

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: 001-37941

**SENESTECH, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**20-2079805**

(I.R.S. Employer  
Identification No.)

**23460 N. 19<sup>th</sup> Avenue, Suite 110  
Phoenix, AZ**

(Address of principal executive offices)

**85027**

(Zip Code)

**(928) 779-4143**

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading symbol	Name of each exchange on which registered
Common Stock, \$0.001 par value	SNES	The Nasdaq Stock Market LLC (Nasdaq Capital Market)

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

NONE

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 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 Act). Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates on June 30, 2021 (the last business day of the registrant's most recently completed second fiscal quarter) as reported by The NASDAQ Capital Market on such date was approximately \$19,477,004. There were 12,097,518 shares of the registrant's common stock outstanding on June 30, 2021.

The number of shares of common stock outstanding as of March 29, 2022: 12,212,283

**Documents Incorporated by Reference**

Portions of the registrant's definitive proxy statement for the 2022 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

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**SENESTECH, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The statements contained in this Annual Report on Form 10-K that are not historical are 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, or the Exchange Act. All statements other than statements of historical facts contained or incorporated herein by reference in this Annual Report on Form 10-K, including statements regarding our future operating results, future financial position, business strategy, objectives, goals, plans, prospects, markets, and plans and objectives for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “suggests,” “targets,” “contemplates,” “projects,” “predicts,” “may,” “might,” “plan,” “would,” “should,” “could,” “can,” “potential,” “continue,” “objective,” or the negative of those terms, or similar expressions intended to identify forward-looking statements. However, not all forward-looking statements contain these identifying words. Specific forward-looking statements in this Annual Report on Form 10-K include statements regarding:

- our belief the most effective, long-term way to manage rats is by using a combination of tools that work together to magnify the efficacy of the pest management protocol; integrated pest management (IPM) is based upon this concept;
- our belief ContraPest can establish a new paradigm in rodent control, making fertility control an essential component of a sustainable IPM program;
- our belief that the size of the rat control market is sufficient for our near-term focus;
- our belief that successful field trials with certain influential end-users will help drive significant subsequent sales to other participants in the relevant market;
- our belief ContraPest will be perceived as a significant value as a complement to existing pest control products or as a non-lethal stand-alone solution for managing rat infestations and, as such, should command a premium price compared to other products;
- our belief that ContraPest consumption should not cause rats to become ill, change their behavior, or become more susceptible to predation, which reduces risks of non-target species exposure;
- our belief that a certain non-registered product being sold online that claims to control rodent reproduction humanely may attempt to compete with us;
- our plan to continue to use promotional efforts to support the value message and to justify our product’s premium price;
- our plan to attempt to accelerate the reformulation process through partnerships with others in the industry that will be able to give us access to proven technologies, thus reducing potential development time;
- the exclusive patent license with the University of Arizona for background intellectual property that we plan to employ for future product development in the domestic animal fertility control market;
- our plan to continue to utilize various forms of stock-based compensation awards to attract and retain qualified employees;
- our anticipation that stock-based compensation expense will continue to represent a significant portion of our selling, general and administrative expenses for the foreseeable future;
- our expectation our expenses to continue or increase in connection with our ongoing activities, particularly as we focus on marketing and sales of ContraPest;
- our expectation to continue to grant stock options and other equity-based awards, such as restricted stock units, in the future and to continue to recognize stock-based compensation expense in future periods
- our commercialization and promotion strategy and plans, including key elements to our business strategy, how we commercialize, our sales approach, the tools we use, our hiring and retention strategy; our areas and markets of focus, our pricing strategy, our strategic relationships and which geographic markets we target;
- our seeking, obtaining or maintaining regulatory approvals for our product candidates;
- our expectations regarding the potential market size for our products and how the market may develop;

- our estimates or expectations related to our revenue, cash flow, expenses, capital requirements and need for additional financing;
- our ability, and the time required, to improve our cost structure and gross margins, and limit our cash burn;
- our plans for our business, including for research and development;
- our ability to enter into strategic arrangements and to achieve the expected results from such arrangements;
- the adequacy of our facilities to meet our current needs;
- the initiation, timing, progress and results of field studies and other studies and trials and our research and development programs;
- our belief the claims against us do not have merit and our intention to aggressively defend against these accusations;
- our belief the litigation against us is not likely to have a material effect on our operations;
- our financial performance, including our ability to fund operations;
- developments and projections relating to our projects, competitors and our industry, including legislative developments and impacts from those developments; and
- other risks and uncertainties, including those described or incorporated by reference under the caption “Risk Factors” in this Annual Report on Form 10-K.

These forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and situations that are difficult to predict and that may cause our own, or our industry’s, actual results to be materially different from the future results that are expressed or implied by these statements. Accordingly, actual results may differ materially from those anticipated or expressed in such statements as a result of a variety of factors, including those discussed in Item 1A-“Risk Factors” of Part II of in this Annual Report on Form 10-K. A number of factors could cause our actual results to differ materially from those indicated by the forward-looking statements. Such factors include, among others, the following:

- the impacts and implications of the COVID-19 pandemic;
- the successful commercialization of our products;
- market acceptance of our products; and
- regulatory approval and regulation of our products and other factors and risks identified from time to time in our filings with the Securities and Exchange Commission, including this Annual Report on Form 10-K.

All forward-looking statements included herein are based on information available to us as of the date hereof and speak only as of such date. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements. The forward-looking statements contained in or incorporated by reference into this Annual Report on Form 10-K reflect our views as of the date of this Annual Report on Form 10-K about future events and are subject to risks, uncertainties, assumptions, and changes in circumstances that may cause our actual results, performance, or achievements to differ significantly from those expressed or implied in any forward-looking statement. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future events, results, performance, or achievements.

We are subject to the information requirements of the Exchange Act, and we file or furnish reports, proxy statements and other information with the Securities and Exchange Commission, or the SEC. Such reports and other information we file with the SEC are available free of charge at [www.senestech.com](http://www.senestech.com) as soon as practicable after such reports are available on the SEC’s website at [www.sec.gov](http://www.sec.gov). The SEC’s website contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

## PART I

### Item 1. *Business.*

#### *Overview*

We have developed and are commercializing a global, proprietary technology for managing animal pest populations, initially rat populations, through fertility control.

