2021 there were nine KEYNOTE B36 clinical study sites actively evaluating patients for enrollment.

Brain metastases

Metastatic cancer is cancer that has spread from the place where it first started to another place in the body. In metastasis, cancer cells break away from where they first formed (the primary cancer), travel through the blood or lymph system, and form new tumors (the metastatic tumors) in other parts of the body. The exact incidence of brain metastases is unknown because no national cancer registry documents brain metastases, and estimates from scientific literature vary greatly based on the study methodology applied. It is estimated that between 100,000 and 240,000 new cases are diagnosed in the U.S. each year with brain metastases estimated to occur in between 10% to 40% of all cancer patients.

Brain metastases are commonly treated with a combination of surgery and radiation. Chemotherapy is often given for the primary tumor, but many chemotherapy agents do not cross the blood brain barrier and are thus ineffective in the treatment of brain metastases. When brain metastases appear, they are either surgically removed or treated with radiation using stereotactic radiosurgery ("SRS") when possible. Whole brain radiation therapy, although effective in delaying progression or recurrence of brain metastases when given either before or after SRS, is associated with neurotoxicity and a significant decline in cognitive functioning. Thus, whole brain radiation therapy is often delayed until later in the disease course and is often used as a last resort. This practice results in a window of unmet need after localized surgery and SRS are used and before whole brain radiation therapy is administered to delay or prevent the additional spread of brain metastases.

METIS phase 3 pivotal study

In 2016, we enrolled the first patient in our METIS study ("METIS"), a phase 3 pivotal study testing the effectiveness of SRS plus TTFields compared to SRS alone in patients with brain metastases resulting from NSCLC. It is estimated that between 20 to 40% of patients with NSCLC develop brain metastases, with an estimated 38,000 to 77,000 patients diagnosed each year in the U.S. with brain metastases resulting from NSCLC. The primary endpoint of METIS is time to first intracranial progression. Secondary endpoints include, among others, time to neurocognitive failure, overall survival and radiological response rate following study treatments. The study is designed to accrue 270 patients with data analyzed 12 months after the last patient in. We anticipate data will be available in 2023.

Liver cancer

Liver cancer is a leading cause of cancer deaths worldwide and is the sixth leading cause of cancer deaths annually in the U.S. The incidence of liver cancer is approximately 42,000 new cases annually in the U.S. The five-year survival rate with existing standards of care is less than 20%.

Hepatocellular carcinoma is the most widespread type of cancer that originates from the liver. Advanced liver cancer has spread either to the lymph nodes or to other organs and, because these cancers are widespread, they cannot be treated with surgery. The current common standard treatment for patients with advanced disease and those who progressed on loco-regional therapy is systemic therapy with sorafenib, lenvatinib, or atezolizumab plus bevacizumab.

In September 2021, we announced that the FDA granted breakthrough designation to the NovoTTF-200T System, a TTFields device intended for use together with atezolizumab and bevacizumab for the first-line treatment of patients with unresectable or metastatic liver cancer. The designation offers us an opportunity to interact with FDA experts throughout the premarket review phase and allows for prioritized review of regulatory submissions.

HEPANOVA phase 2 pilot study

In 2018, we opened our HEPANOVA study, a single-arm, phase 2 pilot clinical study in liver cancer testing the safety and efficacy of TTFields in combination with sorafenib for the treatment of advanced hepatocellular cancer that are not eligible for standard local therapies or surgery. The primary endpoint is overall response rate, and secondary endpoints include progression-free and overall survival at one year.

In July 2021, we announced the final results of the HEPANOVA study. Historical control data showed a 4.5% objective response rate and a 43% disease control rate for patients treated with sorafenib alone. In 21 evaluable patients, HEPANOVA showed a 9.5% objective response rate and 76% disease control rate, as well as 5.8 months of progression free survival. These results are even more encouraging when considering the poor prognosis of the study population. 52% of the patients in HEPANOVA were categorized as Child-Pugh Class B, compared to 5% in the historical control, indicating significant liver functional compromise. Additionally, research conducted to date has shown that TTFields anti-mitotic effect requires extended exposure to the therapy for maximum impact. This was a challenge given median patient treatment duration of only 10 weeks during the study. Of the patients who received at least 12 weeks of therapy, the disease control rate reached 91% with an objective response rate of 18%. These data demonstrate that TTFields have the potential to extend survival in advanced liver cancer. Our team, along with study investigators, are actively designing a phase 3 pivotal study that contemplates TTFields therapy together with the current standard of care, including immunotherapy.

Gastric cancer

Gastric cancer is the third leading cause of cancer deaths worldwide and the third leading cause of cancer deaths in China. The incidence of gastric cancer is approximately 478,500 new cases annually in China, and approximately 26,000 new cases annually in the U.S. The five-year overall survival rate of gastric cancer is approximately 36%.

Current therapies include surgery, chemotherapy, radiotherapy and targeted therapy. A commonly used chemotherapy regimen in treating gastric cancer is XELOX, a combination of oxaliplatin and capecitabine. In patients diagnosed with advanced gastric cancer that is no longer operable, combination chemotherapy extends progression-free survival and overall survival to 3-6 months and 8-14 months, respectively.

EF-31 phase 2 pilot study

In 2020, we opened our EF-31 study, a single-arm, phase 2 pilot clinical study in gastric cancer in partnership with Zai testing the safety and efficacy of TTFields together with XELOX chemotherapy as first-line treatment for patients with unresectable gastric adenocarcinoma or gastroesophageal junction adenocarcinoma. The primary endpoint is investigator-assessed objective response rate, and secondary endpoints include progression-free and overall survival. The protocol is designed to include 25 evaluable patients who receive at least one tumor assessment. In October 2021, we announced the final patient was enrolled in the study and data is anticipated in 2022.

Ovarian cancer

In the U.S., ovarian cancer ranks fifth in cancer deaths among women, with approximately 24,000 women diagnosed each year. Ovarian cancer incidence increases with age, and the median age at time of diagnosis is 63 years old.

Physicians use different combinations of surgery and pharmacological therapies to treat ovarian cancer, depending on the stage of the disease. Surgery is usually used in early stages of the disease and is usually combined with chemotherapy, including paclitaxel and platinum-based chemotherapy. Unfortunately, the majority of patients are diagnosed at an advanced stage when the cancer has spread outside of the ovaries to include regional tissue involvement and/or metastases. Platinum-based chemotherapy remains part of the standard of care in advanced ovarian cancer, but most patients with advanced ovarian cancer will have tumor progression or, more commonly, recurrence. Almost all patients with recurrent disease ultimately develop platinum resistance, and the prognosis for this population remains poor.

INNOVATE phase 2 pilot study

In 2018, we published the results of our phase 2 pilot study in recurrent ovarian cancer, the INNOVATE study ("INNOVATE"), examining TTFields in combination with standard of care chemotherapy. INNOVATE was a multi-center, non-randomized, open-label study designed to test the feasibility, safety and preliminary efficacy of TTFields in combination with weekly paclitaxel. The paclitaxel control arm from the bevacizumab phase 3 pivotal FDA registration study was used as a historical control in this study.

A total of 31 patients were recruited to the study with a minimum follow-up of six months. Safety results suggested that TTFields in combination with weekly paclitaxel may be tolerable and safe as second-line treatment for patients with recurrent ovarian cancer. Median progression-free survival in the TTFields-treated group was 8.9 months (compared to 3.9 months in the paclitaxel-alone historical control), and median overall survival was not yet reached. The one-year survival rate was 61%. Efficacy results based on the 31 evaluable patients suggested more than doubling of the progression-free survival and an improvement in overall survival among patients who received TTFields therapy with paclitaxel compared to paclitaxel alone.

INNOVATE-3 phase 3 pivotal study

In 2019, we enrolled the first patient in our INNOVATE-3 study ("INNOVATE-3"), a phase 3 pivotal study testing the effectiveness of TTFields with paclitaxel in patients with platinum-resistant ovarian cancer. It is estimated that approximately 16,000 patients are diagnosed with platinum-resistant ovarian cancer each year in the U.S. The primary endpoint of INNOVATE-3 is overall survival. Secondary endpoints include progression-free survival, objective response rate, severity and frequency of adverse events, time to undisputable deterioration in health-related quality of life or death, and quality of life. The study is designed to accrue 540 patients with data analyzed 18 months after the last patient in. In October 2021, we announced that the final patient was enrolled in the pivotal INNOVATE-3 study. A DMC will conduct the pre-specified interim analysis pursuant to the study protocol in 2022 and data is anticipated in 2023.The European Network for Gynaecological Oncological Trial groups ("ENGOT") and The GOG Foundation, Inc. ("GOG"), third-party clinical study networks, are collaborating with us on the study.

Pancreatic cancer

Pancreatic cancer is one of the most lethal cancers and is the third most frequent cause of death from cancer in the U.S. While overall cancer incidence and death rates are remaining stable or declining, the incidence and death rates for pancreatic cancer are increasing. It is estimated that approximately 53,000 patients are diagnosed with pancreatic cancer each year in the U.S. Pancreatic cancer has a five-year relative survival rate of just 10 percent.

Physicians use different combinations of surgery, radiation and pharmacological therapies to treat pancreatic cancer, depending on the stage of the disease. For patients with locally advanced pancreatic cancer involving encasement of arteries but no extra-pancreatic disease, the standard of care is surgery followed by chemotherapy with or without radiation. Unfortunately, the majority of locally advanced cases are diagnosed once the cancer is no longer operable, generally leaving chemotherapy with or without radiation as the only treatment option.

PANOVA phase 2 pilot study

In 2018, we published the results of our phase 2 pilot study in advanced pancreatic adenocarcinoma, the PANOVA study ("PANOVA"), examining TTFields in combination with standard of care chemotherapy.

PANOVA was a multicenter, non-randomized, open-label study. The study included 40 patients with locally advanced or metastatic pancreatic cancer whose tumors could not be removed surgically and who had not received chemotherapy or radiation therapy prior to the clinical study. Patients were enrolled between 2014 and 2016 in two cohorts: The first cohort of 20 patients received TTFields with standard doses of gemcitabine alone. The second cohort of 20 patients received TTFields with standard doses of nab-paclitaxel plus gemcitabine.

In the first cohort, efficacy results showed that progression-free survival and overall survival of patients treated with TTFields combined with gemcitabine were more than double those of gemcitabine-treated historical controls. Median progression-free survival in the TTFields-treated group was 8.3 months (compared to 3.7 months in the gemcitabine historical control), with locally advanced patients reaching a median progression-free survival of 10.3 months and patients with metastatic disease reaching a median progression-free survival of 5.7 months. The median overall survival for all patients was 14.9 months (compared to 6.7 months in the gemcitabine historical control). Median overall survival was not reached in locally advanced patients and 86% of patients were alive at end of follow up. Patients with metastatic disease experienced a median overall survival of 8.3 months. One-year

survival was 55% (compared to 22% in the gemcitabine historical control). Of 11 patients with available CT scans, 5 (45%) had a partial response (compared to 7% with gemcitabine alone), 5 (45%) had stable disease, which means that the cancer is neither decreasing nor increasing in extent or severity, and 1 (10%) had progressive disease.

In the second cohort, efficacy results showed that progression-free survival and overall survival of patients treated with TTFields combined with nab-paclitaxel plus gemcitabine were more than double those of nab-paclitaxel plus gemcitabine-treated historical controls. Median progression-free survival in the TTFields-treated group was 12.7 months (compared to 5.5 months in the nab-paclitaxel plus gemcitabine historical control) and median overall survival was not yet reached. The one-year survival rate was 72% (compared to 35% in nab-paclitaxel plus gemcitabine historical control). Of the 15 patients with available CT scans, 6 (40%) had a partial response (compared to 23% with the nab-paclitaxel plus gemcitabine alone), 7 (47%) had stable disease and 2 (13%) had progressive disease.

Safety results from both cohorts suggested that TTFields plus first-line chemotherapies nab-paclitaxel and/or gemcitabine may be tolerable and safe in patients with advanced pancreatic cancer. Patients reported no serious adverse events related to TTFields.

PANOVA-3 phase 3 pivotal study

In 2018, we enrolled the first patient in our PANOVA-3 study ("PANOVA-3"), a phase 3 pivotal study testing the effectiveness of TTFields with nab-paclitaxel and gemcitabine versus nab-paclitaxel and gemcitabine alone as a front-line treatment for unresectable locally advanced pancreatic cancer. It is estimated that approximately 43,000 patients are diagnosed with unresectable pancreatic cancer each year in the U.S. The primary endpoint of PANOVA-3 is overall survival. Secondary endpoints include progression-free survival, local progression-free survival, objective response rate, one-year survival rate, quality of life, pain-free survival, resectability rate and toxicity.

The study is designed to accrue 556 patients with data analyzed 18 months after the last patient in. A DMC will conduct a pre-specified interim analysis pursuant to the study protocol and final data is anticipated in 2024.

Zai License and Collaboration Agreement

In 2018, we announced a strategic collaboration with Zai. The collaboration agreement grants Zai a license to commercialize our Products in Greater China and establishes a development partnership intended to accelerate the development of TTFields in multiple solid tumor cancer indications. Zai has launched Optune for the treatment of newly diagnosed GBM in Hong Kong and mainland China and is seeking marketing authorization for GBM in Taiwan. Zai has also launched Optune Lua for the treatment of MPM in Hong Kong and has filed a Marketing Authorization Application for MPM in mainland China. For additional information, see Note 12 to the Consolidated Financial Statements.

Manufacturing and supply chain

We outsource production of all of our system components to qualified partners. Disposable array manufacturing, the dominant activity in our manufacturing supply chain, includes several specialized processes. Production of the durable system components follows standard electronic medical device methodologies.

We have supply agreements in place with our third-party manufacturing partners. While we currently obtain some critical materials for use in certain jurisdictions from single source suppliers, we have developed or are in the process of developing and obtaining regulatory approval for second sources for critical materials in all jurisdictions. We hold safety stocks of single source components in quantities that we believe are sufficient to protect against possible supply chain disruptions. We anticipate that the diversification of our supply chain will both ensure a continuity of supply and reduce costs.

Intellectual property

We believe we possess global commercialization rights to our Products in oncology and are well-positioned to extend those rights into the future as we continue to find innovative ways to improve our Products. Our robust global patent and intellectual property portfolio consists of hundreds of issued patents in multiple jurisdictions covering various aspects of our devices and related technology. In the U.S., our patents have expected expiration dates between 2023 and 2038. We have also filed several hundred additional patent applications worldwide, that, if issued, may protect aspects of our platform beyond the current last-to-expire patent in the relevant market. These

pending applications cover innovations relating to our arrays, field generators and software platform, in addition to other topics related to TTFields. Our reliance on intellectual property involves certain risks, as described under the heading "Risk factors—Risks relating to intellectual property."

In addition to our patent portfolio, we further protect our intellectual property by maintaining the confidentiality of our trade secrets, know-how and other confidential information. Given the length of time and expense associated with bringing device candidates through development and regulatory approval to the market place, the healthcare industry has traditionally placed considerable importance on obtaining patent protection and maintaining trade secrets, know-how and other confidential information for significant new technologies, products and processes.

Our policy is to require each of our employees, consultants and advisors to execute a confidentiality agreement before beginning their employment, consulting or advisory relationship with us. These agreements generally provide that the individual must keep confidential and not disclose to other parties any confidential information developed or learned by the individual during the course of their relationship with us except in limited circumstances. These agreements also generally provide that we own, or the individual is required to assign to us, all inventions conceived by the individual in the course of rendering services to us. Despite measures taken to protect our intellectual property, unauthorized parties may copy certain aspects of our products or obtain and use information that we believe is proprietary.

Pursuant to our strategic collaboration with Zai, we granted Zai a license to commercialize TTFields in Greater China. For additional information, see Note 12 to the Consolidated Financial Statements.

In 2015, we entered into a settlement agreement with the Technion Research and Development Foundation to resolve certain potential disputes regarding intellectual property developed by our founder and previously assigned to us.

In 2005, we granted an exclusive license to a third party, NovoBiotic LLC, to certain of our key intellectual property for use outside the field of oncology. In December 2020, we entered into an agreement with Novobiotic LLC that terminated all pre-existing agreements between the parties, including any restrictions on our use of intellectual property outside the field of oncology.

Competition

The market for cancer treatments is intensely competitive, subject to rapid change and significantly affected by new product and treatment introductions and other activities of industry participants. The general bases of competition are overall effectiveness, side effect profile, cost, availability of reimbursement and general market acceptance of a product as a suitable cancer treatment.

Our intellectual property portfolio is continuously expanding as we find new and unique ways to improve TTFields therapy. We believe these intellectual property rights would provide an obstacle to the introduction of state of the art TTFields devices by a competitor. However, competitors may be able to offer less sophisticated TTFields devices that utilize technology described in expired patents and/or choose to market their system(s) in countries where we have limited or no enforceable intellectual property rights. Competitors could also pursue alternative technologies for the application of TTFields into a patient that we did not foresee or protect. We are aware of a few third parties in the United States and China developing devices and filing for intellectual property protection related to TTFields.

Beginning in 2021, several of our early patents covering technology included in our Products began expiring in the U.S. and elsewhere. Even after the expiration of our patents, we believe that potential market entrants applying low-intensity, alternating electric fields to solid tumors will have to undertake their own clinical studies and regulatory submissions to prove equivalence to our Products, a necessary step in receiving regulatory approvals for a competing product, all while avoiding infringing our unexpired patents.

Presently, the traditional biotechnology, pharmaceutical and medical technology industries expend significant resources in developing novel and proprietary therapies for the treatment of solid tumors, including GBM, MPM and other indications that we are currently investigating. As we work to increase market acceptance of our Products, we compete with companies commercializing or investigating other anti-cancer therapies, some of which are in clinical studies for GBM or MPM that currently specifically exclude patients who have been or are being treated with our Products. The introduction of competing therapies could materially impact our business and financial results.

Government regulation

In the U.S., our Products and our operations are subject to extensive regulation by the FDA under the Federal Food, Drug, and Cosmetic Act ("FDCA"). In the EU member states where we market our Products and operate, we are currently subject to, inter alia, the Medical Device Directive ("MDD") as implemented into national legislation by the EU member states. On May 26, 2021, the MDD was replaced and repealed by the Medical Device Regulation ("MDR"), which applies directly in all EU member states. In Switzerland, our Products and operations are subject to, inter alia, the Medical Devices Ordinance, which implements the MDD into Swiss law (See "Foreign approvals and CE mark" below). In Japan, our Products and operations are subject to regulation by the Pharmaceuticals and Medical Device Agency ("PMDA") under the Pharmaceuticals and Medical Devices Act ("PMD Act"). In addition, our Products must meet the requirements of a large and growing body of national, regional and international standards that govern the preclinical and clinical testing, manufacturing, labeling, certification, storage, recordkeeping, advertising, promotion, export and marketing and distribution, among other things, of our Products for current and future indications.

In the U.S., advertising and promotion of medical devices, in addition to being regulated by the FDA, is also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. In the EU, advertising and promotion is subject to not only the general provisions of the MDD or MDR, but also general EU advertising rules on misleading and comparative advertising and unfair commercial practices, as implemented at the EU member state level, such as the Heilmittelwerbegesetz in Germany. Promotional activities for FDA-regulated products of other companies have been the subject of government enforcement actions brought under healthcare laws and consumer protection statutes. In addition, we are required to meet analogous regulatory requirements in countries outside the U.S., which can change rapidly with relatively short notice. Competitors can also initiate litigation alleging false advertising for our promotional efforts under the Lanham Act, or under similar state laws.

Our research, development and clinical programs, as well as our manufacturing and marketing operations, are also subject to extensive regulation.

Failure by us or by our suppliers to comply with applicable regulatory requirements can result in enforcement action by the FDA or other regulatory authorities, which may result in any number of regulatory enforcement actions, or civil or criminal liability.

Food and Drug Administration

The FDA regulates the development, testing, manufacturing, labeling, storage, recordkeeping, promotion, marketing, distribution and service of medical devices in the U.S. to ensure that medical products distributed domestically are safe and effective for their intended uses. In addition, the FDA regulates the export of medical devices manufactured in the U.S. to international markets and the importation of medical devices manufactured abroad. The FDA has broad post-market and regulatory enforcement powers to ensure compliance with the FDCA.

The FDA governs the following activities that we perform or that are performed on our behalf:

- product design, development and manufacture;
- product safety, testing, labeling and storage;
- record keeping procedures;
- product marketing, sales and distribution; and
- post-marketing surveillance, complaint handling, medical device reporting, reporting of deaths, serious injuries or device malfunctions and repair or recall of products.

We have registered three of our facilities with the FDA. We are subject to announced and unannounced inspections by the FDA to determine our compliance with the Quality System Regulation ("QSR") and other regulations and these inspections include the manufacturing facilities of our suppliers.

FDA's premarket clearance and approval requirements

Unless an exemption applies, before we can commercially distribute medical devices in the U.S., we must obtain, depending on the type of device, either prior 510(k) clearance or premarket approval ("PMA") from the FDA. The

FDA classifies medical devices into one of three classes. Devices deemed to pose lower risks are placed in either class I or II, which typically requires the manufacturer to submit to the FDA a premarket notification requesting permission to commercially distribute the device. This process is generally known as 510(k) clearance. Some low-risk devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) device, are placed in class III, generally requiring PMA.

Premarket approval (PMA) and Humanitarian Device Exemption (HDE) pathways

Optune and Optune Lua are classified as Class III devices as they are deemed to be life-sustaining devices. Accordingly, we were required to receive PMA for Optune, which the FDA granted in April 2011 and October 2015 for the treatment of recurrent and newly diagnosed supratentorial GBM, respectively, in adult patients. We expect that we will be required to receive PMA for the use of our Products for future indications.

A PMA must be supported by extensive data, including from technical tests, preclinical studies and clinical studies, manufacturing information and intended labeling to demonstrate, to the FDA's satisfaction, the safety and effectiveness of a medical device for its intended use. During the PMA review period, the FDA will typically request additional information or clarification of the information already provided. Also, an advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. The FDA may or may not accept the panel's recommendation. In addition, the FDA will generally conduct a pre-approval inspection of the manufacturing facility or facilities to ensure compliance with the QSR. Prior to approval of the Optune PMA for the treatment of recurrent GBM, we and our critical component suppliers were each inspected by the FDA.

New PMAs or PMA supplements are required for modifications that affect the safety or effectiveness of our devices, including, for example, certain types of modifications to a device's indication for use, manufacturing process, labeling and design. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA and may not require any or as extensive clinical data as the original PMA required, or the convening of an advisory panel. The FDA requires a company to make the determination as to whether a new PMA or PMA supplement application is to be filed. If a company determines that neither a new PMA nor a PMA supplement application is required for modifications, it must nevertheless notify the FDA of these modifications in its PMA Annual Report. The FDA may review a company's decisions when reviewing the PMA Annual Report and require the filing of an application.

As is typical with medical device companies, we have received approval for a number of post-approval PMA supplements for GBM, including for modifications to Optune's electric field generator, arrays, software, manufacturing processes and labeling. Future modifications may be considered by us as the need arises, some of which we may deem to require a PMA supplement application and others to require reporting in our PMA Annual Report.

For class III devices intended to treat disease affecting 8,000 individuals or less per year in the U.S., called Humanitarian Use Devices ("HUD"), the FDA has a separate marketing authorization pathway called the HDE. Approval basis for an HDE is a "reasonable assurance of safety" and that the probable benefit to health outweighs risk of injury from its use, which means a traditional phase 3 pivotal study usually is not required to support approval.

In 2019, the FDA approved Optune Lua (then known as "NovoTTF-100L") for the treatment of MPM under the HDE pathway. Devices approved through an HDE application are subject to certain requirements, including specific labeling restrictions and the requirement that a facility's institutional review board ("IRB") or Local Committee approve the use of the device before it can be distributed in that facility. In addition, there is a general prohibition on profiting from sales of devices approved under the HDE standard. As part of the approval process, we applied for an exemption from this limitation, which the FDA granted. Otherwise, HDE approved devices are generally required to follow the same requirements as PMA approved devices, including the supplement process.

Clinical studies

Clinical studies are generally required to support approval of a PMA or HDE. Such studies generally require an Investigational Device Exemption ("IDE") approval from the FDA for a specified number of patients and study sites, unless the product is deemed a non-significant risk device eligible for more abbreviated IDE requirements. Clinical studies are subject to extensive monitoring, recordkeeping and reporting requirements. Clinical studies must be

conducted under the oversight of an IRB for the relevant clinical study sites and must comply with FDA regulations, including those relating to current Good Clinical Practices ("cGCPs"). To conduct a clinical study, we also are required to obtain the patients' informed consent in form and substance that complies with both FDA requirements and state and federal privacy and human subject protection regulations. We, the FDA or the respective IRB could suspend a clinical study at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. Even if a study is completed, the results of clinical testing may not adequately demonstrate the safety and efficacy of the device or may otherwise not be sufficient to obtain FDA approval to market the product in the U.S.

Post-approval studies are also typically required as a condition of PMA to reinforce the reasonable assurance of safety and effectiveness. Such studies are conducted in the post-market setting with the approved device, often to address the long-term use of the device or other discrete questions that may have been raised based on the clinical data from the IDE clinical study. The FDA required a post-approval registry study as a condition of approval for Optune for recurrent GBM,which we completed.

Foreign approvals and CE mark

Market access, sales and marketing of medical devices outside of the U.S. are subject to foreign regulatory requirements that vary widely from country to country. In the European Economic Area ("EEA"), for Novocure's devices these include the requirement to obtain a CE Certificate and to affix a CE mark to our Products. In the EEA, whether or not we have obtained FDA approval, our devices must be subject to conformity assessment procedure involving an EEA notified body, a private organization accredited by an EEA member state to conduct conformity assessment procedures under the MDD/MDR. Apart from low risk medical devices (Class I with no measuring function and which are not sterile), a conformity assessment procedure requires the intervention of a notified body. The notified body typically audits and examines the device's technical documentation, including the clinical evaluation, and the quality system for the manufacture, design and final inspection of our devices before issuing a CE Certificate demonstrating compliance with the relevant requirements or the quality system requirements laid down in the relevant Annexes to the MDD/MDR. Following the issuance of this CE Certificate, we can draw up a declaration of conformity and affix the CE mark to the devices covered by this CE Certificate. The time required to CE mark our devices or to obtain approval from other non-U.S. authorities may be longer or shorter than that required for FDA approval. Moreover, the MDR, which became applicable on May 26, 2021, imposed new, stricter requirements that we must comply with in order to renew the CE Certificates for our Products when these expire, or May 25, 2025, whichever comes first. In addition, as of May 25, 2021, in the absence of a new MRA, Switzerland is now considered a non-EU "third country" with respect to medical devices, meaning that movement of our Products bearing a CE mark from the EEA to Switzerland is subject to additional requirements.

In the EEA, before carrying out a clinical investigation with a non-CE marked device to assess its safety or performance when in accordance with its intended use, the study sponsor must receive a positive opinion from the local ethics committee and approval from the national competent authority in the relevant EEA member states in which the clinical investigation will be conducted. When a CE marked medical device is used in a clinical study in accordance with its intended use, the approval of the national competent authorities is not required for the use of such medical device in the study. In Japan, we must obtain approvals from the Ministry of Health, Labour, and Welfare ("MHLW") to market our devices. Each regulatory approval process outside of the U.S. includes all the risks associated with FDA regulation, as well as country-specific regulations.

Pervasive and continuing regulation

After a device is placed on the market, numerous regulatory requirements apply depending upon the country in which the device is being marketed. These may include:

- product listing and establishment registration, which helps facilitate FDA inspections and other regulatory action;
- QSR, which requires manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the manufacturing process for products marketed in the U.S.;
- labeling regulations and FDA and equivalent competent authority in other jurisdictions requiring promotion be truthful and non-misleading and prohibiting the promotion of products for uncleared, unapproved or off-label uses;

- approval of product modifications that affect the safety or effectiveness of one of our devices that has been approved or is the subject of a CE Certificate;
- Medical Device Reporting regulations of the FDCA and medical device vigilance, which require that manufacturers comply with FDA or equivalent competent authority requirements in other jurisdictions to report if their device may have caused or contributed to a death or serious injury, or has malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction of the device or a similar device were to recur;
- post-approval restrictions or conditions, including post-approval study commitments;
- post-market surveillance regulations, which apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device;
- the FDA's and equivalent competent authority's recall authority, whereby they can ask, or under certain conditions order, device manufacturers to recall from the market a product that is in violation of governing laws and regulations;
- regulations pertaining to voluntary recalls; and
- notices of corrections or removals.

Our devices could be subject to voluntary recall if we, the FDA or another applicable regulatory authority determine, for any reason, that our devices pose a risk of injury or are otherwise defective. Moreover, the FDA and other applicable regulatory authorities can order a mandatory recall if there is a reasonable probability that our device would cause serious adverse health consequences or death.

The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA to determine our compliance with the QSR and other regulations and these inspections include the manufacturing facilities of our subcontractors. We are also subject to FDA's broad regulatory enforcement power around promotional activities. Failure by us or by our suppliers to comply with applicable regulatory requirements can result in enforcement action by the FDA or other applicable regulatory authorities, which may result in sanctions, including, but not limited to:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- customer notifications for repair, replacement and/or refunds;
- recall, detention or seizure of our devices;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying our requests for approval of device candidates or a modified version of Optune;
- withdrawal of PMA/HDE approvals or suspension, variation or withdrawal of CE Certificates that have already been granted;
- refusal to grant export approval for our devices; or
- civil and/or criminal prosecution by the U.S. Department of Justice or other enforcement authorities outside of the U.S.

To date, our facility and those of our critical suppliers have been inspected by the FDA in order to obtain FDA approval of our Products. No inspectional observations were identified and no FDA Form 483s were issued following these inspections.

DME accreditation and licensing and other requirements

In the U.S., we are subject to accreditation and licensing requirements as a DME supplier in most states and must meet the supplier standards of Medicare, Medicaid and other federal healthcare programs. Certain states require that DME providers maintain an in-state location. Although we believe we are in compliance with all applicable federal and state regulations regarding accreditation and licensure requirements and similar requirements in other jurisdictions, if we are found to be noncompliant, we could lose our accreditation or licensure in such states or our supplier rights under such federal healthcare programs, which could prohibit us from selling our current or future devices to patients in such state or to that federal healthcare program.

Healthcare regulatory matters

In addition to FDA restrictions on the marketing of medical devices, several other U.S. federal and state laws have been applied to restrict certain business practices in the healthcare industry and penalize unlawful conduct. These laws include the federal Anti-Kickback Statute, the federal prohibition on physician self-referrals (commonly known as the "Stark Law") and the federal False Claims Act.

The U.S. federal Anti-Kickback Statute is a criminal, intent-based statute that prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving any remuneration to induce or in return for purchasing, leasing, ordering, recommending or arranging for the purchase, lease, order or recommendation of any healthcare item or service that may be paid for, in whole or in part, by Medicare, Medicaid or another federal healthcare program. Among other arrangements, this statute has been interpreted to apply to financial arrangements between medical device manufacturers on one hand and prescribers and purchasers on the other. Although there are a number of statutory exceptions and regulatory safe harbors that protect certain common activities from prosecution under the law, the exceptions and safe harbors are drawn narrowly and practices that involve the provision of remuneration intended to induce ordering, purchasing, leasing or recommending of a medical device may be subject to scrutiny if they do not qualify for an exception or safe harbor. In some cases, our practices may not meet all of the technical elements for protection under a federal Anti-Kickback Statute exception or safe harbor. Similarly, as a supplier, we are also subject to the federal beneficiary anti-inducement statute, which prohibits us from offering any remuneration to a beneficiary of Medicare or Medicaid that is likely to influence that beneficiary's choice of therapy, unless an exception applies. This can include, but is not limited to, the provision of inappropriate financial assistance to purchase our Products. Recent government investigations and enforcement actions have focused on the provision of financial assistance to patients by providers and suppliers. As noted, there are established exceptions from liability, but we cannot guarantee that all of our practices will fall squarely within those exceptions.

As a DME supplier, we also are subject to the Stark law, which is a strict liability law that prohibits Medicare payments for certain "designated health services" ("DHS") including DME ordered by physicians who, personally or through an immediate family member, have an ownership interest in or a compensation arrangement with the furnishing DHS entity. The Stark law contains a number of specific exceptions that, if met, permit physicians who have certain financial relationships with a DHS entity to make referrals to that entity and for that entity to bill Medicare for such services.

The False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. The government has pursued numerous cases under the False Claims Act in connection with the off-label promotion of medical products and various other health care law violations. Notably, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act.

The majority of states also have statutes or regulations similar to the federal Anti-Kickback Statute, Stark Law and False Claims Act laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, that apply regardless of the payer (e.g., including private/commercial payors or cash-pay scenarios).

Numerous federal and state laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH" and collectively "HIPAA"), govern the collection, dissemination, use, security and privacy of individually identifiable health information. We believe we are in substantial compliance with such applicable laws and regulations, including HIPAA.

HIPAA also includes a number of federal criminal provisions, including for healthcare fraud and for false statements relating to healthcare matters. The healthcare fraud provision prohibits knowingly and willfully executing a scheme

to defraud any healthcare benefit program, including private third-party payers. The false statements provision prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Many states have similar healthcare fraud laws or insurance fraud laws that apply to claims for healthcare reimbursement.

Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer's products from reimbursement under government programs, criminal fines and imprisonment.

Legislation similar to the federal Anti-Kickback Statute, the Stark Law and False Claims Act has been adopted in foreign countries, including a number of EU member states.

In the EU, the General Data Protection Regulation ("GDPR") has applied since May 25, 2018. The GDPR harmonizes data privacy laws and rules for the processing of personal data, including patient and employee data, across the EU and repeals and replaces Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995, and applicable national laws. The GDPR has added a number of strict data protection and security requirements for companies processing personal data of EU residents, including when such data is transferred outside the EU.

In the U.S., the federal Physician Payment Sunshine Act ("Sunshine Act") requires certain manufacturers of drugs, medical devices, biologicals or medical supplies that participate in U.S. federal health care programs to track and then report certain payments and transfers of value given to "Covered Recipients." The term "Covered Recipients" currently includes U.S.-licensed physicians and teaching hospitals, and, for reports submitted on or after January 1, 2022, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives. The Sunshine Act requires that manufacturers collect this information on a yearly basis and then report it to Centers for Medicare & Medicaid Services by the 90th day of each subsequent year. We have adopted policies and codes of conduct regarding our interactions with Covered Recipients and believe we are in material compliance with the Sunshine Act. However, our failure to adhere to these requirements could materially adversely impact our business and financial results. Additionally, a number of states have transparency reporting requirements similar to (and in some cases broader than) the Sunshine Act, and regulations similar to the Sunshine Act have been adopted in foreign countries including a number of EU member states.

In addition, the U.S. Foreign Corrupt Practices Act ("FCPA") prohibits corporations and individuals from engaging in certain activities to obtain or retain business outside the U.S. or to influence a person working in an official capacity in a foreign country. It is illegal to pay, offer to pay or authorize the payment of anything of value to any official of another country, government staff member, political party or political candidate in an attempt to obtain or retain business or to otherwise influence a person working in that capacity. Legislation similar to the FCPA has been adopted in foreign countries, including a number of EU member states.

Human Capital Resources

As of December 31, 2021, we had 1,167 employees, compared to 1,023 employees as of December 31, 2020. We believe relations with our employees are good.

To achieve commercial success for our Products, we believe we must continue to develop and grow our sales and marketing, patient support and research and development teams, along with the necessary staff to support it. This need accounts for the significant increase in the number of employees in 2021. Developing and managing a growing organization is a difficult, expensive and time consuming process. To be successful we must:

- recruit and retain adequate numbers of effective and experienced sales and marketing, patient support and research and development personnel;
- effectively train our personnel on the benefits and risks of our Products and healthcare compliance; and
- manage geographically disbursed business operations.

We compete with other medical device, pharmaceutical and life sciences companies to recruit, hire, train and retain the personnel that we anticipate we will need. Because our current Products require, and we anticipate our future Products will require, physician training and education, we expect that our sales and marketing and patient support teams will continue to grow substantially as we expand our approved indications and markets.

The ongoing COVID-19 pandemic also creates challenges to our ability to recruit and retain effective and experienced employees. In 2021, we instituted a COVID-19 vaccine mandate for all employees (subject to certain exceptions). Some employees chose to leave our company in response to this mandate and while the pandemic continues, this mandate may limit our ability to recruit new employees.

Available information

Our corporate website address is www.novocure.com. Our website is an inactive textual reference and nothing on our website is incorporated by reference in this Annual Report. Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, are available free of charge on our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. These filings are also available on the SEC's website at www.sec.gov.

We may use our website as a means of disclosing material information and for complying with our disclosure obligations under Regulation Fair Disclosure promulgated by the SEC. Accordingly, investors should monitor our website, in addition to following our press releases, SEC filings, public conference calls, webcasts and our social media accounts.

ITEM 1A. RISK FACTORS

An investment in our ordinary shares involves a high degree of risk. Investors and prospective investors should carefully consider all of the information in this Annual Report on Form 10-K, including the risks and uncertainties described below. Any of the following risks could have a material adverse effect on our business, prospects, financial condition and results of operations. In any such case, the trading price of our ordinary shares could decline, and you could lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and the related notes thereto.

Risks relating to our business and our Products

Our business and prospects depend heavily on Optune, which is currently approved only for the treatment of GBM, and Optune Lua, which is currently approved only for the treatment of MPM. If we are unable to increase sales of our Products, obtain further regulatory approvals and commercialize our Products for the treatment of additional indications, or are significantly delayed or limited in doing so, our business and prospects will be materially harmed.

To date we have received FDA regulatory approval under the PMA pathway and certain approvals in other jurisdictions for the use of Optune for the treatment of adult patients with newly diagnosed GBM in combination with temozolomide (a form of chemotherapy) and for the treatment of adult patients with recurrent GBM as monotherapy. Optune has a CE mark affixed for the treatment of GBM in the EU and Switzerland. We have also received FDA approval under the HDE pathway to market Optune Lua for unresectable, locally advanced or metastatic, MPM in combination with standard chemotherapies. Optune Lua is also CE Certified for the same indication in the EU and Switzerland. However, such approvals and maintaining the CE Certificates of Conformity, and related CE marking, of our Products, as applicable, do not guarantee future revenues for these indications. Further, until we receive FDA and analogous approval in other jurisdictions for the use of our Products for other indications, almost all of our revenues will derive from sales and royalties from sales of Optune for the treatment of newly diagnosed and recurrent GBM and Optune Lua for MPM. The commercial success of our Products and our ability to generate and maintain revenues from the sale of our Products will depend on a number of factors, including:

- our ability to develop and obtain additional regulatory approvals and further commercialize our Products for additional indications;
- our ability to expand into new markets and future indications;
- the acceptance of our Products by patients and the healthcare community, including physicians and third-party payers (both private and governmental), as therapeutically effective and safe;
- the accomplishment of various scientific, engineering, clinical, regulatory and other goals, which we sometimes refer to as milestones, on our anticipated timeline;
- the relative cost, safety and efficacy of alternative therapies;
- our ability to obtain and maintain sufficient coverage or reimbursement by private and governmental third-party payers and to comply with applicable health care laws and regulations;
- the ability of our third-party manufacturers to manufacture our Products in sufficient quantities with acceptable quality;
- our ability to provide marketing, distribution and customer support for our Products;
- the presence of competitive products in our active indications;
- results of future clinical studies relating to our Products or other competitor products for similar indications;
- compliance with applicable laws and regulatory requirements, in particular in the EU;
- the maintenance of our existing regulatory approvals; and
- the consequences of any reportable adverse events involving our Products.

In addition, the promotion of our Products is limited to approved indications, which vary by geography.The labelling for Optune in the U.S. is limited in certain respects (for example, it is approved specifically for glioblastomas of the supratentorial region of the brain, is indicated for use in the treatment of newly diagnosed GBM only when used together with temozolomide, and limited to use by adults ages 22 and older), which may limit the number of patients to whom it is prescribed. Similarly, the label for Optune Lua also contains certain limitations that may adversely affect adoption, including the requirement in the United States (applicable to all HDE-approved devices) to display on all marketing materials that the efficacy of the Product has not been established, as well as a a limitation for use by adults ages 22 and older, and the absence of phase 3 pivotal clinical data.

Our ability to generate future revenues will also depend on achieving regulatory approval of, and eventual commercialization of, our Products for additional indications and in additional geographies, which is not guaranteed. Our near-term prospects are substantially dependent on our ability to obtain regulatory approvals on the timetable we have anticipated, and thereafter to further successfully commercialize our Products for additional indications. Regulatory changes or actions in areas in which we operate or propose to operate may further affect our ability to obtain regulatory approvals on our anticipated timetable. If we are not able to receive such approvals, meet other anticipated milestones, or further commercialize our Products, or are significantly delayed or limited in doing so, our business and prospects will be materially harmed and we may need to reduce expenses by delaying, reducing or curtailing the development of our Products and we may need to raise additional capital to fund our operations, which we may not be able to obtain on favorable terms, if at all.

To date, we have generated only limited and intermittent operating profits, and we have a history of incurring substantial operating losses.

We were founded in 2000 and have only recently and intermittently started generating limited operating profits. We have otherwise had a history of incurring substantial operating losses. We anticipate continuing to incur significant costs associated with commercializing our Products for approved indications including product sales, marketing, manufacturing, and distribution expenses. We expect our research, development, and clinical study expenses to increase in connection with our ongoing activities and as additional indications enter late-stage clinical development and as we advance our product development. Our expenses could increase beyond expectations if, for example, we are required by the FDA, or other regulatory agencies or similar governing bodies, to change manufacturing processes for our Products or to perform clinical, nonclinical or other types of studies in addition to those that we currently anticipate. Our revenues are dependent, in part, upon the size of the markets in the jurisdictions in which we receive regulatory approval, the accepted price for our Products and the ability to obtain reimbursement at the accepted applicable price. If the number of addressable patients is not as significant as we estimate, the indications approved by regulatory authorities are narrower than we expect or the eligible population for treatment is narrowed by competition, regulatory approvals, physician choice or treatment guidelines, we may not generate significant revenues. If we are not able to generate significant revenues, we may never be sustainably profitable.

Our clinical studies could be delayed or otherwise adversely affected by many factors, including difficulties in enrolling patients.

Clinical testing can be costly and take many years, and the outcome is uncertain and susceptible to varying interpretations. Moreover, success in preclinical and early clinical studies does not ensure that large-scale studies will be successful or predict final results. Acceptable results in early studies may not be replicable in later studies. A number of companies in the oncology industry have suffered significant setbacks in advanced clinical studies, even after promising results in earlier studies. Negative or inconclusive results or adverse events or incidents during a clinical study could cause the clinical study to be redone or terminated. In addition, failure to appropriately construct clinical studies could result in high rates of adverse events or incidents, which could cause a clinical study to be suspended, redone or terminated. Our failure or the failure of third-party participants in our studies to comply with their obligations to follow protocols and/or legal requirements may also result in our inability to use the affected data in our submissions to regulatory authorities.

The timely completion of clinical studies depends, among other things, on our ability to enroll a sufficient number of patients who remain in the study until its conclusion. We may experience difficulties in patient enrollment in our clinical studies for a variety of reasons, including:

- the severity of the disease under investigation;
- the limited size and nature of the patient population;
- the patient eligibility criteria defined in our protocol and other clinical study protocols;

- the nature of the study protocol, including the attractiveness of, or the discomforts and risks associated with, the treatments received by enrolled subjects;
- difficulties and delays in clinical studies that may occur as a result of the COVID-19 pandemic;
- the ability to obtain IRB approval at clinical study locations;
- clinicians' and patients' perceptions as to the potential advantages, disadvantages and side effects of our Products in relation to other available therapies, including any new drugs or treatments that may be approved for the indications we are pursuing;
- availability of other clinical studies that exclude use of our Products;
- the possibility or perception that enrolling in a Product's clinical study may limit the patient's ability to enroll in future clinical studies for other therapies due to protocol restrictions;
- the possibility or perception that our software is not secure enough to maintain patient privacy;
- patient referral practices of physicians;
- the ability to monitor patients adequately during and after treatment;
- the availability of appropriate clinical study investigators, support staff, drugs and other therapeutic supplies and proximity of patients to clinical sites;
- physicians' or our ability to obtain and maintain patient consents; and
- the risk that patients enrolled in clinical studies will choose to withdraw from or otherwise not be able to complete a clinical study.

If we have difficulty enrolling and retaining a sufficient number or diversity of patients to conduct our clinical studies as planned, or encounter other difficulties, we may need to delay, terminate or modify ongoing or planned clinical studies, any of which would have an adverse effect on our business.

If we are unable to continue the development of an adequate sales and marketing organization or contract with third parties to assist us, we may not be able to successfully commercialize our Products for current and future indications.

To achieve commercial success for our Products, we must continue to compliantly develop and grow our sales and marketing organization and, as necessary, enter into sales and distribution relationships with third parties to market and sell our Products. Developing and managing a sales and marketing organization is a difficult, expensive and time consuming process. We may not be able to successfully develop adequate sales and marketing capabilities to achieve our growth objectives. We compete with other medical device, pharmaceutical and life sciences companies to recruit, hire, train and retain the sales and marketing personnel that we anticipate we will need, and the nature of our Products may make it more difficult to compete for sales and marketing personnel. In addition, because our current Products require, and we anticipate our future Products will require, physician training and education, our sales and marketing organization may need to grow substantially as we expand our approved indications and markets. As a consequence, our expenses associated with building up and maintaining our sales force and marketing capabilities may be disproportionate to the revenues we may be able to generate on sales of our Products.