Rats pose threats to human and animal health as well as food security around the world. In addition, rats cause extensive product loss through consumption and contamination, including in the agricultural industry. Rats also cause significant damage to critical infrastructure by burrowing beneath foundations and gnawing on electrical wiring, insulation, fire proofing systems, electronics and computer equipment.

The most prevalent response to rat infestations is the use of lethal tools such as traps and rodenticides, although there are growing concerns about secondary exposure and bioaccumulation of rodenticides. These solutions are limited by the rat's extraordinary reproduction rate as well as their behavior.

ContraPest<sup>®</sup>, our initial product, is unique liquid bait in the pest control industry. ContraPest targets the reproductive systems of both male and female Norway and roof rats, which can lead to sustained reductions of the rat population.

ContraPest is a liquid bait containing the active ingredients 4-vinylcyclohexene diepoxide ("VCD") and triptolide. ContraPest limits the reproduction of male and female rats beginning with the first breeding cycle following consumption. Accordingly, it offers an alternative to traditional rodenticides in many environments and also may be used in coordination with rodenticides as part of integrated pest management. It is an important option in the increasing number of jurisdictions that are restricting the use of second-generation anti-coagulant products.

We began the registration process with the United States Environmental Protection Agency (the "EPA") for ContraPest on August 23, 2015. On August 2, 2016, the EPA granted an unconditional registration for ContraPest as a Restricted Use Product ("RUP"), due to the need for applicator expertise for deployment. On October 18, 2018, the EPA approved the removal of the RUP designation and was reclassified as a general-use pesticide. In addition to the EPA, ContraPest is registered in all 50 states, 48 of which have approved the removal of the RUP designation, as well as the District of Columbia. In certain cases, our registrations are conditional and require completion of testing and we continue to seek to comply with these requirements.

We continue to develop enhancements to ContraPest that align with our target verticals while pursuing regulatory approvals and amendments to the existing U.S. registration to broaden its use and marketability. When ContraPest begins to generate sufficient revenue, we will seek regulatory approval for additional jurisdictions beyond the United States.

We were formed in July 2004 and incorporated in the state of Nevada. On November 12, 2015, we subsequently reincorporated in the state of Delaware. Our corporate headquarters and manufacturing site are in Phoenix, Arizona. On December 8, 2016, we went public and are currently traded on the Nasdaq Capital Market ("Nasdaq") under the symbol SNES.

On February 4, 2020, we amended our amended and restated certificate of incorporation to effect a 1-for-20 reverse split of our issued and outstanding shares of common stock. The accompanying condensed financial statements and notes thereto give retrospective effect to the reverse stock split for all periods presented. All issued and outstanding common stock, options and warrants exercisable for common stock, restricted stock units, preferred stock conversions to common stock and per share amounts contained in our condensed financial statements have been retrospectively adjusted.

### ***Current Challenges in Pest Control Methodologies***

Lethal control measures such as traps and rodenticides are often at the forefront of rat control programs but reproduction, behavior, and genetic resistance can negatively impact results of mitigation efforts.

Rats reach sexual maturity at approximately nine weeks of age. Females can give birth to six litters per year, with up to five to ten offspring each. This rapid reproduction rate can cause populations to rebound quickly after implementing a lethal control program.

Rat behavior, either learned or innate, can negatively affect pest control efforts. Neophobia, or the fear and avoidance of new objects, is an innate behavior that often impacts control efforts. Rats avoid bait stations, loose bait, or traps until they are confident that these new objects pose no danger. Over time rats will begin to sample new foods to determine if there are any negative side effects. If the food or rodenticide causes illness in rats but they do not die, they will avoid that food or rodenticide in the future.

Genetic resistance also creates challenges for rodent control programs. Rats can be resistant develop resistance to rodenticides due to genetic through genetic mutations. This resistance is passed onto their offspring who will carry this resistant trait to future generations.

Because of the above factors, conventional rodenticide producers are continually challenged to develop new, more lethal chemicals to control future rat populations.

Rodenticides have significant drawbacks, in that they may affect species that prey on rats, including birds of prey and large cats, due to the persistence of the rodenticide in the rat tissue. In addition, there is growing concern about the adverse effects that rodenticides may have on children and pets due to accidental, direct exposure.

### ***Integrated Pest Management and Fertility Control***

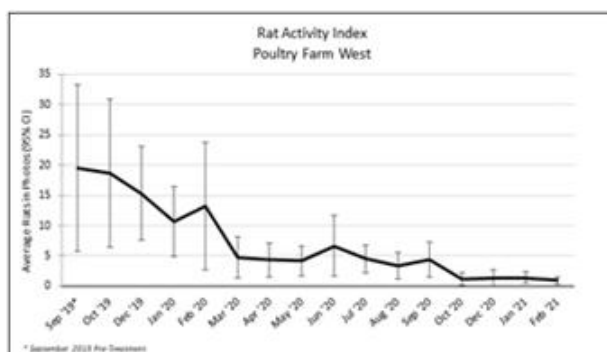
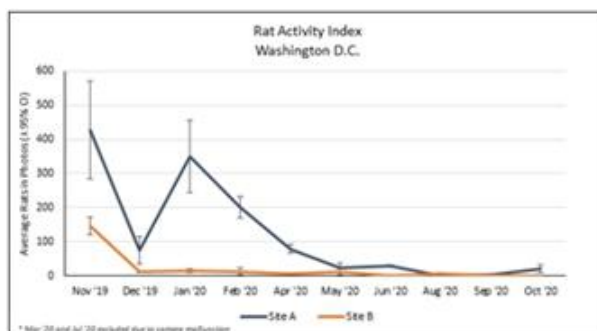


The most effective, long-term way to manage rats is by using a combination of tools that work together to magnify the efficacy of the pest management protocol; integrated pest management (IPM) is based upon this concept. An effective IPM program needs to reduce the existing rat population while preventing the population from rebounding. We believe ContraPest has established a new paradigm in rodent control, making fertility control an essential component of a sustainable IPM program.

ContraPest is a highly palatable liquid formulation that reduces fertility in both male and female rats. Rats require 10% of their body weight in water per day, making ContraPest a great tool to add to IPM programs. The high-fat content and sweet taste promote sustained consumption even when other sought-after food sources are present. In both field and laboratory settings, ContraPest will be consumed by rats even in the presence of abundant water sources and plentiful food choices, including animal feed, trash and other options. Consumption of ContraPest does not cause illness in rats, and therefore, it does not change behavior or result in bait aversion.

Adding ContraPest to an IPM program brings the rodent population down initially and keeps it at a manageable level by minimizing reproduction and thereby limiting population rebounds. Continued maintenance baiting of ContraPest at lower population levels dramatically reduces the risk of future population spikes, allowing customers to be more focused on eliminating the causes of future invasions through exclusion and sanitation initiatives.

The following graphs illustrate the incremental benefit of adding ContraPest to IPM programs with conventional rodenticides. The data is derived from three programs we began in late 2019 to demonstrate the effectiveness of ContraPest to potential end-users and our study of the results through monitoring rat activity by camera. The data presented shows the incremental benefit of ContraPest deployment beyond that achieved through rodenticides. Ongoing monitoring of the program locations has indicated that there has been no rebound in the rodent population from the current low levels.



(source: company studies)

### Other Applications

While our proprietary technology is effective on rodent species, our technology can be applied to other mammalian species. We are currently developing a fertility control product for mice. Further, we have developed preliminary data with feral dogs, feral pigs, wallabies and brushtail possums. While this preliminary data indicates potential for the continued development of fertility control technology in general, we are not pursuing these opportunities at this time. We believe that the size of the rat control market as well as mice control market are sufficient for our near-term focus. We remain open to the potential to license our technology to other strategic partners to explore its applicability to other mammalian species.



## **Business Strategy**

Our goal is to be a leader in the pest management industry; utilizing fertility control technologies to limit the adverse effects caused by rodent infestations, educating PMP's and the general public on alternatives or enhancements to lethal rodenticides and developing additional product lines to address the needs of our customers. Key elements of our strategy are as follows:

- work to maximize market acceptance for, and generate sales of, our products, including by conducting field demonstrations at potential lead customers;
- explore strategic partnerships to enable us to penetrate additional target markets and geographical locations;
- manage the infrastructure for sales, marketing and distribution of ContraPest and any other product candidates for which we may receive regulatory approval;
- seek additional regulatory approvals for ContraPest, including to more fully expand the market and use for ContraPest and, if we believe there is commercial viability, for our other product candidates;
- further develop our manufacturing processes to contain costs while being able to scale to meet future demand of ContraPest and any other product candidates for which we receive regulatory approval;
- continue product development of ContraPest and advance our research and development activities and, as our operating budget permits, advance the research and development programs for other product candidates;
- maintain and protect our intellectual property portfolio; and
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts and operations as a public company.

## ***Marketing and Sales Approach***

The pest control industry is highly competitive with a number of large competitors developing and marketing pest control products, particularly rodenticides, and services. Because fertility control in general, and ContraPest specifically, may be considered a disruptive technology, we have encountered resistance to initial adoption. We continue to build a robust set of case studies to demonstrate efficacy and cost efficiency, identify lead users and expand within market segments. In order to enhance the likelihood of success, we have currently targeted key market segments with the highest likelihood to add ContraPest into their IPM programs. These include agribusiness (e.g., egg hen farms, grain and protein production and grain storage, transport and sales facilities), municipalities and government agencies, e-Commerce, zoos and sanctuaries, and commercial accounts.

In the United States, ContraPest is most commonly deployed and serviced by a licensed Pest Management Professional ("PMP"), although some customers have in house pest management service personnel. In some circumstances, customers will request PMPs to use certain products in the provision of their service. Initially, our marketing strategy involved sales to and through large distributors of pest control products. In 2019, we substantially modified this strategy to create two different sources of pull-through-demand: sales to PMPs and sales directly to commercial customers. We believe that by making end users aware of the existence and benefits of ContraPest, we are more likely to create demand through PMPs that would otherwise simply continue to use their existing rodenticide-based IPM models. We currently market ContraPest both to pest management companies and directly to target segments, using a direct to PMP sales channel; indirectly through distributor sales; and through our own direct sales force. In addition, in the fourth quarter of 2019, we added a new e-Commerce tool to enable customers in each of our target segments to buy directly from us. Finally, we have been pursuing strategic relationships with large pest management companies and key end-user organizations in our target segments for the distribution and sale of ContraPest.

In each of our target segments we have identified potential lead customers with whom we are working on large scale projects to demonstrate the efficacy of ContraPest in real world situations. We provide significant product support to these customers to make sure that we are not only achieving desired results, but also obtaining the data to support sales in the related market vertical. We believe that successful field trials with these influential end users will help drive significant subsequent sales to other participants in the relevant market.

We are also focused on expanding regulatory approvals for ContraPest to make the product more user friendly and available for use in an increased number of applications. These include alternative delivery methods and expansion of the label to additional applications and/or species.

## **Pricing and Value**

Our pricing strategy takes into account the cost of goods sold, the cost of competitive products and the value of our product to the end user. We believe ContraPest will be perceived as a significant value as a complement to existing pest control products or as a non-lethal stand-alone solution for managing rat infestations and, as such, should command a premium price. Our experience is that once potential customers understand the advantages of ContraPest, they recognize that the benefits of long-term sustained rodent reduction dramatically offset the cost of the product. We plan to continue to use promotional efforts to support the value message and to justify our product's premium price, built around the following advantages:

- ContraPest uses targeted delivery for maximum efficacy;
- our proprietary gravity feeding system optimizes consumption;
- ContraPest can be used as an anchor or enhancement for an IPM program, or as a stand-alone solution to decrease reliance on lethal control options;
- ContraPest is designed, formulated and dispensed in a manner that minimizes the exposure hazard for handlers and non-targeted species such as wildlife, livestock and pets; and
- over time, as the pest population decreases, the quantity deployed and consequently, the cost of ContraPest will decrease, bringing the long-term cost of ContraPest in line with other elements of integrated pest management.

We also focus on specific advantages for the individual customer and expect to position our product as having the following additional general advantages:

- savings by reducing loss or contamination of food and product inventories;
- savings by reducing damage to infrastructure and major production equipment;
- reduction in labor and servicing costs due to dramatically reduced rodent populations;
- creation of a more predictable cost model based on prevention versus treatment of spikes in population seen with rebound effect;
- reduction in disease vectors; and
- public relations and risk reduction advantages when reducing usage of lethal rodenticides and traps.