If we are unable to establish adequate sales and marketing capabilities or successful sales and distribution relationships, we may fail to realize the full revenue potential of our Products for current and future indications, and we may not be able to achieve the necessary growth in a cost-effective manner or realize a positive return on our investment. In our current and future sales and distribution agreements with other companies, we generally do not and may not have control over the resources or degree of effort that any of these third parties may devote to our Products, and if they fail to devote sufficient time and resources to the marketing of our Products, or if their performance is substandard, our revenues may be adversely affected.

The success of our business may be dependent on the actions of our collaborative partners.

Our global business strategy includes, in part, the consummation of collaborative arrangements with companies who will support the development and commercialization of our Products and technology. For example, we have exclusively licensed rights to commercialize our Products in the field of oncology in Greater China to Zai pursuant to an agreement that also establishes a development partnership for Tumor Treating Fields ("TTFields") in multiple solid tumor indications. Zai is responsible for the development and commercialization of our Products in Greater China at its sole cost with certain assistance from us. We have also entered into several clinical collaborations with third parties to test our Products and technology together with other products and technologies.

When we collaborate with a third party for development and commercialization of a Product in a particular territory, we can expect to relinquish some or all of the control over the future success of that Product to the third party in that territory. In addition, our collaborative partners may have the right to abandon research or development projects and terminate applicable agreements, including payment obligations, prior to or upon the expiration of the agreed-upon terms. We may not be successful in establishing or maintaining collaborative arrangements on acceptable terms or at all, collaborative partners may terminate funding before completion of projects, our Products may not achieve the criteria for milestone payments, our collaborative arrangements may not result in successful product commercialization, our Products may not receive acceptable pricing and we may not derive any revenue from such arrangements. Additionally, our collaborators may not perform their obligations as expected or in compliance with study protocols or applicable laws. Acts or omissions by collaborators may disqualify study data for use in regulatory submissions and/or create liability for us in the jurisdictions in which we operate. Any disagreements with collaborators, including disagreements over proprietary rights, contract interpretation or the preferred course of development or commercialization, might cause delays or termination of the research, development or commercialization of Products, might lead to additional responsibilities for us with respect to developing or commercializing Products, or might result in litigation or arbitration, any of which would be time-consuming and expensive. To the extent that we are not able to develop and maintain collaborative arrangements, we would need to devote substantial capital to undertake development and commercialization activities on our own in order to further expand our global reach, and we may be forced to limit the territories in which we commercialize our Products.

We may not be successful in achieving market acceptance of our Products by healthcare professionals, patients and/or third-party payers in the timeframes we anticipate, or at all, which could have a material adverse effect on our business, prospects, financial condition and results of operations.

Our business model is predicated on achieving market acceptance of our Products as a monotherapy or in combination with well-established cancer treatment modalities like surgery, radiation and pharmacological therapies. We may not achieve market acceptance of our Products for current or future indications within the timeframes we have anticipated, or at all, for a number of different reasons, including the following factors:

- it may be difficult to gain broad acceptance of our Products because they are new technologies and involve a novel mechanism of action and, as such, physicians may be reluctant to prescribe our Products without prior experience or additional data or training;
- physicians may be reluctant to prescribe our Products due to their perception that the supporting clinical study designs have limitations, as they are, for example, unblinded;
- physicians at large academic universities and medical centers may prefer to enroll patients into clinical studies instead of prescribing our Products;
- it may be difficult to gain broad acceptance at community hospitals where the number of patients seeking treatment may be more limited than at larger medical centers, and such community hospitals may not be willing to invest in the resources necessary for their physicians to become trained to use our Products, which could lead to reluctance to prescribe our Products;
- patients may be reluctant to use our Products for various reasons, including a perception that the treatment is untested or difficult to use (for example, they will need to shave the areas on their bodies where the arrays are applied) or a perception that our software is not secure;

- our Products may have side effects (for example, dermatitis where the arrays are placed) and our Products cannot be worn in all circumstances (for example, they cannot get wet and are difficult to wear in high temperatures); and
- the price of our Products includes a monthly fee for use of the device and therefore, as the duration of the treatment course increases, the overall price will increase correspondingly and, when used in combination with other treatments, the overall cost of treatment will be greater than using a single type of treatment.

In particular, our Products may not achieve market acceptance for current or future indications because of the following additional factors:

- achieving patient acceptance could be difficult because we are targeting devastating diseases with poor prognoses, and not all patients with potentially short lifespans are willing to comply with requirements of treatment with our Products, such as the need to use our Products for at least 18 hours per day, carrying around a device and shaving the area where the arrays are worn, and other patients may forego our Products for financial, privacy, cosmetic, visibility or mobility reasons;
- achieving patient compliance is difficult because the recommended use of our currently marketed Products is throughout the day, requiring patients to wear the device nearly continuously, which to some extent restricts physical mobility because the battery must be frequently exchanged and recharged, and the patient or a caregiver must ensure that it remains continuously operable and this may also impact the pool of patients to whom physicians may be willing to prescribe our Products;
- certain patients are contraindicated to using our Products due to a variety of factors, including, but not limited to, those who have an active implanted medical device, those who have a skull defect, and those who are sensitive to conductive hydrogels;
- there are certain perceived limitations to our study designs or data obtained from our clinical studies;
- efficacy may also be limited in instances where patients take a break from the device when experiencing skin rashes, while bathing or swimming (because our Products should not get wet), or while traveling; and
- patients may decline therapy or prescribers may be unwilling to prescribe our Products due to certain adverse events reported in clinical studies by patients treated with our Products as monotherapy include medical device site reaction, headache, malaise, muscle twitching, fall and skin ulcer; additional adverse events reported in clinical studies by patients treated with our Products in combination with chemotherapies in addition to the above, were thrombocytopenia, nausea, constipation, vomiting, fatigue and other side effects consistent with treatment with chemotherapies.

In addition, even if we are successful in achieving market acceptance of our Products for GBM or MPM, we may be unsuccessful in achieving market acceptance of our Products for other indications, such as brain metastases, NSCLC, pancreatic cancer, ovarian cancer and other solid tumor cancers, because certain radiation, chemotherapies and/or systemic medical therapies may become or remain the preferred standard of care for these indications.

There may be other factors that are presently unknown to us that also may negatively impact our ability to achieve market acceptance of our Products. If we do not achieve market acceptance of our Products in the timeframes we anticipate, or are unable to achieve market acceptance at all, our business, prospects, financial condition and results of operations could be materially adversely affected.

Failure to secure and maintain adequate coverage and reimbursement from third-party payers could adversely affect acceptance of our Products and reduce our revenues.

We expect that the vast majority of our revenues will come from third-party payers either directly to us in markets where we provide our Products or plan to provide our device candidates to patients or indirectly via payments made to hospitals or other entities providing our Products or which may in the future provide our device candidates to patients.

In the U.S., private payers cover the largest segment of the population, with the remainder either uninsured or covered by governmental payers. The majority of the third-party payers outside the U.S. are government agencies, government sponsored entities or other payers operating under significant regulatory requirements from national or regional governments.

Third-party payers may decline to cover and reimburse certain procedures, supplies or services. Additionally, some third-party payers may decline to cover and reimburse our Products for a particular patient even if the payer has a favorable coverage policy addressing our Products or previously approved reimbursement for our Products. Additionally, private and government payers may consider the cost of a treatment in approving coverage or in setting reimbursement for the treatment.

Private and government payers around the world are increasingly challenging the prices charged for medical products and services. Additionally, the containment of healthcare costs has become a priority of governments around the world. Adoption of additional price controls and cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures, could further limit our revenues and operating results. If third-party payers do not consider our Products or the combination of our Products with additional treatments to be cost-justified under a required cost-testing model, they may not cover our Products for their populations or, if they do, the level of reimbursement may not be sufficient to allow us to sell our Products on a profitable basis.

Reimbursement for the treatment of patients with medical devices around the world is governed by complex mechanisms established on a national or sub-national level in each country. These mechanisms vary widely among countries, can be informal, somewhat unpredictable, and evolve constantly, reflecting the efforts of these countries to reduce public spending on healthcare. As a result, obtaining and maintaining reimbursement for the treatment of patients with medical devices has become more challenging globally. We cannot guarantee that the use of our Products will receive reimbursement approvals and cannot guarantee that our existing reimbursement approvals will be maintained in any country.

We provide financial assistance to certain patients in certain markets who qualify based on established financial and other criteria. Primarily, we provide financial assistance to patients where we have or are actively pursuing coverage and reimbursement. This financial assistance is intended to defray out-of-pocket costs for our Products for patients who begin treatment but who are unable to pay for the costs of their treatment not covered by insurance. Our costs associated with this program could increase if payers increase the cost-sharing burden of patients or we do not obtain coverage and reimbursement and we elect to continue providing financial assistance in those markets. Additionally we provide charitable donations to foundations that can then provide financial assistance to those receiving health care coverage from federal or state funded programs. Enforcement actions and changes to government regulations related to manufacturer-sponsored and independent charitable patient assistance programs could reduce our ability to support patients financially in the future.

Our failure to secure or maintain adequate coverage or reimbursement for our Products by third-party payers in the U.S. or in the other jurisdictions in which we market our Products could have a material adverse effect on our business, revenues and results of operations and cause our stock price to decline.

We may not be successful in securing and maintaining reimbursement codes necessary to facilitate accurate and timely billing for our Products or physician services attendant to our Products.

Third-party payers, healthcare systems, government agencies or other groups often issue reimbursement codes to facilitate billing for products and physician services used in the delivery of healthcare. Within the U.S., the billing codes most directly related to our Products are contained in the Healthcare Common Procedure Coding System ("HCPCS code set"). The HCPCS code set contains Level I codes that describe physician services, also known as Common Procedural Terminology codes ("CPT codes") and Level II codes that primarily describe products. CMS is responsible for issuing the HCPCS Level II codes. The American Medical Association issues HCPCS Level I codes.

We have secured unique HCPCS Level II codes that describe Optune and we are able to use these codes in the U.S. to bill third-party payers. Loss of these codes or any alteration in the reimbursement amounts attached to these codes would materially impact our operating results. We do not have a unique HCPCS Level II code for Optune Lua at this time.

No CPT codes currently exist to describe physician services related to the delivery of therapy using our Products. We may not be able to secure CPT codes for physician services related to our Products. Our future revenues and results may be affected by the absence of CPT codes, as physicians may be less likely to prescribe the therapy when there is no certainty that adequate reimbursement will be available for the time, effort, skill, practice expense and malpractice costs required to provide the therapy to patients.

Outside the U.S., but excluding Germany and Japan, we have not secured codes to describe our Products or to document physician services related to the delivery of therapy using our Products. The failure to obtain and maintain these codes could affect the future growth of our business.

There is no assurance that Medicare or the Medicare Administrative Contractors will provide, or continue to provide, coverage or adequate payment rates for our Products.

We anticipate that a significant portion of patients using our Products will be beneficiaries under the Medicare fee-for-service program. Failure to secure or maintain coverage or maintain adequate reimbursement from Medicare would reduce our revenues and may also affect the coverage and reimbursement decisions of other third-party payers in the U.S. and elsewhere.

Medicare classifies Optune as durable medical equipment ("DME"). Medicare has the authority to issue national coverage determinations or to defer coverage decisions to its regional Medicare Administrative Contractors ("MACs"). The fact that only two MACs administer the entire DME program may negatively affect our ability to petition individual medical policy decision-makers at the MACs for coverage. The absence of a positive coverage determination or a future restriction to existing coverage from Medicare or the DME MACs would materially affect our future revenues.

Additionally, Medicare has the authority to publish the reimbursement amounts for DME products. Medicare has published a reimbursement amount for Optune that falls below the median reimbursement that we have established with non-Medicare payers. Medicare may in the future publish reimbursement amounts for our Products that do not reflect then-current prices for our Products or Medicare may decrease existing reimbursement amounts published for our Products. Medicare fee schedules are frequently referenced by private payers in the U.S. and around the world. Medicare's publication of reimbursement amounts for our Products that are below our Products' established prices could materially reduce our revenues and operating results with respect to non-Medicare payers in the U.S. and our other active markets.

Medicare has assigned the billing codes describing Optune to the DME category for products that require frequent and substantial servicing. DME items in this billing category are billed monthly and payment is not capped after a time period. If Medicare revises its payment category classifications for our Products, this action could materially reduce our revenues and operating results.

CMS requires prior authorization for certain DME items. Claims for such items that did not receive prior authorization before they were furnished to a beneficiary will be automatically denied. In the event Medicare adds one of our Products to the list of items requiring prior authorization, our ability to bill and secure reimbursement for patients who would otherwise be covered to use our Product under the Medicare fee-for-service program may be reduced.

The Medicare fee-for-service program has denied coverage for all claims prior to the September 1, 2019 effective date for the DME MAC LCD, which provides coverage for Optune for the treatment of newly diagnosed GBM subject to certain conditions and restrictions. We expect that Medicare will continue to deny essentially all claims that do not meet the coverage policy terms. Although we are actively appealing these coverage denials, we are unable to bill the vast majority of our existing Medicare fee-for-service patients for amounts not paid by Medicare. Therefore, we are absorbing and may continue to absorb the costs of treatment for amounts not paid by Medicare.

We appeal Medicare coverage denials through the Medicare appeals process: redetermination by a MAC, reconsideration by a Qualified Independent Contractor, hearing before an Administrative Law Judge (“ALJ”) at the Office of Medicare Hearings and Appeals, review by the Medicare Appeals Council, and judicial review in U.S. District Court. Currently, there is a considerable backlog of appeals at the ALJ level and there are significant delays in the assignment of ALJ cases. We cannot provide any assurance that our outstanding ALJ appeals will be favorably decided. Further, we anticipate that, even if we are successful in winning our appeals, we will experience a significant delay in securing reimbursement for Medicare patients when Medicare’s DME MACs deny coverage for patients who start therapy.

While we have obtained Medicare coverage for our existing Products, we cannot provide any assurance that we can access transitional, expedited, or expanded Medicare coverage for our future Products. CMS is expected to issue rules regarding coverage of emerging technologies; however, no specific information is available about the content of the expected rules and we cannot provide any assurance that any new rules regarding emerging technologies would be applicable to our future Products.

We depend on single-source suppliers for some of our components. The loss of these suppliers could prevent or delay shipments of our Products, delay our clinical studies or otherwise adversely affect our business.

In certain jurisdictions, we source some of the components of our Products from only a single vendor. If any one of these single-source suppliers were to fail to continue to provide components to us on a timely basis, or at all, our business and reputation could be harmed. Our policy is to seek and maintain second-source suppliers, but we can provide no assurance that we will secure or maintain such suppliers. We have developed or are in the process of developing and obtaining regulatory approval for second sources for components in all jurisdictions. Various steps must be taken before securing these suppliers, including qualifying these suppliers in accordance with regulatory requirements, but we may never receive such approvals. The risks associated with the failure of our suppliers to comply with strictly enforced regulatory requirements as described below are exacerbated by our dependence on single-source suppliers.

If we experience any deficiency in the quality of, delay in or loss of availability of any components supplied to us by third-party suppliers, or if we switch suppliers or components, we may face additional regulatory delays and the manufacture and delivery of our Products would be interrupted for an extended period of time, which could materially adversely affect our business, prospects, financial condition and results of operations. If we are required to obtain prior regulatory approval from the FDA or regulatory authorities or similar governing bodies in other jurisdictions or to conduct a new conformity assessment procedure and obtain new CE Certificates of Conformity in the EU to use different suppliers or components for our Products, regulatory approval or the CE Certificates of Conformity for our Products may not be received on a timely basis, or at all, which would have a material adverse effect on our business, prospects, financial condition and results of operations.

Quality control problems with respect to devices and components supplied by third-party suppliers could have a material adverse effect on our reputation, our clinical studies or the commercialization of our Products and, as a result, a material adverse effect on our business, prospects, financial condition and results of operations.

Our Products, which are manufactured by third parties, are highly technical and are required to meet exacting specifications. Any quality control problems that we experience with respect to the devices and components supplied by third-party suppliers could have a material adverse effect on our reputation, our attempts to complete our clinical studies, our operating expenses or the commercialization of our Products. The failure of our suppliers to comply with strictly enforced regulatory requirements could expose us to regulatory action, including warning letters, product recalls, suspension or termination of distribution, product seizures or civil penalties. If we experience any delay in the receipt or deficiency in the quality of products supplied to us by third-party suppliers, or if we have to switch to replacement suppliers, we may face additional regulatory delays and the manufacture and delivery of our Products would be interrupted for an extended period of time, which would materially adversely affect our business, prospects, financial condition and results of operations.

If the third parties on which we rely to conduct our preclinical and clinical studies and to assist us with research and development do not perform as contractually required or expected, we may not be able to obtain regulatory approvals for or commercialize our Products.

We do not have the ability to independently conduct certain of our preclinical and development activities or any of our clinical studies for our Products; therefore, we must rely on third parties, such as contract research organizations, medical institutions, clinical investigators, contract laboratories and collaborative partners, to conduct such studies. We and these third parties are required to comply with current good clinical practices ("cGCPs"), which are regulations and guidelines enforced by the FDA under the medical device Quality System Regulation ("QSR") and comparable regulatory authorities in other jurisdictions for clinical development. We and these third parties are also required to comply with current good laboratory practices ("cGLPs"), which are regulations and guidelines enforced by the FDA and comparable regulatory authorities in other jurisdictions for nonclinical laboratory studies. If we or any of these third parties fail to comply with applicable cGLP and cGCP regulations, the data generated in our nonclinical studies and clinical studies may be deemed unreliable and the FDA or regulatory authorities in other jurisdictions may require us to perform additional nonclinical or clinical studies before approving our applications. We cannot be certain that, upon inspection or review of our data, such regulatory authorities will determine that any of our nonclinical studies or clinical studies comply with the applicable cGLP or cGCP regulations.

Additionally, any third parties conducting our preclinical, clinical and other development programs are not and will not be our employees and, except for remedies available to us under our agreements with such third parties, we

cannot control whether or not they devote sufficient time and resources to our ongoing preclinical, clinical and other development programs. If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if these third parties need to be replaced or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our development activities or clinical studies may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory approval for our Products or successfully commercialize our Products on a timely basis, if at all, and our business, prospects and results of operations may be adversely affected.

Continued testing of our Products may not yield successful results and could reveal currently unknown aspects or safety hazards associated with our Products.

Our research and development programs are designed to test the safety and efficacy of our Products and TTFields through extensive preclinical and clinical testing. Even if our ongoing and future preclinical and clinical studies are completed as planned, we cannot be certain that their results will support our claims or that the FDA and other regulatory authorities will agree with our conclusions. Success in preclinical studies and early clinical studies does not ensure that later clinical studies will be successful, and we cannot be sure that the later studies will replicate the results of prior studies and preclinical studies. The clinical study process may fail to demonstrate that our device candidates are safe and effective for the proposed indicated uses, which could cause us to abandon a device candidate and may delay development of others. It is also possible that patients enrolled in clinical studies will experience adverse side effects that have not been previously observed. In addition, our preclinical and clinical studies for our device candidates involve a relatively small patient population and, as a result, these studies may not be indicative of future results.

We may experience numerous unforeseen events during, or as a result of, the testing process that could delay or prevent further commercialization of our Products, including the following:

- Preclinical and clinical testing for our Products may not produce the desired effect, may be inconclusive or may not be predictive of safety or efficacy results obtained in future clinical studies, following long-term use or in much larger populations;
- unanticipated adverse events or other side effects that are not currently known may occur during our clinical studies that may preclude additional regulatory approval or result in additional limitations to commercial use if approved; and
- the data collected from our clinical studies may not reach statistical significance or otherwise not be sufficient to support FDA or other regulatory approval.

If unacceptable side effects arise in the development of our Products for future indications, we could suspend or terminate our clinical studies or the FDA or other regulatory authorities could order us to cease clinical studies or deny approval of our device candidates for any or all targeted indications, narrow the approved indications for use or otherwise require restrictive product labeling or marketing or require further clinical studies, which may be time-consuming and expensive and may not produce results supporting FDA or other regulatory approval of our Products in a specific indication. Treatment-related side effects could also affect patient recruitment or the ability of enrolled patients to complete the study or result in potential product liability claims. In addition, these side effects may not be appropriately recognized or managed by the treating medical staff. We expect to have a need to train medical personnel using our device candidates to understand the side effect profiles for our clinical studies and upon any commercialization of our Products for future indications. Inadequate training in recognizing or managing the potential side effects of our Products could result in patient injury or death. Any of these occurrences may harm our business, prospects and financial condition significantly.

Any delay or termination of our clinical studies will delay the filing of submissions for regulatory approvals of our Products and ultimately our ability to commercialize our Products and generate revenues. Furthermore, we may abandon our Products for indications that we previously believed to be promising. Any of these events could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

We face competition from numerous competitors, which may make it more difficult for us to achieve significant market penetration and which may allow our competitors to develop additional oncology treatments to compete with our Products.

The oncology market is intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. Our Products primarily compete with radiation and

pharmacological therapies. We may face additional competition as advancements are made in the field of anti-cancer therapies and as we enter additional oncological markets. To date, we have conducted clinical studies where our Products are used together with a certain subset of other anti-cancer therapies. Many of our competitors are large, well-capitalized companies with significantly greater market share and resources than we have. As a consequence, they are able to spend more aggressively on product development, marketing, sales and other initiatives than we can. Many of these competitors could have:

- significantly greater name recognition and experience;
- established distribution networks and/or relationships with government agencies, healthcare professionals, patients and third-party payers;
- additional product lines, and the ability to offer rebates or bundle products to offer higher discounts or more competitive pricing or other incentives to gain a competitive advantage; and
- greater financial and human resources for research and development, sales and marketing, patent litigation and/or acquisitions.

Although we believe our Products represent a treatment modality that can be used together with other cancer treatment modalities, our current and future competitors may at any time develop additional drugs, biologics or devices for the treatment of GBM, MPM, or other solid tumors that could be more effective from a therapeutic or cost-basis perspective than using our Products. In our currently-approved indications, if current or future competitors develop a product that proves to be superior or comparable to our Products, our revenues may decline. In addition, some of our competitors may compete by lowering the price of their cancer treatments. If these competitors' products were to gain acceptance by healthcare professionals, patients or third-party payers, a downward pressure on prices could result. If prices were to fall, we may not be able to improve our gross margins or sales growth sufficiently to be sustainably profitable. For future indications, other companies could view us as a competitor and attempt to block our market entry or otherwise hinder our Product growth in a market. We are aware of third parties in the United States and China developing devices and filing for intellectual property protection related to TTFields, which, if approved, may directly compete with our Products. Competitors could also pursue alternative technologies for the application of TTFields into a patient that we did not foresee or protect.

As we expand, we may experience difficulties managing our growth.

Our anticipated growth will place a significant strain on our management and on our operational and financial resources and systems. We could face challenges inherent in efficiently managing a more complex business with an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs. Failure to manage our growth effectively could materially adversely affect our business. Additionally, our anticipated growth will increase the demands placed on our third-party suppliers, resulting in an increased need to carefully monitor the available supply of components and services and to scale up our quality assurance programs. There is no guarantee that our suppliers will be able to support our anticipated growth. Any failure by us to manage our growth effectively could have an adverse effect on our ability to achieve our development and commercialization goals.

Because of the specialized nature of our business, the termination of relationships with our key employees, consultants and advisors may prevent us from successfully operating our business, including developing our Products, conducting clinical studies, commercializing our Products and obtaining any necessary financing.

We are highly dependent on the members of our executive team, the loss of whose services may adversely impact the achievement of our objectives. While we have entered into employment agreements with each of our key executives, any of them could leave our employment at any time. We do not have "key person" insurance on any of our employees. The loss of the services of one or more of our current employees might impede the achievement of our business objectives.

The competition for qualified personnel in the oncology and medical device fields is intense, and we rely heavily on our ability to attract and retain qualified scientific, technical and managerial personnel. Our future success depends upon our ability to attract, retain and motivate highly skilled employees. In order to commercialize our Products successfully, we will be required to expand our workforce, particularly in the areas of research and development and clinical studies, sales and marketing and supply chain management. These activities will require the addition of new personnel and the development of additional expertise by existing management personnel. We face intense competition for qualified individuals from numerous pharmaceutical, biopharmaceutical and biotechnology

companies, as well as academic and other research institutions. We may not be able to attract and retain these individuals on acceptable terms or at all. Failure to do so could materially harm our business.

Product liability suits, whether or not meritorious, could be brought against us due to alleged defective devices or for the misuse of our Products, which could result in expensive and time-consuming litigation, payment of substantial damages and/or expenses and an increase in our insurance rates.

If our current or future devices are defectively designed or manufactured, contain defective components or are misused, or if someone claims any of the foregoing, whether or not meritorious, we may become subject to substantial and costly litigation. For example, we may be sued if our Products cause or are perceived to cause injury or are found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. This may occur if our Products are misused or damaged, have a sudden failure or malfunction (including with respect to safety features) or are otherwise impaired due to wear and tear. Even absent a product liability suit, malfunctions of our Products or misuse by physicians or patients would need to be remedied swiftly in order to maintain continuous use and ensure efficacy of our Products.

Any product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the device, negligence, strict liability or a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our Products. Even successful defense may require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our Products;
- injury to our reputation;
- withdrawal of clinical study participants and inability to continue clinical studies;
- initiation of investigations by regulators;
- costs to prepare for and defend the related litigation;
- a diversion of management’s time and our resources;
- substantial monetary awards to study participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenues;
- exhaustion of any available insurance and our capital resources;
- the inability to commercialize any device candidate; and
- a decline in our share price.

Product liability claims could divert management’s attention from our core business, be expensive to defend and result in sizable damage awards against us. We may not have sufficient insurance coverage for all claims. Any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, could harm our reputation in the industry and could reduce revenues. Product liability claims in excess of our insurance coverage would be paid out of cash reserves, if any, which could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline. Even if our agreements with our third-party manufacturers and suppliers entitle us to indemnification against losses, such indemnification may not be available or adequate should any claim arise.

Other future litigation and regulatory actions could have a material adverse impact on the Company.

From time to time, we may be subject to litigation and other legal and regulatory proceedings relating to our business or investigations or other actions by governmental agencies, including as described in Part I, Item 3 "Legal Proceedings" of this Annual Report on Form 10-K. No assurances can be given that the results of these or new matters will be favorable to us. An adverse resolution of lawsuits, arbitrations, investigations or other proceedings or actions could have a material adverse effect on our financial condition and results of operations, including as a result of non-monetary remedies. Defending ourselves in these matters may be time-consuming, expensive and disruptive to normal business operations and may result in significant expense and a diversion of management’s time and attention from the operation of our business, which could impede our ability to achieve our business objectives. Additionally, any amount that we may be required to pay to satisfy a judgment, settlement, fine or penalty

may not be covered by insurance. Subject to the Jersey Companies Law, our articles of association permit us to indemnify any director against any liability, to purchase and maintain insurance against any liability for any director and to provide any director with funds (whether by loan or otherwise) to meet expenditures incurred or to be incurred by such director in defending any criminal, regulatory or civil proceedings or in connection with an application for relief (or to enable any such director to avoid incurring such expenditure). In addition, we have entered into indemnification agreements with each of our directors and officers to indemnify them against certain liabilities and expenses arising from their being a director or officer to the maximum extent permitted by Jersey law. In the event we are required to make such payments to our directors and officers, there can be no assurance that any of these payments will not be material.

Global economic, political and industry conditions constantly change and unfavorable conditions may have a material adverse effect on our business and results of operations.

We are a global company with worldwide operations. Volatile economic, political and market conditions, such as political or economic instability, civil unrest, trade sanctions, majority hostilities or acts of terrorism in the regions in which we operate may have a negative impact on our operating results and our ability to achieve our business objectives. We may not have insight into economic and political trends that could emerge and negatively affect our business. In addition, significant or volatile changes in exchange rates between the U.S. dollar and other currencies may have a material adverse impact upon our liquidity, revenues, costs and operating results.

In particular, we have research facilities located in Israel, and certain key suppliers manufacture their goods in Israel. Due to the high-conflict nature of this area, Israel could be subject to additional political, economic and military confines, which could result in a material adverse effect on our operations. Parties with whom we do business have sometimes declined to travel to Israel during periods of heightened unrest or tension, forcing us to make alternative arrangements when necessary. In addition, the political and security situation in Israel may result in parties with whom we have agreements involving performance in Israel claiming that they are not obligated to perform their commitments under those agreements pursuant to force majeure provisions in the agreements.

Additionally, natural disasters and public health emergencies, such as extreme weather events and the COVID-19 pandemic, could have a significant adverse effect on our business, including interruption of our commercial and clinical operations, supply chain disruption, endangerment of our personnel, fewer patient visits, increased patient drop-out rates, delays in recruitment of new patients, and other delays or losses of materials and results.

The COVID-19 pandemic could materially adversely impact our business.

As the COVID-19 pandemic continues around the globe, we have experienced and will likely continue to experience disruptions that could severely impact our business and clinical studies, which could include:

- delays and/or difficulties in onboarding active patients and enrolling patients in our clinical studies;
- delays and/or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- declines in prescriptions written due to a perception that our Products are difficult to administer remotely or if patients are unwilling to travel to treatment sites or receive in-home treatment assistance from us or other caregivers;
- reductions in third-party reimbursements, which could materially affect our revenue, as most of our patients rely on third-party payers to cover the cost of our Products and a material number of our patients could lose access to their private health insurance plan if they or someone in their family lose their job;
- diversion of healthcare resources away from conducting clinical studies, including the diversion of hospitals serving as our clinical study sites and hospital staff supporting the conduct of our clinical studies;
- interruption of key clinical study activities, such as clinical study site monitoring, due to limitations on travel imposed or recommended by federal or state governments, employers and others;
- staff disruptions and turnover internally and at treatment sites and third-party providers who provide support, either directly as a result of illness or indirectly as a result of vaccine mandates and other changes in terms of employment;
- delays in receiving approval from local regulatory authorities or IRBs to initiate our planned clinical studies;
- delays in clinical sites receiving the supplies and materials needed to conduct our clinical studies;
- interruption in global shipping that may affect the transport of active patient and clinical study materials;

- changes in local regulations as part of a response to the COVID-19 outbreak that may require us to change the ways in which our clinical studies are conducted, which may result in unexpected costs, or to discontinue the clinical studies altogether;
- delays in necessary interactions with local regulators, ethics committees and other important agencies and contractors due to limitations in employee resources or forced furlough of government employees;
- disruption of our supply chain as our suppliers and common carriers are unable to meet our requirements to provide us the materials we need for clinical study and active patient care needs;
- indirect consequences of the COVID-19 pandemic on the global economy in general, such as an increase in bankruptcies of our key suppliers, or the inability of our third-party payers to meet their obligations reimburse us in a timely fashion or at all;
- postponements and cancellations of key conferences and meetings and travel restrictions could interfere with our ability to interact with key thought leaders in the field, leading to a disruption in the rate of adoption of our technology;
- access restrictions at offices, hospitals, and treatment centers, and stakeholder illness could interfere with the ability of our sales force to engage in face-to-face visits with providers, leading to a disruption in the rate of adoption of our technology;
- increases in expenditures for technology and other tools necessary to provide patient care in an environment where both patient and care-giver travel is restricted and access to in-person interaction is limited;
- refusal of the FDA to accept data from clinical studies in affected geographies outside the United States; and
- patient delays in seeking or receiving treatment, either due to fear of infection or lack of access to treatment and study sites, leading to fewer diagnoses of the indications our Products are approved to treat or more advanced procession of the disease, which may contraindicate the use of our Products or disqualify the patient from participating in a given study.

The global status of the COVID-19 pandemic continues to rapidly evolve. The extent to which the pandemic may impact our business and clinical studies will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as the ultimate geographic spread of the disease, the duration of the pandemic, travel restrictions and social distancing guidelines, business closures or business disruptions and the effectiveness of actions taken to contain and treat the disease. The response to the pandemic may result in permanent changes to the environment in which we operate as described above in ways we are unable to predict.The COVID-19 pandemic may also have the effect of heightening many of the other risks described herein.

We are increasingly dependent on information technology systems and subject to privacy and security laws. Our Products and our systems and infrastructure face certain risks, including from cyber security breaches and data leakage.

We increasingly rely upon technology systems and infrastructure. Our technology systems, including our Products, are potentially vulnerable to breakdown or other interruption by fire, power loss, system malfunction, unauthorized access and other events. Likewise, data privacy breaches by employees and others with both permitted and unauthorized access to our Products and our systems may pose a risk that protected patient information ("PI") may be exposed to unauthorized persons or to the public, or may be permanently lost. The increasing use and evolution of technology, including cloud-based computing, creates additional opportunities for the unintentional dissemination of information, intentional destruction of confidential information stored in our systems or in non-encrypted portable media or storage devices. We could also experience a business interruption, information theft of confidential information, or reputational damage from industrial espionage attacks, malware or other cyber incidents, which may compromise our system infrastructure or lead to data leakage, either internally or at our third-party service providers or other business partners.

The size and complexity of our computer systems, and scope of our geographic reach, make us potentially vulnerable to information technology system breakdowns, internal and external malicious intrusion, cyberattacks and computer viruses. Because the techniques used to obtain unauthorized access, or to sabotage systems, change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. If we do not allocate and effectively manage the resources necessary to build and sustain the proper technology infrastructure or properly manage third-party

contractors who perform data management services on our behalf, then a security breach could subject us to, among other things, transaction errors, business process inefficiencies, the loss of customers, damage to our reputation, business disruptions or the loss of or damage to intellectual property. Such security breaches could expose us to a risk of loss of information, litigation, penalties, remediation costs and potentially significant liability to customers, employees, business partners and regulatory authorities, including, for example, under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") in the United States and Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data under GDPR in the EU. If our data management systems (including third party data management systems) do not effectively collect, secure, store, process and report relevant data for the operation of our business, whether due to equipment malfunction or constraints, software deficiencies, or human error, our ability to effectively plan, forecast and execute our business plan and comply with applicable laws and regulations will be impaired. Any such impairment could materially and adversely affect our financial condition and results of operations.

While we have invested heavily in the protection of data and information technology and in related training, there can be no assurance that our efforts will prevent significant breakdowns, breaches in our systems or other cyber incidents or ensure compliance with all applicable security and privacy laws, regulations and standards, including with respect to third-party service providers that utilize sensitive personal information, including PI, on our behalf.

A security breach, whether of our Products, systems or third-party hosting services we utilize, could disrupt treatments being provided by our Products, disrupt access to our customers' stored information, such as patient treatment data and health information, and could lead to the loss of, damage to or public disclosure of such data and information, including patient health information. Such an event could have serious negative consequences, including possible patient injury, regulatory action, fines, penalties and damages, reduced demand for our Products, an unwillingness of customers to use our Products, harm to our reputation and brand and time-consuming and expensive litigation, any of which could have a material adverse effect on our financial results. We carry a limited amount of insurance for cybersecurity liability, and our insurance coverage may be inadequate. In the future, our insurance coverage may be expensive or not be available on acceptable terms or in sufficient amounts, if at all.

Risks relating to the regulation of our business

Our device candidates must undergo rigorous preclinical and clinical testing and we must obtain regulatory approvals, which could be costly and time-consuming and subject us to unanticipated delays or prevent us from marketing any devices.

Our research and development activities, as well as the manufacturing and marketing of our Products, are subject to regulation, including regulation for safety, efficacy and quality, by the FDA in the U.S. and comparable authorities in other countries. FDA regulations and the regulations of comparable regulatory authorities in other jurisdictions are wide-ranging and govern, among other things:

- the conduct of preclinical and clinical studies;
- product design, development, manufacturing, testing, storage and shipping;
- product labeling, advertising and promotion;
- premarket clearance, approval and conformity assessment procedures, as well as for modifications introduced in marketed products;
- post-market surveillance and monitoring;
- reporting of adverse events or incidents and implementation of corrective actions, including product recalls;
- interactions with healthcare professionals and patients; and
- product sales and distribution.

We cannot be certain if or when the FDA, comparable regulatory agencies in other jurisdictions or our notified body might request additional or modified studies on our Products, under what conditions such studies might be requested, or the required size or length of any such studies. The data collected from our clinical studies may not be sufficient to support regulatory approval in the U.S., Japan and other countries or to obtain a CE Certificate in the EU for our various future device candidates. Even if we believe the data collected from our clinical studies are sufficient, the FDA and comparable regulatory bodies in other jurisdictions have substantial discretion in the assessment and approval or conformity assessment processes and may disagree with our interpretation of the data. Our failure to adequately demonstrate the safety and efficacy of any of our device candidates would delay or

prevent regulatory approval in the U.S., Japan and other countries or delay or prevent a CE Certificate in the EU (and therefore be unable to affix the CE mark) for our device candidates, which could prevent us from being sustainably profitable. In addition, any change in the laws or regulations that govern the clearance and approval processes relating to our current and future devices could make it more difficult and costly to obtain clearance or approval for new devices, or to produce, market and distribute our Products. Significant delays in receiving clearance or approval, or the failure to receive clearance or approval for our new devices would have an adverse effect on our ability to expand our business.

We intend to market our Products in a number of international markets in addition to our current markets. In order to market our Products in any jurisdiction and for other indications or purposes, we may be required to obtain separate regulatory approvals or CE Certificates for our Products, as applicable. The requirements governing the conduct of clinical studies and manufacturing and marketing of our device candidates outside the U.S. vary widely from country to country. CE Certificates and regulatory approvals in other jurisdictions may take longer to obtain than FDA approvals and can require, among other things, additional testing and different clinical study designs. CE Certification processes and regulatory approvals in other jurisdictions include essentially all of the risks associated with the FDA approval processes. Some regulatory agencies in other jurisdictions must also approve prices of our Products. Approval of a Product by the FDA does not guarantee approval of the same product by the health authorities of other countries or CE marking of our Products in the EU and vice versa. In addition, changes in regulatory policy in the U.S. or in other countries for the approval or CE marking of a medical device during the period of product development and regulatory agency review or notified body review of each submitted new application may cause delays or rejections.

Regulation (EU) 2017/745 on medical devices ("MDR") became active on May 26, 2021 and replaced Council Directive 93/42/EEC concerning medical devices ("MDD"), introduced significant changes to the regulatory framework for medical devices in the EU. These changes may prevent or delay the CE Certification of our device candidates or impact our ability to modify our Products on a timely basis. In particular, the delay in the publication of key MDR guidance documents at EU level and the limited availability of qualified notified bodies might affect our ability to timely comply and demonstrate such compliance with the new requirements or delay the MDR CE Certification of our device candidates.

We may choose to, or may be required to, suspend, repeat or terminate our clinical studies if they are not conducted in accordance with regulatory requirements, the results are negative or inconclusive or the studies are not well designed.

Clinical studies must be conducted in accordance with the FDA's cGCPs and the equivalent laws and regulations applicable in other jurisdictions in which the clinical studies are conducted. The clinical studies are subject to oversight by the FDA, regulatory agencies in other jurisdictions, ethics committees and institutional review boards at the medical institutions where the clinical studies are conducted. In addition, clinical studies must be conducted with device candidates produced under the FDA's QSR and in accordance with the applicable regulatory requirements in the other jurisdictions in which the clinical studies are conducted. The conduct of clinical studies may require large numbers of test patients.

The FDA or regulatory agencies in other jurisdictions might delay or terminate our clinical studies of a device candidate for various reasons, including:

- the device candidate may have unforeseen adverse side effects or may not appear to be more effective than current therapies;
- we may not agree with the FDA, a regulatory authority in another jurisdiction or an ethics committee regarding the protocol for the conduct of a clinical study;
- new therapies may become the standard of care while we are conducting our clinical studies, which may require us to revise or amend our clinical study protocols or terminate a clinical study; or
- fatalities may occur during a clinical study due to medical problems that may or may not be related to clinical study treatments.

Furthermore, the process of obtaining and maintaining regulatory approvals in the U.S. and other jurisdictions and CE Certification in the EU for new therapeutic products is lengthy, expensive and uncertain. It can vary substantially, based on the type, complexity and novelty of the product involved. Accordingly, any of our device candidates could take a significantly longer time than we expect to, or may never, gain regulatory approval or obtain CE Certification in the EU, which could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

Legislative and regulatory changes in the U.S. and in other countries regarding healthcare insurance and government-sponsored reimbursement programs (such as Medicare in the United States) may adversely affect our business and financial results.

We rely to a material degree on highly regulated private and government-run health insurance programs for our revenue in most of the countries in which we operate. The laws and regulations regarding health care programs, both public and private, are driven by public policy considerations that may be unrelated to the direct provision of patient care, such as lowering costs or requiring or limiting access to healthcare options. These laws and regulations are very complicated and there are many requirements we must satisfy in order for our Products to become and remain eligible for reimbursement under these programs. In many cases we may have limited negotiating power when negotiating reimbursement rates for our Products.

In the future, lawmakers and regulators could also pass additional healthcare laws and implement other regulatory changes at both the national and local levels. These laws and regulations could potentially affect coverage and reimbursement for our Products. However, we cannot predict the ultimate content, timing or effect of any future healthcare initiatives or the impact any future legislation or regulation will have on us.

With respect to countries outside the U.S., the national competent authorities in the EU member states, the UK, Switzerland, Israel, Japan, and other jurisdictions are also increasingly active in their goal of reducing public spending on healthcare. We cannot, therefore, guarantee that the treatment of patients with our Products would be reimbursed in any particular country or, if successfully included on reimbursement lists, whether we will remain on such lists.

We are subject to extensive post-marketing regulation by the FDA and comparable authorities in other jurisdictions, which could impact the sales and marketing of our Products and could cause us to incur significant costs to maintain compliance. In addition, we may become subject to additional regulation in other jurisdictions as we increase our efforts to market and sell Optune or Optune Lua and future Products outside of the U.S.

We market and sell our Products, and expect to market and sell future Products, subject to extensive regulation by the FDA and numerous other federal, state and governmental authorities in other jurisdictions. These regulations are broad and relate to, among other things, the conduct of preclinical and clinical studies, product design, development, manufacturing, labeling, testing, product storage and shipping, premarket clearance and approval, conformity assessment procedures, premarket clearance and approval of modifications introduced in marketed products, post-market surveillance and monitoring, reporting of adverse events and incidents, pricing and reimbursement, interactions with healthcare professionals, interactions with patients, information security, advertising and promotion and product sales and distribution. Although we have received FDA approval to market Optune in the U.S. for the treatment of adult patients with newly diagnosed GBM (together with temozolomide) and recurrent GBM and approval to market Optune Lua for adults patients with MPM, we will require additional FDA approval to market our Products for other indications. We may be required to obtain approval of a new PMA, HDE or PMA/HDE supplement application for modifications made to our Products. This approval process is costly and uncertain, and it could take one to three years, or longer, from the time the application is filed with the FDA. We may make modifications in the future that we believe do not or will not require additional approvals. If the FDA disagrees, and requires new PMAs, HDEs, or PMA/HDE supplements for the modifications, we may be required to recall and to stop marketing the modified versions of our Products.

In addition, before our Products can be marketed in the EU, our Products must obtain a CE Certificate from a notified body. New intended uses of CE marked medical devices falling outside the scope of the current CE Certificate require a completely new conformity assessment before the device can be CE marked and marketed in the EU for the new intended use. The process required to gather necessary information and draw up documentation in order to obtain CE Certification of a medical device in the EU can be expensive and lengthy and its outcome can be uncertain. We may make modifications to our Products in the future that we believe do not or will not require notifications to our notified body or new conformity assessments to permit the maintenance of our current CE Certificate. If the competent authorities of the EU member states or our notified body disagree and require the conduct of a new conformity assessment, the modification of the existing CE Certificate or the issuance of a new CE Certificate, we may be required to recall or suspend the marketing of the modified versions of our Products.

In Japan, new medical devices or new therapeutic uses of medical devices falling outside the scope of the existing approval by the MHLW require a new assessment and approval for each such new device or use. Accordingly, we may be required to obtain a new approval from MHLW before we launch a modified version of our Products or the use of our Products for additional indications. Approval time frames from the MHLW vary from simple notifications to review periods of one or more years, depending on the complexity and risk level of the device. In addition,

importation into Japan of medical devices is subject to "Quality Management System (QMS) Ordinance," which includes the equivalent of "Good Import" regulations in the U.S. As with any highly regulated market, significant changes in the regulatory environment could adversely affect our ability to commercialize Optune in Japan.

In the U.S. and other jurisdictions, we also are subject to numerous post-marketing regulatory requirements, which include regulations under the QSR related to the manufacturing of our Products, labeling regulations and medical device reporting regulations, which require us to report to the FDA or comparable regulatory authorities in other jurisdictions and our notified body if our Products cause or contributes to a death or serious injury, or malfunction in a way that would likely cause or contribute to a death or serious injury. In addition, these regulatory requirements may in the future change in a way that adversely affects us. If we fail to comply with present or future regulatory requirements that are applicable to us, we may be subject to enforcement action by the FDA or comparable regulatory authorities in other jurisdictions and notified bodies, which may include any of the following sanctions:

- untitled letters, warning letters, fines, injunctions, consent decrees and civil penalties;
- unanticipated expenditures to address or defend such actions;
- patient notification, or orders for repair, replacement or refunds;
- voluntary or mandatory recall, withdrawal or seizure of our current or future devices;
- administrative detention by the FDA or other regulatory authority in another jurisdiction of medical devices believed to be adulterated or misbranded;
- operating restrictions, suspension or shutdown of production;
- refusal or delay of our requests for PMA or analogous approval for new intended uses for or modifications to our Products or for approval of new devices;
- refusal or delay in obtaining CE Certificates for new intended uses for or modifications to our Products;
- suspension, variation or withdrawal of the CE Certificates granted by our notified body in the EU;
- prohibition or restriction of Products being placed on the market;
- operating restrictions;
- suspension or withdrawal of PMA or analogous approvals that have already been granted;
- refusal to grant export approval for our Products or any device candidates; or
- criminal prosecution.

The occurrence of any of these events could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

Over time, we expect to make modifications to our Products that are designed to improve efficacy, reduce side effects, enhance the user experience and other purposes. Modifications to our Products may require approvals of new PMAs, HDEs, or PMA/HDE supplement applications, modified or new CE Certificates and analogous regulatory approvals in other jurisdictions or even require us to cease promoting or to recall the modified versions of our Products until such clearances, approvals or modified or new CE Certificates are obtained, and the FDA, comparable regulatory authorities in other jurisdictions or our notified body may not agree with our conclusions regarding whether new approvals are required.

Any modification to a device approved through the PMA or HDE pathway that impacts the safety or effectiveness of the device requires submission to the FDA and FDA approval of a PMA supplement application or even a new PMA or HDE application, as the case may be. The FDA requires a company to make the determination as to whether a new PMA, HDE or PMA/HDE supplement application is to be filed, but the FDA may review the company's decision. For example, in the past, we have made initial determinations that certain modifications did not require the filing of a new PMA or PMA/HDE supplement application and have notified the FDA of these changes in our PMA Annual Report, but after its review of our PMA Annual Report, the FDA requested that we submit these modifications to the FDA as a PMA supplement application. From time to time, we may make other changes to the devices, software, packaging, manufacturing facilities and manufacturing processes and may submit additional PMA/HDE supplement applications for these changes. FDA may conduct a facility inspection as part of its review and approval process. In addition, it is possible that the FDA will require a human factors (user interface) study. It is also possible that the FDA may require additional clinical data. We can provide no assurance that we will receive FDA approval for these changes on a timely basis, or at all. We also may make additional changes in the future that we may determine do

not require the filing of a new PMA, HDE or PMA/HDE supplement application. The FDA may not agree with our decisions regarding whether the filing of new PMAs, HDEs or PMA/HDE supplement applications are required.

In addition, any substantial change introduced to a medical device or to the quality system certified by our notified body requires a new conformity assessment of the device and can lead to changes to the CE Certificates or the preparation of a new CE Certificate of Conformity. Substantial changes may include, among others, the introduction of a new intended use of the device, a change in its design or a change in the company's suppliers. Responsibility for determination that a modification constitutes a substantial change lies with the manufacturer of the medical device. We must inform the notified body that conducted the conformity assessment of the Products we market or sell in the EU of any planned substantial changes to our quality system or changes to our Products that could, among other things, affect compliance with the MDR or the devices' intended use. The notified body will then assess the changes and verify whether they affect the Product's conformity with the Essential Requirements laid down in Annex I to the MDD or the conditions for the use of the device. If the assessment is favorable, the notified body will issue a new CE Certificate or an addendum to the existing CE Certificate attesting compliance with the Essential Requirements laid down in Annex I to the MDD. There is a risk that the competent authorities of the EU member states or our notified body may disagree with our assessment of the changes introduced to our Products. The competent authorities of the EU member states or our notified body also may come to a different conclusion than the FDA on any given product modification.

In addition, medical devices that have obtained a CE Certification under the MDD may in principle continue to be marketed under such CE Certificate until the CE Certificate expires and at the latest until May 27, 2024, provided that the manufacturer complies with the MDR's additional requirements related to post-marketing surveillance, market surveillance, vigilance, and registration of economic operators and of devices. However, if such medical devices undergo a significant change in their design or intended use, we would need to obtain a new CE Certificate under the MDR for these devices.

If the FDA disagrees with us and requires us to submit a new PMA, HDE, or PMA/HDE supplement application for then-existing modifications and/or the competent authorities of the EU member states or our notified body disagree with our assessment of the change introduced in a product, its design or its intended use, we may be required to cease promoting or to recall the modified product until we obtain approval and/or until a new conformity assessment has been conducted in relation to the product, as applicable. In addition, we could be subject to significant regulatory fines or other penalties. Furthermore, our Products could be subject to recall if the FDA, comparable regulatory authorities in other jurisdictions, or our notified body determine, for any reason, that our Products are not safe or effective or that appropriate regulatory submissions were not made. Any recall or requirement that we seek additional approvals or clearances could result in significant delays, fines, increased costs associated with modification of a product, loss of revenues and potential operating restrictions imposed by the FDA, comparable foreign regulatory authorities in other jurisdictions, or our notified body. Delays in receipt or failure to receive approvals/certification, or the failure to comply with any other existing or future regulatory requirements, could reduce our sales, profitability and future growth prospects.

In addition to FDA requirements, we will spend considerable time and money complying with other federal, state, local and foreign rules, regulations and guidance and, if we are unable to fully comply with such rules, regulations and guidance, we could face substantial penalties.

We are subject to extensive regulation by the U.S. federal government and the states and other countries in which we conduct our business. U.S. federal government healthcare laws apply when we submit a claim on behalf of a U.S. federal healthcare program beneficiary, or when a customer submits a claim for an item or service that is reimbursed under a U.S. federal government-funded healthcare program, such as Medicare or Medicaid. The laws that affect our ability to operate our business in addition to the Federal Food, Drug, and Cosmetic Act and FDA regulations include, but are not limited to, the following:

- the Federal Anti-Kickback Statute, an intent-based federal criminal statute which prohibits knowingly and willfully offering, providing, soliciting or receiving remuneration of any kind to induce or reward, or in return for, referrals or the purchase, lease, order or recommendation or arranging of any items or services reimbursable by a federal healthcare program;
- the Federal Civil False Claims Act, which imposes civil penalties, including through civil whistleblower or "*qui tam"* actions, for knowingly submitting or causing the submission of false or fraudulent claims of payment to the federal government, knowingly making, using or causing to be made or used a false statement or record material to payment of a false claim or avoiding, decreasing or concealing an obligation to pay money to the federal government;

- the Federal Criminal False Claims Act, which is similar to the Federal Civil False Claims Act and imposes criminal liability on those that make or present a false, fictitious or fraudulent claim to the federal government;
- Medicare laws and regulations that prescribe requirements for coverage and reimbursement, including the conditions of participation for DME suppliers, and laws prohibiting false claims or unduly influencing selection of products for reimbursement under Medicare and Medicaid;
- healthcare fraud statutes that prohibit false statements and improper claims to any third-party payer;
- the Federal Physician Self-Referral Law, commonly known as the Stark law, which, absent an applicable exception, prohibits physicians from referring Medicare and Medicaid patients to an entity for the provision of certain designated health services ("DHS"), including DME, if the physician (or a member of the physician's immediate family) has an impermissible financial relationship with that entity and prohibits the DHS entity from billing for such improperly referred services;
- the Federal Beneficiary Anti-Inducement Statute, which prohibits the offering of any remuneration to a beneficiary of Medicare or Medicaid that is likely to influence that beneficiary's choice of provider or supplier. This can include, but is not limited to, inappropriate provision of patient services including financial assistance. Recent government investigations have focused on this particular prohibition. There are established exceptions from liability, but we cannot guarantee that all of our practices will fall squarely within those exceptions;
- similar state anti-kickback, false claims, insurance fraud and self-referral laws, which may not be limited to government-reimbursed items, as well as state laws that require us to maintain permits or licenses to distribute DME;
- federal and state accreditation and licensing requirements applicable to DME providers and equivalent requirements in other jurisdictions;
- the U.S. Foreign Corrupt Practices Act, which can be used to prosecute companies in the U.S. for arrangements with physicians or other parties outside the U.S. if the physician or party is a government official of another country and the arrangement violates the law of that country;
- the Federal Trade Commission Act, the Lanham Act and similar federal and state laws regulating truthfulness in advertising and consumer protection; and
- the Federal Physician Payments Sunshine Act, the French Sunshine Act and similar state and foreign laws, which require periodic reporting of payments and other transfers of value made to U.S. and French-licensed physicians, teaching hospitals, and in the U.S., physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, and certified nurse-midwives.

Similar laws exist in the EU, individual EU member states and other countries. These laws are complemented by EU or national professional codes of practices.

HIPAA provides data privacy and security provisions for safeguarding medical information. Additionally, states in the U.S. are enacting local privacy laws (e.g., California). In the EU, the GDPR harmonizes data privacy laws and rules on the processing of personal data, including patient and employee data, across the EU. The GDPR has a number of strict data protection and security requirements for companies processing data of EU residents, including when such data is transferred outside of the EU. Additionally, we need to comply with analogous privacy laws in other jurisdictions in which we operate, such as the Israeli Privacy Protection Law, the Asia Pacific Economic Cooperation Privacy Framework, and Japan's Act on the Protection of Personal Information.

The laws and codes of practices applicable to us are subject to evolving interpretations. Moreover, certain U.S. federal and state laws regarding healthcare fraud and abuse and certain laws in other jurisdictions regarding interactions with healthcare professionals and patients are broad and we may be required to restrict certain of our practices to be in compliance with these laws. Healthcare fraud and abuse laws also are complex and even minor, inadvertent irregularities, or even the perception of impropriety, can potentially give rise to claims that a statute has been violated.

Any violation of these laws could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline. Similarly, if there is a change in law, regulation or administrative or judicial interpretations, we may have to change our business practices or our existing business practices could be challenged as unlawful, which likewise could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline. Fines and penalties for violations of these laws and regulations could include severe criminal and civil penalties, including, for example,

significant monetary damages, exclusion from participation in the federal healthcare programs and permanent disbarment of key employees. Any penalties, damages, fines, curtailment or restructuring of our operations would adversely affect our ability to operate our business, our prospects and our financial results. In addition, any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation.

In addition, although we believe that we have the required licenses, permits and accreditation to dispense our Products in the future, a regulator could find that we need to obtain additional licenses or permits. We also may be subject to mandatory reaccreditation and other requirements in order to maintain our billing privileges. Failure to satisfy those requirements could cause us to lose our privileges to bill governmental and private payers. If we are required to obtain permits or licenses that we do not already possess, we also may become subject to substantial additional regulation or incur significant expense.

To ensure compliance with Medicare, Medicaid and other regulations, federal and state governmental agencies and their agents, including DME MACs, may conduct audits of our operations to support our claims submitted for reimbursement of items furnished to beneficiaries and health care providers. Depending on the nature of the conduct found in such audits and whether the underlying conduct could be considered systemic, the resolution of these audits could adversely impact our revenue, financial condition and results of operations.

If we, our collaborative partners, our contract manufacturers or our component suppliers fail to comply with the FDA's QSR or equivalent regulations established in other countries, the manufacturing and distribution of our Products could be interrupted, and our Product sales and results of operations could suffer.

We, our collaborative partners, our contract manufacturers and our component suppliers are required to comply with the FDA's QSR and the equivalent quality system requirements imposed by the laws and regulations in other jurisdictions, which are a complex regulatory framework that covers the procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of our Products. We cannot assure you that our facilities or our contract manufacturers' or component suppliers' facilities would pass any future quality system inspection. If our or any of our contract manufacturers' or component suppliers' facilities fails a quality system inspection, the manufacturing or distribution of our Products could be interrupted and our operations disrupted. Failure to take adequate and timely corrective action in response to an adverse quality system inspection could force a suspension or shutdown of our packaging and labeling operations or the manufacturing operations of our contract manufacturers, and lead to suspension, variation or withdrawal of our regulatory approvals or a recall of our Products. If any of these events occurs, we may not be able to provide our customers with our Products on a timely basis, our reputation could be harmed and we could lose customers, any or all of which could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

Our Products may in the future be subject to recalls that could harm our reputation, business and financial results.

The FDA and similar governmental authorities in other jurisdictions have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture. In the case of the FDA, the authority to require a recall must be based on an FDA finding that there is a reasonable probability that the device would cause serious injury or death. In addition, governmental bodies in other jurisdictions have the authority to require the recall of our Products in the event of material deficiencies or defects in design or manufacture. Distributors and manufacturers may, under their own initiative, recall a product if any material deficiency in a device is found. A government-mandated or voluntary recall by us or one of our manufacturers could occur as a result of component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. The FDA requires that certain classifications of recalls be reported to the FDA within ten working days after the recall is initiated. Requirements for the reporting of product recalls to the competent authorities are imposed in other jurisdictions in which our Products are or would be marketed in the future. Companies are required to maintain certain records of recalls, even if they are not reportable to the FDA or to the competent authorities of other countries. In the future, we may initiate voluntary recalls involving our Products that we determine do not require notification of the FDA or to other equivalent non-U.S. authorities. If the FDA or the equivalent non-U.S. authorities disagree with our determinations, they could require us to report those actions as recalls. A future recall announcement could harm our reputation with customers and negatively affect our sales. In addition, the FDA and the equivalent non-U.S. authorities could take enforcement action if we fail to report the recalls when they were conducted. Recalls of our Products would divert managerial and financial resources and could have a material

adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

If our Products cause or contribute to a death or a serious injury, or malfunction in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

Under the FDA Medical Device Reporting regulations and the equivalent regulations applicable in other jurisdictions in which our Products are or may be marketed in the future, medical device manufacturers are required to report to the FDA and to the equivalent non-U.S. authorities information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would likely cause or contribute to death or serious injury if the malfunction of the device or one of our similar devices were to recur. If we fail to report these events to the FDA or to the equivalent authorities in other jurisdictions within the required time frames, or at all, the FDA or the equivalent authorities in other jurisdictions could take enforcement action against us. Any such adverse event involving our Products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, will require the dedication of our time and capital, distract management from operating our business, and may harm our reputation and financial results.

We may be subject to fines, penalties or injunctions if we are determined to be promoting the use of our Products for unapproved or off-label uses.

Medical devices may be marketed only for the indications for which they are approved. Our promotional materials and training materials must comply with FDA regulations and other applicable laws and regulations governing the promotion of our Products in the U.S. and other jurisdictions. Currently, Optune is approved for treatment of adult patients with newly diagnosed GBM (together with temozolomide) and recurrent GBM in the U.S. and is approved for treatment of adult patients with GBM in Japan. In the EU and Switzerland, we have CE marked the Optune for the treatment of newly diagnosed GBM (together with temozolomide), recurrent GBM, and advanced NSCLC (together with standard-of-care chemotherapy). Optune is also approved in Israel and in Australia for the treatment of recurrent GBM and newly diagnosed GBM (together with temozolomide). The Optune Lua System is only approved in the U.S., the EU and Switzerland for the treatment of unresectable, locally advanced or metastatic MPM.

If the FDA or the competent authorities in other jurisdictions, including the EU member states, determine that our promotional materials or training constitutes promotion of an unapproved use, they could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled or warning letter, an injunction, seizure, civil fines and criminal penalties. It is also possible that authorities in other federal, state or national enforcement in other jurisdictions might take action if they consider our promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. In that event, our reputation could be damaged and the commercialization of our Products could be impaired.

We pay taxes in multiple jurisdictions and adverse determinations by taxing or other governmental authorities or changes in tax laws, rates or our status under which tax jurisdictions apply to us could increase our tax burden or otherwise affect our financial condition or results of operations, as well as subject our shareholders to additional taxes.

The amount of taxes we pay is subject to a variety of tax laws in the various jurisdictions in which we and our subsidiaries are organized and operate. Our domestic and international tax liabilities are dependent on the location of earnings among these various jurisdictions. Such tax liabilities could be affected by changes in tax or other laws, treaties and regulations, as well as the interpretation or enforcement thereof by tax or other governmental entities in any relevant jurisdiction. The amount we pay in tax to any particular jurisdiction depends, in part, on the correct interpretation of the tax laws in such jurisdiction, and we have made a number of determinations as to the effect of such tax laws in our particular circumstances. In some cases, the determinations we have made as to the effect of the tax laws in a particular jurisdiction depend on the continuing effectiveness of administrative rulings we have received from the tax authorities in that jurisdiction, while in other cases, our determinations are based on the reasoned judgment of our tax advisors. Although we believe that we are in compliance with the administrative rulings we have received, that the assumptions made by our tax advisors in rendering their advice remain correct, and that as a result we are in compliance with applicable tax laws in the jurisdictions where we and our subsidiaries are organized and operate, a taxing authority in any such jurisdiction may challenge our interpretation of those laws and assess us or any of our subsidiaries with additional taxes, penalties, fees and interest.

Additionally, from time to time, proposals can be made and legislation can be introduced to change the tax laws, regulations or interpretations thereof (possibly with retroactive effect) of various jurisdictions or limit tax treaty benefits that, if enacted, could materially increase our tax burden, increase our effective tax rate or otherwise have a material adverse impact on our financial condition and results of operations. It is possible that these changes could adversely affect our business. While we monitor proposals and other developments that would materially impact our tax burden and effective tax rate and investigate our options accordingly, we could still be subject to increased taxation on a going forward and retroactive basis no matter what action we undertake if certain legislative proposals or regulatory changes are enacted, certain tax treaties are amended and/or our interpretation of applicable tax or other laws is challenged and determined to be incorrect. Any alternative interpretations of applicable tax laws asserted by a tax authority or changes in tax laws, regulations or accounting principles that limit our ability to take advantage of tax treaties between jurisdictions, modify or eliminate the deductibility of various currently deductible payments, increase the tax burden of operating or being resident in a particular country, result in transfer pricing adjustments or otherwise require the payment of additional taxes, may have a material adverse effect on our cash flows, financial condition and results of operations. The termination or revision of any of our tax rulings or indirect tax exemptions that we have or may have in the future may have a material adverse effect on our cash flows, financial condition and results of operations.

We are affected by and subject to environmental laws and regulations that could be costly to comply with or that may result in costly liabilities.

We are subject to environmental laws and regulations, including those that impose various environmental controls on the manufacturing, transportation, storage, use and disposal of batteries and hazardous chemicals and other materials used in, and hazardous waste produced by, the manufacturing of our Products. We incur and expect to continue to incur costs to comply with these environmental laws and regulations. Additional or modified environmental laws and regulations, including those relating to the manufacture, transportation, storage, use and disposal of materials used to manufacture our Products or restricting disposal or transportation of batteries, may be imposed that may result in higher costs.

In addition, we cannot predict the effect that additional or modified environmental laws and regulations may have on us, our third-party suppliers of equipment, batteries and our Products or our customers. For example, we and our suppliers rely on the exemption in European Directive 2011/65/EU relating to the restriction of the use of certain hazardous substances in electrical and electronic equipment, set out in Annex IV, relating to lead content in our arrays. To the extent this exemption is revoked or amended, it may have a material impact on our business and results of operations.

Safety issues concerning lithium-ion batteries could have a material adverse impact on our business.

Our Products use lithium-ion batteries. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke, heat, and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. A failure in the lithium-ion battery contained in a Product could occur, which could result in accidents, casualty or damages, and subject us to lawsuits, product recalls, or redesign efforts. In addition, we store a significant number of lithium-ion cells at our facilities. Any failure of battery cells or a safety issue or fire related to the cells could disrupt our operations. Such damage or injury could lead to adverse publicity and potentially a safety recall. The transportation of lithium and lithium-ion batteries is regulated worldwide.

Laws regulating the transportation of batteries have been and may be enacted which could impose additional costs that could harm our ability to be profitable. If additional restrictions are put in place that limit our ability to ship our Products by air freight or on water borne cargo, such restrictions could have an adverse effect on our supply chain, our inventory management procedures and processes and our ability to fill prescriptions and service patients in a timely manner, which could have a material adverse effect on our business, prospects, financial condition and results of operations. In addition, compliance with future worldwide or International Air Transport Association approval process and regulations could require significant time and resources from our technical staff and, if redesign were necessary, could delay the introduction of new Products.

Risks relating to intellectual *property*

If we fail to protect, sustain, further build and enforce our intellectual property rights, including to our proprietary technology, trade secrets or know how, competitors may be able to develop competing therapies.

Our success depends, in part, on our ability to obtain and maintain protection for our Products and technologies under the patent laws or other intellectual property laws of the U.S. and other countries. The standards that the U.S. Patent and Trademark Office ("USPTO") and its counterparts in other jurisdictions use to grant patents are not always applied predictably or uniformly and can change. Consequently, we cannot be certain as to whether pending patent applications will result in issued patents, and we cannot be certain as to the type and extent of patent claims that may be issued to us in the future. Any issued patents may not contain claims that will permit us to stop competitors from using similar technology.

Our current intellectual property portfolio consists of hundreds of issued patents in multiple jurisdictions covering various aspects of our devices and related technology. The legal scope of our patents vary, with some having broad coverage and others having narrow coverage, for example being limited to certain intensities and frequencies. Our patent position is generally uncertain and involves complex legal and factual questions.

In the U.S., our patents have expected expiration dates between 2023 and 2038. In 2021, several patents covering technology included in our Products expired in the U.S. and elsewhere. Patent expiration could adversely affect our ability to protect our Products and future product development and our competitors may develop and market competing products. We have also filed additional patent applications in several countries that may never be issued. Consequently, our operating results and financial position could be materially adversely affected. In addition, due to the extensive time needed to develop, test and obtain regulatory approval for our treatment therapies, any patents that protect our Product candidates may expire early during commercialization. This may reduce or eliminate any market advantages that such patents may give us and harm our financial position. If we fail to develop and successfully launch new Products prior to the expiration of patents for our existing Products, our sales and achieving patient acceptance with respect to those Products could decline significantly. We may not be able to develop and successfully launch more advanced replacement Products before these and other patents expire.

We have limited intellectual property rights outside of our key markets. In some countries outside the U.S., we do not have any intellectual property rights, and our intellectual property rights in other countries outside the U.S. have a different scope and strength compared to our intellectual property rights in the U.S. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but where enforcement rights are not as strong as those in the U.S. These products may compete with our devices, and our patents or other intellectual property rights may not be effective or adequate to prevent such competition.

For a variety of reasons, we may decide not to file for patent protection for certain of our intellectual property. Our patent rights underlying TTFields and our Products may not be adequate, and our competitors or customers may design around our proprietary technologies or independently develop similar or alternative technologies or products that are equal or superior to ours without infringing on any of our patent rights. In addition, the patents licensed or issued to us may not provide a competitive advantage, and may be insufficient to prevent others from commercializing products similar or identical to ours. The occurrence of any of these events could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

Our existing and future patent portfolio also may be vulnerable to legal challenges. The standards that courts use to interpret patents are not always applied predictably or uniformly and can change, particularly as new technologies develop. On September 16, 2011, President Obama signed into law the Leahy-Smith America Invents Act ("AIA") a significant patent law reform. The AIA implements a first-inventor-to-file standard for patent approval, changes the legal standards for patentability and creates a post-grant review system. As a result of the uncertainties of patent law in general, and surrounding the interpretation of the AIA in particular, we cannot predict with certainty how much protection, if any, will be given to our patents if we attempt to enforce them and they are challenged in court. Any attempt to enforce our intellectual property rights may also be time-consuming and costly, may divert the attention of management from our business, may ultimately be unsuccessful or may result in a remedy that is not commercially valuable. Such attempts may also provoke third parties to assert claims against us or result in our intellectual property being narrowed in scope or declared to be invalid or unenforceable.

In addition, we rely on certain proprietary trade secrets, know-how and other confidential information. We have taken measures to protect our unpatented trade secrets, know-how and other confidential information, including the use of confidentiality and assignment of inventions agreements with our employees, consultants and certain contractors. It is possible, however, that these persons may breach or challenge the agreements, that our trade secrets may otherwise be misappropriated or that competitors may independently develop or otherwise discover our trade secrets. There is therefore no guarantee that we will be able to obtain, maintain and enforce the intellectual property rights that may be necessary to protect and grow our business and to provide us with a meaningful competitive advantage, and our failure to do so could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

The oncology and medical device industries are characterized by patent and other intellectual property litigation and disputes, and any litigation, dispute or claim against us may cause us to incur substantial costs, could place a significant strain on our financial resources, divert the attention of management from our business, harm our reputation and require us to remove certain devices from the market.Whether a product infringes a patent or violates other intellectual property rights involves complex legal and factual issues, the determination of which is often uncertain. Any intellectual property dispute, even a meritless or unsuccessful one, would be time consuming and expensive to defend and could result in the diversion of our management's attention from our business and result in adverse publicity, the disruption of research and development and marketing efforts, injury to our reputation and loss of revenues. Any of these events could negatively affect our business, prospects, financial condition and results of operations.

Third parties may assert that TTFields, our Products, the methods employed in the use of our Products or other activities infringe on their patents. Such claims may be made by competitors seeking to obtain a competitive advantage or by other parties, many of whom have significantly larger intellectual property portfolios than we have. Additionally, in recent years, individuals and groups have begun purchasing intellectual property assets for the purpose of making claims of infringement and attempting to extract settlements from companies like ours. With respect to our current Products, the risk of infringement claims is exacerbated by the fact that there are numerous issued and pending patents relating to the treatment of cancer. Because patent applications can take many years to issue, and in many cases remain unpublished for many months after filing, there may be applications now pending of which we are unaware that may later result in issued patents that our Products may infringe.

There could also be existing patents that one or more components of our Products or other device candidates may inadvertently infringe. As the number of competitors in the market or other device candidates grows, the possibility of inadvertent patent infringement by us or a patent infringement claim against us increases. To the extent we gain greater market visibility, our risk of being subject to such claims is also likely to increase. If a third party's patent was upheld as valid and enforceable and we were found to be infringing, we could be prevented from making, using, selling, offering to sell or importing our Products or other device candidates, unless we were able to obtain a license under that patent or to redesign our systems to avoid infringement. A license may not be available at all or on terms acceptable to us, and we may not be able to redesign our Products to avoid any infringement. Modification of our Products or development of device candidates to avoid infringement could require us to conduct additional clinical studies and to revise our filings with the FDA and other regulatory bodies, which would be time-consuming and expensive. If we are not successful in obtaining a license or redesigning our devices, we may be unable to make, use, sell, offer to sell or import our devices and our business could suffer. We may also be required to pay substantial damages and undertake remedial activities, which could cause our business to suffer.

We may also be subject to claims alleging that we infringe or violate other intellectual property rights, such as copyrights or trademarks, may have to defend against allegations that we misappropriated trade secrets, and may face claims based on competing claims of ownership of our intellectual property. The confidentiality and assignment of inventions agreements that our employees, consultants and other third parties sign may not in all cases be enforceable or sufficient to protect our intellectual property rights. In addition, we may face claims from third parties based on competing claims to ownership of our intellectual property.

We also employ individuals who were previously employed at other medical device companies, and as such we may be subject to claims that such employees have inadvertently or otherwise used or disclosed the alleged trade secrets or other proprietary information of their former employers. Any such litigation, dispute or claim could be costly to defend and could subject us to substantial damages, injunctions or other remedies, which could have a material adverse effect on our business, prospects, financial condition and results of operations and cause our stock price to decline.

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

As is the case with other medical device companies, our success is heavily dependent on our intellectual property rights, and particularly on our patent rights. Obtaining and enforcing patents in the medical device industry involves both technological and legal complexity, and is therefore costly, time consuming and inherently uncertain. In addition, the U.S. has recently enacted and is currently implementing wide-ranging patent reform legislation. Certain U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents once obtained. Depending on decisions by the U.S. Congress, the federal courts and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could further negatively impact the value of our patents, narrow the scope of available patent protection or weaken the rights of patent owners.

Risks relating to our ordinary shares and capital structure

The market price for our ordinary shares may be volatile, which could result in substantial losses.

The market price for our ordinary shares may be volatile and subject to wide fluctuations in response to factors such as publication of clinical studies relating to our Products, our system candidates or a competitor's product, actual or anticipated fluctuations in our quarterly results of operations, changes in financial estimates by securities research analysts, negative publicity, studies or reports, changes in the economic performance or market valuations of other companies that operate in our industry, changes in the availability of third-party reimbursement in the U.S. or other countries, changes in governmental regulations or in the status of our regulatory approvals or applications, announcements by us or our competitors of material acquisitions, strategic partnerships, joint ventures or capital commitments, intellectual property litigation, release of transfer restrictions on our outstanding ordinary shares, and economic or political conditions in the U.S. or elsewhere.

Our ordinary shares are issued under the laws of Jersey, which may not provide the level of legal certainty and transparency afforded by incorporation in a U.S. state.

We are incorporated under the laws of the Bailiwick of Jersey, Channel Islands. Jersey legislation regarding companies is largely based on English corporate law principles. However, there can be no assurance that Jersey law will not change in the future or that it will serve to protect investors in a similar fashion afforded under corporate law principles in the U.S., which could adversely affect the rights of investors.

U.S. shareholders may not be able to enforce civil liabilities against us.

We are a Jersey entity with most of our assets located outside of the U.S. Although we have appointed an agent for service of process in the U.S. for purposes of U.S. federal securities laws, a number of our directors and executive officers and a number of directors of each of our subsidiaries are not residents of the U.S., and all or a substantial portion of the assets of such persons are located outside the U.S. As a result, it may not be possible for investors to effect service of process within the U.S. upon such persons or to enforce against them judgments obtained in U.S. courts predicated upon the civil liability provisions of the federal securities laws of the U.S.

We have been advised by our Jersey lawyers that the courts of Jersey would recognize any final and conclusive judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) obtained against us in the courts of any other territory in respect of certain enforceable obligations in accordance with the principles of private international law as applied by Jersey law (which are broadly similar to the principles accepted under English common law) and such judgment would be sufficient to form the basis of proceedings in the Jersey courts for a claim for liquidated damages in the amount of such judgment. In such proceedings, the Jersey courts would not re-hear the case on its merits save in accordance with such principles of private international law. Obligations may not necessarily be enforceable in Jersey in all circumstances or in accordance with their terms; and in particular, but without limitation: (i) any agreement purporting to provide for a payment to be made in the event of a breach of such agreement would not be enforceable to the extent that the Jersey courts were to construe such payment to be a penalty that was excessive, in that it unreasonably exceeds the maximum damages that an obligee could have suffered as a result of the breach of an obligation; (ii) the Jersey courts may refuse to give effect to any provision in an agreement that would involve the enforcement of any revenue or penal laws in other jurisdictions; and (iii) the Jersey courts may refuse to allow unjust enrichment or to give effect to any provisions of an agreement (including provisions relating to contractual interest on a judgment debt) that it considers usurious.

We have borrowed a significant amount of debt and have the ability to borrow additional debt in the future, which could adversely affect our financial condition and results of operations and our ability to react to changes in our business.

We currently have two significant debt arrangements outstanding. On November 5, 2020, we issued $575 million of 0% Convertible Senior Notes due 2025 (the "Convertible Notes"). The Convertible Notes are senior unsecured obligations. The Convertible Notes do not bear regular interest, and mature on November 1, 2025, unless earlier repurchased, redeemed or converted. The Notes are not redeemable prior to November 6, 2023 and are convertible into a combination of cash and ordinary shares on or after August 1, 2025, or earlier upon certain events.

On November 6, 2020, we entered into a new $150.0 million senior secured revolving credit facility with J.P. Morgan Chase Bank, N.A., as administrative agent, and a syndicate of relationship banks (the "Credit Facility"). We may, subject to certain conditions and limitations, increase the revolving credit commitments outstanding under the Credit Facility in an aggregate principal amount not to exceed $250.0 million. The commitments under the Credit Facility are guaranteed by certain of our subsidiaries and secured by a first-lien of our and certain of our subsidiary's assets. Outstanding loans will bear interest per annum at a sliding scale between 2.75% and 3.25% above the applicable interbank borrowing reference rate for the currency in which the loan is denominated. As of the date of this Annual Report, we had no outstanding balance borrowed under the Credit Facility.

Our existing indebtedness and any additional indebtedness we may incur under the Credit Facility or otherwise could require us to divert funds identified for other purposes for debt service and impair our liquidity position. In addition, the Credit Facility contains usual and customary restrictive covenants relating to the operation of our business, including restrictions on our ability to incur or guarantee additional indebtedness, to incur or permit to exist certain liens, and other restrictions on corporate actions.

The fact that a substantial portion of our cash flow from operations could be needed to make payments on our indebtedness could have important consequences, including the following:

- increasing our vulnerability to general adverse economic and industry conditions or increased interests rates;
- limiting the availability of our cash flow for other purposes and our flexibility in planning for or reacting to changes in our business and the markets in which we operate, which would place us at a competitive disadvantage compared to our competitors that may have less exposure to debt;
- limiting our ability to borrow additional funds for working capital, capital expenditures and other investments; and
- failing to comply with the covenants in our debt agreements could result in all of our indebtedness becoming immediately due and payable.

Our ability to obtain necessary funds through borrowing, as well as our ability to service our indebtedness, will depend on our ability to generate cash flow from operations. Our ability to generate cash is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. If our business does not generate sufficient cash flow from operations or if future borrowings are not available to us under our outstanding borrowings or otherwise in amounts sufficient to enable us to fund our liquidity needs, our financial condition and results of operations may be adversely affected. Our inability to make scheduled payments on our debt obligations in the future would require us to refinance all or a portion of our indebtedness on or before maturity, sell assets or seek additional equity investment. We may not be able to take any of such actions on a timely basis, on terms satisfactory to us or at all.

Transactions relating to our Convertible Notes may dilute the ownership interest of existing shareholders, or may otherwise depress the price of our ordinary shares.

The conversion of some or all of our Convertible Notes would dilute the ownership interests of existing shareholders to the extent we deliver shares upon conversion of any of such notes. Our Convertible Notes are convertible at the option of their holders prior to their scheduled terms under certain circumstances. In connection with the conversion of our Convertible Notes, we may deliver to the holders of such notes a significant number of our ordinary shares. Any sales in the public market of our ordinary shares issuable upon such conversion could adversely affect prevailing market prices of our ordinary shares. In addition, the existence of our Convertible Notes may encourage short selling by market participants because the conversion of such notes could be used to satisfy short positions, or anticipated conversion of such notes into our ordinary shares could depress the price of our ordinary shares.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our global supply chain and European operations center is located in Root, Switzerland, our U.S. operations center is located in Portsmouth, New Hampshire, and our research and development operations are located in Haifa, Israel, all of which are leased. In December 2021 we acquired a property in downtown Portsmouth, New Hampshire that will become our flagship location to accommodate our growing employee base and house a world-class training and development center, where partners from around the world can come to learn more about our TTFields technology. Construction on the property is expected to be completed in 2023. We also lease additional office and warehouse space across North America, Europe, Israel and Japan. We believe that our current facilities are adequate for our present purposes, but we may need additional space as we continue to grow and expand our operations. We believe that suitable additional or alternative office, laboratory, and manufacturing space would be available as required in the future on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are involved in various legal proceedings, claims, investigations and litigation that arise in the ordinary course of our business. Litigation is inherently uncertain. Accordingly, we cannot predict with certainty the outcome of these matters. After considering a number of factors, including (but not limited to) the views of legal counsel, the nature of contingencies to which the Company is subject and prior experience, management believes that the ultimate disposition of these legal actions will not materially affect its consolidated financial position or results of operations.

ITEM 4. MINE SAFETY DISCLOSURES

None.

Information about our Executive Officers

Our executive officers are elected by and serve at the discretion of our board of directors. The following table lists information about our executive officers:

Name	Age	Position
Asaf Danziger	55	Chief Executive Officer and Director
William Doyle	59	Executive Chairman
Ely Benaim	61	Chief Medical Officer
William Burke	67	Chief Human Resources Officer
Ashley Cordova	42	Chief Financial Officer
Wilhelmus Groenhuysen	64	Chief Operating Officer
Francis Leonard	42	Chief Development Officer
Todd Longsworth	47	General Counsel
Pritesh Shah	44	Chief Commercial Officer

Asaf Danziger has served as our Chief Executive Officer since 2002 and has been a director of NovoCure since 2012. From 1998 to 2002, Mr. Danziger was CEO of Cybro Medical, a subsidiary of Imagyn Medical Technologies, Inc. Mr. Danziger holds a B.Sc. in material engineering from Ben Gurion University of the Negev, Israel.

William Doyle has served as our Executive Chairman since 2016, as Chairman of the Board since 2009 and as a member of our Board of Directors since 2004. Mr. Doyle has been the managing director of WFD Ventures LLC, a private venture capital firm he co-founded, since 2002. Prior to 2002, Mr. Doyle was a member of Johnson & Johnson's Medical Devices and Diagnostics Group Operating Committee and was Vice President, Licensing and Acquisitions. While at Johnson & Johnson, Mr. Doyle was also chairman of the Medical Devices Research and Development Council, and Worldwide president of Biosense-Webster, Inc. and a member of the board of directors of Cordis Corporation and Johnson & Johnson Development Corporation, Johnson & Johnson's venture capital subsidiary. Earlier in his career, Mr. Doyle was a management consultant in the healthcare group of McKinsey & Company. Mr. Doyle is also a member of the Governing Board of the Pershing Square Sohn Cancer Research Alliance. From 2014 to 2016 he was a member of the investment team at Pershing Square Capital Management

L.P., a private investment firm and from November 2016 to January 2021, Mr.Doyle served as the Executive Chairman of BlinkHealth LLC, which has developed a pharmacy-as-a-service, e-commerce platform. Mr. Doyle has been a director of Elanco Animal Health, Inc. since 2020 and director of Minerva Neurosciences, Inc. since 2017. Mr. Doyle previously served as a director of Optinose, Inc., a commercial-stage specialty pharmaceuticals company, from 2004 to 2020. Mr. Doyle holds an S.B. in materials science and engineering from the Massachusetts Institute of Technology and an M.B.A. from Harvard Business School. Mr. Doyle serves on Harvard Business School's Board of Dean's Advisors and MIT's Institute of Medical Engineering & Science Visiting Committee.

Ely Benaim has been our Chief Medical Officer since 2019. Dr. Benaim previously served as Chief Medical Officer for Rexahn Pharmaceuticals from 2015 to 2019, where he was responsible for leading clinical development programs and providing strategic and clinical guidance. Prior to joining Rexahn, he was chief medical officer and senior vice president of regulatory affairs at BERG Health from 2013 to 2015. From 2011 to 2013, Dr. Benaim was senior director, clinical research and global clinical lead for Millennium Pharmaceuticals Inc./Takeda Pharmaceuticals Company. From 2007 to 2010, he was vice president, clinical affairs for Sangamo BioSciences. Dr. Benaim received his M.D. from the Universidad Central de Venazuela, Caracas, and completed his pediatric residency training at the University of South Florida. Dr. Benaim completed fellowships in pediatric oncology and bone marrow transplantation at St. Jude's Children's Research Hospital.

William Burke has been our Chief Human Resources Officer since September 2021 and prior to that was our Senior Vice President of Global Human Resources. Mr. Burke joined Novocure in 2014. Mr. Burke has had extensive experience as a human resources leader for companies such as Arrow Electronics, ThermoFisher Scientific, Novartis Consumer Health, Cadbury Schweppes and PepsiCo. Burke holds a bachelor's degree in Business and Industrial Relations from the University of Bridgeport, and he has attended management development programs at INSEAD and London Business School.

Ashley Cordova has been our Chief Financial Officer since September 2020. From October 2018 to August 2020, Ms. Cordova served as our Senior Vice President, Finance and Investor Relations. Ms. Cordova joined us in June 2014 as Director of Global Treasury. In March 2015, she became our Senior Director, Investor Relations and Global Treasury, and in July 2016, she became our Vice President, Finance and Investor Relations. Prior to joining us, Ms. Cordova served in various financial roles at Zoetis Inc. from 2012 to 2014 and Pfizer Inc. from 2005 to 2012. Ms. Cordova graduated with a bachelor's degree in Music and Business from Furman University, and earned her International Master of Business Administration from the University of South Carolina.

Wilhelmus Groenhuysen has been our Chief Operations Officer since September 2020 and prior to that was our Chief Financial Officer since 2012. He has served on the Board of Optinose Inc., a commercial-stage specialty pharmaceuticals company, since October 2017. From 2007 to 2011, Mr. Groenhuysen worked for Cephalon, Inc., a U.S. biopharmaceutical company, last serving as executive vice president and chief financial officer, where he had responsibility for worldwide finance, commercial operations and risk management. From 1987 to 2007, Mr. Groenhuysen worked for Philips Group in various assignments in Europe, Asia and the United States, the latest of which started in 2002 when he was promoted to chief financial officer and senior vice president of Philips Electronics North America Corporation. Mr. Groenhuysen holds a Master's Degree in Business Economics from VU University Amsterdam and graduated as a Registered Public Controller at VU University Amsterdam.

Frank Leonard has been our Chief Development Officer since September 2020. Mr. Leonard joined Novocure in 2010, and most recently served as the Senior Vice President for Corporate Strategy and Health Policy. Prior to joining Novocure, Mr. Leonard was a venture capital investor focused on high-impact medical technologies. Mr. Leonard holds an A.B. from Harvard and an M.A. from the London School of Economics and Political Science.

Todd Longsworth joined Novocure in 2012 and serves as General Counsel. Mr. Longsworth worked for Cephalon, Inc., a U.S. biopharmaceutical company, from 2005 to 2012, last serving as Mergers and Acquisitions, Securities and Corporate Governance Counsel. Prior to joining Cephalon, he was an associate at WilmerHale LLP, a global law firm from 2001 to 2005. Mr. Longsworth earned his B.A. from Duke University and his J.D. from the University of Pennsylvania.

Pritesh Shah joined Novocure in November 2012 and serves as Chief Commercial Officer. Prior to joining Novocure, Mr. Shah had extensive experiences in leading oncology commercial and medical affairs functions at Roche, Genentech, Bristol-Myers Squibb, OSI Oncology and AVEO Oncology. He holds a Doctor of Pharmacy from the University of Maryland and a master's degree in Strategic Communication and Leadership from Seton Hall University.

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

Our ordinary shares are quoted on the NASDAQ Global Select Market under the symbol "NVCR."

Holders of Ordinary Shares

As of February 18, 2022, there were 17 holders of record of our ordinary shares. On February 18, 2022, the last reported sale price of our ordinary shares on the NASDAQ Global Select Market was $76.00 per share.

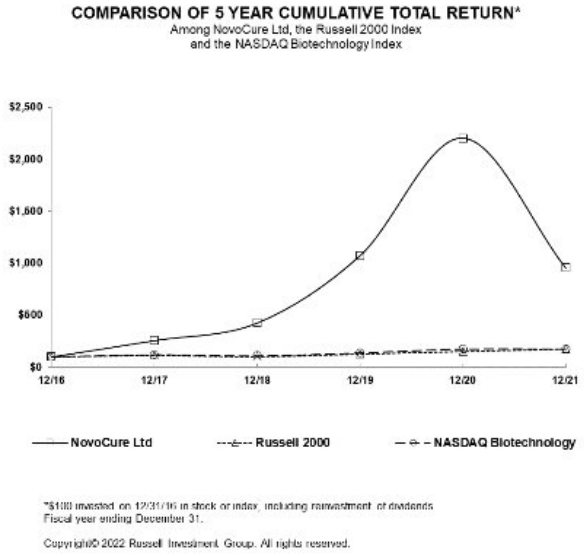
Dividend Policy

We have not paid any dividends on our ordinary shares since our inception and do not anticipate paying any dividends on our ordinary shares in the foreseeable future.

Performance Graph

The following performance graph is being furnished as part of this annual report and shall not be deemed "filed" with the SEC or incorporated by reference into any of our filings under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

The graph below matches our cumulative 5-Year total shareholder return on our ordinary shares with the cumulative total returns of the Russell 2000 index and the Nasdaq Biotechnology index. The graph tracks the performance of a $100 investment in our ordinary shares and in each index (with the reinvestment of all dividends) from December 31, 2016 to December 31, 2021. Pursuant to applicable SEC rules, all values assume reinvestment of the full amount of all dividends; however, no dividends have been declared on our ordinary shares to date. The shareholder return shown on the graph below is not necessarily indicative of future performance, and we do not make or endorse any predictions as to future stockholder returns.



	12/16	12/17	12/18	12/19	12/20	12/21
NovoCure Ltd	100.00	257.32	426.50	1,073.50	2,204.33	956.43
Russell 2000	100.00	114.65	102.02	128.06	153.62	176.39
NASDAQ Biotechnology	100.00	121.63	110.85	138.69	175.33	175.37

Recent Sales of Unregistered Securities

Not applicable

Issuer Purchases of Equity Securities

Not applicable.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table gives information about our ordinary shares that may be issued upon the exercise of stock options and vesting of restricted stock units, as applicable, under all of our existing equity compensation plans as of December 31, 2021, including the 2003 Share Option Plan (the "2003 Plan"), the 2013 Share Option Plan (the "2013 Plan"), the 2015 Omnibus Incentive Plan (the "2015 Plan") and the Employee Share Purchase Plan (the "ESPP"). Each of the 2003 Plan, the 2013 Plan, the 2015 Plan and the ESPP has been approved by the Company's shareholders.