## **Raw Materials and Manufacturing Process**

ContraPest contains two active ingredients, VCD, an industrial chemical, and triptolide, a plant derived chemical. ContraPest also contains several other inactive, generally recognized as safe (GRAS), ingredients. Currently, we source VCD from standard industrial chemical supply providers. Triptolide is derived from the Thunder God Vine, *Tripterygium wilfordii*, which is commonly cultivated and harvested wild in southeastern China and other Asian countries. Triptolide is available from a variety of sources, but the process to purify triptolide for use in ContraPest is expensive. Thus, we are investigating other, less costly sources of triptolide.

Our manufacturing process involves the incorporation of our two active ingredients, in low concentrations, into several inactive ingredients. Once incorporated, the entire product goes through a micro-encapsulation process in order to stabilize the final formulation. This process allows ContraPest to be delivered to rats in a palatable, non-lethal, and effective manner.

Currently, we have production scale capability in our facilities in Arizona to manufacture ContraPest. Our internal production capabilities allow us to meet our current and anticipated demand through 2023 for ContraPest.

## **Scientific Background Regarding our Product**

ContraPest is a liquid bait containing the active ingredients VCD and triptolide. When consumed, ContraPest targets reproduction, limiting fertility in male and female rats beginning with the first breeding cycle following consumption.

Female rats are born with a finite number of eggs, or oocytes, and remain fertile until death. Within the ovary, eggs develop within structures called follicles. The non-regenerating and least mature follicles are called primordial. The primordial follicles mature through primary, secondary and antral stages and ultimately ovulate. Once the primordial follicles have become depleted, ovarian failure occurs, which terminates reproductive capability. VCD causes specific loss of small ovarian follicles (both primordial and primary). Triptolide causes specific loss of growing follicles (secondary and antral). In males, triptolide exerts a significant suppression of male fertility by preventing sperm maturation and impairing the movement of sperm.

The safety and efficacy of VCD, triptolide, and ContraPest are supported by considerable evidence. VCD and triptolide are rapidly metabolized by the rat, limiting the possibility of bioaccumulation or effect on non-target species. Further, based on our toxicology studies, ContraPest should not cause rats to become ill, change behavior or become more susceptible to predation.

Furthermore, ContraPest is a contraceptive, not a sterilant. The average duration of infertility ranges from 77 to over 180 days.

## **Other Potential Products**

We have begun work on new formulations of ContraPest – particularly solid and semi-solid variants. Although solid bait is not essential to our near-term plans, the non-liquid formulations may expand the potential uses of ContraPest as well as pave the way for future sales through retail stores. Our plan is to accelerate the reformulation process through partnerships with others in the industry that will be able to give us access to proven technologies, thus reducing potential development time.

## **Competition**

Currently, we are unaware of any other non-lethal fertility control products targeting rats that are registered by the EPA. There is a non-registered product being sold online that claims to control rodent reproduction humanely. We do not believe this is a product that can compete with us.

Our principal competition is the substitution of other tools that PMPs use in their IPM.

## **Government Regulation and Product Approval**

Federal, state and local government authorities in the United States regulate, among other things, the testing, manufacturing, quality control, approval, labeling, packaging, storage, record-keeping, distribution and marketing of the products we develop. The process for obtaining regulatory approval and compliance with appropriate federal, state and local regulations is rigorous and requires the expenditure of substantial time and financial resources.

### ***United States Review and Approval Processes***

In the United States, the EPA regulates the sale, distribution and use of any pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The EPA's definition of a pesticide includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." FIFRA defines a pest as "any insect, rodent, nematode, fungus, or weed." To register a new product with the EPA, all active ingredients within the product must be registered with the EPA.

The EPA granted registration for ContraPest effective August 2, 2016. This initial EPA approval labeled ContraPest as a restricted-use product, due to the need for applicator expertise for deployment. On October 18, 2018, the EPA removed the Restricted Use designation, meaning that we can sell ContraPest to consumers who do not have applicator expertise. ContraPest is currently limited by EPA requirements to indoor use and to use within one foot of manmade structures. We intend to diligently pursue additional related regulatory approvals from the EPA to support our product evolution, including seeking approval for full outdoor use, alternative formulations and for additional rodent species. This may entail the need to complete and submit to EPA additional studies, principally related to the effects on other animals and fish if ingested or if the product enters the water supply.

In addition to the EPA registration of ContraPest in the United States, we must obtain registration from the various state regulatory agencies prior to selling in each state. To date, we have received registration for ContraPest in all 50 states and the District of Columbia, 48 of which have approved the removal of the Restricted Use designation.

In addition to product registration, the EPA also approves all labeling (the container label, instructional inserts, and the Safety Data Sheet (SDS)) of ContraPest. Generally, states accept the EPA approved label as is. ContraPest's labeling was submitted to states at initial registration and is resubmitted during state scheduled reregistration or for any significant labeling change requiring EPA approval.

In certain cases, our EPA and state registrations require completion of testing and certifications even after we have received approval for the product or its labelling. We continue to seek to comply with these requirements.

### ***International Review and Approval Processes***

We are researching potential international markets and will evaluate the regulatory landscapes of each prospective market. Country-specific regulatory laws have provisions that include requirements for certain labeling, safety, efficacy and manufacturers' quality control procedures to assure the consistency of the product, as well as company records and reports. Some specific in-country studies will be required for particular countries, but others will generally accept an EPA or EU compliant dossier.

### ***Personnel***

As of December 31, 2021, we had 26 full-time employees and one part-time employee. Within our workforce, seven employees are engaged in research and development and 20 employees are engaged in sales, business development, finance, regulatory, human resources, facilities, information technology and general management and administration.

None of our employees are represented by labor unions or covered by collective bargaining agreements.

### ***Intellectual Property and Other Proprietary Rights***

Maintaining a strong position in the rodenticide market requires constant innovation along with a healthy research program to evolve product lines to remain competitive and relevant to the needs of the changing global marketplace. We seek to protect our proprietary data and trade secrets with attention to data exchanges among employees, consultants, collaborators and research and trade partners.