Equity Compensation Plan Information

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	(b) Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	(c) Number of Securities Remaining Available for Future Issuance (Excludes Securities Reflected in Column (a))
Equity compensation plans approved by shareholders	13,008,429	$ 21.75	23,536,406
Equity compensation plans not approved by shareholders	—	—	—
Total	13,008,429	$ 21.75	23,536,406

ITEM 6. [RESERVED]

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

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide information to assist you in better understanding and evaluating our financial condition and results of operations. We encourage you to read this MD&A in conjunction with our consolidated financial statements and the notes thereto included in Part II, Item 8 of this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Please refer to the information under the heading "Cautionary Note Regarding Forward-Looking Statements" elsewhere in this report. References to the words "we," "our," "us," and the "Company" in this report refer to NovoCure Limited, including its consolidated subsidiaries.

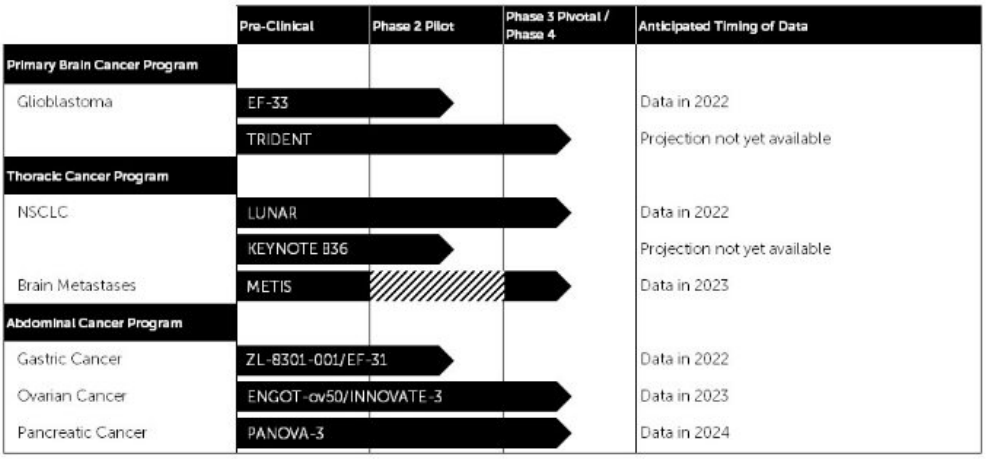
Overview

We are a global oncology company with a proprietary platform technology called Tumor Treating Fields ("TTFields"), which are electric fields tuned to specific frequencies that disrupt cancer cell division. Our key priorities are to drive commercial adoption of Optune and Optune Lua, our commercial devices, and to advance clinical and product development programs intended to extend overall survival in some of the most aggressive forms of cancer.

Optune is approved by the U.S. Food and Drug Administration ("FDA") under the Premarket Approval ("PMA") pathway for the treatment of adult patients with newly diagnosed glioblastoma ("GBM") together with temozolomide, a chemotherapy drug, and for adult patients with GBM following confirmed recurrence after chemotherapy as monotherapy treatment. We also have a CE certificate to market Optune for the treatment of GBM in the European Union ("EU"), as well as approval or local registration in the United Kingdom ("UK"), Japan and certain other countries. Optune Lua is approved by the FDA under the Humanitarian Device Exemption ("HDE") pathway to treatment malignant pleural mesothelioma ("MPM") together with standard chemotherapies. We have also received CE certification in the EU and approval or local registration to market Optune Lua in certain other countries. We market Optune and Optune Lua in multiple countries around the globe with the majority of our revenues coming from the use of Optune in the U.S., Germany and Japan. We are actively evaluating opportunities to expand our international footprint.

We believe the physical mechanism of action behind TTFields therapy may be broadly applicable to solid tumor cancers. Currently, we are conducting phase 3 pivotal studies evaluating the use of TTFields in non-small cell lung cancer ("NSCLC"), ovarian cancer, brain metastases from non-small cell lung cancer ("brain metastases") and pancreatic cancer. In 2021, we completed patient enrollment in our phase 3 pivotal NSCLC and ovarian cancer studies with data anticipated in 2022 and 2023, respectively. Additionally, we have multiple ongoing phase 2 pilot studies evaluating the use of TTFields in gastric cancer, for which patient enrollment is complete, and stage 3 NSCLC, as well as testing the potential incremental survival benefit of TTFields delivered using high-intensity arrays versus standard arrays. We are designing several phase 2 pilot studies in partnership with oncology leaders to further explore the capabilities of TTFields. We are also currently conducting a global phase 4 post-marketing study testing the potential survival benefit of initiating Optune concurrent with radiation therapy versus following radiation therapy in patients with newly diagnosed GBM. In 2021, we presented data from our phase 2 pilot study studying the use of TTFields in liver cancer and are currently evaluating protocol design options for a large, randomized study in this indication. We anticipate expanding our clinical pipeline over time to study the safety and efficacy of TTFields for additional solid tumor indications and combinations with other cancer treatment modalities.

The table below presents the current status of the ongoing clinical studies in our pipeline and anticipated timing of data.



Our therapy is delivered through a medical device and we continue to advance our Products with the intention to extend survival and maintain quality of life for patients. We have several product development programs underway that are designed to optimize TTFields delivery to the target tumor and enhance patient ease of use. Our intellectual property portfolio contains hundreds of issued patents and numerous patent applications pending worldwide. We believe we possess global commercialization rights to our Products in oncology and are well-positioned to extend those rights into the future as we continue to find innovative ways to improve our Products.

In 2018, we granted Zai Lab (Shanghai) Co., Ltd. ("Zai") a license to commercialize Optune in China, Hong Kong, Macau and Taiwan ("Greater China") under a License and Collaboration Agreement (the "Zai Agreement"). The Zai Agreement also establishes a development partnership intended to accelerate the development of TTFields in multiple solid tumor cancer indications. For additional information, see Note 12 to the Consolidated Financial Statements.

Impact of COVID-19

In March 2020, the World Health Organization (“WHO”) declared COVID-19 a global pandemic. Since the pandemic began, we have been following the guidance of the WHO, the U.S. Centers for Disease Control and Prevention, and local health authorities in all of our active markets and we have adjusted the way we conduct business to adapt to the evolving situation. The COVID-19 pandemic did not have a material impact on our financial results throughout 2021. The pandemic has had and is having an impact on our day-to-day operations, which varies by region based on factors such as geographical spread, stage of containment and recurrence of the pandemic in each region. We believe the prolonged disruption caused by COVID-19 is resulting in increased volatility across global health care systems, such as fluctuations in patient volumes and changes in patterns of care in certain regions, which is currently impacting and might continue to impact our business and clinical studies in the future. For example, we continue to see fluctuations in the timing of surgeries and radiation therapy in certain regions, which has had some adverse influence on the eligible patient population for Optune. We have also have been impacted by staff disruptions and turnover internally and at treatment sites, clinical study sites and third-party providers, either directly as a result of illness or indirectly as a result of vaccine mandates and other changes in terms of employment. TTFields is an emerging modality in cancer care and requires significant educational effort to drive awareness and acceptance of our therapy. We have relied heavily on virtual engagement to manage these educational efforts since the onset of the pandemic, which poses challenges to our ability to effectively communicate and engage with our customers and partners around the world.

Given the aggressive nature of the cancers that we treat, we believe that the fundamental value proposition of the TTFields platform remains unchanged. We continue to evaluate and plan for the potential effects of COVID-19 on our business moving forward. The extent to which the COVID-19 pandemic may impact our business and clinical studies in the future will depend on further developments, which are highly uncertain and cannot be predicted with confidence. The COVID-19 pandemic may also heighten many of the other risks described in our risk factors disclosed in this Annual Report.

We view our operations and manage our business in one operating segment. Our net revenues were $535.0 million for the year ended December 31, 2021, $494.4 million for the year ended December 31, 2020 and $351.3 million for the year ended December 31, 2019. Our net loss was $58.4 million for the year ended December 31, 2021, net income was $19.8 million for the year ended December 31, 2020 and net loss was $7.2 million for the year ended December 31, 2019. As of December 31, 2021, we had an accumulated deficit of $685.9 million.

Commentary on Results of Operations

Net revenues

Our revenues are primarily derived from patients using our Products in our active markets. We charge for treatment with our Products on a monthly basis. Our potential net revenues per patient are determined by our ability to secure payment, the monthly fee we collect and the number of months that the patient remains on therapy.

We also receive revenues pursuant to the Zai Agreement. For additional information regarding the Zai Agreement, see Note 12 to the Consolidated Financial Statements.

Cost of revenues

We contract with third parties to manufacture our Products. Our cost of revenues is primarily comprised of the following:

- disposable arrays;
- depreciation expense for the field equipment, including the electric field generator used by patients; and
- personnel and overhead costs such as facilities, freight and depreciation of property, plant and equipment associated with managing our inventory, warehousing and order fulfillment functions.

Operating expenses

Our operating expenses consist of research, development and clinical studies, sales and marketing and general and administrative expenses. Personnel costs are a significant component for each category of operating expenses and consist of wages, benefits and bonuses. Personnel costs also include share-based compensation.

Research, development and clinical studies

Our research, development and clinical studies activity is focused on advancing TTFields through clinical studies across multiple solid tumor types and improving the efficacy and usability of our devices. Research, development and clinical studies costs, including direct and allocated expenses, are expensed as incurred and consist primarily of the following:

- personnel costs for those employees involved in our preclinical and basic research, clinical development programs, clinical affairs, product development and regulatory activities;
- costs to conduct research, product development and clinical study activity through agreements with contract research organizations and other third parties;
- manufacturing expenses associated with our Products, including durable components and disposable arrays, utilized in clinical studies and other research;
- costs associated with medical grants, publications, presentations and investigator-sponsored trials;
- professional fees related to regulatory approvals and conformity assessment procedures; and
- facilities, depreciation and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities, depreciation of leasehold improvements and equipment and laboratory and other supplies.

The following table summarizes our research, development and clinical study expenses by program for the years ended December 31, 2021, 2020 and 2019:

	Year ended December 31,		
U.S. dollars in thousands	**2021**	**2020**	**2019**
Preclinical and basic research	$ 15,580	$ 12,079	$ 6,874
Clinical development programs:			
LUNAR	9,069	8,261	7,243
INNOVATE - 3	17,708	14,190	4,822
METIS	7,056	5,147	4,699
PANOVA - 3	15,026	7,033	5,368
TRIDENT	12,588	3,709	424
Other clinical studies	4,634	2,764	1,726
Clinical administration	19,764	13,158	8,834
Product development	15,248	9,710	4,944
Clinical affairs	24,486	21,058	15,531
Other research and development costs (1)	32,547	16,776	10,968
Share based compensation	27,597	18,125	7,570
Research, development and clinical studies	$ 201,303	$ 132,010	$ 79,003

(1) Other research, development and clinical study costs include regulatory affairs, quality assurance, intellectual property, product safety, allocated facilities and other overhead costs.

We are committed to investing strategically to maximize the growth potential of the TTFields platform. We expect growth in our research and development investments to continue into 2022 as we work to advance our pipeline programs and increase acceptance of Tumor Treating Fields across the global oncology community.

Sales and marketing

Sales and marketing expenses consist primarily of personnel costs, travel, marketing and promotional activities, commercial shipping and facilities costs. Over the next few years, we expect to continue to make significant expenditures associated with selling and marketing our Products, primarily in connection with continued commercialization in the United States, EU and Japan for the treatment of our approved indications.

General and administrative

General and administrative expenses consist primarily of personnel, professional fees and facilities costs. General and administrative personnel costs include our executive, finance, human resources, information technology and legal functions. These costs also include our contributions to support industry and patient groups. Our professional fees consist primarily of accounting, information technology, legal and other consulting costs. We expect that general and administrative expenses will increase to support our growth. In addition, we incur significant legal and accounting costs related to compliance with SEC rules and regulations, including the costs of achieving and maintaining compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and compliance with rules of the NASDAQ Stock Market, as well as insurance, investor relations and other costs associated with being a public company.

Financial expenses, net

Financial expenses, net primarily consists of credit facility interest expense and related debt issuance costs, interest income from cash balances and short-term investments and gains (losses) from foreign currency transactions. Our reporting currency is the U.S. dollar. We have historically held substantially all of our cash balances in U.S. dollar denominated accounts to minimize the risk of translational currency exposure.

Critical accounting policies and estimates

In accordance with U.S. GAAP, in preparing our financial statements we must make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of net revenues and expenses during the reporting period. We develop and periodically change these estimates and assumptions based on historical experience and on various other factors that we believe are reasonable under the circumstances. Actual results may differ from these estimates.

The critical accounting policies requiring estimates, assumptions and judgments that we believe have the most significant impact on our consolidated financial statements are described below.

Revenue recognition

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, Revenue from Contracts with Customers (Topic 606) (ASU 2014-09), an updated standard on revenue recognition and issued subsequent amendments to the initial guidance in March 2016, April 2016, May 2016 and December 2016 within ASU 2016-08, 2016-10, 2016-12 and 2016-20, respectively. The Company adopted the standard effective January 1, 2018 using the modified retrospective method for all contracts. The reported results for 2018 and thereafter reflect the application of Accounting Standards Codification ("ASC") 606 guidance. The amount of revenue recognized reflects the consideration to which we expect to be entitled to receive in exchange for our Products. For additional information, see Note 2(m) to the Consolidated Financial Statements.

We also receive revenues pursuant to the Zai Agreement. For additional information regarding the Zai Agreement, see Note 12 to the Consolidated Financial Statements.

Share-based compensation

Under the FASB's ASC 718, Compensation-Stock Compensation, we measure and recognize compensation expense for share options granted to our employees and directors and for our ESPP based on the fair value of the awards on the date of grant. The fair value of share options is estimated at the date of grant using the Black-Scholes option pricing model and for market condition awards we also use the Monte-Carlo simulation model. Both models requires management to apply judgment and make estimates, including:

- the expected term of the stock option award, which we calculate using the simplified method, in accordance with ASC No.718-10-S99-1 (SAB No. 110) as we have insufficient historical information regarding our stock options to provide a basis for an estimate;
- the expected share price volatility of our underlying ordinary shares, which since the beginning of 2021, we estimate based on a combination of our own stock price and a representative group of publicly traded biopharmaceutical and medical technology companies with similar characteristics to us ("peer-based companies") for a period matching the expected term assumption when there is not sufficient historical information for our ordinary shares (prior to 2021 our estimation was based on the historical volatility of peer-based companies);
- the risk-free interest rate, which we base on the yield curve of U.S. Treasury securities with periods commensurate with the expected term of the options being valued; and
- the expected dividend yield, which we estimate to be zero based on the fact that we have never paid cash dividends and have no present intention to pay cash dividends.

For information about our ESPP, see Note 14 to the Consolidated Financial Statements.

We recognize share-based compensation costs only for those shares expected to vest over the requisite vesting period of the award, which is generally the option vesting term of four years, using the accelerated method.

The table below summarizes the assumptions that were used to estimate the fair value of the options granted to employees during the periods presented:

	Year ended December 31,		
	2021	2020	2019
Expected term (years)	5.50-6.00	5.50-6.00	5.50-6.00
Expected volatility	60%-63%	54%-56%	55%-61%
Risk-free interest rate	0.78%-1.27%	0.30%-0.86%	1.73%-2.40%
Dividend yield	0.00%	0.00%	0.00%

If any of the assumptions used in the Black-Scholes option pricing model change significantly, share-based compensation for future awards may differ materially from the awards granted previously.

So long as our ordinary shares are publicly traded in a liquid market, we will rely on the daily trading price of our ordinary shares when we estimate the fair value of options granted.

We incurred share-based compensation expense of $94.9 million, $75.7 million and $52.4 million during the years ended December 31, 2021, 2020 and 2019, respectively. As of December 31, 2021, we have unrecognized compensation expense of $96.4 million, which is expected to be recognized over a weighted average period of approximately 2.63 years. We expect to continue to grant equity awards in the future, and to the extent that we do, our recognized share-based compensation expense will likely increase. For additional information, see Note 14 to the Consolidated Financial Statements.

Long-lived assets

Property and equipment and field equipment are stated at cost, net of accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful life of the relevant asset. We make estimates of the useful life of our property and equipment and field equipment, based on similar assets purchased in the past and our historical experience with such similar assets, in order to determine the depreciation expense to be recorded for each reporting period.

Our field equipment consists of equipment being utilized under rental agreements accounted for on a monthly basis as an operating lease, as well as service pool equipment. Service pool equipment is equipment owned and maintained by us that is swapped for equipment that needs repair or maintenance by us while being used by a patient. We record a provision for any excess, lost or damaged equipment when warranted based on an assessment of the equipment.

We assess impairment whenever events or changes in circumstances indicate that the carrying amount of the asset is impaired or the estimated useful life is no longer appropriate. Circumstances such as changes in technology or in the way an asset is being used may trigger an impairment review. For additional information, see Notes 2(i) and 2(j) to the Consolidated Financial Statements.

Inventories

Inventories are stated at the lower of cost or net realizable value. We regularly evaluate the ability to realize the value of inventory. If the inventories are deemed damaged, if actual demand for our devices declines, or if market conditions are less favorable than those projected, inventory write-offs may be required. For additional information, see Note 2(h) to the Consolidated Financial Statements.

Income taxes

As part of the process of preparing our consolidated financial statements, we are required to calculate our income taxes based on taxable income by jurisdiction. We make certain estimates and judgments in determining our income taxes, including assessment of our uncertain tax positions, for financial statement purposes. Significant changes to these estimates may result in an increase or decrease to our tax provision in the subsequent period when such a change in estimate occurs.

Uncertain tax positions are based on estimates and assumptions that have been deemed reasonable by management. Our estimates of unrecognized tax benefits and potential tax benefits may not be representative of actual outcomes.

For additional information, see Note 13 to the Consolidated Financial Statements.

Results of operations

The following discussion provides an analysis of our results of operations and reasons for material changes therein for 2021 as compared to 2020. See "Results of Operations" in Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations in the Company's 2020 Annual Report on Form 10-K, filed with the SEC on February 25, 2021, for an analysis of the 2020 results as compared to 2019.

The following table sets forth our consolidated statements of operations data:

	Year ended December 31,		
U.S. dollars in thousands, except share and per share data	**2021**	**2020**	**2019**
Net revenues	$ 535,031	$ 494,366	$ 351,318
Cost of revenues	114,877	106,501	88,606
Gross profit	420,154	387,865	262,712
Operating costs and expenses:			
Research, development and clinical studies	201,303	132,010	79,003
Sales and marketing	137,057	118,017	96,675
General and administrative	126,127	107,437	87,948
Total operating costs and expenses	464,487	357,464	263,626
Operating income (loss)	(44,333)	30,401	(914)
Financial expenses (income), net	7,742	12,299	7,910
Income (loss) before income tax	(52,075)	18,102	(8,824)
Income tax	6,276	(1,706)	(1,594)
Net income (loss)	$ (58,351)	$ 19,808	$ (7,230)
Basic net income (loss) per ordinary share	$ (0.56)	$ 0.20	$ (0.07)
Weighted average number of ordinary shares used in computing basic net income (loss) per share	103,433,274	100,930,866	97,237,549
Diluted net income (loss) per ordinary share	$ (0.56)	$ 0.18	$ (0.07)
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	103,433,274	108,877,648	97,237,549

The following table details the share-based compensation expense included in costs and expenses:

	Year ended December 31,		
U.S. dollars in thousands	**2021**	**2020**	**2019**
Cost of revenues	$ 3,471	$ 2,221	$ 2,231
Research, development and clinical studies	27,597	18,125	7,570
Sales and marketing	22,673	17,672	11,897
General and administrative	41,159	37,703	30,718
Total share-based compensation expense	$ 94,900	$ 75,721	$ 52,416

Key performance indicators

We believe certain commercial operating statistics are useful to investors in evaluating our commercial business as they help investors evaluate and compare the adoption of our Products from period to period. The number of active patients on therapy is our principal revenue driver. An "active patient" is a patient who is receiving treatment under a commercial prescription order as of the measurement date, including patients who may be on a temporary break from treatment and who plan to resume treatment in less than 60 days. Prescriptions are a leading indicator of

demand. A "prescription received" is a commercial order for Optune or Optune Lua that is received from a physician certified to treat patients with our Products for a patient not previously on Optune or Optune Lua. Orders to renew or extend treatment are not included in this total.

The following table includes certain commercial operating statistics for and as of the end of the periods presented.

	December 31,		
Operating statistics	**2021**	**2020**	**2019**
Active patients at period end			
North America	2,272	2,193	1,952
EMEA:			
Germany	563	562	493
Other EMEA	445	391	272
Japan	307	265	192
Total	3,587	3,411	2,909

	Year ended December 31,		
	2021	**2020**	**2019**
Prescriptions received in period			
North America	3,781	3,871	3,833
EMEA:			
Germany	924	910	872
Other EMEA	521	467	360
Japan	436	365	306
Total	5,662	5,613	5,371

In the U.S., there were 11 active MPM patients on therapy as of December 31, 2021 and 48 MPM prescriptions were received in the year ended December 31, 2021.

Year ended December 31, 2021 compared to year ended December 31, 2020

	Year ended December 31,			
	2021	**2020**	**Change**	**% Change**
Net revenues	$ 535,031	$ 494,366	$ 40,665	8 %

Net revenues. Net revenues increased by $40.7 million, or 8%, to $535.0 million for the year ended December 31, 2021 from $494.4 million for the year ended December 31, 2020. This primarily was due to an increase of 176 active patients, representing 5% growth and increased efficiency in our revenue operations, offset by a reduction in net revenue per active patient in Germany.

For the year ended December 31, 2021, we recorded $40.3 million in revenues from Medicare fee-for-service beneficiaries billed under the coverage policy compared to $36.1 million for the year ended December 31, 2020. We believe we have completed our administrative ramp-up for processing Medicare claims and efficiently pursuing appeals.

In 2021, we did not record material revenue from the successful appeal of previously denied claims for Medicare fee-for-service beneficiaries billed prior to established coverage, compared to approximately $19 million in incremental net revenues recorded in 2020. We continue to actively appeal and pursue previously denied claims for beneficiaries billed prior to established coverage, but the cadence and amount of these Medicare payments are impossible to predict.

	Year ended December 31,			
	2021	**2020**	**Change**	**% Change**
Cost of revenues	$ 114,877	$ 106,501	$ 8,376	8 %

Cost of revenues. Our cost of revenues increased by $8.4 million, or 8%, to $114.9 million for the year ended December 31, 2021 from $106.5 million for the year ended December 31, 2020. The increase in cost of revenues primarily was due to increased array utilization and shipping costs to a higher volume of active patients, which

increased 5% in the year ended December 31, 2021 compared to the year ended December 31, 2020. An increase of $5 million in product sales to Zai in the year ended December 31, 2021 compared to the year ended December 31, 2020 contributed to the increase in cost of revenues. Excluding sales to Zai, cost of revenues per active patient per month decreased 5% to $2,474 for the year ended December 31, 2021 from $2,602 for the year ended December 31, 2020 due to on-going efficiency initiatives and scale.

Cost of revenues per active patient is calculated by dividing the cost of revenues for the year less product sales to Zai for the year by the average of the active patients at the end of the each quarter in the current year and the end of the year active patients from the prior year. This annual figure is then divided by twelve to estimate the monthly cost of revenues per active patient. Sales to Zai are deducted because they are made at cost and in anticipation of future royalties from Zai, and Zai patient counts are not included in our active patient population. Product sales to Zai totaled $11.3 million for the year ended December 31, 2021 compared to $6.3 million for the year ended December 31, 2020.

Gross margin was 79% for the year ended December 31, 2021 and 78% for the year ended December 31, 2020. Gross margin continues to benefit from ongoing efficiency initiatives and increasing scale and is tempered by product sales to Zai.

	Year ended December 31,			
	2021	2020	Change	% Change
Operating expenses:				
Research, development and clinical studies	$ 201,303	$ 132,010	$ 69,293	52 %
Sales and marketing	137,057	118,017	19,040	16 %
General and administrative	126,127	107,437	18,690	17 %
Total operating expenses	$ 464,487	$ 357,464	$ 107,023	30 %

Research, development and clinical studies expenses. Research, development and clinical studies expenses increased by $69.3 million, or 52%, to $201.3 million for the year ended December 31, 2021 from $132.0 million for the year ended December 31, 2020. The change is primarily due to an incremental $31.6 million in clinical studies and clinical administration expenses, $5.5 million in product development expenses, $3.5 million in preclinical and basic research expenses, and $3.4 million in clinical affairs expenses.

We expect growth in our research and development investments to continue into 2022 as we work to advance our pipeline programs and increase acceptance of Tumor Treating Fields across the global oncology community. We balance our investments in research and development with our organizational capacity to effectively execute our strategic initiatives.

Sales and marketing expenses. Sales and marketing expenses increased by $19.0 million, or 16%, to $137.1 million for the year ended December 31, 2021 from $118.0 million for the year ended December 31, 2020. The change primarily was due to increases of $7.0 million, $4.0 million and $2.6 million in health policy, marketing and sales expenses, respectively, which are intended to support our growing commercial business and reimbursement efforts, including an incremental $5.7 million invested in pre-commercial activities associated with potential commercial launches in additional cancer indications and expansion into new markets in our approved indications.

General and administrative expenses. General and administrative expenses increased by $18.7 million, or 17%, to $126.1 million for the year ended December 31, 2021 from $107.4 million for the year ended December 31, 2020. The change primarily was due to increase of $10.1 million in expenses associated with personnel costs and professional services, as well as an increase of $4.6 in expenses associated with supply chain optimization.

	Year ended December 31,			
	2021	2020	Change	% Change
Financial expenses (income), net	$ 7,742	$ 12,299	$ (4,557)	(37) %

Financial expenses, net. Financial expenses, net, decreased by $4.6 million, or 37%, to $7.7 million for the year ended December 31, 2021 from $12.3 million for the year ended December 31, 2020. The change primarily was due to a prepayment premium related to the 2018 Credit Facility, amortization costs related to the issuance of our convertible notes and expenses related to the senior secured revolving credit facility. See Note 10 to the Consolidated Financial Statements.

	Year ended December 31,			
	2021	2020	Change	% Change
Income tax	$ 6,276	$ (1,706)	$ 7,982	(468)%

Income taxes. Income tax expenses increased by $8.0 million, or 468%, resulting in a tax expense of $6.3 million for the year ended December 31, 2021 compared to a tax benefit of $1.7 million for the year ended December 31, 2020. The change was primary due to a net one-time tax benefit of $11.3 million which was recorded in the first quarter of 2020 in response to the changes in the U.S. tax code related to the economic impact of the COVID-19 pandemic. Without this one-time benefit in 2020, income taxes expenses decreased $3.3 million in 2021 driven by a change in the mix of applicable statutory tax rates in our active jurisdictions.

Non-GAAP financial measures

We also measure our performance based upon a non-U.S. GAAP measurement of earnings before interest, taxes, depreciation, amortization and shared-based compensation ("Adjusted EBITDA"). We believe Adjusted EBITDA is useful to investors in evaluating our operating performance because it helps investors evaluate and compare the results of our operations from period to period by removing the impact of earnings attributable to our capital structure, tax rate and material non-cash items, specifically share-based compensation.

We calculate Adjusted EBITDA as operating income before financial expenses and income taxes, net of depreciation, amortization and share-based compensation. The following table reconciles net loss (which is the most directly comparable U.S. GAAP operating performance measure) to Adjusted EBITDA.

	Year ended December 31,		
	2021	2020	2019
Net income (loss)	$ (58,351)	$ 19,808	$ (7,230)
Add: Income tax	6,276	(1,706)	(1,594)
Add: Financial expenses (income), net	7,742	12,299	7,910
Add: Depreciation and amortization	10,251	9,150	8,460
EBITDA	$ (34,082)	$ 39,551	$ 7,546
Add: Share-based compensation	94,900	75,721	52,416
Adjusted EBITDA	$ 60,818	$ 115,272	$ 59,962

Adjusted EBITDA decreased by $54.5 million, or 47%, to $60.8 million for the year ended December 31, 2021 from $115.3 million for the year ended December 31, 2020. This decrease was in part due to a $59.8 million increase in investment in research, development and clinical studies expenses (net of share-based compensation expenses), intended to advance our pipeline programs and increase acceptance of TTFields across the global oncology community, as well as an incremental $5.7 million invested in pre-commercial activities associated with potential commercial launches in additional cancer indications and expansion into new markets in our approved indications.

Liquidity and capital resources

We have incurred significant losses and cumulative negative cash flows from operations with only limited and intermittent operating profits since our founding in 2000. As of December 31, 2021, we had an accumulated deficit of $685.9 million. To date, we primarily have financed our operations through the issuance and sale of equity and the proceeds from long-term loans.

At December 31, 2021, we had $208.8 million in cash and cash equivalents and $728.9 million in short-term investments. At December 31, 2021, our cash, cash equivalents and short-term investments totaled $937.7 million, an increase of $95.1 million compared to $842.6 million at December 31, 2020. The increase was primarily due to net cash generated by operating activities and the exercise of options.

We believe our cash, cash equivalents and short-term investments as of December 31, 2021 are sufficient for our operations for at least the next 12 months based on our existing business plan and our ability to control the timing of significant expense commitments. We expect that our research, development and clinical expenses, sales and marketing expenses and general and administrative expenses will continue to increase over the next several years and may outpace our gross profit. As a result, we may need to raise additional capital to fund our operations.

The following summary of our cash flows for the periods indicated has been derived from our consolidated financial statements, which are included elsewhere in this Annual Report:

U.S. dollars in thousands	Year ended December 31, 2021	2020	2019
Net cash provided by (used in) operating activities	$ 82,756	$ 99,148	$ 26,620
Net cash provided by (used in) investing activities	(144,834)	(472,847)	(51,667)
Net cash provided by (used in) financing activities	25,702	440,209	61,681
Effect of exchange rate changes on cash and cash equivalents	(188)	247	26
Net increase (decrease) in cash, cash equivalents and restricted cash	$ (36,564)	$ 66,757	$ 36,660

Operating activities

Net cash provided by operating activities primarily represents our net income for the periods presented. Adjustments to net income for non-cash items include share-based compensation, depreciation, amortization and asset write-downs. Operating cash flows are also impacted by changes in operating assets and liabilities, principally trade payables, deferred revenues, other payables, prepaid expenses, inventory and trade receivables.

Net cash provided by operating activities was $82.8 million for the year ended December 31, 2021 compared to $99.1 million for the year ended December 31, 2020. Gross profit increased by $32.3 million in 2021 versus 2020, partially funding incremental investments of $69.3 million in research and development and $37.7 million in sales, marketing, general and administrative expenses. The year over year decrease in cash provided by operating activities was driven by lower cash earnings, offset by lower interest payments, as well as the timing of receipts and payments in the ordinary course of business.

Upcoming use of cash in operations will include payments in the normal course of business of $45.3 million in purchase obligations with certain of our suppliers, primarily for the purchase of Product components along with other commitments to purchase goods or services. These amounts include approximately $34.4 million of commitments with three major suppliers. We make such commitments through a combination of purchase orders, supplier contracts, and open orders based on projected demand information. We also have employment agreements with certain employees that require the funding of a specific level of payments if certain events, such as a change in control or termination without cause, occur. In the course of normal business operations, we also have agreements with contract service providers to assist in the performance of our research and development (including clinical studies) and manufacturing activities. We could also enter into additional collaborative research, contract research, manufacturing and supplier agreements in the future, which may require up-front payments and even long-term commitments of cash.

Investing activities

Our investing activities primarily consist of capital expenditures to purchase property and equipment and field equipment, as well as investments in and redemptions of our short-term investments.

Net cash used in investing activities was $144.8 million for the year ended December 31, 2021 compared to net cash used in investing activities of $472.8 million for the year ended December 31, 2020. The net cash used in investing activities for 2021 was primarily attributable to $24.2 million in property and equipment and the net purchase of $120.7 million in short-term investments. The net cash used in investing activities for 2020 was primary attributable to $15.0 million in property and equipment and the net purchase of $457.9 million in short-term investments.

Financing activities

To date, our primary financing activities have been the sale of equity and the proceeds from long-term loans.

Net cash provided by financing activities was $25.7 million for the year ended December 31, 2021 compared to $440.2 million for the year ended December 31, 2020. The net cash provided by financing activities for 2021 was primary attributable to proceeds from exercise of options and issuance of shares pursuant to the ESPP. The net cash provided by financing activities for 2020 primarily was attributable to $558.4 million in proceeds from the convertible note issuance and $31.8 million in proceeds from exercise of options and shares related to the ESPP partially offset by $150.0 million in repayment of the 2018 Credit Facility (as described below).

Convertible Notes

On November 5, 2020, we issued $575.0 million aggregate principal amount of 0% Convertible Senior Notes due 2025 (the “Notes”). The net proceeds from the offering were approximately $558.4 million. We intend to use the net proceeds to further advance our clinical and product development programs and to invest in associated pre-commercial and commercial activities, as well as for general corporate purposes.

The Notes are senior unsecured obligations. The Notes do not bear regular interest, and the principal amount of the Notes will not accrete. Special interest, if any, payable in accordance with the terms of the Notes will be payable in cash semi-annually in arrears on May 1 and November 1 of each year, beginning on May 1, 2021. The Notes mature on November 1, 2025, unless earlier repurchased, redeemed or converted.

The Notes are convertible at an initial conversion rate of 5.9439 ordinary shares per $1,000 principal amount of the Notes, which is equivalent to an initial conversion price of approximately $168.24 per ordinary share. In January 2021, we irrevocably elected to settle all conversions of Notes by a combination of cash and our ordinary shares and that the cash portion per $1,000 principal amount of Notes for all conversion settlements shall be $1,000, Accordingly, from and after the date of the election, upon conversion of any Notes, holders of Notes will receive, with respect to each $1,000 principal amount of Notes converted, cash in an amount up to $1,000 and the balance of the conversion value, if any, in our ordinary shares

The Notes are not redeemable prior to November 6, 2023, except in the event of certain tax law changes. We may redeem for cash all or any portion of the Notes, at our option, on or after November 6, 2023 if the last reported sale price of our ordinary shares has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date. No sinking fund is provided for the Notes.

Prior to the close of business on the business day immediately preceding August 1, 2025, the Notes are convertible at the option of the holders only upon the satisfaction of certain conditions and during certain periods and if we exercise our right to redeem the Notes as permitted or required by the indenture. On or after August 1, 2025 until the close of the business on the business day immediately preceding the maturity date, holders may convert all or any portion of their Notes at the conversion rate at any time irrespective of the foregoing conditions.

Term loan credit facility

On November 6, 2020, we entered into a new three-year $150.0 million senior secured revolving credit facility with a syndicate of relationship banks (the "2020 Credit Facility"). We may, subject to certain conditions and limitations, increase the revolving credit commitments outstanding under the 2020 Credit Facility or incur new incremental term loans in an aggregate principal amount not to exceed $250.0 million in total.

The commitments under the 2020 Credit Facility are guaranteed by certain of our subsidiaries and secured by a first lien on our and certain of our subsidiaries’ assets. Outstanding loans will bear interest per annum at a sliding scale based on the our secured leverage ratio from 2.75% to 3.25% above the applicable interbank borrowing reference rate for the currency in which the loan is denominated. Additionally, the 2020 Credit Facility contains a fee for the unused revolving credit commitments at a sliding scale based on our secured leverage ratio from 0.35% to 0.45%. The 2020 Credit Facility contains financial covenants requiring maintenance of a minimum fixed charge coverage ratio and specifying a maximum senior secured net leverage ratio, as well as customary events of default which include a change of control. As of December 31, 2021, we were in compliance with such covenants.

As of December 31, 2021, we had no outstanding balance borrowed under the 2020 Credit Facility.

For additional information, see Note 12(c) to the Consolidated Financial Statements.

2020 Prepayment of 2018 term loan

In 2018, we entered into a Loan and Security Agreement ("2018 Loan Agreement") pursuant to which we borrowed a term loan in the aggregate principal amount of $150.0 million (the "2018 Credit Facility"). The term loan, which was drawn in full upon execution of the 2018 Loan Agreement, bore interest at 9.0% per annum, payable quarterly in arrears. In 2020, we terminated the 2018 Credit Facility and prepaid the principal amount in full. The prepayment included $150.0 million in principal repayment and $3.0 million in prepayment premium, plus accrued and unpaid interest and expenses payable through the payoff date.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates. We do not hold or issue financial instruments for trading purposes. There were no material quantitative changes in our market risk exposures between the year ended December 31, 2021 and the year ended December 31, 2020.

Interest rate sensitivity

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. Our cash, cash equivalents and short-term investment accounts as of December 31, 2021 totaled $937.7 million and consist of cash, cash equivalents and short-term investments with maturities of less than one year from the date of purchase. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of the interest rates in the United States. However, because of the short-term nature of the instruments in our portfolio and our intent to hold instruments to maturity, a 10% change in market interest rates would not be expected to have a material impact on our financial condition or our results of operations.

Foreign currency exchange risk

Our consolidated results of operations and cash flow are subject to fluctuations due to changes in foreign currency exchange rates. All of our revenues are generated in the local currency for commercial markets. Our expenses are generally denominated in the currencies in which our operations are located, which is primarily in the United States, Switzerland, Germany, Israel and Japan. Our consolidated results of operations and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates and may be adversely affected in the future due to changes in foreign exchange rates. The effect of a hypothetical 10% change in foreign currency exchange rates applicable to our business would not have a material impact on our historical consolidated financial statements. We do not hedge our foreign currency exchange risk.

ITEM 8. FINANCIAL STATEMENTS

NovoCure Limited

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of NovoCure Limited

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of NovoCure Limited and subsidiaries (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), changes in shareholders' equity and cash flows for each of the three years in the period ended December 31, 2021 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, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, 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, 2021, 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 24, 2022 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 matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of critical audit matters 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 matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Revenue recognition – Measuring variable consideration

Description of the Matter	As per the Company's consolidated statements of operations, the net revenues recognized during the fiscal year of 2021 amounted to a sum of $535 million, which included variable consideration estimates. As described in Note 2 to the consolidated financial statements, the transaction price is determined based on the consideration to which the Company will be entitled in exchange for providing Optune solution. The company provides certain patients with implicit price concessions, which results in variable consideration. According to historical records, the Company expects to receive, in aggregate for a given portfolio, less than the gross revenue net of explicit discounts. Auditing the Company's measurement of variable consideration involved challenging judgment because the calculation involves uncertainty and subjective management assumptions about estimates of expected price concessions. The implicit discount includes both an estimate of claims that will pay at an amount less than billed and an estimate of claims that will not pay within a given time horizon. The implicit discount adjustments to the transaction price are due to concessions, not collectability concerns driven by payer credit risk.
How We Addressed the Matter in Our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of internal controls over the Company's process to calculate variable consideration, including the underlying assumptions about estimates of expected price concessions. Our audit procedures included, among others, evaluating the methodology used, analyzing the significant assumptions discussed above, and testing the accuracy and completeness of the underlying data used in management's calculation. This included testing inputs of the calculation by reconciliation of the data between the various information systems performing independent recalculation of the Company's estimate and evaluating the historical accuracy of management's estimates by comparing such estimates to subsequent actual results.

KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global

We have served as the Company‘s auditor since 2003.
Tel-Aviv, Israel
February 24, 2022

Report of Independent Registered Public Accounting Firm

To the board of directors and shareholders of NovoCure Limited

Opinion on Internal Control over Financial Reporting

We have audited NovoCure Limited and subsidiaries internal control over financial reporting as of December 31, 2021, 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, NovoCure Limited and subsidiaries (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, 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, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss) changes in shareholders' equity and cash flows for each of the three years in the period ended December 31, 2021 and the related notes, and our report dated February 24, 2022 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.

KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global

Tel-Aviv, Israel
February 24, 2022

NovoCure Limited and subsidiaries

Consolidated balance sheets

U.S. dollars in thousands	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 208,802	$ 234,674
Short-term investments	728,898	607,902
Restricted cash	807	11,499
Trade receivables, net	93,567	96,699
Receivables and prepaid expenses	17,025	21,245
Inventories	24,427	27,422
Total current assets	1,073,526	999,441
Long-term assets:		
Property and equipment, net	22,693	11,395
Field equipment, net	12,923	11,230
Right-of-use assets	18,267	19,009
Other long-term assets	12,086	10,908
Total long-term assets	65,969	52,542
Total assets	$ 1,139,495	$ 1,051,983

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

NovoCure Limited and subsidiaries

Consolidated balance sheets

U.S. dollars in thousands, except share and per share data	December 31, 2021	December 31, 2020
Liabilities and shareholders' equity		
Current liabilities:		
Trade payables	$ 72,600	$ 53,647
Other payables, lease liabilities and accrued expenses	70,002	59,965
Total current liabilities	142,602	113,612
Long-term liabilities:		
Long-term debt, net	562,216	429,905
Deferred revenues	6,477	12,139
Long term leases	12,997	14,293
Employee benefit liabilities	4,543	5,171
Other long-term liabilities	166	337
Total long-term liabilities	586,399	461,845
Total liabilities	729,001	575,457
Commitments and contingencies		
Shareholders' equity:		
Share capital -		
Ordinary shares - No par value, Unlimited shares authorized; Issued and outstanding: 103,971,263 shares and 102,334,276 shares at December 31, 2021 and December 31, 2020 respectively;	—	—
Additional paid-in capital	1,099,589	1,111,435
Accumulated other comprehensive income (loss)	(3,169)	(3,832)
Retained earnings (accumulated deficit)	(685,926)	(631,077)
Total shareholders' equity	410,494	476,526
Total liabilities and shareholders' equity	$ 1,139,495	$ 1,051,983

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

NovoCure Limited and subsidiaries

Consolidated statements of operations

U.S. dollars in thousands, except share and per share data	Year ended December 31, 2021	2020	2019
Net revenues	$ 535,031	$ 494,366	$ 351,318
Cost of revenues	114,877	106,501	88,606
Gross profit	420,154	387,865	262,712
Operating costs and expenses:			
Research, development and clinical studies	201,303	132,010	79,003
Sales and marketing	137,057	118,017	96,675
General and administrative	126,127	107,437	87,948
Total operating costs and expenses	464,487	357,464	263,626
Operating income (loss)	(44,333)	30,401	(914)
Financial expenses (income), net	7,742	12,299	7,910
Income (loss) before income taxes	(52,075)	18,102	(8,824)
Income tax	6,276	(1,706)	(1,594)
Net income (loss)	$ (58,351)	$ 19,808	$ (7,230)
Basic net income (loss) per ordinary share	$ (0.56)	$ 0.20	$ (0.07)
Weighted average number of ordinary shares used in computing basic net income (loss) per share	103,433,274	100,930,866	97,237,549
Diluted net income (loss) per ordinary share	$ (0.56)	$ 0.18	$ (0.07)
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	103,433,274	108,877,648	97,237,549

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

NovoCure Limited and subsidiaries

Consolidated statements of comprehensive income (loss)

U.S. dollars in thousands	Year ended December 31, 2021	2020	2019
Net income (loss)	$ (58,351)	$ 19,808	$ (7,230)
Other comprehensive income (loss), net of tax :			
Change in foreign currency translation adjustments	302	(85)	(304)
Pension benefit plan	361	(980)	(1,063)
Total comprehensive income (loss)	$ (57,688)	$ 18,743	$ (8,597)

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

NovoCure Limited and subsidiaries

Statements of changes in shareholders' equity

U.S. dollars in thousands, except share data	Ordinary shares (Shares)	Additional paid-in capital	Accumulated other comprehensive income (loss)	Retained earnings (accumulated deficit)	Total shareholders' equity
Balance as of December 31, 2018	93,254,185	$ 757,314	$ (1,400)	$ (643,655)	$ 112,259
Share-based compensation	—	52,416	—	—	52,416
Exercise of options	6,206,884	59,245	—	—	59,245
Issuance of shares in connection with employee stock purchase plan	67,366	2,467	—	—	2,467
Other comprehensive income (loss) net of tax benefit of $(145)	—	—	(1,367)	—	(1,367)
Net income (loss)	—	—	—	(7,230)	(7,230)
Balance as of December 31, 2019	99,528,435	871,442	(2,767)	(650,885)	217,790
Share-based compensation to employees	—	75,721	—	—	75,721
Exercise of options	2,739,150	28,428	—	—	28,428
Issuance of shares in connection with employee stock purchase plan	66,691	3,370	—	—	3,370
Conversion feature of convertible note, net	—	132,474	—		132,474
Other comprehensive income (loss) net of tax expense of $0	—	—	(1,065)	—	(1,065)
Net income (loss)	—	—	—	19,808	19,808
Balance as of December 31, 2020	102,334,276	1,111,435	(3,832)	(631,077)	476,526
Share-based compensation	—	94,900	—	—	94,900
Exercise of options	1,585,617	21,182	—	—	21,182
Issuance of shares in connection with employee stock purchase plan	51,370	4,546	—	—	4,546
Cumulative effect adjustment resulting from ASU 2020-06 early adoption (see Note 2(z))	—	(132,474)	—	3,502	(128,972)
Other comprehensive loss, net of tax expense of $0	—	—	663	—	663
Net income (loss)	—	—	—	(58,351)	(58,351)
Balance as of December 31, 2021	103,971,263	$ 1,099,589	$ (3,169)	$ (685,926)	$ 410,494

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

NovoCure Limited and subsidiaries

Consolidated statements of cash flows

U.S. dollars in thousands	Year ended December 31, 2021	2020	2019
Cash flows from operating activities:			
Net income (loss)	$ (58,351)	$ 19,808	$ (7,230)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	10,251	9,150	8,460
Accrued interest	(94)	—	—
Asset write-downs and impairment of field equipment	649	429	398
Share-based compensation	94,900	75,721	52,416
Foreign currency remeasurement loss (gain)	3,231	(699)	(917)
Decrease (increase) in accounts receivables	5,270	(30,354)	(36,496)
Amortization of discount (premium)	3,101	3,260	(2,176)
Decrease (increase) in inventories	2,483	(2,935)	(1,159)
Decrease (increase) in other long-term assets	4,519	(1,366)	3,446
Increase (decrease) in accounts payables and accrued expenses	27,777	25,470	16,883
Increase (decrease) in other long-term liabilities	(10,980)	664	(7,006)
Net cash provided by (used in) operating activities	$ 82,756	$ 99,148	$ 26,620
Cash flows from investing activities:			
Purchase of property, equipment and field equipment	(24,170)	(14,968)	(10,485)
Proceeds from maturity of short-term investments	958,000	150,000	420,661
Purchase of short-term investments	(1,078,664)	(607,879)	(461,843)
Net cash provided by (used in) investing activities	$ (144,834)	$ (472,847)	$ (51,667)

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

NovoCure Limited and subsidiaries

Consolidated statements of cash flows

U.S. dollars in thousands	Year ended December 31, 2021	2020	2019
Cash flows from financing activities:			
Proceeds from issuance of shares, net	$ 4,546	$ 3,370	$ 2,467
Proceeds from convertible note, net	—	558,439	—
Repayment of long-term debt	(26)	(150,028)	(31)
Exercise of options	21,182	28,428	59,245
Net cash provided by (used in) financing activities	$ 25,702	$ 440,209	$ 61,681
Effect of exchange rate changes on cash, cash equivalents and restricted cash	$ (188)	$ 247	$ 26
Increase (decrease) in cash, cash equivalents and restricted cash	(36,564)	66,757	36,660
Cash, cash equivalents and restricted cash at the beginning of the year	246,173	179,416	142,756
Cash, cash equivalents and restricted cash at the end of the year	$ 209,609	$ 246,173	$ 179,416
Supplemental cash flow activities:			
Cash paid during the year for:			
Income taxes paid (refunded), net	$ 3,110	$ (3,261)	$ 11,241
Interest paid	$ 101	$ 8,686	$ 13,699
Non-cash activities:			
Right-of-use assets obtained in exchange for lease liabilities	$ 5,387	$ 5,617	$ 22,943

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

NovoCure Limited and subsidiaries
Notes to consolidated financial statements
U.S. dollars in thousands (except share and per share data)

Note 1: Organization

NovoCure Limited (including its consolidated subsidiaries, the "Company") was incorporated in the Bailiwick of Jersey and is principally engaged in the development, manufacture and commercialization of Tumor Treating Fields ("TTFields") devices, including Optune and Optune Lua (collectively, our "Products"), for the treatment of solid tumor cancers. The Company currently markets Optune in the United States ("U.S."), Germany, Japan and certain other countries. The Company currently markets Optune Lua in the U.S. and European Union. The Company also has a License and Collaboration Agreement (the "Zai Agreement") with Zai Lab (Shanghai) Co., Ltd. ("Zai") to market Optune in China, Hong Kong, Macau and Taiwan ("Greater China"). See Note 12.

During the year ended December 31, 2019, the Company implemented changes to its corporate entity operating structure, including transferring certain intellectual property to its Swiss subsidiary, primarily to align corporate entities with the Company's evolving operations and business model.

Note 2: Basis of presentation and significant accounting policies

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP").

a. Use of estimates:

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. The Company evaluates on an ongoing basis its assumptions, including those related to contingencies, deferred taxes, tax liabilities, useful-life of field equipment, right-of-use assets and lease liabilities, convertible notes, pension liabilities, revenue recognition, accrued expenses and share-based compensation costs. The Company's management believes that the estimates, judgment and assumptions used are reasonable based upon information available at the time they are made. These estimates, judgments and assumptions can affect the reported amounts of assets and liabilities at the dates of the consolidated financial statements, and the reported amounts of net revenue and expenses during the reporting period. Actual results could differ from those estimates.

b. Financial statements in U.S. dollars:

The accompanying financial statements have been prepared in U.S. dollars in thousands, except for share and per-share data.

The Company finances its operations in U.S. dollars and a substantial portion of its costs and revenues from its primary markets is incurred in U.S. dollars. As such, the Company's management believes that the U.S. dollar is the currency of the primary economic environment in which NovoCure Limited and certain subsidiaries operate. The Company's reporting currency is U.S. dollars.

Transactions and balances denominated in U.S. dollars are presented at their original amounts. Monetary accounts maintained in currencies other than the U.S. dollar are re-measured into dollars in accordance with Accounting Standards Codification (ASC) No. 830-10, "Foreign Currency Matters." All transaction gains and losses of the re-measurement of monetary balance sheet items are reflected in the consolidated statements of operations as financial income or expenses, as applicable.

For a subsidiary whose functional currency has been determined to be its local currency, assets and liabilities are translated at year-end exchange rates and statement of operations items are translated at average exchange rates prevailing during the year. Such translation adjustments are recorded as a separate component of accumulated other comprehensive income (loss) in shareholders' equity.

c. Principles of consolidation:

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Intercompany transactions and balances, including unrealized profits from intercompany sales, have been eliminated upon consolidation.

U.S. dollars in thousands (except share and per share data)

d. Cash equivalents:

Cash equivalents are short-term, highly liquid investments that are readily convertible into cash with a maturity of three months or less at the date acquired.

e. Short-term investments:

The Company accounts for investments in debt securities in accordance with ASC 320, "Investments—Debt and Equity Securities." Management determines the appropriate classification of its investments in marketable debt securities at the time of purchase and reevaluates such determinations at each balance sheet date. For the years ended December 31, 2021 and 2020, all securities are classified as held-to-maturity since the Company has the intent and ability to hold the securities to maturity and, accordingly, debt securities are stated at amortized cost.

The amortized cost of held-to-maturity securities is adjusted for amortization of premiums and accretion of discounts to maturity and any credit losses. Such amortization and interest are included in the consolidated statement of operations as financial income or expenses, as appropriate.

For the three years ended December 31, 2021, no credit losses have been identified.

f. Restricted cash

The Company has restricted cash used as security for the use of Company credit cards and cash management, presented in short-term assets. Additionally, the Company has pledged bank deposits to cover bank guarantees related to facility rental agreements, fleet lease agreements and customs payments presented in other long-term assets (see Note 12).

g. Trade receivables:

The Company's trade receivables balance contains billed and unbilled commercial activities. The Company records an allowance for credit losses, if identified. The Company periodically reviews its customers' credit risk and payment history. To date, the Company has not experienced any material credit losses related to counter-party risk.

h. Inventories:

Inventories are stated at the lower of cost or net realizable value. Cost is determined using the weighted average method. The Company regularly evaluates its ability to realize the value of inventory. If the inventories are deemed damaged, if actual demand for the Company's devices deteriorates, or if market conditions are less favorable than those projected, inventory write-offs may be required.

Inventory write-offs of $1,045, $616 and $310, respectively, were recorded for the years ended December 31, 2021, 2020 and 2019.

i. Property and equipment:

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets at the following rates:

	%
Computers and laboratory equipment	15 - 33
Office furniture	6 - 33
Production equipment	20
Leasehold improvements	Over the shorter of the term of the lease or its useful life

Land and assets held within construction in progress are not depreciated. Construction in progress is related to the construction or development of property and equipment that is not yet ready for its intended use.

j. Field equipment:

Field equipment is stated at cost, net of accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful life of the field equipment, which was determined to be 18 to 36 months. Field equipment is equipment being utilized under service agreements, and accounted for in accordance with ASC 842 on

a monthly basis as an operating lease (see Note 2(x)). The Company records a write-off provision for any excess, lost or damaged equipment when warranted based on an assessment of the equipment. Write-offs for equipment are included in cost of revenues. During the years ended December 31, 2021, 2020 and 2019, write-offs for $639, $409 and $327, respectively, were recorded (see Note 7).

k. Impairment of long-lived assets:

The Company's long-lived assets are reviewed for impairment in accordance with ASC 360-10, "Property, Plant and Equipment," whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of an asset to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted cash flows expected to be generated by the asset. If such asset is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. During the three years ended December 31, 2021, no impairment losses have been identified.

l. Other long-term assets:

Restricted deposits, long-term lease deposits associated with office rent and vehicles under operating leases, prepaid and vendors down payments are presented in other long-term assets.

m. Revenue recognition:

Our Products are comprised of two main components: (1) an electric field generator and (2) arrays and related accessories. We retain title to the electric field generator, and the patient is provided replacement arrays and technical support for the device during the term of treatment. The electric field generator and arrays are always supplied and function together and are not sold on a standalone basis.

The Company uses the portfolio approach to apply the standard to portfolios of contracts with similar characteristics.

To recognize revenue under ASC 606, the Company applies the following five steps:

1. *Identify the contract with a patient.* A contract with a patient exists when (i) the Company enters into an enforceable contract with a patient that defines each party's rights regarding delivery of and payment for a Product, (ii) the contract has commercial substance and (iii) the Company determines that collection of substantially all consideration for such Product is probable based on the payer's intent and ability to pay the promised consideration. The evidence of a contract generally consists of a prescription, a patient service agreement and the verification of the assigned payer for the contract and intention to collect.

2. *Identify the performance obligations in the contract.* Our contracts include the lease of the device, the supply obligation of disposable arrays and technical support for the term of treatment. To the extent a contract includes multiple promised products and/or services, the Company must apply judgment to determine whether those products and/or services are capable of being distinct in the context of the contract. If these criteria are not met the promised products and/or services are accounted for as a combined performance obligation. In the Company's case, the device, support, and disposables are provided as one inseparable package of monthly treatment for a single monthly fee. For more information, see Note 2(x).

3. *Determine the transaction price.* The transaction price is determined based on the consideration to which the Company will be entitled in exchange for providing a Product to the patient. To the extent the transaction price includes variable consideration, the Company estimates the amount of variable consideration that should be included in the transaction price utilizing either the expected value method or the most likely amount method depending on the nature of the variable consideration. Variable consideration is included in the transaction price if, in the Company's judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. The Company has agreements with many payers that define explicit discounts off the gross transaction price. In addition to the explicit discounts negotiated with each payer, the Company expects to receive, in aggregate for a given portfolio, less than the gross revenue net of explicit discounts. ASC 606 requires that the Company recognize this variable consideration as an implicit discount in the billing period. The implicit discount includes both an estimate of claims that will pay at an amount less than billed and an estimate of claims that

will not pay within a given time horizon. The implicit discount adjustments to the transaction price are due to concessions, not collectability concerns driven by payer credit risk.

4. *Allocate the transaction price to performance obligations in the contract.* If a contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. As discussed above, there is a combined performance obligation under the Company's contracts and, therefore, the monthly transaction price determined for the performance obligation will be recognized over time ratably over the monthly term of the treatment.

5. *Recognize revenue when or as the Company satisfies a performance obligation.* The Company satisfies performance obligations over time. Revenue is recognized at the time the related performance obligation is satisfied by transferring a promised service to a patient. The patient consumes the benefits of treatment on a daily basis over the monthly term. As this criterion is met, the revenues will be recognized over the monthly term. For more information, see Note 2(x).

Revenues are presented net of indirect taxes.

Net revenues in the years ended December 31, 2021, 2020 and 2019 also include amounts recognized pursuant to the Zai Agreement. For additional information, see Note 12.

n. Charitable care:

The Company provides treatment at no charge to patients who meet certain criteria under its charitable care policy. Because the Company does not pursue collection of amounts determined to qualify as charity, they are not reported as revenue. The Company's costs of care provided under charitable care were $4,204, $3,653 and $2,847 for the years ended December 31, 2021, 2020 and 2019, respectively. These amounts were determined by applying charitable care as a percentage of gross billings to total cost of goods sold.

o. Shipping and handling costs:

The Company does not separately bill its customers for shipping and handling costs associated with shipping Products to its customers. These direct shipping and handling costs of $2,958, $3,224 and $2,688 for the years ended December 31, 2021, 2020 and 2019, respectively, are included in Sales and Marketing costs.

p. Accounting for share-based compensation:

The Company accounts for share-based compensation in accordance with ASC 718, "Compensation—Stock Compensation." ASC 718 requires companies to estimate the fair value of share-based compensation awards on the date of grant using an option-pricing model. The value of the award is recognized as an expense over the requisite service periods in the Company's consolidated statements of operations. The Company's policy is to account for forfeitures as they occur.

The Company recognizes compensation costs for the value of awards granted using the accelerated method over the requisite service period of the award, which is generally the restricted share unit vesting term of three years and option vesting term of four years, respectively.

The Company applies the Black-Scholes model as it believes it is the most appropriate fair value method for all equity awards and for the Employee Share Purchase Plan (the "ESPP"). For market condition awards, the Company also applies the Monte-Carlo simulation model. The Black-Scholes model requires a number of assumptions, of which the most significant are the share price, expected volatility and the expected award term.

Beginning with the first quarter of 2021, the computation of expected volatility is based on a combination of actual historical share price volatility of comparable publicly-traded companies and the historical volatility the Company's shares. Prior to the first quarter of 2021, due to the lack of sufficient historical information for the Company, the computation was based on actual historical volatility of comparable publicly-traded companies. Beginning with the first quarter of 2021, the expected term of options granted is calculated using the Company's historical and future exercise behavior. Prior to the first quarter of 2021, it was calculated using the average between the vesting period and the contractual term to the expected term of the options in effect at the time of grant. The Company has historically not paid dividends and has no foreseeable plans to pay dividends and, therefore, uses an expected dividend yield of zero in the option pricing model. The risk-free interest rate is based on the yield of U.S. treasury bonds with equivalent terms.

q. Fair value of financial instruments:

The carrying amounts of cash and cash equivalents, short-term investments, restricted cash, receivables and prepaid expenses, trade receivables, trade payables and other accounts payable and accrued expenses approximate their fair value due to the short-term maturity of such instruments.

The Company accounts for certain assets and liabilities at fair value under ASC 820, "Fair Value Measurements and Disclosures." Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

The hierarchy below lists three levels of fair value based on the extent to which inputs used in measuring fair value are observable in the market. The Company categorizes each of its fair value measurements in one of these three levels based on the lowest level input that is significant to the fair value measurement in its entirety.

The three levels of inputs that may be used to measure fair value are as follows:

Level 1 - Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets;

Level 2 - Includes other inputs that are directly or indirectly observable in the marketplace, other than quoted prices included in Level 1, such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets with insufficient volume or infrequent transactions, or other inputs that are observable (model-derived valuations in which significant inputs are observable), or can be derived principally from or corroborated by observable market data; and

Level 3 - Unobservable inputs which are supported by little or no market activity.

The availability of observable inputs can vary from instrument to instrument and is affected by a wide variety of factors, including, for example, the type of instrument, the liquidity of markets and other characteristics particular to the transaction. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment and the instrument is categorized as Level 3.

r. Basic and diluted net loss per share:

Basic net income (loss) per share is computed based on the weighted average number of ordinary shares outstanding during each period. Diluted net income per share is computed based on the weighted average number of ordinary shares outstanding during the period, plus potential dilutive shares considered outstanding during the period, in accordance with ASC 260-10, as determined under the treasury stock method.

s. Income taxes:

The Company accounts for income taxes in accordance with ASC 740-10, "Income Taxes." ASC 740-10 prescribes the use of the liability method whereby deferred tax asset and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company provides a valuation allowance, to reduce deferred tax assets to their estimated realizable value, if needed.

The Company established reserves for uncertain tax positions based on the evaluation of whether or not the Company’s uncertain tax position is "more likely than not" to be sustained upon examination. The Company records interest and penalties pertaining to its uncertain tax positions in the financial statements as income tax expense.

t. Concentration of risks:

Our cash, cash equivalents, short-term investments and trade receivables are potentially subject to a concentration of risk. Cash, cash equivalents and short-term investments are invested at top tier financial institutions globally. As such, these investments may be in excess of insured limitations or not insured in certain jurisdictions. Generally, these investments may be redeemed upon demand and therefore, bear minimal risk.

Our trade receivables are due from numerous governments and federal and state agencies that are paid from their respective budgets, and from hundreds of health insurance companies. The Company does not believe that there

are significant default risks associated with these governments, agencies and health insurance companies based upon the Company's the historical experience with them.

The Company has no off-balance sheet concentrations of credit risk such as foreign exchange contracts, option contracts or other foreign hedging arrangements.

u. Retirement, pension and severance plans:

The Company has a 401(k) retirement savings plan for its U.S. employees. Each eligible employee may elect to contribute a portion of the employee's compensation to the plan. Company contributions to the plan are at the sole discretion of the Company's Board of Directors. Currently, the Company provides a matching contribution of 50% of the employee's contributions, up to a maximum of three percent (3%) of the employee's annual salary. The Company began making matching contributions as of January 1, 2019. For the years ended December 31, 2021, 2020 and 2019, the Company had made matching contributions in the amount of $1,967 and $1,589 and $978, respectively, pursuant to the plan.

The Company sponsors a defined benefit plan (the "Swiss Plan") for all its employees in Switzerland for retirement benefits, as well as benefits on death or long-term disability, whereby the employee and the Company contribute a portion of the employee's compensation to the plan. The Swiss Plan is part of a collective pension foundation "Asga Pensionskasse". Asga is an autonomous pension foundation, meaning that the underlying investment risk and the all biometrical risks (disability, death, longevity) are born by the pension foundation itself. Notwithstanding, the Company and its employees bear the risk of having to pay recovery contributions in a financial distress situation. The Company accounts for this risk in accordance with ASC 715, "Compensation – Retirement Benefits" (see Note 9). The pension expense for the years ended December 31, 2021, 2020 and 2019 was $1,494, $1,588 and $984, respectively.

Israeli law generally requires payment of severance pay upon dismissal of an employee or upon termination of employment in certain other circumstances. The Company contributes to employee pension plans to fund its severance liabilities. According to Section 14 of Israel Severance Pay Law, the Company makes deposits on behalf of its employees with respect to the Company's severance liability and therefore no obligation is provided for in the financial statements. Severance pay liabilities with respect to employees who are not subject to Section 14, are provided for in the financial statements based upon the number of years of service and the latest monthly salary and the related deposits are recorded as an asset based on the cash surrender value. Contributions pursuant to these obligations for the years ended December 31, 2021, 2020 and 2019 amounted to $1,466, $1,130 and $784, respectively.

v. Contingent liabilities:

The Company accounts for its contingent liabilities in accordance with ASC 450, "Contingencies." A provision is recorded when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated.

With respect to legal matters, provisions are reviewed and adjusted to reflect the impact of negotiations, estimated settlements, legal rulings, advice of legal counsel and other information and events pertaining to a particular matter.

w. Other comprehensive income (loss):

The Company accounts for comprehensive income (loss) in accordance with ASC 220, "Comprehensive Income." ASC 220 establishes standards for the reporting and display of comprehensive income (loss) and its components. Comprehensive income (loss) generally represents all changes in shareholders' equity during the period except those resulting from investments by, or distributions to, shareholders. The accumulated other comprehensive income (loss), net of taxes, relates to a pension liability and foreign currency translation adjustments.

x. Leases:

1. Lessee accounting:

On January 1, 2019, the Company adopted ASU No. 2016-02, Leases (ASC 842). The Company determines if an arrangement is a lease and the classification of that lease at inception based on: (1) whether the contract involves the use of a distinct identified asset, (2) whether the Company obtains the right to substantially all the economic benefits from the use of the asset throughout the period, and (3) whether the Company has a right to direct the use

of the asset. The Company elected to not recognize a lease liability or right-of-use ("ROU") asset for leases with a term of twelve months or less. The Company also elected the practical expedient to not separate lease and non-lease components for its leases.

ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make minimum lease payments arising from the lease. ROU assets are initially measured at amounts, which represents the discounted present value of the lease payments over the lease, plus any initial direct costs incurred. The ROU assets are reviewed for impairment. The lease liability is initially measured at lease commencement date based on the discounted present value of minimum lease payments over the lease term. The implicit rate within the operating leases are generally not determinable; therefore, the Company uses the Incremental Borrowing Rate ("IBR") based on the information available at commencement date in determining the present value of lease payments. The Company's IBR is estimated to approximate the interest rate on similar terms and payments and in economic environments where the leased asset is located.

Certain leases include options to extend or terminate the lease. An option to extend the lease is considered in connection with determining the ROU asset and lease liability when it is reasonably certain that the Company will exercise that option. An option to terminate is considered unless it is reasonably certain that the Company will not exercise the option.

2. Lessor accounting - Operating leases:

ASC 842 provides lessors with an optional practical expedient, by class of underlying asset, not to separate non-lease components from the associated lease component and, instead, to account for those components as a single component if the non-lease components otherwise would be accounted for under the new revenue guidance (ASC 606) and both of the following criteria are met:

a. The timing and pattern of transfer of the lease component and the non-lease component(s) are the same; and

b. The lease component would be classified as an operating lease if it were accounted for separately.

The Company's product supply agreements include the right to use the device (lease component), the supply obligation of disposable arrays and technical support for the term of treatment (non-lease component).

If the lease component is the predominant component, the Company accounts for all revenues under such lease as a single component in accordance with the new lease accounting standard. Conversely, if the non-lease component is the predominant component, all revenues under such lease are accounted for in accordance with the revenue recognition accounting standard. The Company's operating leases qualify for the single component accounting, and the non-lease component in each of the Company's leases is predominant. Therefore, The Company accounts for all revenues from its operating leases in accordance with the revenue recognition accounting standard.

y. Convertible note:

Prior to January 1, 2021, the Company accounted for its convertible senior notes in accordance with ASC 470-20 "Debt with Conversion and Other Options". Pursuant to ASC Subtopic 470-20, issuers of certain convertible debt instruments, such as the convertible senior notes, that have a net settlement feature and may be settled wholly or partially in cash upon conversion are required to separately account for the liability (debt) and equity (conversion option) components of the instrument. The Company allocated the proceeds from issuance between the liability component and the embedded conversion option, or equity component. The liability component at issuance is recognized at fair value, based on the fair value of a similar instrument of similar credit rating and maturity that does not have a conversion feature. The equity component is based on the excess of the principal amount of the convertible senior notes over the fair value of the liability component and is recorded in additional paid-in capital. The equity component, net of issuance costs is presented within additional paid-in-capital and is not remeasured as long as it continues to meet the conditions for equity classification. The Company allocated the total issuance costs incurred to the liability and equity components of the convertible senior notes based on the same proportions as the proceeds from the notes.

Commencing January 1, 2021, the Company early adopted ASU 2020-06, see note 2(z).

U.S. dollars in thousands (except share and per share data)

z. Recently adopted accounting pronouncements:

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity (ASU 2020-06), which simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts in an entity's own equity. Among other changes, ASU 2020-06 removes from GAAP the liability and equity separation model for convertible instruments with a cash conversion feature, and as a result, after adoption, entities will no longer separately present in equity an embedded conversion feature for such debt. Similarly, the embedded conversion feature will no longer be amortized into income as interest expense over the life of the instrument. Instead, entities will account for a convertible debt instrument wholly as debt unless (1) a convertible instrument contains features that require bifurcation as a derivative under Accounting Standards Codification ("ASC Topic 815"), Derivatives and Hedging, or (2) a convertible debt instrument was issued at a substantial premium. Additionally, ASU 2020-06 requires the application of the if-converted method to calculate the impact of convertible instruments on diluted earnings per share (EPS), which is consistent with the Company's accounting treatment under the current standard. ASU 2020-06 is effective for fiscal years beginning after December 15, 2021, with early adoption permitted for fiscal years beginning after December 15, 2020, and can be adopted on either a fully retrospective or modified retrospective basis. The Company early adopted ASU 2020-06, effective January 1, 2021 on a modified retrospective basis.

The impact of the Company's adoption of ASU 2020-06 on the balance sheet as of January 1, 2021 was an increase in long term debt, net of $128,972, a decrease in additional paid-in capital of $132,474, and a decrease in accumulated deficit of $3,502. Interest expense recognized in future periods will be reduced as a result of accounting for the convertible debt instrument as a single liability measured at its amortized cost. For additional information see Note 10 of these audited consolidated financial statements.

In December 2019, the FASB issued Accounting Standard Update No. 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes (ASU 2019-12), which simplifies the accounting for income taxes, eliminates certain exceptions within ASC 740, Income Taxes, and clarifies certain aspects of the current guidance. ASU 2019-12 is effective for the Company as of January 1, 2021 and the adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Note 3: Cash and Cash equivalents and Short-term investments

a. Cash and cash equivalents:

Cash equivalents include items almost as liquid as cash, such as certificates of deposit and term deposits with maturity periods of three months or less when purchased. The Company's cash and cash equivalents were composed of:

	December 31,	
	2021	2020
Cash	$ 3,139	$ 20,339
Money market funds	64,668	214,335
Certificate of deposits, notes and term deposits	140,995	—
Total cash and cash equivalents	$ 208,802	$ 234,674

b. Short-term investments

The following table sets forth the Company's short-term investments:

	December 31,	
	2021	2020
Term deposits	$ 424,094	$ —
US treasury bills	199,981	607,902
Corporate debt securities	104,823	—
Total short-term investments	$ 728,898	$ 607,902

U.S. dollars in thousands (except share and per share data)

The Company invests in marketable U.S. treasury Bills ("T-bills"), term deposits, notes, and corporate debt securities that are classified as held-to-maturity securities and are presented as cash and cash equivalents and short-term investments according their maturity periods.

The Company measures its cash equivalents and short-term investments at fair value and classifies them within Level 1 or 2. The Company values these investments using quoted market prices or alternative pricing sources and models utilizing market observable inputs. The fair value of the Company's Level 1 financial assets is based on quoted market prices of the identical underlying security. The fair value of the Company's level 2 financial assets is based on inputs that are directly or indirectly observable in the market, including the readily-available pricing sources for the identical underlying security that may not be actively traded.

The estimated fair value of our short-term investments as of December 31, 2021 and 2020 was $728,906 and $607,905, respectively. As of December 31, 2021 and 2020, amounts of $624,083 and $607,905, respectively, were categorized as level 1, and the remaining balance as level 2 in accordance with ASC 820, "Fair Value Measurements and Disclosures."

Note 4: Receivables and prepaid expenses

The following table sets forth the Company's receivables and prepaid expenses:

	December 31,	
	2021	2020
Advances to and receivables from suppliers	$ 3,843	$ 3,768
Government authorities	8,421	13,358
Prepaid expenses	4,711	3,963
Others	50	156
	$ 17,025	$ 21,245

Note 5: Inventories

Inventories are stated at the lower of cost or net realizable value. The weighted average methodology is applied to determine cost. The following table sets forth the Company's inventories:

	December 31,	
	2021	2020
Raw materials	$ 1,485	$ 5,175
Work in process	8,274	4,896
Finished goods	14,668	17,351
	$ 24,427	$ 27,422

U.S. dollars in thousands (except share and per share data)

Note 6: Property and equipment, net

The following table sets forth the Company's property and equipment, net:

	December 31,	
	2021	2020
Cost:		
Computers and laboratory equipment	$ 21,135	$ 18,821
Office furniture	3,044	2,871
Production equipment	2,377	1,628
Land and building	$ 11,155	$ —
Leasehold improvements	7,076	6,501
Total cost	$ 44,787	$ 29,821
Accumulated depreciation and amortization	(22,094)	(18,426)
Depreciated cost	$ 22,693	$ 11,395

The Company capitalized software costs according to FASB's ASC 350-40, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use." Cumulative capitalization as of December 31, 2021 and 2020 was $9,979 and $9,219, respectively. Amortization of capitalized software costs for the years ended December 31, 2021, 2020 and 2019 was $1,084, $1,398 and $1,682, respectively.

Depreciation expense was $2,812, $2,635 and $2,080 for the years ended December 31, 2021, 2020 and 2019, respectively.

Note 7: Field equipment, net

The following table sets forth the Company's field equipment, net:

	December 31,	
	2021	2020
Field equipment	$ 33,789	$ 27,876
Accumulated depreciation	(20,866)	(16,646)
Field equipment, net	$ 12,923	$ 11,230

Depreciation expense was $6,355, $5,117 and $4,631 for the years ended December 31, 2021, 2020 and 2019, respectively. Write downs of $639, $409 and $327 were identified for the years ended December 31, 2021, 2020 and 2019, respectively.

Note 8: Other payables and accrued expenses

The following table sets forth the Company's other payables and accrued expenses:

	December 31,	
	2021	2020
Employees and payroll accruals	$ 39,590	$ 30,316
Government authorities	5,797	5,340
Deferred revenues	17,762	17,765
Other	6,853	6,544
	$ 70,002	$ 59,965

Note 9: Employee benefit obligations

The Company's liability in respect of the Swiss Plan (see Note 2(u)) is the projected benefit obligation calculated using the projected unit credit method. The projected benefit obligation as of December 31, 2021 represents the

actuarial present value of the estimated future payments required to settle the obligation that is attributable to employee service rendered before that date. Swiss Plan assets are recorded at fair value. Pension expense is presented in the payroll expenses in the various functions in which the employees are engaged. Actuarial gains and losses arising from differences between the actual and the expected return on the Swiss Plan assets are recognized in accumulated other comprehensive income (loss) and amortized over the requisite service period. The Swiss Plan is part of a collective pension foundation of pooled investments managed by a top tier insurance company. The Company and the employees pay retirement contributions, which are defined as a percentage of the employees' covered salaries.The basis for the determination of the interest on employee's savings account is the return on plan assets, considering legal minimum requirements. The targeted allocation for these funds is as follows:

Asset Allocation by Category as of December 31, 2021: **Asset Category:**	**Asset allocation (%)**
Debt Securities	30%
Real Estate	27%
Equity Securities	37%
Others	6%
Total	100%

U.S. dollars in thousands (except share and per share data)

The following table sets forth the Swiss Plan's funded status and amounts recognized in the consolidated financial statements for the year ended December 31, 2021 and 2020:

	December 31,	
	2021	2020
Change in Benefit Obligation		
Projected benefit obligation at beginning of year	$ 22,753	$ 15,685
Interest cost	48	37
Company service cost	1,915	1,483
Employee contributions	1,167	870
Prior service cost	(923)	—
Benefits paid	2,976	1,612
Actuarial loss	2,039	3,066
Projected benefit obligation at end of year	$ 29,975	$ 22,753
Change in Plan Assets		
Fair value of plan assets at beginning of year	$ 18,082	$ 12,356
Actual return on plan assets	1,992	1,938
Employer contributions	1,750	1,306
Employee contributions	1,167	870
Benefits paid	2,976	1,612
Fair value of plan assets at end of year	$ 25,967	$ 18,082
Funded Status at End of year		
Excess of obligation over assets	$ 4,008	$ 4,671
Change in Accrued Benefit Liability		
Accrued benefit liability at beginning of year	$ (4,671)	$ (3,329)
Company contributions made during year	1,750	1,306
Net periodic benefit cost for year	(1,310)	(1,909)
Net decrease (increase) in accumulated other comprehensive loss	223	(739)
Accrued benefit liability at end of year	$ (4,008)	$ (4,671)

	December 31,	
	2021	2020
Non-current plan assets	$ 25,967	$ 18,083
Non-current liability	29,975	22,754
Accrued benefit liability at end of year	$ (4,008)	$ (4,671)
Projected Benefit Payments		
Projected year 1	$ 567	$ 1,804
Projected year 2	454	394
Projected year 3	819	400
Projected year 4	765	788
Projected year 5	452	405
Projected years 6-10	13,816	3,445

The fair value of the plan assets is the estimated cash surrender value of the insurance contract at December 31, 2021. The level of inputs used to measure fair value was Level 2.

U.S. dollars in thousands (except share and per share data)

	Year ended December 31,	
	2021	2020
Net Periodic Benefit Cost		
Service cost	$ 1,915	$ 1,483
Interest cost (income)	48	37
Expected return on plan assets	(508)	(31)
Amortization of actuarial (gain) loss	133	120
Amortization of prior service costs	(94)	(21)
Total net periodic benefit cost	$ 1,494	$ 1,588
Weighted average assumptions:		
Discount rate as of December 31	0.20%	0.20 %
Expected long-term rate of return on assets	2.50%	0.20 %
Rate of compensation increase	1.00%	1.00%
Mortality and disability assumptions (*)	BVG 2020 GT	BVG 2015 GT

(*) Mortality data used for actuarial calculation.

Note 10: Long-term debt, net

The following table sets forth the Company's long-term debt, net:

	December 31,	
	2021	2020
0% Convertible Senior Notes (a)	$ 562,216	$ 429,905
Credit facility (b)	—	—
	$ 562,216	$ 429,905

a. Convertible Notes

On November 5, 2020, the Company issued $575,000 aggregate principal amount of 0% Convertible Senior Notes due 2025 (the "Notes"). The net proceeds from the offering were approximately $558,400.

The Notes are senior unsecured obligations of the Company. The Notes do not bear regular interest, and the principal amount of the Notes will not accrete. Special interest, if any, payable in accordance with the terms of the Notes will be payable in cash semi-annually in arrears on May 1 and November 1 of each year, beginning on May 1, 2021. The Notes mature on November 1, 2025, unless earlier repurchased, redeemed or converted.

The Notes are convertible into cash, the Company's ordinary shares or a combination of cash and the Company's ordinary shares at the Company's election at an initial conversion rate of 5.9439 ordinary shares per $1,000 principal amount of the Notes, which is equivalent to an initial conversion price of approximately $168.24 per ordinary share.

In January 2021, the Company irrevocably elected to settle all conversions of Notes by a combination of cash and the Company's ordinary shares and that the cash portion per $1,000 principal amount of Notes for all conversion settlements shall be $1,000. Accordingly, from and after the date of the election, upon conversion of any Notes,

holders of Notes will receive, with respect to each $1,000 principal amount of Notes converted, cash in an amount up to $1,000 and the balance of the conversion value, if any, in ordinary shares (the "Conversion Shares").

The Notes are not redeemable prior to November 6, 2023, except in the event of certain tax law changes. The Company may redeem for cash all or any portion of the Notes, at the Company's option, on or after November 6, 2023 if the last reported sale price of the Company's ordinary shares has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date. No sinking fund is provided for the Notes.

Prior to the close of business on the business day immediately preceding August 1, 2025, the Notes are convertible at the option of the holders only upon the satisfaction of certain conditions and during certain periods as described below and if the Company exercises its right to redeem the Notes as permitted or required by the Indenture as described below. On or after August 1, 2025 until the close of the business on the business day immediately preceding the maturity date, holders may convert all or any portion of their Notes at the conversion rate at any time irrespective of the foregoing conditions.

If holders of at least $3,000 aggregate principal amount of the Notes provide the Company with reasonable evidence that the trading price per $1,000 principal amount of Notes (the "Note Trading Price") on any trading day would be less than 98% of the product of the last reported sale price of the Ordinary Shares on such trading day and the conversion rate on such trading day (the "Trigger Note Price"), the Company shall follow the process for obtaining the Note Trading Price as provided in the Indenture on a daily basis until the Note Trading Price exceeds the Trigger Notice Price. During this time, if during any five consecutive trading day period (the "Measurement Period") the Note Trading Price is less than 98% of the Trigger Notice Price, the Company must notify the holders and the trustee of such an event and the holders may convert their Notes into Ordinary Shares at any time during the five business day period immediately after.

If the Company intends to (i) issue warrants/rights/options to existing shareholders with an exercise price less than the ten-day trailing last trading price average or (ii) distribute to shareholders assets, securities or rights with a value per share greater than 10% of the last reported trading price, then the Company must give holders of the Notes thirty-five (35) trading days' notice of such event, at which time a holder may convert their Notes during such 35 trading day period (or until the Company revokes its decision to issue/distribute the securities, whichever comes sooner).

In addition, upon the occurrence of a fundamental change (as defined in the indenture), holders may require the Company to repurchase for cash all or any portion of their Notes at a fundamental change repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date. In addition, following certain corporate events that occur prior to the maturity date or if the Company delivers a notice of redemption, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event or notice of redemption, as the case may be.

As of December 31, 2021, the conditions allowing holders of the Notes to convert were not met. The Notes are therefore not convertible as of December 31, 2021 and are classified as long-term liability.

U.S. dollars in thousands (except share and per share data)

The net carrying amount of the liability and equity components of the Convertible Notes (see note 2(z) for additional information) as of December 31, 2021 and 2020 are as follows:

	December 31,	
	2021	2020
Liability component, net:		
Principal amount	$ 575,000	$ 575,000
Unamortized discount	—	(132,797)
Unamortized issuance costs	(12,784)	(12,298)
Net carrying amount of liability component (1)	$ 562,216	$ 429,905
Equity component, net:		
Conversion feature	$ —	$ 136,402
Issuance costs	$ —	(3,928)
Net carrying amount of equity component	$ —	$ 132,474

An effective interest rate determines the fair value of the Notes, therefore they are categorized as Level 3 in accordance with ASC 820, "Fair Value Measurements and Disclosures." The estimated fair value of the Net carrying amount of liability component of the Notes as of December 31, 2021 and 2020 were $467,469 and $450,437, respectively.

Finance expense related to the Notes were as follows:

	Year ended December 31,	
	2021	2020
Amortization of debt issuance costs	$ 3,339	$ 333
Amortization of debt discount	$ —	$ 3,605
Total finance expense recognized	$ 3,339	$ 3,938

b. Loan and Security Agreement

On February 7, 2018, the Company and certain of its subsidiaries entered into a Loan and Security Agreement ("2018 Loan Agreement") with BioPharma Credit PLC pursuant to which such lender made a term loan to the Company in the principal amount of $150,000 (the "2018 Credit Facility"). The term loan, which was drawn in full upon execution of the 2018 Loan Agreement, bore interest at 9.0% per annum, payable quarterly in arrears.

On August 18, 2020, the Company terminated the 2018 Credit Facility. The prepayment included $150,000 in principal repayment and $3,000 in prepayment premium, plus accrued and unpaid interest and expenses payable through the payoff date. The un-amortized issuance costs in the amount of $478 that were fully amortized upon the repayment and the prepayment premium were reported in the Company's finance expenses.

Note 11: Other long-term liabilities

	December 31,	
	2021	2020
Leasehold improvements financing and other	$ 12	$ 40
Unrecognized tax benefits (Note 13(e))	154	297
	$ 166	$ 337

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Note 12: Commitments and contingent liabilities

a. Operating leases

The facilities of the Company are leased under various operating lease agreements for periods ending no later than 2030. The Company also has the option to extend the term of certain facility lease agreements and these are included in the calculation of right-of-use assets. The Company also leases motor vehicles under various operating leases, which expire on various dates, the latest of which is in 2024.

Under ASC 842, all leases with durations greater than 12 months, including non-cancelable operating leases, are recognized on the balance sheet. The aggregated present value of lease payments is recorded as a long-term asset titled right-of-use assets. The corresponding lease liabilities are split between other payables and long-term lease liabilities, and as of December 31, 2021, are as follows:

	December 31, 2021
Future minimum lease payments:	
2022	$ 6,925
2023	4,959
2024	3,508
2025	2,083
2026	1,990
Thereafter	2,511
Total future minimum lease payments	$ 21,976
Less imputed interest	(2,295)
Net present value of future minimum lease payments	$ 19,681
Current year end	
Short-term lease liabilities	$ 6,684
Long-term lease liabilities	12,997
Net present value of future minimum lease payments	$ 19,681
Weighted average of remaining operating lease term (years)	4.47
Weighted average of operating lease discount rate	5.62 %

Lease and rental expense for the years ended December 31, 2021, 2020 and 2019 was $7,349, $5,950, and $5,410, respectively.

b. Bank guarantee and pledges

As of December 31, 2021 and 2020 the Company pledged bank deposits of $2,350 and $1,438, respectively, to cover bank guarantees in respect of its leases of operating facilities and obtained guarantees by the bank for the fulfillment of the Company's lease commitments of $2,698 and $1,687, respectively.

c. Senior secured revolving credit facility

On November 6, 2020, the Company entered into a new three-year $150,000 senior secured revolving credit facility with a syndicate of relationship banks. The Company may, subject to certain conditions and limitations, increase the

revolving credit commitments outstanding under the revolving credit facility or incur new incremental term loans in aggregate principal amount not to exceed $250.0 million in total.

The commitments under the revolving credit facility are guaranteed by certain of the Company's subsidiaries and secured by a first lien on the Company's and certain of the Company's subsidiaries' assets. Outstanding loans will bear interest per annum at a sliding scale based on the Company's secured leverage ratio from 2.75% to 3.25% above the applicable interbank borrowing reference rate for the currency in which the loan is denominated. Additionally, the facility contains a fee for the unused revolving credit commitments at a sliding scale based on the Company's secured leverage ratio from 0.35% to 0.45%. The facility contains financial covenants requiring maintenance of a minimum fixed charge coverage ratio and specifying a maximum senior secured net leverage ratio, as well as customary events of default which include a change of control.

As of December 31, 2021, the Company had no outstanding balance borrowed under the facility.

d. Zai License and Collaboration Agreement

On September 10, 2018, the Company entered into the Zai Agreement. Under the Zai Agreement, the Company granted Zai exclusive rights to commercialize Optune in the field of oncology in China, Hong Kong, Macau and Taiwan ("Greater China"). The Zai Agreement also established a development partnership for Optune in multiple solid tumor indications. In partial consideration for the license grant to Zai for Greater China, the Company was entitled to a non-refundable, up-front license fee in the amount of $15,000 (the "License Fee"). The Zai Agreement also provides for certain development, regulatory and commercial milestone payments totaling up to $78,000. Furthermore, pursuant to the Zai Agreement, Zai will pay the Company tiered royalties at percentage rates from 10 up to the mid-teens on the net sales of the licensed products in Greater China. Zai is purchasing licensed products for commercial use exclusively from the Company at the Company's fully burdened manufacturing cost.

The Company recognizes revenue pursuant to the License Agreement with Zai in accordance with ASC 606, "Revenue Recognition from Customers." The License Fee is deferred and recognized over related six year performance period commencing September 10, 2018 ("Zai Performance Period"). Revenue from commercial milestone payments will be recognized upon the achievement of such milestones and future clinical or regulatory milestone payments will be recognized in a straight line over the applicable performance period, in accordance with ASC 606. Revenue from royalty payments are recognized in accordance with ASC 606 in the period accrued. Revenues from sales of product or rendering services are recognized upon shipping the products or rendering the services and satisfying the performance obligation.

During the year ended December 31, 2020, the Company triggered an aggregate $10,000 of milestone payments, which, with the License Fee, are deferred and recognized over the remainder of the Zai Performance Period ending in September 2024 on a straight-line basis, resulting in revenue of $6,308 $3,981 and $2,115 for the years ended December 31, 2021, 2020 and 2019, respectively.

U.S. dollars in thousands (except share and per share data)

Note 13: Income taxes

a. Tax provision:

Income (loss) before income taxes is as follows:

	Year ended December 31,		
	2021	2020	2019
United States (U.S.)	$ 82,249	$ (15,283)	$ (87,925)
Non-U.S.	(134,324)	33,385	79,101
Total income (loss) before income taxes	$ (52,075)	$ 18,102	$ (8,824)

The provision (benefit) for income taxes from continuing operations is comprised of:

	Year ended December 31,		
	2021	2020	2019
Current:			
U.S.	$ 65	$ (11,898)	$ (6,143)
Non-U.S.	6,211	10,192	4,405
Total current	$ 6,276	$ (1,706)	$ (1,738)
Deferred:			
Non-U.S.	—	—	144
Total deferred	—	—	144
Total income tax provision	$ 6,276	$ (1,706)	$ (1,594)

b. Theoretical tax

The Company's effective tax rate is affected by the tax rates in the various jurisdictions in which the Company operates. For purposes of comparability, the Company used the notional U.S. federal income tax rate of 21% for the 2021, 2020 and 2019 tax years when presenting the Company's reconciliation of the income tax provision. A reconciliation of the provision for income taxes compared with the amounts at the notional federal statutory rate was:

	Year ended December 31,		
	2021	2020	2019
Income (loss) before income taxes	$ (52,075)	$ 18,102	$ (8,824)
U.S. statutory income tax rate	21.0 %	21.0 %	21.0 %
Notional U.S. federal income taxes at statutory rate	$ (10,936)	$ 3,801	$ (1,853)
Foreign taxes rate differential	14,651	4,024	(4,216)
Share based compensation	(12,669)	(6,190)	(26,528)
Change in valuation allowance	11,643	6,821	244,344
Return to provision true-ups	2,416	654	(5,204)
Research and Development Credits	(2,216)	(5,243)	(2,333)
State income taxes	1,572	607	(16,679)
Withholding Taxes	273	2,366	384
Non-deductible expenses	(147)	260	357
Unamortized intangible assets	—	—	(189,410)
2020 Cares Act	—	(8,694)	—
Other	1,689	(112)	(456)
Income tax	$ 6,276	$ (1,706)	$ (1,594)
Effective tax rate	(12.1)%	(9.4)%	18.1 %

U.S. dollars in thousands (except share and per share data)

c. Deferred income tax

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	December 31,	
	2021	2020
Deferred tax assets:		
Unamortized intangible assets	$ 138,978	$ 157,930
Impact of revenue recognition	$ 112,251	$ 131,395
Net operating loss carryforwards	$ 77,664	$ 40,314
Share based compensation	$ 25,644	$ 17,595
Research and development	$ 12,146	$ 9,186
Interest limitations	$ 7,948	$ 6,975
Lease liability	$ 4,836	$ 1,006
Other temporary differences	$ 3,032	$ 2,822
Total gross deferred tax assets	$ 382,499	$ 367,223
Less: valuation allowance	(375,717)	(364,082)
Total deferred tax assets	6,782	3,141
Deferred tax liabilities:		
Right of use assets	4,559	936
Fixed assets	2,214	2,185
Other liabilities	9	20
Total gross deferred tax liabilities	$ 6,782	$ 3,141
Net deferred taxes assets (liability)	$ —	$ —

d. Carryforward loss:

The Company had $790,668 of gross non-U.S net operating carryforwards (NOLs) as of December 31, 2021 of which $1,968 carry forward indefinitely. The remainder expires from 2026 through 2038.