### ***Patent Filings***

Our intellectual property portfolio supporting ContraPest consists of nine international patent filings (in the United States, Europe, Canada, Brazil, Russia, Japan, Mexico, South Korea, and Australia) addressing the ContraPest compound. Claims directed toward the compound include composition-of-matter involving a diterpenoid epoxide or salts thereof in combination with an organic diepoxide, use claims for inducing follicle depletion and for reducing the reproductive capability of a mammalian animal or non-human mammalian population. Issued claims will have a patent term extending to 2033 or longer based on patent term determinations in each of the filing countries. The novelty of ContraPest extends to its method of field distribution and has required innovation to perfect the dosing of our product to rodents. We have filed U.S. and international patent applications covering our novel bait station device to effectively and efficiently deliver our rodent bait at individual bait sites that would, if issued, offer patent term protection through at least 2036.

### ***License Agreements***

We have an exclusive patent license with the University of Arizona for background intellectual property that we plan to employ for future product development in the domestic animal fertility control market. The patent claims in the United States, Australia and New Zealand cover the use of 4-vinylcyclohexene diepoxide to deplete ovarian follicles in individual mammals and mammal populations. The license agreement, signed in 2005, will terminate with the last-to-expire patent claims, which have a term extending to 2026.

### ***Trade Secrets and Trademarks***

Beyond our patent right holdings, we broaden our intellectual property position with trademark, trade secret, know-how and continuous scientific discovery to accompany our product development efforts. We protect these proprietary assets with a combination of confidentiality terms in all commercial agreements or stand-alone confidentiality agreements along with rights-ownership agreements and structured information transfer understandings prior to beginning any collaborative projects. We own and maintain the ContraPest trademark and intend to register new trademarks for products from our evolving rodenticide product line and for products for mammalian species beyond rodentia.

### ***Data Sets***

We have exclusive use status with the EPA for the data sets we have developed and submitted to the EPA as part of our application for ContraPest. The exclusive use status applies to new active ingredients and the final formulation of the ContraPest product for a period of 10 years. For five years after the 10-year period of exclusivity, if another applicant or the EPA Administrator chooses to rely on one or more data sets that we submitted in support of an application submitted by another applicant, the new applicant must make a binding offer to compensate us and certify to the EPA that it has done so. If we and the offeror cannot reach agreement on the terms of the compensation for the use of such data sets, FIFRA requires resolution by binding arbitration. The EPA rules do not describe how the compensation should be determined, and there is publicly available information about some, but not all, binding arbitration decisions.

### ***Where You Can Find Additional Information***

We electronically file with the SEC our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. We make available on our website at [www.senestech.com](http://www.senestech.com), free of charge, copies of these reports, as soon as reasonably practicable after electronically filing such reports with, or furnishing them to, the SEC. The information contained in, or that can be accessed through, our website is not part of, and is not incorporated into, this Annual Report on Form 10-K.

## **Item 1A. Risk Factors**

As discussed immediately prior to Item 1 of Part I, “Business” under “Cautionary Note Regarding Forward-Looking Statements,” our actual results could differ materially from those expressed in our forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed below. Additional risks and uncertainties not presently known to us, or that we currently deem immaterial, may also impair our business operations. If any of the following risks occur, our business, financial condition, operating results, cash flows and the trading price of our common stock could be materially adversely affected.

### **Risks Relating to our Business**

***The impacts of the coronavirus pandemic could adversely affect our business, and other similar crises could result in similar or other harms.***

The outbreak of the novel coronavirus (COVID-19) pandemic has resulted in widespread travel and transportation restrictions and closures of commercial spaces, industrial facilities and other spaces and businesses in and across the United States and the world, including in the locations we operate or target sales. As a result, our business has been impacted and we could face continued or more adverse effects. In addition, our results and financial condition may be adversely affected by federal or state legislation, or other similar laws, regulations, orders or other governmental or regulatory actions or best practices, that would impose new restrictions on our ability to operate our business or customers to operate their businesses. For example, our sales and technical field forces have been restricted from traveling or limited in travel, which adversely affects our ability to sell our products and complete field studies. While we have implemented cautionary procedures at our manufacturing facility, there may be disruptions to our ability to manufacture due to current and additional workplace controls. Our customers may be less inclined or unable to purchase our products or continue product studies due to restrictions under which they may be operating. Those restrictions have been and are more severe in some jurisdictions, such as California. If financial markets tighten, we may have more limited ability to raise necessary financing. The COVID-19 pandemic is also placing a significant budgetary burden on federal, state and local governments, which may impede or delay their ability to purchase our products. We source some of our critical raw materials from Asia, and the coronavirus has caused supply chain disruptions, which could limit a timely supply of materials. Each of these could have negative effects on our business, results of operations, financial condition and cash flows. Even if the coronavirus pandemic passes, another crisis with similar effects could develop and harm our business, financial results and liquidity. The degree to which the COVID-19 pandemic may impact our results of operations and financial condition is unknown at this time and will depend on future developments, including the ultimate severity and the duration of the pandemic, and further actions that may be taken by governmental authorities or businesses or individuals on their own initiatives in response to the pandemic.

***Our success is dependent on the successful commercialization of ContraPest.***

The EPA granted registration approval for ContraPest effective August 2, 2016, and as of July 12, 2018, we have received registration for ContraPest in all 50 states and the District of Columbia. However, we have not yet had significant sales of ContraPest, which is our only product to date that is available for commercialization and the generation of revenue.

***ContraPest and our other product candidates, if approved, may not achieve adequate market acceptance necessary for commercial success.***

Even following receipt of regulatory approval for ContraPest or future regulatory approval of our other product candidates, such products may not gain market acceptance. Market acceptance of any of our product candidates for which we receive approval depends on a number of factors, including the following:

- the potential and perceived advantages of product candidates over alternative or complementary products;
- the effectiveness of our sales and marketing efforts and those of our collaborators;
- the efficacy and safety of such product candidates as demonstrated in trials;
- the uses, indications or limitations for which the product candidate is approved;
- product labeling or product insert requirements of the EPA or other regulatory authorities;
- the timing of market introduction of our products as well as future competitive or alternative products;
- relative convenience and ease of use; and
- unfavorable publicity relating to the product.