Approximately $783,347 of these NOLs are attributable to Novocure Switzerland with $405,553 available at the Federal level and $377,794 available at the cantonal level.

In the U.S., the Company had $98,120 of U.S. federal NOLs and $124,146 of U.S. state NOLs. The U.S. federal NOLs carry forward indefinitely. Also, approximately $24,263 in U.S. state NOLs carry forward indefinitely, with the remainder expiring from 2023 through 2040.

U.S. dollars in thousands (except share and per share data)

e. Uncertain tax benefits:

A reconciliation of the beginning and ending balances of uncertain tax benefits is as follows:

	December 31,		
	2021	2020	2019
Balance at beginning of the year	$ 297	$ 116	$ 103
Additions (reductions) for taxes positions related to prior years	(143)	181	13
Balance at the end of the year	$ 154	$ 297	$ 116

The Company recognizes interest and penalties related to unrecognized tax benefits in tax expense. During the years ended December 31, 2021, 2020 and 2019, the Company accrued $5, $21 and $13, respectively, for interest and penalties expenses related to uncertain tax positions.

The Company files income tax returns in the U.S. and various state and foreign jurisdictions. Currently, the Company is under examination by the tax authorities in Israel for the tax years 2017, 2018 and 2019 and is not under examination by any other tax authority. Additional tax years within the period 2015 to 2020 remain subject to examination by the U.S. Internal Revenue Service. Furthermore, tax years 2015 to 2020 remain subject to examination in other U.S. state and municipal jurisdictions, as well as foreign jurisdictions.

Note 14: Share capital

Share capital is composed as follows:

	Issued and outstanding Number of shares December 31,	
	2021	2020
Ordinary shares no par value	103,971,263	102,334,276

Equity incentive plans:

Stock option plan

Until the IPO in October 2015, the Company maintained and granted option awards under the 2003 Share Option Plan (the "2003 Plan") and the 2013 Equity Incentive Share Option Plan (the "2013 Plan") for the Company's officers, directors, employees and advisors. The 2003 Plan and the 2013 Plan terminated as of the IPO as to future awards, but they continue to govern option awards previously granted thereunder.

In September 2015, the Company adopted the 2015 Omnibus Incentive Plan (the "2015 Plan"). The Company's shareholders approved the 2015 Plan in September 2015. Under the 2015 Plan, the Company can issue various types of equity compensation awards such as restricted shares, performance shares, restricted stock units ("RSUs"), performance share units ("PSUs"), long-term cash award and other share-based awards. Options granted under the 2015 Plan generally have a vesting period of four years and expire ten years after the date of grant. RSUs granted under the 2015 Plan vest in equal installments over three years. PSUs granted under the 2015 Plan generally vest have a vesting period between three and six years, as performance targets are attained. Options, RSUs and PSUs granted under the 2015 Plan that are canceled before expiration become available for future grants.

On December 31, 2021, in accordance with the terms of the 2015 Plan, the number of shares available for issuance under the 2015 Plan automatically increased by 4% of the Company's outstanding ordinary shares as of December 31, 2021. As a result, the number of shares available for issuance under the 2015 Plan increased from 35,107,569 shares to 39,264,853 shares. As of December 31, 2021,18,581,409 ordinary shares are available for grant under the 2015 Plan.

Employee Stock Purchase Plan

In September 2015, the Company adopted an ESPP to encourage and enable eligible employees to acquire ownership of the Company's ordinary shares purchased through accumulated payroll deductions on an after-tax basis. The ESPP is intended to be an "employee stock purchase plan" within the meaning of Section 423 of the Code and the provisions of the ESPP will be construed in a manner consistent with the requirements of such

U.S. dollars in thousands (except share and per share data)

section. The Company began its offerings under the ESPP on August 1, 2016. The Company issued 51,370 ordinary shares for the plan period from January 1, 2021 through December 31, 2021.

The terms of the ESPP provide that on December 31 of each year, the number of shares available for purchase by eligible employees who participate in the ESPP automatically increases by 1% of the Company's outstanding ordinary shares outstanding, unless the Company determines that such an increase is not necessary. The Company determined that an such increase was not necessary and no such increase took place. As of December 31, 2021, 4,954,997 ordinary shares are available for offering under the ESPP.

The fair value of share-based awards was estimated using the Black-Scholes model for all equity grants and for market condition awards. The Company also applied the Monte-Carlo simulation model, with the following underlying assumptions:

	Year ended December 31,		
	2021	2020	2019
Stock Option Plans			
Expected term (years)	5.50-6.00	5.50-6.00	5.50-6.00
Expected volatility	60%-63%	54%-56%	55%-61%
Risk-free interest rate	0.78%-1.27%	0.30%-0.86%	1.73%-2.40%
Dividend yield	0.00 %	0.00 %	0.00 %
ESPP			
Expected term (years)	0.50	0.50	0.50
Expected volatility	54%-81%	47%-66%	44%-62%
Risk-free interest rate	0.05%-0.09%	0.17%-1.57%	2.10%-2.51%
Dividend yield	0.00 %	0.00 %	0.00 %

A summary of the status of the Company's options to purchase ordinary shares as of December 31, 2021 and changes during the year ended on that date is presented below:

	Year ended December 31, 2021		
	Number of options	Weighted average exercise price	Aggregate intrinsic value
Outstanding at beginning of year	9,220,326	$ 26.21	
Granted	466,360	149.96	
Exercised	(1,016,369)	20.81	
Forfeited and cancelled	(120,995)	62.77	
Outstanding at end of year	8,549,322	$ 33.09	$ 394,997
Exercisable options	5,145,149	$ 19.76	$ 285,295

A summary of the status of the Company's RSUs and PSUs as of December 31, 2021 and changes during the year ended on that date is presented below:

U.S. dollars in thousands (except share and per share data)

	Year ended December 31, 2021		
	Number of RSUs/PSUs	Weighted average grant date fair value price	Aggregate intrinsic value
Unvested at beginning of year	4,466,151	$ 54.06	
Granted	632,275	138.37	
Vested	(569,248)	52.63	
Forfeited and cancelled	(70,071)	94.41	
Unvested at end of year (1)	4,459,107	$ 65.56	$ 334,790

Includes PSUs that have a mix of service, market and other milestone performance vesting conditions which are vested upon achievements of market and performance conditions which are not probable, as of December 31, 2021, in accordance with ASC 718 as follows:

December 31, 2021		
Number of PSUs	Fair value at grant date per PSU	Total fair value at grant date
2,703,852	$ 48.16	$ 130,218
108,113	69.37	7,500
17,712	84.68	1,500
10,532	94.94	1,000
189,626	$ 114.26	$ 21,667
3,029,835		$ 161,885

These PSUs will be expensed over the performance period when the vesting conditions become probable in accordance with ASC 718.

The total equity-based compensation expense related to all of the Company's equity incentive plans recognized for the years ended December 31, 2021, 2020 and 2019, was comprised as follows:

	Year ended December 31,		
	2021	2020	2019
Cost of revenues	$ 3,471	$ 2,221	$ 2,231
Research, development and clinical studies	27,597	18,125	7,570
Sales and marketing	22,673	17,672	11,897
General and administrative	41,159	37,703	30,718
Total share-based compensation expense	$ 94,900	$ 75,721	$ 52,416

As of December 31, 2021, unamortized share-based compensation costs amounted to $96,379 and are expected to be recognized over a weighted average period of approximately 2.63 years.

The weighted average grant date exercise price of the Company's options granted during the years ended December 31, 2021, 2020 and 2019 were $149.96, $71.87 and $50.45 per share, respectively.

The weighted average grant date fair values of the Company's options forfeited and cancelled during the years ended December 31, 2021, 2020 and 2019 were $62.77, $22.98 and $22.11, respectively.

The aggregate intrinsic values for the options exercised during the years ended December 31, 2021, 2020 and 2019 were $143,695, $156,910 and $266,626, respectively. The aggregate intrinsic value is calculated as the difference between the per share exercise price and the deemed fair value of the Company's ordinary shares for each share subject to an option multiplied by the number of shares subject to options at the date of exercise. The Company

U.S. dollars in thousands (except share and per share data)

deemed the fair value of the Company's ordinary shares to be $75.08, $173.04 and $84.27 per share as of December 31, 2021, 2020, and 2019, respectively.

Options outstanding as of December 31, 2021 are as follows:

Exercise price	Number of options outstanding	Weighted average remaining contractual term	Number of options exercisable	Weighted average remaining contractual term
$		(years)		(years)
0.00 - 10.00	1,116,075	4.48	1,116,075	4.48
10.01 - 20.00	2,668,814	4.94	1,787,295	4.74
20.01 - 30.00	1,886,852	5.53	1,461,424	5.35
30.01 - 40.00	331,417	6.56	272,217	6.54
40.01 - 60.00	1,200,783	7.29	274,740	7.21
60.01 - 100.00	871,555	8.18	227,804	8.13
100.01 - 160.00	462,606	9.25	5,594	8.85
160.01 - 220.00	11,220	9.42	—	0.00
	8,549,322	5.97	5,145,149	5.24

Note 15: Financial expenses, net

The following table sets forth the Company's total financial expenses, net:

	Year ended December 31,		
	2021	2020	2019
Financial expenses:			
Interest expense	$ (101)	$ (13,068)	$ (13,718)
Revolving credit facility fee	(588)	(79)	—
Amortization of discount and issuance costs	(3,339)	(4,514)	(156)
Foreign currency transaction losses	(4,032)	—	(431)
Others	(779)	(389)	(338)
	$ (8,839)	$ (18,050)	$ (14,643)
Financial income:			
Amortization of investments premium	$ 306	$ 1,316	$ 2,331
Foreign currency transaction gains	—	2,648	—
Interest income	791	1,787	4,402
	$ 1,097	$ 5,751	$ 6,733
Total financial expenses, net	$ (7,742)	$ (12,299)	$ (7,910)

Note 16: Basic and diluted net income (loss) per share

Basic net income (loss) per share is computed based on the weighted average number of ordinary shares outstanding during each period. Diluted net income per share is computed based on the weighted average number of ordinary shares outstanding during the period, plus potential dilutive shares (deriving from options, RSUs, PSUs, convertible notes and the ESPP) considered outstanding during the period, in accordance with ASC 260-10, as determined under the treasury stock method.

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The following table sets forth the computation of the Company's basic and diluted net loss per ordinary share:

	Year ended December 31,		
	2021	2020	2019
Net income (loss) attributable to ordinary shares as reported	$ (58,351)	$ 19,808	$ (7,230)
Net income (loss) used in computing basic net income (loss) per share	$ (58,351)	$ 19,808	$ (7,230)
Adjustment needed in calculating diluted net income (loss) per share	—	—	—
Net income (loss) used in computing diluted net income (loss) per share	$ (58,351)	$ 19,808	$ (7,230)
Weighted average number of ordinary shares used in computing basic net income (loss) per share	103,433,274	100,930,866	97,237,549
Potentially dilutive shares that were excluded from the computation of basic net income (loss) per share:			
Options	—	6,967,554	—
Restricted share units	—	945,612	—
ESPP	—	33,616	—
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	103,433,274	108,877,648	97,237,549
Weighted anti-dilutive shares outstanding which were not included in the diluted calculation	8,524,922	1,307,762	10,230,982
Basic net income (loss) per ordinary share	$ (0.56)	$ 0.20	$ (0.07)
Diluted net income (loss) per ordinary share	$ (0.56)	$ 0.18	$ (0.07)

Note 17: Subcontractor

In certain markets and for certain key components, the Company is currently dependent upon sole source suppliers used in its devices. The Company's management believes that in most cases other suppliers could provide similar components at comparable terms. A change of suppliers which requires FDA or other regulatory approval, however, could cause a material delay in manufacturing and a possible loss of sales, which could adversely affect the Company's operating results and financial position.

Note 18: Supplemental information

The following table presents long-lived assets by location:

	December 31,	
	2021	2020
United States	$ 23,263	$ 11,868
Israel	5,297	4,370
Switzerland	4,085	2,849
Germany	1,020	1,075
Japan	799	1,230
Others	1,152	1,233
Total long-lived assets	$ 35,616	$ 22,625

The Company's net revenues by geographic region, based on the patient's location are summarized as follows:

	Year ended December 31,		
	2021	2020	2019
United States	$ 353,110	$ 340,782	$ 232,805
EMEA:			
Germany	93,939	93,264	86,564
Other EMEA	30,577	18,654	8,782
Japan	34,640	29,076	17,912
Greater China (1)	22,765	12,590	5,255
Total net revenues	$ 535,031	$ 494,366	$ 351,318

(1) For additional information, see Note 12.

Note 19: Selected quarterly financial information (Unaudited)

The following table sets forth selected financial information for the Company:

	2021			
	Three months ended			
	December 31	September 30	June 30	March 31
Net revenues	$ 133,213	$ 133,606	$ 133,517	$ 134,695
Gross profit	103,526	103,400	104,918	108,310
Operating income (loss)	(23,398)	(8,552)	(12,295)	(88)
Net income (loss)	(26,458)	(13,124)	(14,641)	(4,128)
Basic net income (loss) per ordinary share	$ (0.25)	$ (0.13)	$ (0.14)	$ (0.04)
Weighted average number of ordinary shares used in computing basic net income (loss) per share	103,884,288	103,731,147	103,484,866	102,633,545
Diluted net income (loss) per ordinary share	$ (0.25)	$ (0.13)	$ (0.14)	$ (0.04)
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	103,884,288	103,731,147	103,484,866	102,633,545

	2020			
	Three months ended			
	December 31	September 30	June 30	March 31
Net revenues	$ 143,953	$ 132,660	$ 115,925	$ 101,828
Gross profit	115,817	104,265	90,451	77,332
Operating income (loss)	12,092	15,022	6,668	(3,381)
Net income (loss)	4,917	9,284	1,655	3,952
Basic net income (loss) per ordinary share	$ 0.05	$ 0.09	$ 0.02	$ 0.04
Weighted average number of ordinary shares used in computing basic net income (loss) per share	101,945,085	101,234,306	100,718,893	99,877,567
Diluted net income (loss) per ordinary share	$ 0.04	$ 0.09	$ 0.02	$ 0.04
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	110,604,714	108,643,814	107,647,802	108,100,623

	2019			
	Three months ended			
	December 31	September 30	June 30	March 31
Net revenues	$ 99,234	$ 92,062	$ 86,713	$ 73,309
Gross profit	74,448	69,162	65,607	53,495
Operating income (loss)	153	3,855	1,196	(6,118)
Net income (loss)	4,260	1,930	(1,270)	(12,150)
Basic net income (loss) per ordinary share	$ 0.04	$ 0.02	$ (0.01)	$ (0.13)
Weighted average number of ordinary shares used in computing basic net income (loss) per share	99,226,445	98,485,519	96,356,317	94,811,282
Diluted net income (loss) per ordinary share	$ 0.04	$ 0.02	$ (0.01)	$ (0.13)
Weighted average number of ordinary shares used in computing diluted net income (loss) per share	107,911,519	107,604,578	96,356,317	94,811,282

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K have been designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. We believe that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

(b) Management's Annual Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d- 15(f) under the Exchange Act. Our 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 general accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. In making this assessment, it used the criteria established in Internal Control- Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on such assessment, management has concluded that, as of December 31, 2021, our internal control over financial reporting is effective based on those criteria.

(c) Attestation Report of the Registered Public Accounting Firm

The effectiveness of our internal control over financial reporting as of December 31, 2021, has been audited by Kost Forer Gabbay & Kasierer, a member of Ernst & Young Global, an independent registered public accounting firm, as stated in their attestation report, which is included herein.

(d) Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

On February 22, 2022, Todd Longsworth, our General Counsel since 2012, resigned March 31, 2022. Mr. Longsworth will continue to serve as Senior Legal Advisor for a subsequent 12-month period. On February 23, 2022 Barak Ben-Arye, currently our Vice President, EMEA Counsel, was appointed General Counsel, effective April 1, 2022.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information concerning our executive officers required by this Item 10 is provided under the caption "Information about our Executive Officers" in Part I hereof.

The remaining information required by Item 10 is incorporated herein by reference to the information contained under the captions "Proposal 1 — Election of Directors," "Corporate Governance," "Delinquent Section 16(A) Reports" and "Proposal 2 – Approval and Ratification of Appointment of Independent Registered Public Accounting Firm" in our definitive proxy statement related to the 2021 annual meeting of shareholders.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is incorporated by reference to the information contained under the caption "2020 Director Compensation," "Compensation Discussion and Analysis — Executive Compensation" and "Compensation Committee Report" in our definitive proxy statement related to the 2021 annual meeting of shareholders.

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

The information required by Item 12 regarding the ownership of our ordinary shares is incorporated by reference to the information contained under the caption "Information About Stock Ownership — Security Ownership of Certain Beneficial Owners And Management" in our definitive proxy statement related to the 2021 annual meeting of shareholders.

The information required by Item 12 with respect to securities authorized for issuance under our equity compensation plans is provided under the caption "Equity Compensation Plan Information" in Part II, Item 5 hereof.

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

The information required by Item 13 is incorporated by reference to the information contained under the captions "Proposal 1 – Election of Directors," "Corporate Governance," and "Certain Relationships and Related Party Transactions" in our definitive proxy statement related to the 2021 annual meeting of shareholders.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by Item 14 is incorporated by reference to the information contained under the caption "Proposal 2 – Approval and Ratification of Appointment of Independent Registered Public Accounting Firm" in our definitive proxy statement related to the 2021 annual meeting of shareholders.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) DOCUMENTS FILED AS PART OF THIS REPORT

The following is a list of our consolidated financial statements and our subsidiaries and supplementary data included in this Annual Report on Form 10-K under Item 8 of Part II hereof:

1. FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA

Report of Independent Registered Public Accounting Firm.

Consolidated Balance Sheets as of December 31, 2021, 2020 and 2019.

Consolidated Statements of Operations for the years ended December 31, 2021, 2020 and 2019.

Consolidated Statement of Comprehensive Loss for the years ended December 31, 2021, 2020 and 2019.

Consolidated Statements of Shareholders' Equity for the years ended December 31, 2021, 2020 and 2019

Consolidated Statements of Cash Flows for the years ended December 31, 2021, 2020 and 2019.

Notes to Consolidated Financial Statements.

2. FINANCIAL STATEMENT SCHEDULES

Schedules are omitted because they are not applicable or are not required, or because the required information is included in the consolidated financial statements or notes thereto.

(b) EXHIBITS

The following is a list of exhibits filed as part of this Annual Report on Form 10-K. Where so indicated by footnote, exhibits that were previously filed are incorporated by reference. For exhibits incorporated by reference, the location of the exhibit in the previous filing is indicated.

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
3.1	Memorandum of Association	S-1/A	9/21/15	3.3	
3.2	Amended and Restated Articles of Association	8-K	6/6/18	3.2	
4.1	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934	10-K	2/27/20	4.1	
4.2	Eleventh Amended and Restated Investors Rights Agreement, dated June 1, 2015	DRS	6/24/15	4.2	
4.3	Tenth Amended and Restated Registration Rights Agreement, dated June 1, 2015	DRS	6/24/15	4.3	
4.4	Indenture, dated November 5, 2020, between NovoCure Limited. and U.S. Bank National Association	8-K	11/5/20	4.1	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
4.5	Form of 0% Convertible Senior Note due 2025 (included in Exhibit 4.4)	8-K	11/5/20	4.2	
10.1	Credit Agreement dated November 6, 2020 among NovoCure Limited, the subsidiary borrowers party thereto, the lenders party thereto and J.P. Morgan Chase Bank, N.A., as administrative agent	8-K	11/9/20	10.1	
10.2	License and Collaboration Agreement, dated as of September 10, 2018, between NovoCure Limited and Zai Lab (Shanghai) Co., Ltd.	10-Q	10/25/18	10.2	
10.3	Settlement Agreement with the Technion, dated February 10, 2015	DRS/A	8/11/15	10.13	
10.4	2003 Share Option Plan#	DRS	6/24/15	10.3	
10.5	2013 Share Option Plan#	DRS	6/24/15	10.4	
10.6	2015 Omnibus Incentive Plan#	S-1/A	9/21/15	10.5	
10.7	Director Compensation Plan#	S-1/A	9/21/15	10.14	
10.8	Employee Share Purchase Plan#	S-1/A	9/21/15	10.15	
10.9	Form of Non-Qualified Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan (U.S. individuals)#	S-1/A	9/21/15	10.17	
10.10	Form of Incentive Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan (U.S. individuals)#	S-1/A	9/21/15	10.18	
10.11	2015 Omnibus Incentive Plan, including 2015 Omnibus Incentive Plan Sub-Plan for Grantees Subject to Israeli Taxation and 2015 Omnibus Incentive Plan Sub-Plan for Switzerland#	8-K	12/22/15	10.1	
10.12	Form of Incentive Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan for use in connection with the 2015 Omnibus Incentive Plan Sub-Plan for Grantees Subject to Israeli Taxation (non-102(b) grants)#	8-K	12/22/15	10.2	
10.13	Form of Incentive Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan for use in connection with the 2015 Omnibus Incentive Plan Sub-Plan for Grantees Subject to Israeli Taxation (102(b) grants)#	8-K	12/22/15	10.3	
10.14	Form of Stock Option Award Agreement based on the 2015 Omnibus Incentive Plan for use in connection with the 2015 Omnibus Incentive Plan Sub-Plan for Switzerland#	8-K	12/22/15	10.4	
10.15	Form of Incentive Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan for use in Japan#	8-K	12/22/15	10.5	
10.16	Form of Stock Option Award Agreement based on the 2015 Omnibus Incentive Plan for use in Germany#	10-K	3/1/16	10.25	
10.17	Form of Incentive Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan#	8-K	5/12/17	10.1	
10.18	Form of Non-Qualified Stock Option Agreement pursuant to the 2015 Omnibus Incentive Plan#	8-K	5/12/17	10.2	
10.19	Form of Incentive Stock Option Agreement pursuant to the NovoCure Limited 2015 Omnibus Incentive Plan – Form of Performance Option Agreement for Israel#	8-K	4/4/18	10.1	
10.20	NovoCure Limited Policy on Recoupment of Incentive Compensation#	8-K	8/1/17	99.1	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
10.21	Form of Indemnification Agreement	8-K	3/22/16	10.1	
10.22	Employment Agreement, dated as of May 11, 2016, by and between Novocure USA LLC and William F. Doyle#	8-K	5/13/16	10.1	
10.23	Amendment #1 to Employment Agreement between Novocure USA LLC and William F. Doyle dated February 24, 2021#	10-K	2/25/21	10.23	
10.24	Israeli SubPlan to the NovoCure Limited Employee Share Purchase Plan#	8-K	6/30/16	10.1	
10.25	Non-Employee Director Compensation Program#	10-Q	7/25/19	10.1	
10.26	Employment Agreement, dated as of October 10, 2016, by and between NovoCure (Israel) Ltd. and Asaf Danziger#	8-K	10/14/16	10.1	
10.27	Employment Agreement, dated as of October 10, 2016, by and between Novocure USA LLC and Wilhelmus Groenhuysen#	8-K	10/14/16	10.2	
10.28	Amended and Restated Employment Agreement dated as of September 1, 2020 by and between Novocure USA LLC and Wilhelmus Groenhuysen#	8-K	8/13/20	10.1	
10.29	Employment Agreement, dated as of October 10, 2016, by and between NovoCure USA LLC and Michael J. Ambrogi#	8-K	10/14/16	10.3	
10.30	Amended and Restated Employment Agreement, dated as of September 1, 2002, by and between NovoCure USA LLC and Michael J. Ambrogi#	8-K	8/13/20	10.30	
10.31	Employment Agreement, dated as of September 1, 2020, by and between NovoCure USA LLC and Ashley Cordova#	8-K	8/13/20	10.2	
10.32	Employment Agreement, dated as of July 25, 2018, between Novocure USA LLC and Pritesh Shah#	10-Q	10/25/18	10.1	
10.33	Form of Restricted Share Unit Award Notice pursuant to the 2015 Omnibus Incentive Plan – Form of Agreement for USA#	10-K	2/23/17	10.28	
10.34	Form of Restricted Share Unit Award Notice pursuant to the 2015 Omnibus Incentive Plan – Form of Agreement for Israel#	10-K	2/23/17	10.29	
10.35	Form of Restricted Share Unit Award Notice pursuant to the 2015 Omnibus Incentive Plan – Form of Agreement for Switzerland#	10-K	2/23/17	10.30	
10.36	Form of Restricted Share Unit Award Notice pursuant to the 2015 Omnibus Incentive Plan – Form of Agreement for Japan#	10-K	2/23/17	10.31	
10.37	Form of Restricted Share Unit Award Notice pursuant to the 2015 Omnibus Incentive Plan – Form of Agreement for Germany#	8-K	4/4/18	10.2	
10.38	Form of Performance-Based Share Unit Award for Executive Chairman and Chief Executive Officer#	8-K	3/6/20	10.1	
10.39	Form of Performance-Based Share Unit Award for Certain Executive Officers#	8-K	3/6/20	10.2	
10.40	First Addendum dated June 9, 2020 to License and Collaboration Agreement, dated as of September 10, 2018, between NovoCure Limited and Zai Lab (Shanghai) Co., Ltd.**	10-K	2/25/21	10.40	
10.41	Purchase and Sale Agreement dated December 1, 2021 by and between 64 Vaughan Mall, LLC and Novocure Inc.				X

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
10.42	Construction Agreement dated December 30, 2021 by and between Hanover Development Corporation and Novocure Inc.**				X
10.43	Amendment No. 1 dated as of December 6, 2021 to Credit Agreement dated as of November 6, 2020				X
21	Subsidiaries				X
23.1	Consent of Independent Registered Public Accounting Firm				X
31.1	Certification of Principal Executive Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				X
31.2	Certification of Principal Financial Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended				X
32.1*	Certification of Principal Executive Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. §1350				X
32.2*	Certification of Principal Financial Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. §1350				X
101.INS	Inline XBRL Instance Document				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	Inline XBRL Extension Presentation Linkbase Document				X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				X

* The certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of NovoCure Limited 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 this Form 10-K, irrespective of any general incorporation language contained in such filing.

† Confidential treatment has been granted for certain information set forth in this exhibit. Such information has been omitted and filed separately with the Securities and Exchange Commission.

Compensation plans and arrangements for executive officers and others.

** Portions of the referenced exhibit have been omitted pursuant to Item 601(b)(10) of Regulation S-K

This Annual Report on Form 10-K includes trademarks of NovoCure Limited and other persons. All trademarks or trade names referred to herein are the property of their respective owners.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

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

Date: February 24, 2022

NovoCure Limited

By: /s/ Asaf Danziger
Asaf Danziger
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Date:	Signature	Title
February 24, 2022	/s/ Asaf Danziger Asaf Danziger	Chief Executive Officer and Director (Principal Executive Officer)
February 24, 2022	/s/ Ashley Cordova Ashley Cordova	Chief Financial Officer (Principal Financial and Accounting Officer)
February 24, 2022	/s/ William F. Doyle William F. Doyle	Executive Chairman and Director
February 24, 2022	/s/ Jeryl L. Hilleman Jeryl L. Hilleman	Director
February 24, 2022	/s/ David T. Hung David T. Hung	Director
February 24, 2022	/s/ Kinyip Gabriel Leung Kinyip Gabriel Leung	Director
February 24, 2022	/s/ Martin J. Madden Martin J. Madden	Director
February 24, 2022	/s/ Sherilyn D. McCoy Sherilyn D. McCoy	Director
February 24, 2022	/s/ Timothy J. Scannell Timothy J. Scannell	Director
February 24, 2022	/s/ William A. Vernon William A. Vernon	Director

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this 1st day of December, 2021 by and between **64 Vaughan Mall, LLC**, a New Hampshire limited liability company with an address of 41 Industrial Drive, Unit 20, Exeter, New Hampshire 03833 (the "Seller"), and **Novocure Inc.**, a Delaware corporation, having an address of 195 Commerce Way, Portsmouth, New Hampshire 03801 (the "Buyer").

1. Purchase and Sale.

Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, and Buyer agrees to purchase and pay for certain property with all buildings, municipal land use permits, and improvements (the "Improvements") thereon located at 64 Vaughan Mall, Portsmouth, New Hampshire more particularly described in Seller's deed recorded in the Rockingham County Registry of Deeds at Book 6163, Page 19, and including all right, title and interest of Seller in and to all rights, privileges and easements appurtenant to the property, including, without limitation, all development rights, air rights, water rights, and riparian rights relating to the property, and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the property, and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the property (collectively the "Property"); all right, title and interest of Seller in and to all permits, licenses and approvals with respect to the ownership, use and occupancy of the Property and the Improvements and any all other intangible property now or hereafter owned by Seller and used in the ownership of the Property; and all HVAC, boiler systems, mechanical systems, and related systems and components, and other personal property and fixtures owned by Seller located on or in or used in connection with the ownership of the Property except to the extent rejected by Buyer as of the expiration of the Due Diligence Period (as defined in Section 5 below).

2. Purchase Price.

The purchase price for the Property (the "Purchase Price") is Nine Million Five Hundred Thousand and 00/100 Dollars ($9,500,000.00) and shall be payable as follows:

(a) Upon execution of this Agreement, Buyer shall deliver a deposit of Four Hundred Seventy-Five Thousand and 00/100 Dollars ($475,000.00) by wire transfer or by other immediately available funds to Bosen & Associates, PLLC (the "Escrow Agent") to be held in escrow by the Escrow Agent. The Deposit shall be held by the Escrow Agent in a non-interest-bearing account as an earnest money deposit hereunder and shall be applied at the closing of title to be held pursuant to Section 9 hereof (the "Closing") towards payment of the Purchase Price. The Deposit shall be held in escrow in accordance with Section 17 hereof.

(b) Except as otherwise set forth herein, the Deposit shall be non-refundable upon the expiration of the Due Diligence Period except in the event of a Seller default or as otherwise set forth herein.

(c) The balance of the Purchase Price, Nine Million Twenty-Five Thousand and 00/100 Dollars ($9,025,000.00) shall be paid to Seller by Buyer at the Closing by wire transfer or by other immediately available funds, subject to the adjustments required in this Agreement in accordance with the terms hereof.

3. Title.

(a) Seller shall convey the Property to Buyer by Warranty Deed. Title will be good and clear, record and marketable and insurable title pursuant to an ALTA standard form title policy. Buyer shall, at its option and at its sole cost and expense, obtain a title examination of the Property. It is a condition to Buyer's obligations hereunder that title to the Property will be free and clear of all pledges, security interests or other monetary encumbrances, and of all agreements, leases, easements, restrictions and encumbrances, except (i) zoning, Property use and other governmental laws, rules and regulations; (ii) utility and other rights-of-way and/or easements of record, if any; (iii) roads, highways and other public rights of way; (iv) matters created, suffered or permitted by or through the Buyer; (v) any defects of title accepted by Buyer pursuant to Section 3(b); and (vi) real estate taxes or other assessments on the Property not yet due and payable for the current tax year. Buyer shall have the option to have the Seller convey the Property directly to a wholly-owned subsidiary of Buyer.

(b) Buyer shall notify Seller in writing of any objections with respect to title on or before the expiration of the Due Diligence Period, failing which this condition shall be deemed met or waived, excepting only title or survey matters which are recorded, or arise with respect to survey matters, after the date of Buyer's title examination and survey of the Property. If Buyer asserts any objections in title that would make Seller unable to convey title to the Property as described in paragraph (a) above, then Buyer shall notify Seller, and Seller will have thirty (30) days after receipt of notice of such objection within which either to remedy or cure any such objection of title, and the Closing Date (as defined in Section 9(a) below) will be extended accordingly, if necessary, to enable Seller to so remedy or cure such objection(s) of title. If such objections of title are not corrected or remedied within such time period, then Buyer will elect to either (i) accept title to the Property subject to the uncured objections of title without reduction of the Purchase Price and without any right to damages or other liability on the part of Seller, or (ii) terminate this Agreement and have the Deposit returned to Buyer, and all obligations of the parties hereunder shall cease and neither party will have any claim against the other by reason of this Agreement. Seller is not obligated to bring any actions or to expend any money to clear any objections of title.

4. Adjustments and Costs.

Real estate taxes, water and sewer charges, and other assessments affecting the Property shall be apportioned between Seller and Buyer as of the Closing Date. All New Hampshire real estate property transfer taxes shall be shared equally by the Seller and the Buyer.

5. Buyer's Due Diligence Review.

1. Seller has provided Buyer with any and all plans, municipal land use approvals, surveys, property contracts (if any), environmental site assessments and any other documents in Seller's possession with respect to the Property as of the Effective Date of this Agreement. In doing so, Seller makes no representations with respect to the accuracy or completeness of such items except with respect to approvals as set forth in Section 6(k). Subject to any specific limitations or other provisions hereof, Buyer will have until December 15, 2021 (the "Due Diligence Period") to perform all analysis, investigations, appraisals, inspections, assessments, or any other items the Buyer considers necessary to

investigate the Property, including a review of title and survey, environmental conditions, compliance with governing laws and existing approvals, including but not limited to with respect to Buyer's intended use of the Property as general office space with up to 240 workers. Should the results of Buyer's due diligence prove unsatisfactory to the Buyer for any reason and the Buyer so notifies the Seller in writing prior to the end of this due diligence period, Buyer may elect to terminate this Agreement and this Agreement will be null and void and the Deposit will be returned to Buyer, unless the Seller proposes to remedy any such defects and the Buyer elects to accept such remedy. If the Buyer elects to accept Seller's proposal to remedy any defects noted, the Closing Date shall be extended for the period of time required to correct any such defects to Buyer's satisfaction. Notwithstanding the foregoing, should Buyer determine as of the Closing Date that a non-appealable site plan approval necessary for Buyer's intended use of the Premises as general office space for up to 240 workers will not be in place as of the original Closing Date, in addition to having the right to terminate this Agreement and having the Deposit returned to Buyer, Buyer shall have the option to extend the due diligence period and Closing Date for up to four (4) additional thirty (30) day periods to allow site plan approval to be obtained.. Buyer may enter upon the Property to perform such tests and inspections subject to the following terms and conditions: (i) if, as a result of Buyer's inspections, the Property is disturbed or damaged in any way, Buyer shall, at its cost, immediately restore the condition of the Property as near as reasonably possible to that existing prior to entry by Buyer, its agents, employees and/or contractors, which obligation shall survive the termination of this Agreement for up to sixty (60) days; (ii) Buyer' inspections may not include subsurface tests, borings, or scans of the Property without Seller's prior consent; (iii) any entrance on the Property shall not occur unless Buyer has given Seller at least twenty-four (24) hours' advance written notice; and (iv) any entrance upon the Property shall be at Buyer's sole risk and expense. In furtherance thereof, Buyer agrees to indemnify, defend and hold Seller and its officers, directors, partners, shareholders, members, managers, principals and agents free and harmless from and against any and all claims, liabilities, obligations, damages, losses, causes of action and/or obligations, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) asserted against or incurred by Seller and/or its officers, directors, partners, shareholders, members, managers, principals and agents arising out of or in any manner relating to, occurring during, or connected with the performance of Buyer's inspections and/or Buyer's and/or its agents', employees' and/or consultants' entry upon the Property, except to the extent any such claims, etc. arise from the negligence or willful misconduct of Seller, and/or its officers, directors, partners, shareholders, members, managers, principals and agents or the mere discovery of any existing condition at the Property. Should the results of any such analysis, investigations, inspections, assessments or other items be for any reason whatsoever unsatisfactory to the Buyer, the Buyer shall have the option to terminate this Agreement by sending written notice to Seller prior to the expiration of the Due Diligence Period, in which event the Deposit shall be refunded to Buyer promptly and thereafter neither Seller nor Buyer shall have any further rights or obligations under this Agreement.

6. Representations and Warranties:

SELLER represents and warrants to Buyer that:

(a) Organization and Authority. Seller has been duly organized, validly exists, is in good standing in its state of organization and is qualified to do business in the State of New Hampshire. Seller has the full right, power and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing (collectively, the "Closing Documents") will be, authorized and duly executed and delivered by Seller and constitute, or will constitute, as appropriate, the legal, valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) Conflicts and Pending Actions. There is no agreement to which Seller is a party or that is binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement. Seller has not committed or obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any other party. No rights of first offer or rights of first refusal regarding the Property exist under the organizational documents of Seller or under any agreement by which Seller or the Property is or may be bound or affected.

(c) No Foreign Person. Seller is neither a "foreign person" nor a "foreign corporation" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

(d) Seller has received no written notice from any governmental authority of any violation of any applicable federal, state, or local statute, law, or regulation (including, without limitation, any applicable building, zoning, health, environmental or other law, ordinance, or regulation) pertaining to the Property which violation is still outstanding or of any pending or contemplated condemnation proceedings with respect to the Property.

(e) To Seller's knowledge, other than as disclosed in any environmental reports provided by Seller to Buyer and in any environmental reports obtained by Buyer during its inspection of the Property, no hazardous substances are present on, under or in the Property. Seller has not received any written notification from any governmental or public authority that the Property is currently in violation of any environmental laws.

(f) Seller is not aware of any zoning ordinance, permit or approval that would interfere with Buyer's intended use of the Property for general office space;

(g) Seller has received no written notice that any license, permit or approval applicable to the Property has been revoked.

(h) Seller has received no written notice of any violation of the Occupational Safety and Health Act and to Seller's knowledge, no such violations exist at the Property.

(i) At the time of the Closing, there will be no service, management, leasing, brokerage, and other contracts binding upon or affecting the Property.

(j) OFAC. Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees,

officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

(k) Site Plan Approval. Schedule 6(k) contains a list of all approvals obtained by Seller or pending with respect to the Property. No further revisions to the site plan approved by the City of Portsmouth Planning Board on August 19, 2021 ("Site Plan") are required for Buyer's proposed use of the Property for general office with the potential of up to 240 workers provided the Buyer does not increase the height or overall size of the existing building on the Property. Further, the City of Portsmouth has acknowledged that the following conditions to the Site Plan approval have been satisfied as of the Effective Date._____

7. BUYER represents and warrants to Seller that:

(a) Organization and Authority. Buyer has been duly organized, validly exists, is in good standing in the State of Delaware, and is qualified to do business in the State of New Hampshire. Buyer has the full right, power and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the Closing Documents executed by Buyer will be authorized and duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

(b) Conflicts and Pending Actions. There is no agreement to which Buyer is a party or that is binding on Buyer which is in conflict with this Agreement. There is no action or proceeding pending or, to Buyer's knowledge, which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

(c) No Foreign Person. Buyer is neither a "foreign person" nor a "foreign corporation" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

(d) OFAC. Neither Buyer nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

8. Possession and Conditions to Buyer's Performance.

(a) Subject to the terms of Section 3 hereof, Seller will deliver the Property at Closing free of all monetary liens and encumbrances, free of all tenants and occupants. Between

the Effective Date of this Agreement and Closing, Seller will (i) maintain the Property in the same order, condition, and repair as of the date hereof, and consistent with its past practices, reasonable wear and tear only excepted; (ii) operate the Property in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property; (iii) not enter into any lease or other occupancy agreement with respect to any portion of the Property; (iv) not make any alterations or additions to the Property without first obtaining Buyer's written approval, except as may be required by law or as may reasonably be required for the prudent repair and maintenance of the Property, (v) not change or attempt to change (or consent to any change in) the zoning or other legal requirements applicable to the Property without first obtaining Buyer's written approval, (vi) not cancel, amend or modify in any material respect any certificate, license, approval or permit held by or on behalf of Seller with respect to the Property, and (vii) not sell or encumber all or any portion of the Property or enter into any agreement with respect thereto.

(b) Seller shall promptly give Buyer a reasonably detailed written notice of: (i) any fire, flood or other material adverse change with respect to the Property; (ii) any actual or proposed condemnation (or proceeding in lieu thereof); (iii) any notice received by Seller claiming that the Property or the use and operation thereof fails to comply with applicable legal requirements; (iv) any notice received by Seller claiming that Seller is in default under any permit or approval with respect to the Property; and (v) any notice received by Seller concerning any pending or threatened litigation or administrative proceeding affecting the Property or Seller. If Seller becomes aware during the term of this Agreement of any matters that render any of its representations or warranties untrue, Seller shall promptly disclose such matters to Buyer in writing.

(c) Casualty and Condemnation. In addition to the performance or satisfaction in all material respects of all the other provisions of this Agreement by Seller, the Closing and the obligation of Buyer to buy the Property under this Agreement shall be conditioned expressly on the satisfaction of the following conditions at the Closing Date:

i. If there is a Material Casualty, Buyer may elect to terminate this Agreement and receive a return of the Deposit or to proceed with the purchase of the Property in accordance with this Agreement. As used in this Agreement, the term "Material Casualty" means any damage or destruction to the Property: (i) as to require expenditures in the aggregate of greater than $100,000 ("Restoration Cost") required to repair and restore the Improvements to their condition existing prior to such destruction or damage; (ii) that materially and adversely affects access to or parking at the Property; (iii) that causes the Property to fail to comply in any material respect with applicable legal requirements; or (iv) as to which the Seller is not entitled to repair and restore the Improvements to their condition existing prior to such destruction or damage without obtaining a variance, special permit or other similar discretionary permit or approval. In the event of a fire or other casualty that is not a Material Casualty, and in connection with any Material Casualty as to which Buyer elects to proceed with the purchase of the Property in accordance with this Agreement, (A) Buyer shall purchase the Property in accordance with the terms hereof without reduction in the Purchase Price (except that at the Closing Buyer will receive a credit for any applicable deductible) and (B) Seller shall assign to Buyer at Closing all property insurance proceeds paid or payable on account of such damage, (and the amount of any deductible shall be

credited against the Purchase Price). If the Closing Date would otherwise occur sooner, it shall automatically be extended to the date which is mutually agreeable to the parties, but which is at a maximum of twenty (20) business days after written notice to Buyer of the casualty. If any insurance proceeds paid or payable on account of a fire or other casualty are to be assigned to Buyer in accordance with the provisions of this Agreement, Seller shall cooperate as reasonably requested by Buyer to effectuate such assignment (including, if necessary, prosecuting claims in Buyer's name or for Buyer's benefit at Buyer's expense), and Seller's obligation to so cooperate shall survive the Closing. In the event of a fire or other casualty that is not a Material Casualty and is not covered by insurance, if Seller does not elect by written notice to Buyer by the earlier of five (5) days after such casualty or two (2) days before Closing to provide a credit against the Purchase Price at closing equal to the cost to repair and restore such uninsured damage, then Buyer may by written notice to Seller elect to terminate this Agreement and receive a return of the Deposit;

ii. If, at any time before completion of the Closing, a taking or condemnation (or proceeding in lieu thereof) is commenced or threatened in writing: (i) of all or substantially all of the Property; or (ii) of less than all or substantially all of the Property that: (1) causes the Property to fail to comply with legal requirements; (2) materially impairs access to or egress from the Property; (3) causes the loss of more than ten percent (10%) of any parking that benefits the Property; or (4) otherwise, in Buyer's reasonable business judgment, results in a loss of value in excess of $100,000 (any of the foregoing, a "Material Taking"), Buyer may, at Buyer's sole option, elect either to:

(x) terminate this Agreement and receive back the Deposit; or

(y) purchase the Property subject to and in accordance with this Agreement.

In the event of condemnation or taking that does not constitute a Material Taking, or if there is a Material Taking but Buyer elects to proceed hereunder, (1) Buyer shall purchase the Property in accordance with the terms hereof (without reduction in the Purchase Price), (2) Seller shall assign to Buyer at Closing all condemnation proceeds except for any separate award relating to Seller's business and paid or payable as a result of such condemnation. In the event of a condemnation or taking that constitutes a Material Taking, but Buyer elects to proceed, Buyer shall have the right to be present with Seller at any hearings or negotiations with respect thereto, and Seller shall not settle or compromise any such matter without Buyer's prior written consent which consent shall not be unreasonably withheld. If the Closing Date would otherwise occur sooner, it shall automatically be extended to the date that is twenty (20) business days after written notice to Buyer of the Material Taking.

(d) The representations of Seller contained in this Agreement shall be true and correct in all material respects as of Closing Date as if made on the Closing Date.

(e) Since the date of this Agreement, there shall have been no material adverse change in the condition of the Property (exclusive of any insured casualty or condemnation, which shall be governed as set forth above.

(f) Possession of the Property shall be delivered to Buyer by Seller at the Closing free and clear of (a) all leases, tenants and other occupants and (b) any management, leasing, service, maintenance or other contracts or agreements.