***If we cannot successfully commercialize our products, especially ContraPest, we will not become profitable.***

If any of our approved product candidates fail to achieve sufficient market acceptance, we will not be able to generate significant revenues or become profitable. The commercial success of ContraPest will depend on a number of factors, including the following:

- the execution of our commercial strategy and the successful expansion of our commercial organization;
- our success in educating end users about the benefits, administration and use of ContraPest;
- the effectiveness of our own or our potential strategic partners' marketing, sales and distribution strategy and operations;
- convincing PMPs to deploy ContraPest in quantity as an enhancement to, or replacement of, their current strategy of rodenticide use;
- continued refinement of our pricing strategy;
- our ability to manufacture quantities of ContraPest using commercially acceptable processes and at a scale sufficient to meet anticipated demand and enable us to reduce our cost of manufacturing; and
- a continued acceptable safety profile of ContraPest.

Many of these factors are beyond our control. If we are unable to successfully commercialize ContraPest, we may not be able to earn sufficient revenues or profits to continue our business.

***We will require additional capital to fund our operations. Failure to obtain this necessary capital if needed may force us to delay, limit, or terminate our product development efforts or other operations.***

Commercialization of ContraPest and developing further product candidates, including conducting experiments and field studies, obtaining and maintaining regulatory approval and commercializing any products approved for sale, is a time-consuming, expensive and uncertain process that takes years to complete. We expect our expenses to continue and to increase in connection with our ongoing activities, particularly as we advance our commercialization activities. We may expand our operations, and as a result of many factors, some of which may be currently unknown to us, our expenses may be higher than expected. Securing additional financing may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our product candidates, including ContraPest. In addition, we cannot guarantee that future financing will be available in sufficient amounts or on terms acceptable to us, if at all. If we are unable to raise additional capital when required or on acceptable terms, we may be required to take certain actions, including the following:

- significantly delay, scale back or discontinue the development or commercialization of our product candidates, including ContraPest;
- seek strategic partners for the manufacturing, sales and distribution of ContraPest or any of our other product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available; and
- relinquish, or license on unfavorable terms, our rights to technologies or product candidates that we otherwise would seek to develop or commercialize ourselves.

The occurrence of any of the events described above would have a material adverse effect on our business, operating results and prospects and on our ability to develop our product candidates.

***ContraPest is the first product we have marketed, and if we are unable to establish and maintain an effective sales force and marketing and distribution infrastructures, or enter into and rely upon acceptable third-party relationships, we may be unable to generate any revenue.***

We continue to develop a functional infrastructure for the sales, marketing, and distribution of our products and the cost of establishing and maintaining such an infrastructure may exceed the cost-effectiveness of doing so. In order to market ContraPest and any other products that may be approved by the EPA and comparable foreign regulatory authorities, we must continue to build our sales, marketing, managerial and other non-technical capabilities or make arrangements with third parties to perform these services for which we would incur substantial costs. If we are unable to establish and maintain adequate sales, marketing, and distribution capabilities, whether independently or with third parties, we may not be able to generate sufficient product revenue to become profitable. Without an effective internal commercial organization or the support of a third party to perform sales and marketing functions, we may be unable to compete successfully.

## Risks Regulations Have on Our Business

***Regulatory approval processes of the EPA and comparable foreign regulatory authorities are lengthy, time-consuming and unpredictable, and if we are ultimately unable to obtain regulatory approval for our product candidates, our business may fail.***

The EPA review process for a product with one or more new active ingredients typically takes approximately two years to complete and approval is never guaranteed. In addition, we continue to seek approvals to expand labels and use designations for ContraPest to broaden its market and usability. Our efforts could fail to receive marketing approval from the EPA or, with respect to ContraPest or our product candidates, from a comparable foreign regulatory authority for many reasons, including the following:

- disagreement over the design or implementation of our trials;
- failure to demonstrate a product candidate is safe or works according to our claims;
- failure to demonstrate a product candidate's benefits outweigh its risks;
- disagreement over our interpretation of data;
- disagreement over whether to accept efficacy results from trials;
- the insufficiency of data collected from trials to obtain regulatory approval;
- irreparable or critical compliance issues relating to our manufacturing process; or
- changes in the approval policies or regulations that render our data insufficient for approval.

Any of these factors, some of which are beyond our control, could jeopardize our ability to obtain regulatory approval for and successfully market any of our product candidates. Any such setback in our pursuit of regulatory approval could have a material adverse effect on our business and prospects.

***Even following receipt of any regulatory approval for ContraPest and our other product candidates, we will continue to face extensive regulatory requirements and our products may face future development and regulatory difficulties.***

Even following receipt of any regulatory approval for ContraPest or our product candidates, our products will be subject to ongoing requirements by the EPA and comparable state and foreign regulatory authorities governing the manufacture, quality control, further development, labeling, packaging, storage, distribution, safety surveillance, import, export, advertising, promotion, recordkeeping and reporting of safety and other post-market information.

The safety profile of any product will continue to be closely monitored by the EPA and comparable foreign regulatory authorities after approval. In addition, we may be required, from time to time, to provide further testing results and certifications to the EPA and state regulatory agencies for ContraPest.

For instance, we have found it challenging to produce applicable stability test results for certain of our active ingredients, due in part to the small quantities used in the final product and continue to work with the EPA to develop appropriate biological or chemical measurements of product stability. Because our data continue to demonstrate the long-term efficacy of ContraPest, we believe that the testing is a matter we will resolve.

If the EPA or comparable foreign regulatory authorities become aware of new information after approval of ContraPest or any other product candidate, or we are unable to adequately complete required testing and certification requirements, a number of potentially significant negative consequences could result, including the following:

- we may be forced to suspend marketing of such product;
- regulatory authorities may withdraw their approvals of such product after certain procedural requirements have been met;
- regulatory authorities may require additional warnings on the label that could diminish the usage or otherwise limit the commercial success of such product;
- the EPA or other regulatory bodies may issue safety alerts, press releases or other communications containing warnings about such product;
- the EPA may require the establishment or modification of restricted use, or a comparable foreign regulatory authority may require the establishment or modification of a similar strategy that may, for instance, restrict distribution of our product and impose burdensome implementation requirements on us;
- we may be required to change the way the product is administered or conduct additional trials;
- we could be sued and held liable for harm caused;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.



Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate, if approved, and could significantly harm our business, results of operations and prospects.

Moreover, existing government regulations may change, and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of ContraPest or any other product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and/or be subject to different marketing requirements or fines or enhanced government oversight and reporting obligations, which would adversely affect our business, prospects, and ability to achieve or sustain profitability.

***Our future success is also dependent on regulatory approval and commercialization of our other product candidates.***

We are actively working on a semi-solid product as well as an alternative dispenser. We also plan to continue work on a product to control fertility in mice. We cannot commercialize our product candidates in the United States without first obtaining regulatory approval for each product and each use pattern from the EPA or, if applicable, the Food and Drug Administration, or FDA, and from any related applicable state authorities. Before obtaining regulatory approvals for the commercial sale of any product candidate for a target indication, the law requires that applicants demonstrate through laboratory and field studies and related data showing that the product candidate will perform its intended function without causing unreasonable adverse effects on the environment. The EPA or a comparable foreign regulatory authority may require more information, including additional data to support approval that may delay or prevent approval.

***Even following receipt of any regulatory approval for ContraPest and our other product candidates, we will continue to be subject to regulation of our manufacturing processes and advertising practices.***

As a manufacturer of pest control products, we are subject to continual government oversight and periodic inspections by the EPA and other regulatory authorities. If we or a regulatory agency discover problems with a facility where our products are manufactured, a regulatory agency may impose restrictions on the manufacturing facility, including requiring recall or withdrawal of the product from the market or suspension of manufacturing until certain procedural requirements have been met. The occurrence of any such event or penalty could limit our ability to market ContraPest or any other product candidates and generate revenue.

In addition, the EPA strictly regulates the advertising and promotion of pest control products, and these pest control products may only be marketed or promoted for their EPA approved uses, consistent with the product's approved labeling. Advertising and promotion of any product candidate that obtains approval in the U.S. will be heavily scrutinized by the EPA, other applicable state regulatory agencies and the public. Violations, including promotion of our products for unapproved or off-label uses, are subject to enforcement actions, inquiries and investigations, and civil, criminal and/or administrative sanctions imposed by the EPA.

***Failure to obtain regulatory approval in foreign jurisdictions would prevent ContraPest or any other product candidates from being marketed in those jurisdictions.***

To market and sell our products globally, we must obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. Obtaining foreign regulatory approvals and maintaining compliance with foreign regulatory requirements could result in significant delays, difficulties, and cost for us and could delay or prevent the introduction of our products in certain countries. Approval by the EPA does not ensure approval by regulatory authorities in other countries or jurisdictions, but EPA approval may influence decisions by the foreign regulatory authority. If we are unable to obtain approval of ContraPest or for any of our other product candidates by regulatory authorities in the world market, the commercial prospects of that product candidate may be significantly diminished and our business prospects could decline.

### **Risks Related to our Operations and Supply Chain**

***We depend on key personnel to operate our business. If we are unable to retain, attract and integrate qualified personnel, our ability to develop and successfully grow our business could be harmed.***

We believe that our success is highly dependent on our ability to attract and retain highly skilled and experienced sales, research and development, and other personnel. If one or more of our executive officers or key employees terminates employment or becomes disabled or experiences long-term illness, we may not be able to replace their expertise, fully integrate new personnel or replicate the prior working relationships, and the loss of their services might significantly delay or prevent the achievement of our research and development and business objectives. Qualified individuals with the breadth of skills and experience in our industry that we require are in high demand, and we may incur significant costs to attract them. Many of the other companies that we compete against for qualified personnel have greater financial and other resources, different risk profiles and a more established history in the industry. They also may provide more diverse opportunities and better chances for career advancement. Our failure to attract and/or retain key personnel could impede the achievement of our research and development and commercialization objectives.

***We have internal manufacturing capabilities to meet our current and near term forecasted demand for ContraPest, however, we must develop additional manufacturing capability or rely upon third parties to manufacture our products to meet future demand and our single location manufacturing operations could be disrupted.***

Our existing internal manufacturing platform is adequate for meeting our current and near term forecasted demand for ContraPest. We may be required to spend significant time and resources to expand these manufacturing facilities to fully meet future demand. If we are unable to develop full-scale manufacturing capabilities, we may not be able to meet demand of our products without relying on third party manufacturers, which could adversely affect our operations or financial condition.

In addition, if our manufacturing operations fail or are disrupted for any reason, including because of labor, disasters, and/or equipment malfunctions, among others, our ability to timely produce ContraPest may be adversely affected, which would harm our sales and reputation. We only operate in a single location, which means we do not have back-up facilities to produce our products during a time when our manufacturing facility becomes unavailable.

***We will need to expand our operations and grow the size of our organization, and we may experience difficulties in managing this growth.***

As of December 31, 2021, we had 26 full-time employees. As our development and commercialization plans and strategies develop, we will need additional managerial, operational, sales, marketing, scientific and financial headcount and other resources. Our management, personnel, and systems currently in place may not be adequate to support this future growth. Future growth would impose significant added responsibilities on members of management, including the following:

- identifying, recruiting, maintaining, motivating and integrating additional employees with the expertise and experience we will require;
- managing our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors and other third parties;
- managing additional relationships with various strategic partners, suppliers and other third parties;
- managing our trials effectively, which we anticipate being conducted at numerous field study sites;
- improving our managerial, development, operational, marketing, production and finance reporting systems and procedures; and
- expanding our facilities.

Our failure to accomplish any of these tasks could prevent us from successfully growing our business.

***Business or supply chain disruptions could seriously harm our future revenues and financial condition and increase our costs and expenses, particularly because we have limited suppliers and a critical ingredient is sourced from China.***

Our operations could be subject to a variety of potential business disruptions, including power shortages, telecommunications failures, water shortages, floods, fires, earthquakes, extreme weather conditions, medical epidemics and other natural or manmade disasters or other interruptions, for which we are predominantly self-insured. We do not carry insurance for all categories of risk that our business may encounter. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses. Moreover, we rely on third parties to supply various ingredients and other items which are critical for producing our product candidates.

We currently use one supplier for each of our two active ingredients, triptolide and VCD. Our ability to produce our product candidates would be disrupted if the operations of these suppliers are affected by a man made or natural disaster or other business interruption. Because triptolide is sourced from China and other Asian countries, we have a greater risk of supply interruption, including as a result of tariff and trade disputes, or disruptive events like the outbreak of COVID-19. The ultimate impact on our operations from any business interruption impacting us or any of our significant suppliers is unknown, but our operations and financial condition would likely suffer adverse consequences. Further, any significant uninsured liability may require us to pay substantial amounts, which would adversely affect our business, results of operations, financial condition and cash flows from future prospects.