(g) The Buyer shall have entered into a construction agreement acceptable to Buyer in its sole discretion with Hampshire Development Corporation on a cost of work plus fee with guaranteed maximum price basis, with maximum price of $14,500,000 which shall include costs incurred by Seller in connection with the development of the Property as of the Closing Date to the extent in Buyer's reasonable opinion such costs benefit Buyer's use of the Property as general office space with up to 240 workers or are acceptable to Buyer.

9. Closing.

(a) The closing of title shall take place at the office of Bosen & Associates, PLLC, 266 Middle Street, Portsmouth, New Hampshire 03801 or at such other time and/or place as Seller and Buyer shall mutually agree, at noon on December 30, 2021 (the date of such closing being herein referred to as the "Closing Date").

(b) At the Closing, Seller will execute, have acknowledged, and deliver to Buyer (or a wholly-owned subsidiary of Buyer) a Warranty Deed conveying title to the Property. The Warranty Deed delivered by Seller will be subject only to those matters set forth in Section 3(a) of this Agreement, and to any defects of title accepted or waived by Buyer pursuant to Section 3(b) of this Agreement. Buyer shall deliver to Seller the Purchase Price, as adjusted for apportionments as provided herein, and which shall be paid or otherwise credited in accordance with the provisions hereof.

Each party shall deliver to the other such other documents as may be required herein or as may be necessary to fulfill its obligations under this Agreement.

(c) The Seller shall also deliver the following documents at or prior to the Closing:

i. An assignment of permits, assigning all permits, licenses and approvals with respect to Property to Buyer;

ii. Assignments and/or reliance letters satisfactory to Buyer with respect to any environmental or structural assessments of the Property upon which Buyer seeks to rely;

iii Certificates as evidence of the authority of persons executing this Agreement, duly executed and acknowledged as provided therein;

iv. A bill of sale conveying all of the right, title and interest of Seller in and to the personal property used in connection with the Property;

v. An affidavit and indemnity as to mechanics' liens and persons in possession in a customary form reasonably acceptable to Buyers' title insurance company;

vi. An affidavit stating that Seller is not a foreign person or entity within the meaning of Section 1445 of the Internal Revenue Code, and complying with the Internal Revenue Service Regulations promulgated pursuant to said Section 1445; and

vii. A letter from the City of Portsmouth that the existing Site Plan extends site plan approval with respect to Buyer's general office space use of the Property with up to 240 workers.

10. All risk of loss to the Property prior to the Closing will be on Seller.

11. Broker.
None.

12. Statutory Notifications.
By its execution of this Agreement, Buyer acknowledges receipt of the notifications required by NH RSA §§ 477:4-a and 477:4-d, copies of which are attached hereto and made a part hereof as Exhibit A.

13. Default.
(a) If Buyer defaults in performing its obligations hereunder prior to or at the Closing, and Seller has performed or tendered performance of its obligations hereunder, then (a) this Agreement shall terminate; (b) the Deposit shall remain the property of the Seller as liquidated damages; and (c) Seller and Buyer shall have no further obligations to each other. Buyer and Seller acknowledge that the damages to Seller in the event of a breach of this agreement by Buyer would be difficult or impossible to determine, that the amount of the Deposit represents the parties' best and most accurate estimate of the damages that would be suffered by Seller if the transaction should fail to close and that such estimate is reasonable under the circumstances existing as of the date of this Agreement and under the circumstances that Seller and Buyer reasonably anticipate would exist at the time of such breach. Buyer and Seller agree that Seller's right to retain the Deposit shall be Seller's sole remedy, at law and in equity, for Buyer's failure to purchase the Property in accordance with the terms of this Agreement, without further recourse.

(b) If Seller defaults in performing its obligations hereunder prior to or at the Closing, and Buyer has performed or tendered performance of its obligations hereunder, then subject to the terms and conditions hereof, Buyer's sole remedy will be to either (i) terminate this Agreement and have the Deposit theretofore paid returned to it and the parties shall be relieved of any further liability or obligation hereunder, or (ii) commence an action for specific performance or (iii) waive such default and consummate the transactions contemplated hereby in accordance with the terms of this Agreement.

14. Notices.
Whenever Seller or Buyer makes any demand or serves any notice upon the other under the terms of this Agreement, the same shall be in writing and shall be deemed sufficiently given only if personally delivered; or sent by prepaid nationally recognized overnight courier delivering against a signed receipt (e.g., FedEx); to the following addresses:

If to Seller: 64 Vaughan Mall, LLC
41 Industrial Drive, Unit 20
Exeter, NH 03833
Attention: Steven P. Wilson

With a copy to: John K. Bosen, Esquire
Bosen & Associates, PLLC
266 Middle Street
Portsmouth, NH 03801
Phone: (603) 427-5500

If to Buyer: Novocure Inc.
195 Commerce Way
Portsmouth, NH 03101
Attention: General Counsel

With a copy to: Margaret E. Probish, Esq.
Sheehan Phinney Bass & Green PA
1000 Elm Street, 17th Floor
Manchester, NH 03101
T 603.627.8256
mprobish@sheehan.com

A communication sent in compliance with this section shall be deemed given and received on the earliest to occur of: (i) in the case of a hand delivery, the date it is received or first refused; or (ii) in the case of overnight delivery, on the first business day next following the day the notice or communication was delivered to the carrier or first refusal. Communications may be signed, given and/or received by an attorney for a party to this Agreement.

15. Confidentiality. The parties hereto agree that the terms of this Agreement, including but not limited to the Purchase Price, shall remain confidential, and that copies of this Agreement, any and all amendment(s) to this Agreement, and the contents thereof, shall not be provided to anyone other than the parties or their respective attorneys, lenders, employees or representatives without the prior written consent of the parties hereto in each instance, unless a party is compelled to produce same by law or by a court of competent jurisdiction.

16. Section 1031 Exchange. The parties agree to cooperate with each other to effect a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. Each party shall incur no additional risk, cost, or expense in connection therewith or under this Agreement as a result of or in connection with the exchange by the other party. Notwithstanding the foregoing, it is understood that Buyer shall receive the deed for the Property directly from Seller.

17. Escrow Funds. The Deposit shall be held in a federally insured, non-interest bearing escrow account. In the event that Buyer or Seller sends written notice to Escrow Agent certifying to Escrow Agent that it is entitled to receive the Deposit pursuant to the terms of this Agreement (other than at the Closing), Escrow Agent shall promptly forward a copy of such certification to the other party pursuant to and in accordance with the notice provisions of Section 14 hereof. If Escrow Agent does not receive a written objection to such certification from the other party within ten (10) days after the date of receipt of such notice, Escrow Agent may disburse all such amounts to the certifying party. If Escrow Agent timely receives an objection or conflicting demand, Escrow Agent will have the right to do either of the following: (i) interplead the Deposit into a court of competent jurisdiction in Rockingham County, New Hampshire (the cost of doing so to be deducted from the Deposit), and the parties will thereafter be free to pursue their rights at law and/or in equity with respect to the disbursement of the Deposit, whereupon the Escrow Agent will be fully released and discharged from its duties and obligations under this Agreement; or (ii) resign and transfer the Deposit to a replacement escrow agent reasonably satisfactory to Buyer and Seller. Upon the transfer of Deposit to such mutually agreed upon replacement escrow agent, the Escrow Agent will thereupon be fully released and

discharged from all obligations to further perform any and all duties or obligations imposed upon it by this Agreement.

Escrow Agent will incur no liability hereunder whatsoever except in the event of its willful misconduct or negligence. Seller and Buyer, jointly and severally, agree to defend and indemnify the Escrow Agent against all reasonable costs, obligations and liabilities suffered by it for which it may be claimed to be liable hereunder, except for that occasioned by its willful misconduct or negligence. The indemnity provided in the preceding sentence will survive any termination of this Agreement. The fees of the Escrow Agent and costs incurred by it in performing its duties hereunder will be shared equally by the parties.

18. Miscellaneous.

(a) As used in this Agreement, the Effective Date shall be the later date of the execution of this Agreement by the Buyer or the Seller, as determined by reference to the signature dates annotated by the respective parties after their signatures.

(b) This Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective heirs, personal representatives, successors, and assigns.

(c) All prior discussions and agreements, written and/or oral, are merged herein. This Agreement may not be modified in any manner except by an instrument in writing signed by Seller and Buyer.

(d) This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of New Hampshire, and only in a court therein.

(e) **TIME IS OF THE ESSENCE WITH RESPECT TO EACH AND EVERY PROVISION HEREOF.**

(f) This Agreement may be executed in one or more identical counterparts, each of which for all purposes shall be deemed to be an original, and all of which shall collectively constitute but one agreement, fully binding upon, and enforceable against, the parties hereto. Signatures originally executed by hand, but transmitted or delivered by e-mail or facsimile, shall have the same binding effect and shall be as valid and enforceable as original signatures. Neither Seller nor Buyer shall be liable or responsible for any special, incidental, indirect, or consequential damages, including but not limited to lost profits or loss of business, arising out of or in any way relating to performance or non-performance under this Agreement, even if any party has knowledge of the possibility of such damages.

(g) By executing this Agreement, the Seller and Buyer hereby grant to their attorneys the actual authority to bind them for the sole limited purpose of allowing them to grant extensions, and the Seller and Buyer shall be able to rely upon signatures of said attorneys as binding unless they have actual knowledge that the principals have disclaimed the authority granted herein to bind them.

(h) Access. From and after the date of this Agreement, subject to the terms of Section 5, Seller agrees to permit Buyer (and Buyer's designees if accompanied by Buyer)

reasonable access, at reasonable times, to the Property for the purpose of making measurements and inspections, for construction tours, and to show the Improvements to prospective tenants.

The rest of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set out below.

SELLER: 64 Vaughan Mall, LLC

Date: December 1, 2021 By: /s/Steven P. Wilson
Print name: Steven P. Wilson
Print title: Manager
Duly authorized

BUYER: Novocure Inc.

By: /s/Wilco Groenhuysen
Date: December 1, 2021 Print name: Wilco Groenhuysen
Print title: Chief Operating Officer
Duly authorized

Exhibit A

--New Hampshire Statutory Notifications –
{CONFIRM APPLICABILITY/ACCURACY OF STATEMENTS BELOW}

Pursuant to NH RSA § 477:4-a, Seller hereby notifies Buyer as follows:

. *Radon Gas:* Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

. *Lead Paint:* Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

Pursuant to NH RSA § 477:4-d, Seller discloses as follows:

. *Water Supply System:* The Property is served by a public water system.

. *Sewage Disposal System:* The Property is served by city sewer.

. *Insulation:* Some portions of the Property are insulated, but Seller is without knowledge as to the type and location of such insulation.

Buyer's Initials: /s/WG

Seller's Initials: /s/SW

CERTAIN IDENTIFIED SCHEDULES AND EXHIBITS HAVE BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. OMITTED SCHEDULES AND EXHIBITS MARKED WITH ASTERISKS

AGREEMENT made as of the « 30 » day of « December » in the year « 2021 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

«Novocure Inc. »« »
«195 Commerce Way »
«Portsmouth, NH 03801 »
« »

and the Contractor:
(Name, legal status, address and other information)

«Hampshire Development Corporation »« »
«41 Industrial Drive Suite 20 »
« Exeter, NH 03833 »
« »

for the following Project:
(Name, location and detailed description)

«Novocure Flagship Facility »
«64 Vaughan Mall »
«Portsmouth, NH 03801 »

The Architect:
(Name, legal status, address and other information)

« JSA Design » or « »
« 273 Corporate Drive »
« Suite 100 »
« Portsmouth, NH 03801 »

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

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7 COSTS TO BE REIMBURSED

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9 DISCOUNTS, REBATES AND REFUNDS

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11 ACCOUNTING RECORDS

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13 DISPUTE RESOLUTION

14 TERMINATION OR SUSPENSION

15 MISCELLANEOUS PROVISIONS

16 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS*

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents and reasonably inferable therefrom as necessary to produce a first-class office facility as intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work also includes the Contractor's full pursuit and acquisition of all necessary approvals, permits, zoning variances, waivers, easements, assessments and charges required for the construction, use, or occupancy of the Project's permanent structures in order to meet the Project's design requirements and Owner's program goals and requirements related thereto.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the

Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[« X »] The date of this Agreement.

[« »] A date set forth in a notice to proceed issued by the Owner.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« X »] By the following date: « See Exhibit B – Project Schedule »

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

« The Contractor's Fee shall be a lump sum fixed amount of One Million Six Hundred Ninety Six Thousand One Hundred Eighty-Seven Dollars ($1,696,187.00) based upon 7% Overhead and 8 % Profit of the GMP as stated in Exhibit A »

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

« Additive Changes: 8% Profit only on the Costs of the Work of such change, no Overhead cost to the Owner

Deductive Changes: credit deducts to the Contract Sum (resulting from scope deletions, changes, or otherwise) shall include the actual net cost saved and that percentage of the Contractor's Fee (15% unless otherwise set forth herein) for which the credit is provided.

Deductive Changes – Roof Deck: If any portion of the roof deck work cannot proceed due to the inability to obtain proper permitting, zoning approvals and/or waivers thereto, as may be applicable, then the deductive change shall be as set forth herein for other Deductive Changes but in no case less than $200,000.00 per the Roof Deck Allowance . »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« Limitations, if any on Subcontractors' overhead and profit for increases in the cost of its portion of the Work shall be no more than 15% combined for overhead and profit on work performed by their own forces and 5% for work performed by sub-subcontractors. In no event shall the aggregate total of all mark-ups payable by the Owner for changes in the Work performed by a Subcontractor and/or Sub-subcontractor (in the aggregate and regardless of the number of tiers) exceed twenty percent (20%) of the changed Work. »

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
Labor Rates	See section 7.2.2.1	

§ 5.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« »

§ 5.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« »

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed « Fourteen Million, Five Hundred Thousand Dollars » ($ « 14,500,000.00 »), subject to additions and deductions by Change Order as provided in the Contract Documents. See Exhibit A. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ 5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
Permit Allowance	$108,000.00
Testing Allowance	$30,000.00
Abatement Allowance	$60,000.00
Landscaping Allowance	$109,967.00
Roof Deck Allowance	$200,000.00
Millwork Allowance	$150,000.00
Soundproofing Allowance	$30,000.00
Skylight & Interior Glazing Allowance	$100,000.00
Flooring Allowance	$420,000.00
Special Partitions Allowance	$120,000.00
Plumbing Fixture Allowance	$32,000.00
Lighting Allowance	$150,000.00
Fire Alarm Allowance	$45,000.00
Communication & Security Allowance	$68,000.00

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption.)

« The GMP is based on the owner's intent to produce a first-class office facility. The exterior façade to remain largely unchanged from the approved plans on file with the City of Portsmouth »

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

§ 5.2.7 **Savings.** "Savings" means the amount, if any, by which the Guaranteed Maximum Price exceeds the total Cost of the Work payable under this Agreement. If there are Savings, 100% of such Savings shall be kept by the Owner.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of (i) the Contractor's personnel, as set forth below, when stationed at the field office, employed full time in the furtherance of the Work, and (ii) other personnel as set forth below, stationed at the home office or elsewhere to the extent such personnel's time is reasonably and necessarily spent performing the Work. The Contractor shall support all such costs with detailed records setting forth the time spent and, if requested by the Owner, describing in detail the Work performed. The Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for what portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« Principal - $0 no fee
Project Manager - $75/hr
Skilled Labor - $57/hr
General Labor - $42/hr »

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 The Cost of the Work also includes the Contractor's actual costs and expenses associated with the general conditions items set forth to this Agreement ("General Conditions Costs"). Personnel costs included in General Conditions Costs shall be equal to the number of hours works on the project multiplied by the billing rate of their position as shown in Section 7.2.2.1. Notwithstanding anything contained herein to the contrary, the Contractor shall not seek reimbursement with respect to any General Conditions items not specifically identified in the General Conditions Costs breakdown.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Commuting expenses are specifically not reimbursable.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Contractor's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Article 7;

.5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Article 7; and

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain at least three (3) competitive bids from Subcontractors unless the Owner agrees otherwise in writing, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the « 5th » day of a month, the Owner shall make payment of the amount certified to the Contractor and approved by Owner not later

than the « 25th » day of the « current » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified and approved by Owner shall be made by the Owner not later than « Twenty » (« 20») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. In addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged certification and waiver by Contractor and first-tier Subcontractors in the forms attached hereto as Exhibit C.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that

Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« 5% Retainage »

§ 12.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« Municipal Fees »

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 12.1.8. Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Owner may withhold from any retainage due an amount equal to TWO HUNDRED PERCENT (200%) of the aggregate value of (i) the punchlist work to be completed or corrected; (2) close out deliverables; and (3) any claims, setoffs, or withholdings the Owner may have against the Contractor.
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

Prime rare as published in the Wall Street Journal on the date payment is due.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« »
« »
« »
« »

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[« »] Arbitration pursuant to Section 15 of AIA Document A201–2017

[« X »] Litigation in a court of competent jurisdiction

[« »] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

« »

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 The Owner's representative:
(Name, address, email address and other information)

« Dean Smith – Operations Manager/Owner's Representative»
« 195 Commerce Way »
« Portsmouth, NH 03801 »
« dsmith@novocure.com »
« »
« »

§ 15.3 The Contractor's representative:
(Name, address, email address and other information)

« Shayne Forsley – Project Manager »
« Hampshire Development Corp. »
« 41 Industrial Drive Suite 20 »
« Exeter, NH 03833 »
« Shayne.forsley@hdcgc.net »
« »

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« Not used »

§ 15.7 Other provisions:

« 15.7.1 The Contractor warrants that all manufacturers or other warranties and guarantees on all materials and equipment furnished by or to the Contractor Parties shall run directly to or be specifically assigned to the Owner or to such other entity as the Owner may direct. Promptly after the Owner so requests, the Contractor Parties shall execute such assignment documentation (in a form acceptable to the Owner) as may be necessary for the Contractor Parties to assign such warranties and guaranties. The Contractor shall not take any action that would limit or void a warranty on the Work or on any work performed by the Owner's separate contractors, if any. If a manufacturer's warranty or guaranty is ineffective because the material or equipment has been incorrectly installed, the Contractor shall be responsible to the Owner for the incorrect installation and the consequences thereof. On the Date of Substantial Completion, the Contractor shall deliver true and correct copies of all warranties and guaranties to the Owner. »

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

.1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by the parties)

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.5 Drawings

Number	Title	Date
P5042 – Altus Engineering	64 Vaughan Mall Building Restoration	July 28, 2021
	Planning Board Modified Site Plan	November 18, 2021
	HDC Conformed Set	
	HDC Conformed Set – Amendments	September 1, 2021
Architectural Plans – JSA Design	Cabot House Building – Renovation & Addition	December 1. 2021
	Novocure – CWA Design	
191117 – JSN Associates		October 18, 2021
Preliminary Space Plans – Chip Webster Architecture		November 12, 2021

.6 Specifications

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

.8 Other Exhibits:
(Check all boxes that apply.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« A102-2017 Exhibit A Insurance & Bonds »*
« A201-2017 General Conditions of the Contract for Construction »

« Exhibit A - Schedule of Values »*
« Exhibit B - Construction Schedule »*
« Exhibit C - Lien Waivers/Certification Forms »*

This Agreement entered into as of the day and year first written above.

/s/ Wilco Groenhuysen

OWNER (Signature)

« Wilco Groenhuysen »« COO »

(Printed name and title)

/s/ Steven P. Wilson

CONTRACTOR (Signature)

« Steven P. Wilson »« Principal »

(Printed name and title)

/s/ Shayne C. Forsley

CONTRACTOR (Signature)

« Shayne C. Forsley »« Project Manager »

(Printed name and title)

EXHIBIT B
AIA® Document A201TM – 2017
General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

« Novocure Flagship Facility »
«64 Vaughan Mall »
«Portsmouth, NH 03801 »
« »

THE OWNER:
(Name, legal status and address)

« Novocure Inc. »« »
«195 Commerce Way »
«Portsmouth, NH 03801 »« »
« »

THE ARCHITECT:
(Name, legal status and address)

«« JSA Design » or « »
« 273 Corporate Drive »
« Suite 100 »
« Portsmouth, NH 03801 »« »
« »

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the

Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Order of Precedence

§ 1.9.1 Where figures are given, they shall take precedence over any inconsistent, conflicting or ambiguous scaled dimensions.

§ 1.9.2 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

§ 1.9.3 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written modifications to

the Agreement; (b) the Agreement; (c) these General Conditions of Contract; (d) drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; and, (f) approved submittals. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Not used.

§ 2.2.3 Not used.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Contractor shall secure and pay for all necessary approvals, permits, zoning variances, waivers, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities in order to meet the Project's design requirements and/or the Owner's program goals and requirements related thereto.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Owner or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 The Contractor hereby specifically acknowledges and declares that upon agreement as to the Guaranteed Maximum Price for the Work, such agreement constitutes a representation by the Contractor that the Contract Documents are sufficient to enable the Contractor to determine the Cost of such Work as shown in the Contract Documents, and to the best of its knowledge the Drawings, Specifications and addenda do not vary with applicable Legal Requirements. The Contractor further acknowledges that, having carefully examined all Drawings, Specifications and other documents, to the best of its knowledge there are no material discrepancies among the Contract Documents. Notwithstanding the foregoing, it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional except to the extent that the Contractor is providing services under Section 3.12.10 and its subsections.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance and shall only use labor capable of working harmoniously with all trades and crafts. The Contractor shall also enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall promptly notify the Owner when the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of a conflict involving any labor agreement or regulation.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. If the Owner qualifies for exemption from sales or use taxes, the Owner shall provide to the Contractor a copy of its certificate of exemption. The Contractor will notify all Subcontractors of the tax-exempt status of the Work, and will use best efforts to insure that sales and use taxes are not paid on exempt materials and equipment.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all necessary approvals, permits, zoning variances, waivers, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities in order to meet the Project's

design requirements and/or the Owner's program goals and requirements related thereto. Contractor shall also secure and pay for any licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead and profit (i.e. Contractor's Fee), insurance, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Unless a schedule is attached hereto as an Exhibit, the Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and Owner's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided

the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether

or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 Representations and Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties in the Contract Documents), as an inducement to the Owner to execute the Agreement, which representations and warranties shall survive the execution and delivery of the Agreement and the final completion of the Work: (a) that the Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents, (b) that the Contractor is able to furnish the plant, tools, material, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so, and (c) that the Contractor is authorized to do business in the state where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the site of the Project.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The

Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ **7.2.2** A Change Order shall include all of the Contractor's costs associated therewith. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order including all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect plus Contractor's anticipated markup on the same as set forth in the Agreement. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the date of Substantial Completion is delayed at any time during progress of the Work by (1) an act or neglect of the Owner or Architect; (2) by changes ordered in the Work; (3) by fire, unavoidable casualties, war, terrorism, rioting or similar civil unrest; (4) unusual and unforeseeable adverse weather conditions documented in accordance with Section 15.1.6.2; or (4) by delay authorized by the Owner pending mediation and binding dispute resolution then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything in these General Conditions, the Agreement, and/or the Contract Documents to the contrary, this Section 8.3 shall be the Contractor's sole entitlement to recover damages for delay of any kind arising in whole or in part from the Project.

§ 8.3.4 In the event of a compensable delay pursuant to this Article 8 for which a Change Order is executed granting the Contractor a time extension and/or an increase in the Contract Sum, the Contractor shall attempt in good faith to recover any costs incurred due to such delay from insurance policies. To the extent that the Contractor recovers such costs from an insurer, a credit Change Order shall be executed in that amount. In no event shall the Contractor be entitled to receive damages for indirect impact costs, inefficiency, constructive acceleration costs, lost anticipated profits or extended or unabsorbed home office overhead costs regardless of the length or cause and regardless of whether or not caused by delay, hindrance, obstruction, or other impact event.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification or Payment

§ 9.5.1 The Architect may withhold a Certificate for Payment and/or the Owner may withhold payment, in whole or in part, to the extent reasonably necessary to protect the Owner. The Architect may also withhold a Certificate for Payment, or the Owner may withhold payment, because of subsequently discovered evidence to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible including, without limitation:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a Separate Contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 repeated failure to carry out the Work in accordance with the Contract Documents; or

.8 breach of this Agreement.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 Not used.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance,

heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security

interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due (subject to the terms and conditions hereof and of the Agreement) for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents;

.3 terms of special warranties required by the Contract Documents;

.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; and/or

.5 claims, offsets, and defenses previously asserted, noticed, or stated to the Contractor.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. . The Contractor shall promptly report to the Owner and the Architect all accidents on the Project that cause death, personal injury, or property damage.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against

claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.2.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section 11.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions to the extent the loss resulted from an act or omission of the Contractor or Subcontractor, or anyone supplying labor, materials, equipment or services to or through them.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site, without increase to the Contract Sum, portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall, except to the extent covered by insurance, without increase to the Contract Sum, bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a party related to the Owner, a purchaser of the Project, and/or a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ **13.6.1** If any liens, attachments, encumbrances, or notices of lien (each, a "Mechanic's Lien") are filed or established for labor, materials, or equipment furnished in furtherance of the Work by anyone claiming by, through, or under Contractor, then the Contractor, within ten (10) days after the date of the filing or establishment of such

Mechanic's Lien, shall post a bond or otherwise obtain the discharge and release of record thereof. The Contractor also shall indemnify, defend, and hold the Owner harmless from and against all claims, damages, fines, penalties, losses and expenses, including reasonable attorney's fees and expert witness fees, in connection with the Mechanic's Lien and any suit to enforce it. The Contractor's obligations under this Section 13.8, however, do not apply if the Mechanic's Lien is solely the result of the Owner's nonpayment of an amount contained in a previously submitted Application for Payment over which no good-faith dispute exists between the Owner and the Contractor. The obligations of the Contractor under this Section shall survive the completion of the Work and the termination of this Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 The Contractor represents and warrants to the Owner that (a) the Construction Schedule contains allowances for delays caused by adverse weather conditions under normal seasonal conditions and (b) no claim for increase in the Contract Time shall be made as a result of rain, snow, cold, or other weather conditions, unless such conditions are unforeseeable and extraordinary for the prior twenty four (24) month period taken as a whole by comparison to the weather of the past five (5) years as set forth in the U.S. National Oceanic and Atmospheric Administration records for the area where the Work is being performed.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Excluded from the foregoing waiver are any Owner claims covered and paid by insurance policies maintained by Contractor.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor.

EXECUTION COPY

AMENDMENT NO. 1

Dated as of December 6, 2021

to

CREDIT AGREEMENT

Dated as of November 6, 2020

THIS AMENDMENT NO. 1 (this "Amendment") is made as of December 6, 2021 by and between NovoCure Limited, a public company incorporated in Jersey, Channel Islands (registered number 76264) (the "Company"), and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent"), under that certain Credit Agreement dated as of November 6, 2020 by and among the Company, the Subsidiary Borrowers from time to time party thereto, the Lenders and the Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement").

WHEREAS, pursuant to clause (b) of the definition of Early Opt-in Election and Section 2.14(b) of the Credit Agreement, (a) the Administrative Agent has determined that syndicated credit facilities denominated in Pounds Sterling being executed at this time, or that include language similar to that contained in Section 2.14 of the Credit Agreement are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for such Foreign Currency and (b) the Administrative Agent and the Company have jointly elected (the "Election") to declare that an Early Opt-in Election has occurred;

WHEREAS, pursuant to this Amendment and in accordance with clause (b)(2) of the definition of Early Opt-in Election, the Administrative Agent is providing written notice of the Election to the Company and the Lenders;

WHEREAS, as Pounds Sterling is a Foreign Currency, the Benchmark Replacement being determined pursuant to this Amendment will be determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date and, accordingly, pursuant to Section 2.14(b) of the Credit Agreement, this Amendment shall become effective, and such Benchmark Replacement will replace such Benchmark for all purposes under the Credit Agreement and any other Loan Document in respect of any Benchmark setting, at or after 12:00 a.m., New York City time, on the sixth (6^{th}) Business Day after the date hereof without any amendment to, or further action or consent of any other party to, the Credit Agreement or any other Loan Document so long as the Administrative Agent has not received, by 5:00 p.m., New York City time, on the fifth (5^{th}) Business Day after the date of this Amendment, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders; and

WHEREAS, pursuant to Section 2.14(d) of the Credit Agreement, in connection with the implementation of a Benchmark Replacement, the Administrative Agent has the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary in any Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to the Credit Agreement or any other Loan Document.

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Administrative Agent hereby agree to enter into this Amendment.

1. Amendments to the Credit Agreement. Effective as of the first date of satisfaction of the conditions precedent set forth in Section 2 below, the parties hereto agree that the Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Annex A hereto (the Credit Agreement as so amended, the "Amended Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amended Credit Agreement.

2. Conditions of Effectiveness. The effectiveness of this Amendment (which shall occur at 12:00 a.m., New York City time, on December 14, 2021, unless the Administrative Agent shall have received prior to 5:00 p.m., New York City time, on the fifth (5th) Business Day after the date of this Amendment written notice of objection to this Amendment or the Benchmark Replacements being effected hereby from Lenders comprising the Required Lenders) is subject to the conditions precedent that:

(a) the Administrative Agent shall have received (i) counterparts of this Amendment duly executed by the Company and the Administrative Agent and (ii) counterparts of the Consent and Reaffirmation attached as Exhibit A hereto duly executed by the Subsidiary Borrowers and the other Subsidiary Guarantors; and

(b) the Administrative Agent shall have received all fees and other amounts due and payable on or prior to the date hereof, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Company under the Amended Credit Agreement in connection with this Amendment.

3. Representations and Warranties of the Company. The Company hereby represents and warrants as follows:

(a) This Amendment and the Amended Credit Agreement constitute legal, valid and binding obligations of the Company, enforceable in accordance with their terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, (ii) general principles of equity, regardless of whether considered in a proceeding in equity or at law and (iii) requirements of reasonableness, good faith and fair dealing.

(b) As of the date hereof and after giving effect to the terms of this Amendment, (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties of the Company set forth in the Amended Credit Agreement are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (provided that any representation or warranty that is qualified by materiality or Material Adverse Effect shall be true and correct in all respects) as of such earlier date.

4. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Credit

Agreement or any other Loan Document shall mean and be a reference to the Amended Credit Agreement.

(b) Each Loan Document and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby reaffirmed, ratified and confirmed.

(c) Except with respect to the subject matter hereof, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Amended Credit Agreement, the Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

(d) This Amendment is a Loan Document under (and as defined in) the Amended Credit Agreement.

5. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

6. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

7. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered as of the day and year first above written.

NOVOCURE LIMITED,
as the Company

By:_____/s/ Ashley Cordova_____
Name: Ashley Cordova
Title: Chief Financial Officer and Authorized Signatory

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Erik Barragan
Name: Erik Barragan
Title: Authorized Officer

ANNEX A

Attached

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CREDIT AGREEMENT (this "Agreement") dated as of November 6, 2020 among NOVOCURE LIMITED, the SUBSIDIARY BORROWERS from time to time party hereto, the LENDERS from time to time party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acquisition" means (i) any acquisition (whether by purchase, merger, consolidation or otherwise) or series of related acquisitions by the Company or any Subsidiary of (a) all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line (including rights in respect of any drug or other pharmaceutical product) or line of business of) any Person, (b) all or substantially all the Equity Interests in a Person or division or line of business of a Person or (c) any pharmaceutical facility or manufacturing site of a Person, (ii) a Drug Acquisition or (iii) an Exclusive License to develop and commercialize a drug or other product line of any Person.

"Acquisition Consideration" means the sum of the cash purchase price for any Permitted Acquisition payable in respect of such Permitted Acquisition (and which, for the avoidance of doubt, shall include any purchase price adjustment, royalty, earnout, contingent payment, progress payments, milestone payments or any other deferred payment of a similar nature) plus the aggregate amount of Indebtedness assumed on such date in connection with such Permitted Acquisition; provided that Acquisition Consideration shall not include any sales-based milestone payments or royalty payments to be made after the closing of any Permitted Acquisition.

"Adjusted EURIBO Rate" means, with respect to any Eurocurrency Borrowing denominated in euro for any Interest Period, an interest rate per annum equal to (a) the EURIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted LIBO Rate" means, with respect to any Eurocurrency Borrowing denominated in ~~any Agreed Currency (other than euro)~~**Dollars** for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent-Related Person" has the meaning assigned to such term in Section 9.03(d).

"Aggregate Commitment" means the aggregate of the Commitments of all of the Lenders, as reduced or increased from time to time pursuant to the terms and conditions hereof. The initial Aggregate Commitment as of the Effective Date is $150,000,000.

"Agreed Currencies" means (i) Dollars, (ii) euro, (iii) Pounds Sterling and (iv) any other currency (x) that is a lawful currency (other than Dollars) that is readily available, not restricted and freely transferable and convertible into Dollars~~,~~ **and** (y) ~~**for which a LIBO Screen Rate or other applicable screen rate is available in the Administrative Agent's determination and (z)**~~ that is agreed to by the Administrative Agent and each of the Lenders.

"Agreement" has the meaning assigned to such term in the introductory paragraph.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period in Dollars on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBO Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Ancillary Document" has the meaning assigned to such term in Section 9.06.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Company or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Party" has the meaning assigned to such term in Section 8.03(c).

"Applicable Percentage" means, with respect to any Lender, the percentage of the Aggregate Commitment represented by such Lender's Commitment; provided that, in the case of Section 2.23 when a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the Aggregate Commitment (disregarding any Defaulting Lender's Commitment) represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Applicable Rate" means, for any day, with respect to any Eurocurrency Loan**, any RFR Loan** or any ABR Loan or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption "Eurocurrency Spread",

"**RFR Spread**", "ABR Spread" or "Commitment Fee Rate", as the case may be, based upon the Senior Secured Leverage Ratio applicable on such date:

	Senior Secured Leverage Ratio:	Eurocurrency Spread	**RFR Spread**	ABR Spread	Commitment Fee Rate
Category 1:	≤ 1.00 to 1.00	2.75%	**2.75%**	1.75%	0.35%
Category 2:	> 1.00 to 1.00 but ≤ 2.00 to 1.00	3.00%	**3.00%**	2.00%	0.40%
Category 3:	> 2.00 to 1.00	3.25%	**3.25%**	2.25%	0.45%

For purposes of the foregoing,

(i) if at any time the Company fails to deliver the Financials on or before the date the Financials are due pursuant to Section 5.01, Category 3 shall be deemed applicable for the period commencing three (3) Business Days after the required date of delivery and ending on the date which is three (3) Business Days after the Financials are actually delivered, after which the Category shall be determined in accordance with the table above as applicable;

(ii) adjustments, if any, to the Category then in effect shall be effective three (3) Business Days after the Administrative Agent has received the applicable Financials (it being understood and agreed that each change in Category shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change); and

(iii) notwithstanding the foregoing, Category 1 shall be deemed to be applicable until the Administrative Agent's receipt of the applicable Financials for the Company's first fiscal quarter ending after the Effective Date (unless such Financials demonstrate that Category 2 or 3 should have been applicable during such period, in which case such other Category shall be deemed to be applicable during such period) and adjustments to the Category then in effect shall thereafter be effected in accordance with the preceding paragraphs.

"Approved Electronic Platform" has the meaning assigned to such term in Section 8.03(a).

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Approved Jurisdictions" means Jersey, Channel Islands, Switzerland, Luxembourg and the United States.

"Arranger" means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Augmenting Lender" has the meaning assigned to such term in Section 2.20.

"Benchmark Unavailability Period" means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Borrower" means the Company or any Subsidiary Borrower.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect or (b) a Swingline Loan.

"Borrowing Request" means a request by any Borrower for a Borrowing in accordance with Section 2.03, which shall be substantially in the form attached hereto as Exhibit H-1 or any other form approved by the Administrative Agent.

"Borrowing Subsidiary Agreement" means a Borrowing Subsidiary Agreement substantially in the form of Exhibit F-1.

"Borrowing Subsidiary Termination" means a Borrowing Subsidiary Termination substantially in the form of Exhibit F-2.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that **(a)** when used in connection with ~~(a)~~ a Eurocurrency Loan denominated in Dollars, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market, (b) ~~any Borrowings or LC Disbursements that are the subject of a borrowing, drawing, payment, reimbursement or rate selection~~**in relation to Loans** denominated in euro~~, the term "Business Day" shall also exclude any day on which the TARGET2 payment system is not open for the settlement of payments in euro and (c) a Eurocurrency Loan or Letter of Credit denominated in a Foreign Currency other than euro, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in such Foreign Currency in the interbank market in the principal financial center of the country whose lawful currency is such Foreign Currency.~~ **and in relation to the calculation or computation of EURIBOR, any day which is a TARGET2 Day and (iii) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in the applicable Agreed Currency of such RFR Loan, any such day that is only an RFR Business Day.**

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

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning assigned to it in Section 9.19.

"Credit Event" means a Borrowing, the issuance, amendment or extension of a Letter of Credit, an LC Disbursement or any of the foregoing.

"Credit Party" means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

"Cross-Default Reference Obligation" has the meaning assigned to such term in the definition of "Permitted Convertible Indebtedness".

"Daily Simple RFR" means, for any day (an "RFR Interest Day"), an interest rate per annum equal to the sum of (i) the greater of (a) for any RFR Loan denominated in Pounds Sterling, SONIA for the day that is five (5) RFR Business Days prior to (A) if such RFR Interest Day is an RFR Business Day, such RFR Interest Day or (B) if such RFR Interest Day is not an RFR Business Day, the RFR Business Day immediately preceding such RFR Interest Day and (b) 0% and (ii) 0.0326%. Any change in Daily Simple RFR due to a change in the applicable RFR shall be effective from and including the effective date of such change in the RFR without notice to the Borrower.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided that, if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"DEBA" means the Swiss Act on Debt Collection and Bankruptcy (*Bundesgesetz über Schuldbetreibung und Konkurs, SR 281.1*).

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

from interpolating on a linear basis between: (a) the EURIBO Screen Rate for the longest period (for which the EURIBO Screen Rate is available for euro) that is shorter than the Impacted EURIBO Rate Interest Period; and (b) the EURIBO Screen Rate for the shortest period (for which the EURIBO Screen Rate is available for euro) that exceeds the Impacted EURIBO Rate Interest Period, in each case, at such time; provided that, if any EURIBO Interpolated Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"EURIBO Rate" means, with respect to any Eurocurrency Borrowing denominated in euro and for any Interest Period, the EURIBO Screen Rate at approximately 11:00 a.m., Brussels time, ~~on the Quotation Day for euro~~**two (2) TARGET2 Days prior to the commencement of such Interest Period**; provided that, if the EURIBO Screen Rate shall not be available at such time for such Interest Period (an "Impacted EURIBO Rate Interest Period") with respect to euro then the EURIBO Rate shall be the EURIBO Interpolated Rate.

"EURIBO Screen Rate" means, for any day and time, with respect to any Eurocurrency Borrowing denominated in euro and for any Interest Period, the euro interbank offered rate administered by the European Money Markets Institute (or any other person that takes over the administration of such rate) for euro for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Company. If the EURIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"EURIBOR" has the meaning assigned to such term in Section 1.05.

"euro" and/or "€" means the single currency of the Participating Member States.

"Eurocurrency", when used in reference to a currency means an Agreed Currency and when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate or the Adjusted EURIBO Rate.

"Eurocurrency Payment Office" of the Administrative Agent means, for each Foreign Currency, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency as specified from time to time by the Administrative Agent to the Company and each Lender.

"European Insolvency Regulation" means the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

"Event of Default" has the meaning assigned to such term in Section 7.01.

"Excluded Accounts" shall have the meaning set forth in any Security Agreement.

"Excluded Assets" means, collectively: (a) motor vehicles and other assets subject to a certificate of title statute except to the extent perfection of a security interest therein may be accomplished by filing of financing statements in appropriate form in a central filing office located in the jurisdiction in which the granting Loan Party is organized, (b) any fee-owned real property and all leasehold or other occupancy or use (other than ownership) interests in real property, (c) assets subject to a Lien securing Capital Lease Obligations, purchase money debt obligations or other Indebtedness or obligations of the Company or any Subsidiary incurred to finance the acquisition, construction, repair, replacement, lease or improvement of any such assets (including any amendments, modifications, extensions, refinancings, renewals and replacements of any of the foregoing), in each

the grant by such Loan Party of a security interest to secure, such Specified Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an ECP at the time the Guarantee of such Loan Party or the grant of such security interest becomes or would become effective with respect to such Specified Swap Obligation. If a Specified Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Specified Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office or other permanent establishment located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender and with respect to a Loan Party that is a U.S. Person, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by any Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f) and (d) any withholding Taxes imposed under FATCA.

"Exclusive License" means any license to develop and commercialize a drug or other product line of any Person with a term greater than five (5) years and made on an exclusive basis.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FCA" has the meaning assigned to such term in Section 1.05.

"FDA" has the meaning assigned to such term in Section 3.21(g).

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Final Release Conditions" has the meaning assigned to such term in Section 9.14(c).

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Company or any other Person designated as a "Financial Officer" by any of the foregoing officers in writing to the Administrative Agent and reasonably acceptable to the Administrative Agent.

"Financials" means the annual or quarterly financial statements, and accompanying certificates and other documents, of the Company and its Subsidiaries required to be delivered pursuant to Section 5.01(a) or 5.01(b).

"Fixed Coverage Ratio" has the meaning assigned to such term in Section 6.12(b).

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBO Rate ~~or~~, the EURIBO Rate **or the Daily Simple RFR**, as applicable.

"Foreign Currencies" means Agreed Currencies other than Dollars.

"Foreign Currency Amount" of any amount of any Foreign Currency means, at the time of determination thereof, (a) if such amount is expressed in such Foreign Currency, such amount and (b) if such amount is expressed in Dollars, the equivalent of such amount in such Foreign Currency determined by using the rate of exchange for the purchase of such Foreign Currency with Dollars last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Reuters source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of such Foreign Currency with Dollars, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in such Foreign Currency as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion).

"Foreign Currency LC Exposure" means, at any time, the sum of (a) the Dollar Amount of the aggregate undrawn and unexpired amount of all outstanding Foreign Currency Letters of Credit at such time plus (b) the aggregate principal Dollar Amount of all LC Disbursements in respect of Foreign Currency Letters of Credit that have not yet been reimbursed at such time.

"Foreign Currency Letter of Credit" means a Letter of Credit denominated in a Foreign Currency.

"Foreign Lender" means (a) if the applicable Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

~~"IBA" has the meaning assigned to such term in Section 1.05.~~

"Impacted EURIBO Rate Interest Period" has the meaning assigned to such term in the definition of "EURIBO Rate".

"Impacted LIBO Rate Interest Period" has the meaning assigned to such term in the definition of "LIBO Rate".

"Increasing Lender" has the meaning assigned to such term in Section 2.20.

"Incremental Term Loan" has the meaning assigned to such term in Section 2.20.

"Incremental Term Loan Amendment" has the meaning assigned to such term in Section 2.20.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) trade accounts payable in the ordinary course of business, (y) any earn-out, deferred or similar obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after becoming due and payable and (z) expenses accrued in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; provided, that, if such Person has not assumed or otherwise become liable in respect of such Indebtedness, such obligations shall be deemed to be in an amount equal to the lesser of (i) the amount of such Indebtedness and (ii) the fair market value of such property at the time of determination (in the Company's good faith estimate), (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances and (k) all obligations of such Person under Sale and Leaseback Transactions. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor by operation of law as a result of such Person's ownership interest in such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness (including any Guarantees constituting Indebtedness) for which recourse is limited either to a specified amount or to an identified asset of such Person shall be deemed to be equal to the lesser of (x) such specified amount and (y) the fair market value of such identified asset as determined by such Person in good faith. Notwithstanding anything to the contrary in this definition, the term "Indebtedness" shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, (iii) obligations under Sale and Leaseback Transactions to the extent such obligations are not reflected as a liability on the consolidated balance sheet of the Company or (iv) obligations under any Swap Agreements. Notwithstanding anything to the contrary in the foregoing, any Permitted Bond Hedge Transaction, any Permitted Warrant Transaction, and any obligations thereunder, in each case, shall not constitute Indebtedness of the Company.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) hereof, Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(c).

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Initial Subsidiary Borrowers" means, collectively, (i) Novocure Luxembourg, a private limited liability company (*société à responsabilité limitée*), organized and established under the laws of Luxembourg, having its registered office at 19, rue de Bitbourg, L-1273 Luxembourg, and registered with the Luxembourg Trade and Companies Register (*R.C.S. Luxembourg*) under number B170966 ("Novocure Luxembourg"), (ii) Novocure Capital, a private limited liability company (*société à responsabilité limitée*), organized and established under the laws of Luxembourg, having its registered office at 19, rue de Bitbourg, L-1273 Luxembourg, and registered with the Luxembourg Trade and Companies Register (*R.C.S. Luxembourg*) under number B205022 ("Novocure Capital"), (iii) Novocure GmbH, a Swiss limited liability company, and (iv) Novocure Inc., a Delaware corporation, and each individually an "Initial Subsidiary Borrower".

"Information" has the meaning assigned to such term in Section 9.12.

"Interest Election Request" means a request by the applicable Borrower to convert or continue a Borrowing in accordance with Section 2.08, which shall be substantially in the form attached hereto as Exhibit H-2 or any other form approved by the Administrative Agent.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Maturity Date, (b) with respect to any **RFR Loan, each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such RFR Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and the Maturity Date, (c) with respect to any** Eurocurrency Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and the Maturity Date and (~~e~~**d**) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

"Interest Period" means with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~**two,**~~ three or six months **(in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment for any Agreed Currency)** thereafter, as the applicable Borrower (or the Company on behalf of the applicable Borrower) may elect; provided~~,~~ that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day ~~**and,**~~ (ii) any Interest Period pertaining to a Eurocurrency Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period **and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(f) shall be available for specification in such Borrowing Request or Interest Election Request**. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Investment" has the meaning assigned to such term in Section 6.05.

"IRS" means the United States Internal Revenue Service.

"Liabilities" means any losses, claims (including intraparty claims), demands, damages, penalties or liabilities of any kind.

"LIBO Interpolated Rate" means, at any time, with respect to any Eurocurrency Borrowing denominated in ~~any Agreed Currency (other than euro)~~**Dollars** and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available for ~~the applicable Agreed Currency~~**Dollars**) that is shorter than the Impacted LIBO Rate Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available for ~~the applicable Agreed Currency)~~**Dollars)** that exceeds the Impacted LIBO Rate Interest Period, in each case, at such time; provided that if any LIBO Interpolated Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"LIBO Rate" means, with respect to any Eurocurrency Borrowing denominated in ~~any Agreed Currency (other than euro)~~**Dollars** and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, ~~on the Quotation Day for such Agreed Currency~~**two (2) Business Days prior to the commencement of such Interest Period**; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "Impacted LIBO Rate Interest Period") with respect to ~~such Agreed Currency~~**Dollars** then the LIBO Rate shall be the LIBO Interpolated Rate.

"LIBO Screen Rate" means, for any day and time, with respect to any Eurocurrency Borrowing denominated in ~~any Agreed Currency (other than euro)~~**Dollars** and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for ~~such Agreed Currency~~**Dollars** for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"LIBOR" has the meaning assigned to such term in Section 1.05.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidity" means, as of any date of determination, the lesser of (i) the aggregate amount of unrestricted and unencumbered (other than Liens securing the Secured Obligations and Permitted Encumbrances) cash and Permitted Investments maintained by the Company and its Subsidiaries as of such date and (ii) $75,000,000.

"Loan Documents" means this Agreement (including schedules and exhibits hereto), each Borrowing Subsidiary Agreement, each Borrowing Subsidiary Termination, any promissory notes issued pursuant to Section 2.10(e), any Letter of Credit applications, any Letter of Credit Agreement, the Collateral Documents, each Subsidiary Guaranty, and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders. Any reference in this Agreement or any other

~~"Quotation Day" means, with respect to any Eurocurrency Borrowing for any Interest Period, (i) if the currency is Pounds Sterling, the first day of such Interest Period, (ii) if the currency is euro, the day that is two (2) TARGET2 Days before the first day of such Interest Period, and (iii) for any other currency, two (2) Business Days prior to the commencement of such Interest Period (unless, in each case, market practice differs in the relevant market where the LIBO Rate for such currency is to be determined, in which case the Quotation Day will be determined by the Administrative Agent in accordance with market practice in such market (and if quotations would normally be given on more than one day, then the Quotation Day will be the last of those days)).~~

"Recipient" means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Bank, as applicable.

"Reference Time" with respect to any setting of the then-current Benchmark means (~~1~~i) if such Benchmark is the LIBO Rate, 11:00 a.m., London time, on the day that is two London banking days preceding the date of such setting, ~~and~~ (~~2~~ii) if such Benchmark is ~~not~~**the EURIBO Rate, 11:00 a.m., Brussels time two (2) TARGET2 Days preceding the date of such setting, (iii) if the RFR for such Benchmark is SONIA, then five (5) Business Days prior to such setting or (iv) if such Benchmark is none of** the LIBO Rate**, the EURIBO Rate or SONIA**, the time determined by the Administrative Agent in its reasonable discretion.

"Register" has the meaning assigned to such term in Section 9.04(b).

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulatory Authority" has the meaning assigned to such term in Section 3.21(a).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective partners, directors, officers, managers, employees, agents and advisors of such Person and such Person's Affiliates.

"Relevant Governmental Body" means (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto and (ii) with respect to a Benchmark Replacement in respect of Loans denominated in any Foreign Currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

"Relevant Rate" means (i) with respect to any Eurocurrency Borrowing denominated in ~~an Agreed Currency (other than euro)~~**Dollars**, the LIBO Rate ~~or~~**,** (ii) with respect to any Eurocurrency Borrowing denominated in euro, the EURIBO Rate **or (iii) with respect to any Borrowing denominated in Pounds Sterling, the Daily Simple RFR**, as applicable.

"Relevant Screen Rate" means (i) with respect to any Eurocurrency Borrowing denominated in ~~an Agreed Currency (other than euro)~~**Dollars**, the LIBO Screen Rate or (ii) with respect to any Eurocurrency Borrowing denominated in euro, the EURIBO Screen Rate, as applicable.

"Required Lenders" means, subject to Section 2.23, (a) at any time prior to the earlier of the Loans becoming due and payable pursuant to Section 7.02 or the Commitments terminating or expiring, Lenders having Revolving Credit Exposures and Unfunded Commitments representing more than 50% of the sum of the Total Revolving Credit Exposure and Unfunded Commitments at such time, provided that, solely for purposes of declaring the Loans to be due and payable pursuant to Section 7.02, the Unfunded Commitment of each Lender shall be deemed to be zero; and (b) for all purposes after the Loans become due and payable pursuant to Section 7.02 or the Commitments expire or terminate, Lenders having Revolving Credit Exposures representing more than 50% of the Total Revolving Credit Exposure at such time; provided that, in the case of clauses (a) and (b) above, (x) the Revolving Credit Exposure of any Lender that is the Swingline Lender shall be deemed to exclude any amount of its Swingline Exposure in excess of its Applicable Percentage of all outstanding Swingline Loans, adjusted to give effect to any reallocation under Section 2.23 of the Swingline Exposures of Defaulting Lenders in effect at such time, and the Unfunded Commitment of such Lender shall be determined on the basis of its Revolving Credit Exposure excluding such excess amount and (y) for the purpose of determining the Required Lenders needed for any waiver, amendment, modification or consent of or under this Agreement or any other Loan Document, any Lender that is the Company or an Affiliate of the Company shall be disregarded.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, the president, a Financial Officer or other executive officer of the Company.

"Restricted Obligations" shall have the meaning assigned to such term in Section 1.10.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any Subsidiary or any option, warrant or other similar right to acquire any such Equity Interests in the Company or any Subsidiary.

"Reuters" means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure and its Swingline Exposure at such time.

"Revolving Loan" means a Loan made pursuant to Section 2.01.

"RFR" means, for any RFR Loan denominated in Pounds Sterling, SONIA.

"RFR Administrator" means the SONIA Administrator.

"RFR Borrowing" means, as to any Borrowing, the RFR Loans comprising such Borrowing.

"RFR Business Day" means, for any Loan denominated in Pounds Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

"RFR Interest Day" has the meaning specified in the definition of "Daily Simple RFR".

"RFR Loan" means a Loan that bears interest at a rate based on Daily Simple RFR.

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business.

"Sale and Leaseback Transaction" means any sale or other transfer of any property or asset by any Person with the intent to lease such property or asset as lessee.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission of the United States of America or any Governmental Authority succeeding to any of its principal functions.

"Secured Obligations" means all Obligations, together with all Swap Obligations and Banking Services Obligations owing to one or more Lenders or their respective Affiliates; provided that the definition of "Secured Obligations" shall not create or include any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party.

"Secured Parties" means the holders of the Secured Obligations from time to time and shall include (i) each Lender and the Issuing Bank in respect of its Loans and LC Exposure respectively, (ii) the Administrative Agent, the Issuing Bank and the Lenders in respect of all other present and future obligations and liabilities of the Company and each Subsidiary of every type and description arising under or in connection with this Agreement or any other Loan Document, (iii) each Lender and Affiliate of such Lender in respect of Swap Agreements and Banking Services Agreements entered into with such Person by the Company or any Subsidiary, (iv) each indemnified

party under Section 9.03 in respect of the obligations and liabilities of the Borrowers to such Person hereunder and under the other Loan Documents, and (v) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

"Securities Act" means the United States Securities Act of 1933.

"Security Agreement" means, collectively, (i) that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the Effective Date, between the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, (ii) the Jersey Security Agreement, (iii) each Luxembourg Security Agreement (iv) any other pledge or security agreement entered into after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document), or any other Person, as the documents referred to in the preceding clauses (i) through (iv) may be amended, restated, supplemented or otherwise modified from time to time.

"Senior Secured Net Leverage Ratio" means, as of any date of determination for the Company, as determined on a consolidated basis and in accordance with GAAP, the ratio of (a) (i) Consolidated Total Indebtedness (other than any portion of Consolidated Total Indebtedness that is unsecured or constitutes Subordinated Indebtedness) (as of the last day of the most recently completed fiscal quarter of the Company for which financial statements are available) minus (ii) Liquidity as of such date, to (b) Consolidated EBITDA (for the most recently completed four consecutive fiscal quarters of the Company ending on or most recently ended prior to such date for which financial statements are available).

"Service of Process Agent" means CT Corporation Systems, with an office on the date hereof at 111 Eighth Avenue, New York, New York 10011.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m., New York City time, on the immediately succeeding Business Day.

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's Website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Solvent" means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts, including contingent debts, as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities, including contingent debts and liabilities, beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"SONIA" means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA

Administrator on the SONIA Administrator's Website on the immediately succeeding Business Day.

"SONIA Administrator" means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

"SONIA Administrator's Website" means the Bank of England's website, currently at http://www.bankofengland.co.uk, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

"Specified Ancillary Obligations" means all obligations and liabilities (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) of any of the Subsidiaries, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, to the Lenders or any of their Affiliates under any Swap Agreement or any Banking Services Agreement; provided that the definition of "Specified Ancillary Obligations" shall not create or include any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party.

"Specified Swap Obligation" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder. Notwithstanding the foregoing, no Permitted Bond Hedge Transaction, Permitted Warrant Transaction or obligation of the Company thereunder shall be considered a Specified Swap Obligation.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve, liquid asset, fees or similar requirements (including any marginal, special, emergency or supplemental reserves or other requirements) established by any central bank, monetary authority, the Federal Reserve Board, the Financial Conduct Authority, the Prudential Regulation Authority, the European Central Bank or other Governmental Authority for any category of deposits or liabilities customarily used to fund loans in the applicable currency, expressed in the case of each such requirement as a decimal. Such reserve, liquid asset, fees or similar requirements shall include those imposed pursuant to Regulation D. Eurocurrency Loans shall be deemed to be subject to such reserve, liquid asset, fee or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under any applicable law, rule or regulation, including Regulation D. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve, liquid asset or similar requirement.

"Subordinated Indebtedness" means any Indebtedness of the Company or any Subsidiary the payment of which is subordinated to payment of the obligations under the Loan Documents. For the avoidance of doubt, any Permitted Convertible Indebtedness shall not constitute Subordinated Indebtedness.

"Subordinated Indebtedness Documents" means any document, agreement or instrument evidencing any Subordinated Indebtedness or entered into in connection with any Subordinated Indebtedness.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any

administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

"Total Net Leverage Ratio" means, as of any date of determination for the Company, as determined on a consolidated basis and in accordance with GAAP, the ratio of (a) (i) Consolidated Total Indebtedness (as of the last day of the most recently completed fiscal quarter of the Borrower for which financial statements are available) minus (ii) Liquidity as of such date, to (b) Consolidated EBITDA (for the most recently completed four consecutive fiscal quarters of the Company ending on or most recently ended prior to such date for which financial statements are available).

"Total Revolving Credit Exposure" means, at any time, the sum of (a) the outstanding principal amount of the Revolving Loans and Swingline Loans at such time and (b) the total LC Exposure at such time.

"Transactions" means the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Adjusted EURIBO Rate**, the Daily Simple RFR** or the Alternate Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unfunded Commitment" means, with respect to each Lender, the Commitment of such Lender less its Revolving Credit Exposure.

"United States" or "U.S." mean the United States of America.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 9.19.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"wholly-owned Subsidiary" means a Subsidiary with respect to which 100% of the issued and outstanding Equity Interests are owned directly or indirectly by the Company (other than (i) directors' qualifying shares; (ii) shares issued to foreign nationals to the extent required by applicable law; and (iii) shares held by a Person on trust for, or otherwise where the beneficial interest is held by, the Company (directly or indirectly)).

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "Eurocurrency Loan" **or an "RFR Loan"**) or by Class and Type (e.g., a "Eurocurrency **Revolving Loan" or an "RFR** Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "Eurocurrency Borrowing" **or an "RFR Borrowing"**) or by Class and Type (e.g., a "Eurocurrency Revolving Borrowing" **or an "RFR Revolving Borrowing"**).

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any law, statute, rule or regulation shall, unless otherwise specified, be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall

Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness).

SECTION 1.05 Interest Rates; LIBOR Notification. The interest rate on a Loan denominated in an Agreed Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The London interbank offered rate **("LIBOR")** is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. ~~In July 2017~~**On March 5, 2021**, the U.K. Financial Conduct Authority **("FCA") publicly** announced that~~, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurocurrency Loans. In light of this eventuality, public~~**: immediately after December 31, 2021, publication of all seven euro LIBOR settings, all seven Swiss Franc LIBOR settings, the spot next, 1-week, 2-month and 12-month Japanese Yen LIBOR settings, the overnight, 1-week, 2-month and 12-month Pound Sterling LIBOR settings, and the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; immediately after December 31, 2021, the 1-month, 3-month and 6-month Japanese Yen LIBOR settings and the 1-month, 3-month and 6-month Pound Sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or "synthetic") basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA's consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public** and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of ~~the London interbank offered rate~~**LIBOR**. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Section 2.14(b) and Section 2.14(c) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Company, pursuant to Section 2.14(e), of any change to the reference rate upon which the interest rate on Eurocurrency Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission**, performance** or any other matter related to the ~~London interbank offered rate~~**Daily Simple RFR, LIBOR, EURIBOR** or other rates in the definition of "LIBO Rate" (or "EURIBO Rate", as applicable) or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(b) or Section 2.14(c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the **Daily Simple RFR, the** LIBO Rate (or the EURIBO Rate, as applicable) or have

the same volume or liquidity as did ~~the London interbank offered rate~~**LIBOR** (or the euro interbank offered rate **("EURIBOR")**, as applicable) prior to its discontinuance or unavailability. **The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any Daily Simple RFR, any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Company and the other Subsidiary Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any RFR, Daily Simple RFR or any rate with respect to any Eurocurrency Loan, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Company, any Subsidiary Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.**

SECTION 1.06 Status of Obligations. In the event that the Company or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Company shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.07 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that, with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

SECTION 1.08 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.09 Luxembourg Terms. In this Agreement or any other Loan Document, if applicable, where it relates to a Luxembourg Borrower, a reference to:

(a) a winding-up, administration or dissolution includes bankruptcy (*faillite*), insolvency, voluntary or judicial liquidation (*liquidation volontaire ou judiciaire*), composition with creditors (*concordat préventif de la faillite*), moratorium or reprieve from payments (*sursis de paiement*), controlled management (*gestion contrôlée*), a general settlement with creditors, reorganisation or similar law affecting the rights of creditors generally;

its obligations and make the (requested) payment(s) hereunder from time to time, including the following:

(i) preparation of an up-to-date audited balance sheet of the relevant Swiss Loan Party;

(ii) confirmation of the auditors of the relevant Swiss Loan Party that the relevant amount represents (the maximum of) freely distributable capital of the relevant Swiss Loan Party;

(iii) approval by a shareholders meeting of the relevant Swiss Loan Party of the capital distribution;

(iv) if the enforcement of Restricted Obligations would be limited due to the effects referred to in this clause, then the relevant Swiss Loan Party shall to the extent permitted by applicable law write up or realize any of its assets that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of realization, however, only if such assets are not necessary for the relevant Swiss Loan Party's business (*nicht betriebsnotwendig*).

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender (severally and not jointly) agrees to make Revolving Loans to the Borrowers in Agreed Currencies from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing to any Swingline Loans outstanding pursuant to Section 2.10(a)) in, subject to Sections 2.04 and 2.11(b), (a) the Dollar Amount of such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the Dollar Amount of the Total Revolving Credit Exposure exceeding the Aggregate Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02 Loans and Borrowings. (a) Each Revolving Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05.

(b) Subject to Section 2.14, each ~~Revolving~~ Borrowing shall be comprised **(i) in the case of Borrowings in Dollars,** entirely of ABR Loans or Eurocurrency Loans **and (ii) in the case of Borrowings in any other Agreed Currency, entirely of Eurocurrency Loans or RFR Loans, as applicable, in each case of the same Agreed Currency,** as the applicable Borrower may request in accordance herewith; provided that each ABR Loan shall only be made in Dollars. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the applicable Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurocurrency Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of

$1,000,000 (or, if such Borrowing is denominated in a Foreign Currency, 1,000,000 units of such currency) and not less than $5,000,000 (or, if such Borrowing is denominated in a Foreign Currency, 5,000,000 units of such currency). At the time that each ABR Revolving Borrowing **and/or RFR Borrowing** is made, such Borrowing shall be in an aggregate ~~amount~~**Dollar Amount** that is an integral multiple of $1,000,000 and not less than $5,000,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Aggregate Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of $1,000,000 and not less than $1,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Eurocurrency Borrowings **or RFR Borrowings** outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Revolving Borrowings. To request a ~~Revolving~~ Borrowing, the applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Administrative Agent of such request (a) by irrevocable written notice (via a written Borrowing Request signed by a Responsible Officer of the applicable Borrower, or the Company on behalf of the applicable Borrower) **(i)** in the case of a Eurocurrency Borrowing **denominated in Dollars**, not later than ~~11:00 a.m., Local Time~~**11:00 a.m., New York City time**, three (3) Business Days ~~(~~**before the date of the proposed Borrowing, (ii)** in the case of a Eurocurrency Borrowing denominated in ~~Dollars) or by irrevocable written notice (via a written Borrowing Request signed by a Responsible Officer of such Borrower, or of the Company on its behalf)~~ **euro,** not later than 11:00 a.m., ~~Local Time~~**New York City time**, four (4) Business Days ~~(~~**before the date of the proposed Borrowing and (iii)** in the case of ~~a Eurocurrency~~**an RFR** Borrowing denominated in ~~a Foreign Currency), in each case~~**Pounds Sterling, not later than 11:00 a.m., New York City time, five (5) RFR Business Days** before the date of the proposed Borrowing or (b) by irrevocable written notice (via a written Borrowing Request signed by a Responsible Officer of the applicable Borrower, or of the Company on behalf of the applicable Borrower) in the case of an ABR Borrowing, not later than ~~11:00 a.m~~**11:00 a.m**., New York City time, on the date of the proposed Borrowing. Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower;

(ii) the aggregate principal amount of the requested Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be an ABR Borrowing ~~or~~**,** a Eurocurrency Borrowing **or an RFR Borrowing**;

(v) in the case of a Eurocurrency Borrowing, the Agreed Currency and initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vi) the location and number of the applicable Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Revolving Borrowing is specified, then, in the case of a Borrowing denominated in Dollars, the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Borrowing, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration.

against, the Company's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their respective Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Company to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Company to the extent permitted by applicable law) suffered by the Company that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly after such examination notify the Administrative Agent and the Company by telephone (confirmed by telecopy or electronic mail) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Company of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Company shall reimburse such LC Disbursement in full within one (1) Business Day of the date on which such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable, at the rate per annum then applicable to ABR Revolving Loans (or in the case such LC Disbursement is denominated in a Foreign Currency, at the Overnight Foreign Currency Rate for such Agreed Currency plus the then effective Applicable Rate with respect to Eurocurrency Revolving Loans) and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Company fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(ed) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement and Resignation of Issuing Bank. (A) The Issuing Bank may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Company shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to

this Section. A Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, a Borrower, or the Company on its behalf, shall notify the Administrative Agent of such election (by irrevocable written notice via an Interest Election Request signed by a Responsible Officer of such Borrower, or the Company on its behalf) by the time that a Borrowing Request would be required under Section 2.03 if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Notwithstanding any contrary provision herein, this Section shall not be construed to permit any Borrower to (i) change the currency of any Borrowing, (ii) elect an Interest Period for Eurocurrency Loans that does not comply with Section 2.02(d) or (iii) convert any Borrowing to a Borrowing of a Type not available under such Borrowing.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period and Agreed Currency to be applicable thereto after giving effect to such election, which Interest Period shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the applicable Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period (i) in the case of a Borrowing denominated in Dollars, such Borrowing shall be converted to an ABR Borrowing and (ii) in the case of a Borrowing denominated in ~~a Foreign Currency~~euro in respect of which the applicable Borrower shall have failed to deliver an Interest Election Request prior to the third (3rd) Business Day preceding the end of such Interest Period, such Borrowing shall automatically continue as a Eurocurrency Borrowing in the same Agreed Currency with an Interest Period of one month unless such Eurocurrency Borrowing is or was repaid in accordance with Section 2.11. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Company, then, so long as an Event of Default is continuing (i) no outstanding Borrowing denominated in Dollars

may be converted to or continued as a Eurocurrency Borrowing, (ii) unless repaid, each Eurocurrency Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (iii) unless repaid, each Eurocurrency Borrowing denominated in ~~a Foreign Currency~~euro shall automatically be continued as a Eurocurrency Borrowing with an Interest Period of one month.

SECTION 2.09 Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Company may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Company shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, (A) the Dollar Amount of any Lender's Revolving Credit Exposure would exceed its Commitment or (B) the Dollar Amount of the Total Revolving Credit Exposure would exceed the Aggregate Commitment.

(c) The Company shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Company pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Company may state that such notice is conditioned upon the effectiveness of other credit facilities or other transactions specified therein, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.10 Repayment of Loans; Evidence of Debt. (a) Each Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan made to such Borrower on the Maturity Date in the currency of such Loan and (ii) in the case of the Company, to the Administrative Agent for the account of the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the fifth (5^{th}) Business Day after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, the Company shall repay all Swingline Loans then outstanding and the proceeds of any such Borrowing shall be applied by the Administrative Agent to repay any Swingline Loans outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Agreed Currency and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such

accounts or any error therein shall not in any manner affect the Obligations (including, without limitation, the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement).

(e) Any Lender may request that Loans made by it to any Borrower be evidenced by a promissory note. In such event, the applicable Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in the form attached hereto as Exhibit J. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11 Prepayment of Loans.

(a) Any Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part (without premium or penalty (but subject to break funding payments required by Section 2.16), subject to prior notice in accordance with the provisions of this Section 2.11(a). The applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by written notice of any prepayment hereunder (i) **(x)** in the case of prepayment of a Eurocurrency ~~Revolving~~ Borrowing **denominated in Dollars**, not later than ~~11:00 a.m., Local~~**11:00 a.m., New York City** Time, three (3) Business Days ~~(~~**before the date of prepayment, (y)** in the case of **prepayment of** a Eurocurrency Borrowing denominated in ~~Dollars) or~~**euro, not later than 11:00 a.m., New York City time,** four (4) Business Days ~~(~~**before the date of prepayment and (z)** in the case of ~~a Eurocurrency~~**prepayment of an RFR** Borrowing denominated in ~~a Foreign Currency), in each case~~**Pounds Sterling, not later than 11:00 a.m., New York City time, five (5) RFR Business Days** before the date of prepayment, (ii) in the case of prepayment of an ABR ~~Revolving~~ Borrowing, not later than ~~11:00 a.m~~**11:00 a.m**., New York City time, one (1) Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any ~~Revolving~~ Borrowing shall be in an amount that would be permitted in the case of an advance of a ~~Revolving~~ Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) any break funding payments required by Section 2.16.

(b) If at any time, (i) other than as a result of fluctuations in currency exchange rates, the aggregate principal Dollar Amount of the Total Revolving Credit Exposure (calculated, with respect to those Credit Events denominated in Foreign Currencies, as of the most recent Computation Date with respect to each such Credit Event) exceeds the Aggregate Commitment or (ii) solely as a result of fluctuations in currency exchange rates, the aggregate principal Dollar Amount of the Total Revolving Credit Exposure (so calculated) exceeds 105% of the Aggregate Commitment, the Borrowers shall in each case immediately repay Borrowings or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to cause the aggregate Dollar Amount of the Total Revolving Credit Exposure (so calculated) to be less than or equal to the Aggregate Commitment.

SECTION 2.12 Fees.

(a) The Company agrees to pay to the Administrative Agent for the account of each Lender a commitment fee (the "Commitment Fee"), which shall accrue at the Applicable Rate applicable to the Commitment Fee on the daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Commitment Fees accrued through and including the last day of March, June, September and December of each year shall be payable in arrears on the fifteenth (15th) day following such last day and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Company agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Eurocurrency Revolving Loans, during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to the Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the daily maximum amount then available to be drawn under such Letter of Credit, during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment or extension of any Letter of Credit and other processing fees, and other standard costs and charges, of such Issuing bank relating the Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the fifteenth (15th) day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Participation fees and fronting fees in respect of Letters of Credit denominated in Dollars shall be paid in Dollars, and participation fees and fronting fees in respect of Letters of Credit denominated in a Foreign Currency shall be paid in Dollars in the Dollar Amount thereof.

(c) The Company agrees to pay to the Administrative Agent, for its own account, and to the Lenders, as applicable, the fees payable in the amounts and at the times separately agreed upon between the Company and the Administrative Agent from time to time.

(d) All fees payable hereunder shall be paid on the dates due, in Dollars and immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of Commitment Fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Interest. (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate or the Adjusted EURIBO Rate, as applicable, for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each RFR Loan shall bear interest at a rate per annum equal to the Daily Simple RFR plus the Applicable Rate.

(d) ~~(c)~~ Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) ~~(d)~~ Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (**e**~~c~~**d**) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) ~~(e) All interest~~**Interest computed by reference to the LIBO Rate or the EURIBO Rate** hereunder shall be computed on the basis of a year of 360 days~~, except that interest (i)~~**. Interest** computed by reference to **the Daily Simple RFR with respect to Pounds Sterling or** the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year)~~ and (ii) for Borrowings denominated in Pounds Sterling shall be computed on the basis of a year of 365 days, and in~~**. In** each case **interest** shall be payable for the actual number of days elapsed (including the first day but excluding the last day). **All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination.** The applicable Alternate Base Rate, Adjusted LIBO Rate, LIBO Rate, Adjusted EURIBO Rate ~~or~~**,** EURIBO Rate **or Daily Simple RFR** shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(g) ~~(f)~~ Interest in respect of Loans denominated in Dollars shall be paid in Dollars, and interest in respect of Loans denominated in a Foreign Currency shall be paid in such Foreign Currency.

(h) ~~(g)~~ Swiss Minimum Interest. By entering into this Agreement, the parties hereto have assumed in bona fide that the interest payable hereunder is not and will not become subject to any deduction or withholding of Taxes for Swiss Withholding Tax. Nevertheless, if a deduction or withholding of Taxes for Swiss Withholding Tax is required by Swiss law to be made by a Loan Party in respect of any interest payable by it under a Loan Document and should it be unlawful for the relevant Loan Party to comply with Section 2.17(a) for any reason (where this would otherwise be required by the terms of that Section 2.17(a)) then:

(i) the applicable interest rate in relation to that interest payment shall be

(A) the interest rate which would have applied to that interest payment (as provided for in this Section 2.13) in the absence of this clause (g), divided by

(B) one (1) minus the rate at which the relevant deduction or withholding of Taxes for Swiss Withholding Tax is required to be made (where the rate at which the relevant deduction or withholding of Taxes for Swiss Withholding Tax is required to be made is for this purpose expressed as a fraction of (1) rather than as percentage)

(ii) the relevant Loan Party shall: (1) pay the relevant interest at the adjusted rate in accordance with clause (i) above and (2) make the deduction or withholding of Taxes for

Swiss Withholding Tax on the interest so recalculated; and all references to a rate of interest with respect to any Loan shall be construed accordingly.

(iii) To the extent that interest payable by a Loan Party under this Agreement becomes subject to Swiss Withholding Tax, each relevant party to this Agreement and the relevant Loan Party shall promptly cooperate by completing any procedural formalities (including submitting forms and documents required by the appropriate Tax authority) to the extent possible and necessary for that Loan Party to obtain authorization to make interest payments without them being subject to Swiss Withholding Tax or to being subject to Swiss Withholding Tax at a rate reduced under applicable double taxation treaties.

SECTION 2.14 Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e), (f) and (g) of this Section 2.14, if ~~prior to the commencement of any Interest Period for a Eurocurrency Borrowing~~:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) **(A) prior to the commencement of any Interest Period for a Eurocurrency Borrowing,** that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate, the LIBO Rate, the Adjusted EURIBO Rate or the EURIBO Rate, as applicable (including because the Relevant Screen Rate is not available or published on a current basis), for the applicable Agreed Currency and such Interest Period~~, provided that no Benchmark Transition Event shall have occurred at such time~~ **or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Daily Simple RFR or RFR for the applicable currency**; or

(ii) the Administrative Agent is advised by the Required Lenders **(A) prior to the commencement of any Interest Period for a Eurocurrency Borrowing,** that the Adjusted LIBO Rate, the LIBO Rate, the Adjusted EURIBO Rate or the EURIBO Rate, as applicable, for the applicable Agreed Currency and such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for the applicable Agreed Currency and such Interest Period~~;~~ **or (B) at any time, that the applicable Daily Simple RFR or RFR for the applicable Agreed Currency will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for the applicable currency;**

then the Administrative Agent shall give notice thereof to the Company and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Company and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing in the applicable currency or for the applicable Interest Period, as the case may be, shall be ineffective, (ii) if any Borrowing Request requests a Eurocurrency Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing and (iii) if any Borrowing Request requests a Eurocurrency Borrowing **or an RFR Borrowing for the relevant rate above** in a Foreign Currency, then such request shall be ineffective; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other ~~Type~~**Types** of Borrowings shall be permitted. Furthermore, if any Eurocurrency Loan in any Agreed Currency is outstanding on the date of the Company's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Eurocurrency Loan, then (i) if such Eurocurrency Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day ~~or~~**,** (ii) if such Eurocurrency Loan is denominated in any Agreed Currency (other than Dollars), then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business

Day), at the Company's election prior to such day: (A) be prepaid by the applicable Borrower on such day or (B) be converted by the Administrative Agent to, and (subject to the remainder of this subclause (B)) shall constitute, an ABR Loan denominated in Dollars (in an amount equal to the Dollar Amount of such Agreed Currency) on such day (it being understood and agreed that if the applicable Borrower does not so prepay such Loan on such day by 12:00 noon, Local Time, the Administrative Agent is authorized to effect such conversion of such Eurocurrency Loan into an ABR Loan denominated in Dollars), and, in the case of such subclause (B), upon the Company's receipt of notice from the Administrative Agent that the circumstances giving rise to the aforementioned notice no longer exist, such ABR Loan denominated in Dollars shall then be converted by the Administrative Agent to, and shall constitute, a Eurocurrency Loan denominated in such original Agreed Currency (in an amount equal to the Foreign Currency Amount of such Agreed Currency) on the day of such notice being given to the Company by the Administrative Agent. **or (iii) then such RFR Loan, at the Borrower's election, shall either (x) be converted into an ABR Loan denominated in Dollars (in an amount equal to the Dollar Amount of such Foreign Currency) immediately or (y) be prepaid in full immediately.**

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m., New York City time, on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, solely with respect to a Dollar Loan, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Company a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Company and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation

of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or the LIBO Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Company's receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrower may revoke any request for a Eurocurrency Borrowing **or RFR Borrowing** of, conversion to or continuation of Eurocurrency Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the applicable Borrower will be deemed to have converted any request for a Eurocurrency Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans or (y) any **request for a** Eurocurrency Borrowing **or an RFR Borrowing** denominated in a Foreign Currency shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Eurocurrency Loan **or RFR Loan** in any Agreed Currency is outstanding on the date of the Company's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Eurocurrency **Loan or RFR** Loan, then (i) if such Eurocurrency Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day ~~or~~, (ii) if such Eurocurrency Loan is denominated in any Agreed Currency (other than Dollars), then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), at the Company's election prior to such day: (A) be prepaid by the applicable Borrower on such day or (B) be converted by the Administrative Agent to, and (subject to the remainder of this subclause (B)) shall constitute, an ABR Loan denominated in Dollars (in an amount equal to the Dollar Amount of such Agreed Currency) on such day (it being understood and agreed that if the applicable Borrower does not so prepay such Loan on such day by 12:00 noon, Local Time, the Administrative Agent is authorized to effect such conversion of such Eurocurrency Loan into an ABR Loan denominated in Dollars), and, in the case of such subclause (B), upon any subsequent implementation of a Benchmark Replacement in respect of such Agreed Currency pursuant to this Section 2.14, such ABR Loan denominated in Dollars shall then be converted by the Administrative

Agent to, and shall constitute, a Eurocurrency Loan denominated in such original Agent Currency (in an amount equal to the Foreign Currency Amount of such Agreed Currency) on the day of such implementation, giving effect to such Benchmark Replacement in respect of such Agreed Currency. **or (iii) then such RFR Loan, at the Borrower's election, shall either (x) be converted into an ABR Loan denominated in Dollars (in an amount equal to the Dollar Amount of such Foreign Currency) immediately or (y) be prepaid in full immediately.**

SECTION 2.15 Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate or the Adjusted EURIBO Rate, as applicable) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London **or other applicable offshore** interbank market **for the applicable Agreed Currency** any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the applicable Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered as reasonably determined by the Administrative Agent, such Lender or the Issuing Bank (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally consistent with similarly situated customers of the Administrative Agent, such Lender or the Issuing Bank, as applicable, under agreements having provisions similar to this Section 2.15, after consideration of such factors as the Administrative Agent, such Lender or the Issuing Bank, as applicable, then reasonably determines to be relevant).

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the applicable Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered as reasonably determined by the Administrative Agent, such Lender or the Issuing Bank (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally

consistent with similarly situated customers of the Administrative Agent, such Lender or the Issuing Bank, as applicable, under agreements having provisions similar to this Section 2.15, after consideration of such factors as the Administrative Agent, such Lender or the Issuing Bank, as applicable, then reasonably determines to be relevant).

(c) A certificate of a Lender or the Issuing Bank setting forth, in reasonable detail, the basis and calculation of the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay, or cause the other Borrowers to pay, such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Company shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments.

(a) ~~. In~~**With respect to Loans that are not RFR Loans, in** the event of (~~a~~**i**) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (~~b~~**ii**) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (~~c~~**iii**) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(a) and is revoked in accordance therewith) or (~~d~~**iv**) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Company pursuant to Section 2.19 or 9.02(e), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of anticipated profits). Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (~~i~~**x**) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate or the Adjusted EURIBO Rate, as applicable, that would have been applicable to such Loan (but not the Applicable Rate applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (~~ii~~**y**) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the relevant ~~currency~~**Agreed Currency** of a comparable amount and period from other banks in the ~~eurocurrency market~~**applicable offshore market for such Agreed Currency, whether or not such Eurocurrency Loan was in fact so funded**. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and setting forth in reasonable detail the calculations used by such Lender to determine such amount or amounts, shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof; provided that the Company shall not be required to compensate a Lender pursuant to this Section for any amounts under this Section incurred

more than 180 days prior to the date that such Lender notifies the Company of such amount and of such Lender's intention to claim compensation therefor.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(a) and is revoked in accordance therewith), (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or 9.02(e) or (iv) the failure by the Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in a Foreign Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and setting forth in reasonable detail the calculations used by such Lender to determine such amount or amounts, shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof; provided that the Company shall not be required to compensate a Lender pursuant to this Section for any amounts under this Section incurred more than 180 days prior to the date that such Lender notifies the Company of such amount and of such Lender's intention to claim compensation therefor.

SECTION 2.17 Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrowers. The applicable Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the applicable Loan Party by a Lender (with a copy to the Administrative Agent), or by

a Swiss Qualifying Lender other than as a result of any change after the date it became a Lender or Participant under this Agreement in (or in the interpretation, administration or application of) any law or double taxation treaty, or any published practice or published concession of any relevant taxing authority (and it being understood that a Swiss Loan Party shall not be required to make a tax indemnity payment or increased interest payment under any Loan Document to a specific Lender or Participant to the extent a loss, liability or cost is compensated for by an increased payment under Section 2.13(**gh**) or would have been compensated for by an increased payment under Section 2.13(**gh**) but was not so compensated solely because one of the exclusions in Section 2.13(**gh**) or in this clause (j) applied).

(k) Luxembourg Tax Matters. Notwithstanding any provision of this Agreement to the contrary, a Luxembourg Loan Party shall not be required to make a tax gross up pursuant to Section 2.17(a), a tax indemnity payment or an increased interest payment pursuant to Section 2.17(d) under any Loan Document to a Lender (a) if, on the date on which the payment falls due (i) the payment could have been made to the relevant Lender without a tax deduction if the Lender had been a Luxembourg Treaty Lender , but on that date the Lender is not or has ceased to be a Luxembourg Treaty Lender, other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or a Luxembourg Treaty or any published practice or published concession of any relevant taxing authority; (b) such tax deduction is required by virtue of the so-called Luxembourg Relibi Law dated 23 December 2005, as amended; (c) with respect to (i) any stamp duty, registration or other similar taxes payable on or by reference to or in consequence of the transfer or assignment of the whole or any part of the rights of a Lender under a Loan Document and (ii) any Luxembourg registration duties (*droits d'enregistrement*) payable due to registration of any Loan Document when such registration is or was not required to maintain or preserve the rights of any Loan Party under that Loan Document; or (d) or to the extent a loss, liability or cost (i) is compensated for by an increased payment under Section 2.17(a) or (ii) would have been compensated for by an increased payment under Section 2.17(a) but was not so compensated solely because one of the exclusions in paragraph Section 2.17(k) applied.

SECTION 2.18 Payments Generally; Allocations of Proceeds; Pro Rata Treatment; Sharing of Setoffs.

(a) Each Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to (i) in the case of payments denominated in Dollars, 12:00 noon, New York City time and (ii) in the case of payments denominated in a Foreign Currency, 12:00 noon, Local Time, in the city of the Administrative Agent's Eurocurrency Payment Office for such currency, in each case on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made (i) in the same currency in which the applicable Credit Event was made (or where such currency has been converted to euro, in euro) and (ii) to the Administrative Agent at its offices at 10 South Dearborn Street, Chicago, Illinois 60603 or, in the case of a Credit Event denominated in a Foreign Currency, the Administrative Agent's Eurocurrency Payment Office for such currency, except payments to be made directly to the Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments denominated in the same currency received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Notwithstanding the foregoing provisions of this Section, if, after the making of any Credit Event in any Foreign Currency, currency control or exchange regulations are imposed in the country which issues such

available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.20 with respect to an Incremental Term Loan Amendment or as provided in Section 2.14(b), Section 2.14(c) and Section 2.14(d), neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby (except that none of (A) any amendment or modification of the financial covenants in this Agreement (or defined terms used in the financial covenants in this Agreement) or (B) the waiver or reduction of any Borrower to pay interest or fees at the applicable default rate set forth in Section 2.13(ed) shall constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon (other than interest payable at the applicable default rate set forth in Section 2.13(ed)), or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.09(c) or 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change the payment waterfall provisions of Section 2.23(b) or 7.03 without the written consent of each Lender, (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (it being understood that, solely with the consent of the parties prescribed by Section 2.20 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders on substantially the same basis as the Commitments and the Loans are included on the Effective Date), (vii) (x) release the Company from its obligations under Article X or (y) release all or substantially all of the Subsidiary Guarantors from their obligations under any Subsidiary Guaranty, in each case, without the written consent of each

EXHIBIT A

Consent and Reaffirmation

Each of the undersigned hereby acknowledges receipt of a copy of the foregoing Amendment No. 1 to the Credit Agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), dated as of November 6, 2020, by and among NovoCure Limited, a public company incorporated in Jersey, Channel Islands (registered number 76264) (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent"), which Amendment No. 1 is dated as of December 6, 2021 and is by and between the Company and the Administrative Agent (the "Amendment"). Capitalized terms used in this Consent and Reaffirmation and not defined herein shall have the meanings given to them in the Credit Agreement. Without in any way establishing a course of dealing by the Administrative Agent or any Lender, each of the undersigned consents to the Amendment and reaffirms the terms and conditions of the Credit Agreement, the Subsidiary Guaranty, the Security Agreement and any other Loan Document executed by it and acknowledges and agrees that the Credit Agreement, the Subsidiary Guaranty, the Security Agreement and each and every such Loan Document executed by the undersigned in connection with the Credit Agreement remains in full force and effect and is hereby reaffirmed, ratified and confirmed. All references to the Credit Agreement contained in the above-referenced documents shall be a reference to the Credit Agreement as so modified by the Amendment and as the same may from time to time hereafter be amended, modified or restated.

Dated December 6, 2021

[Signature Page Follows]

IN WITNESS WHEREOF, this Consent and Reaffirmation has been duly executed and delivered as of the day and year above written.

NOVOCURE LUXEMBOURG

By: _____
Name: Ashley Cordova
Title: Class A Manager

NOVOCURE CAPITAL

By: _____
Name: Ashley Cordova
Title: Class A Manager

NOVOCURE GMBH

By: _____
Name: Ashley Cordova
Title: Authorized Signatory

NOVOCURE INC.

By: _____
Name: Ashley Cordova
Title: Chief Financial Officer

NOVOCURE USA LLC

By: _____
Name: Ashley Cordova
Title: Chief Financial Officer

Exhibit 21

SUBSIDIARIES OF NOVOCURE LIMITED

Name of Subsidiary and Name Under Which It Does Business	**Jurisdiction of Incorporation**
Novocure Austria GmbH	Austria
Novocure Canada, Inc.	Canada
Novocure Capital	Luxembourg
NovoCure (Israel) Ltd.	Israel
NovoCure GmbH	Germany
Novocure GmbH	Switzerland
Novocure Inc.	Delaware
Novocure K.K.	Japan
Novocure Luxembourg S.à.r.l.	Luxembourg
Novocure Netherlands B.V.	Netherlands
Novocure France SAS	France
Novocure USA LLC	Delaware
Novocure UK Limited	United Kingdom
Novocure Denmark ApS	Denmark

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

a. Registration Statement (Form S-8 No. 333-209854) pertaining to the NovoCure Limited Employee Share Purchase Plan, the NovoCure Limited 2015 Omnibus Incentive Plan, the NovoCure Limited 2013 Share Option Plan and the Standen Limited 2003 Share Option Plan,
b. Registration Statement (Form S-8 No. 333-217619) pertaining to the NovoCure Limited Employee Share Purchase Plan and the NovoCure Limited 2015 Omnibus Incentive Plan,
c. Registration Statement (Form S-8 No. 333-224606) pertaining to the NovoCure Limited 2015 Omnibus Incentive Plan,
d. Registration Statement (Form S-8 No. 333-232896) pertaining to the NovoCure Limited Employee Share Purchase Plan, the NovoCure Limited 2015 Omnibus Incentive Plan,
e. Registration Statement (Form S-8 No. 333-236862) pertaining to the NovoCure Limited Employee Share Purchase Plan, the NovoCure Limited 2015 Omnibus Incentive Plan, and
f. Registration Statement (Form S-8 No. 333-253499) pertaining to the NovoCure Limited Employee Share Purchase Plan, the NovoCure Limited 2015 Omnibus Incentive Plan.

of our reports dated February 24, 2022, with respect to the consolidated financial statements of NovoCure Limited and the effectiveness of internal control over financial reporting of NovoCure Limited included in its Annual Report (Form 10-K) of NovoCure Limited for the year ended December 31, 2021 filed with the Securities and Exchange Commission.

Tel Aviv, Israel
February 24, 2022

/s/ KOST FORER GABBAY AND KASIERER
A member of Ernst & Young Global

Exhibit 31.1

I, Asaf Danziger, certify that:

1. I have reviewed this Annual Report on Form 10-K of NovoCure Limited;

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.

5. The registrant's other certifying officers 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 controls over financial reporting.

Date: February 24, 2022

/s/ Asaf Danziger

Asaf Danziger
Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Ashley Cordova, certify that:

1. I have reviewed this Annual Report on Form 10-K of NovoCure Limited;

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.

5. The registrant's other certifying officers 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 controls over financial reporting.

Date: February 24, 2022

/s/ Ashley Cordova

Ashley Cordova

Chief Financial Officer

(Principal Accounting and Financial Officer)

Exhibit 32.1

NOVOCURE LIMITED
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of NovoCure Limited (the "Company") on Form 10-K for the fiscal year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Asaf Danziger, Chief Executive Officer (Principal Executive Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Asaf Danziger
Asaf Danziger
Chief Executive Officer
(Principal Executive Officer)

Date: February 24, 2022

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff on request.

This certification accompanies the Report 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 NovoCure Limited 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 Report), irrespective of any general incorporation language contained in such filing.

Exhibit 32.2

NOVOCURE LIMITED
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of NovoCure Limited (the "Company") on Form 10-K for the fiscal year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ashley Cordova, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Ashley Cordova
Ashley Cordova
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: February 24, 2022

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff on request.

This certification accompanies the Report 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 NovoCure Limited 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 Report), irrespective of any general incorporation language contained in such filing.