***We are dependent on triptolide, a key ingredient for ContraPest, which has limited sources and must be in a very refined condition.***

If we are unable to develop additional sources of or alternatives to triptolide, a key ingredient for ContraPest, our long-term ability to produce ContraPest at a cost effective price could be in jeopardy. If market demand for triptolide causes the price to increase beyond our ability to market at a competitive price or causes the quality of the refined ingredient to be less than needed for our production, our ability to commercialize ContraPest could be limited or delayed, which would adversely affect our business, results of operations and financial condition.

***A variety of risks associated with marketing our product candidates internationally could materially adversely affect our business.***

We may seek regulatory approval of our product candidates outside of the U.S. and, in that case, we expect that we will be subject to additional risks related to operating in foreign countries if we obtain the necessary approvals, including the following:

- differing regulatory requirements in foreign countries;
- unexpected changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements;
- economic weakness, including inflation or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling internationally;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;
- difficulties staffing and managing foreign operations;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- potential liability under the U.S. Foreign Corrupt Practices Act of 1977, as amended, or the FCPA, or comparable foreign regulations;
- challenges enforcing our contractual and intellectual property rights, especially in those foreign countries that do not respect and protect intellectual property rights to the same extent as the United States;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities internationally; and
- business interruptions resulting from geopolitical actions, including war and terrorism.

These and other risks associated with our international operations may materially adversely affect our ability to attain or maintain profitable operations.

## Risks Relating to Protections of our Intellectual Property and Legal Actions

*If we fail to obtain or protect intellectual property rights, our competitive position could be harmed.*

We depend on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws, and confidentiality, licensing, and other agreements with employees and third parties, all of which offer only limited protection. Our commercial success will depend in part on our ability to obtain and maintain intellectual property protection in the United States and other countries with respect to our proprietary technology and products. Where we deem appropriate, we seek to protect our proprietary position by filing patent applications in the United States and internationally related to our novel technologies and products that are important to our business. However, our financial resources constrain us from seeking protection in every instance, so we may rationalize and selectively pursue expensive patent protection. Patent positions can be highly uncertain, involve complex legal and factual questions and be the subject of litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our patents, including those patent rights licensed to us by third parties, are highly uncertain.

The steps we have taken to protect our proprietary rights may not be adequate to preclude misappropriation of our proprietary information or infringement of our intellectual property rights, both inside and outside the United States. The rights already granted under any of our currently issued patents and those that may be granted under future issued patents may not provide us with the proprietary protection or competitive advantages we are seeking. If we are unable to obtain and maintain protection for our technology and products, or if the scope of the protection obtained is not sufficient, our competitors could develop and commercialize technology and products similar or superior to ours, and our ability to successfully commercialize our technology and products may be adversely affected.

With respect to patent rights, we do not know whether any of our pending patent applications for any of our technologies or products will result in the issuance of patents that protect such technologies or products, or if our licensed patent will effectively prevent others from commercializing competitive technologies and products. Our pending patent applications cannot be enforced against third parties practicing the technology claimed in such applications unless and until a patent issues from such applications. Further, the examination process may require us to narrow the claims for our pending patent applications, which may limit the scope of patent protection that may be obtained if these applications issue. Because the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, issued patents that we own or have licensed from third parties may be challenged in the courts or patent offices in the U.S. and internationally. Such challenges may result in the loss of patent protection, the narrowing of claims in such patents, or the invalidity or unenforceability of such patents, which could limit our ability to stop others from using or commercializing similar or identical technology and products or limit the duration of the patent protection for our technology and products. Protecting against the unauthorized use of our patented technology, trademarks and other intellectual property rights, is expensive, difficult, and in some cases, may not be possible. In some cases, it may be difficult or impossible to detect third party infringement or misappropriation of our intellectual property rights, even in relation to issued patent claims, and proving any such infringement may be even more difficult.

*Intellectual property rights do not necessarily address all potential threats to any competitive advantage we may have.*

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, and may not adequately protect our business, or permit us to maintain our competitive advantage. The following examples are illustrative:

- others may be able to make compounds that are the same as or similar to our future products but that are not covered by the claims of the patents that we own or have exclusively licensed;
- we might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing on our intellectual property rights;
- issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in the U.S. and other countries that provide a safe harbor from patent infringement claims for certain research and development activities, as well as in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable or otherwise protectable;
- employees may violate confidentiality and proprietary invention assignment agreements and we may not have the resources to enforce those agreements or otherwise enforce our patent rights; and
- the patents of others may have an adverse effect on our business.

***Our technology may be found to infringe third party intellectual property rights.***

Third parties may in the future assert claims or initiate litigation related to their patent, copyright, trademark and other intellectual property rights in technology that is important to us. The asserted claims and/or litigation could include claims against us, our licensors, or our suppliers alleging infringement of intellectual property rights with respect to our product candidates or components of those products. Regardless of the merit of the claims, they could be time consuming, resulting in costly litigation and diversion of technical and management personnel, or require us to develop non-infringing technology or enter into license agreements. We cannot assure you that licenses will be available on acceptable terms, if at all. Furthermore, because of the potential for significant damage awards, which are not necessarily predictable, it is not unusual to find even arguably unmeritorious claims resulting in large settlements. If any infringement or other intellectual property claim made against us by any third party is successful, or if we fail to develop non-infringing technology or license the proprietary rights on commercially reasonable terms and conditions, our business, operating results and financial condition could be materially adversely affected.

If our product candidates, methods, processes and other technologies infringe the proprietary rights of other parties, we could incur substantial costs and we may have to take certain actions, including the following:

- obtain licenses, which may not be available on commercially reasonable terms, if at all;
- redesign our product candidates or processes to avoid infringement;
- stop using the subject matter claimed to be held by others;
- pay damages; or
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our financial and management resources.

***We may need to license intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.***

A third party may hold intellectual property, including patent rights that are important or necessary to the development of our product candidates. It may be necessary for us to use the patented or proprietary technology of a third party to manufacture or otherwise commercialize our own technology or products, in which case we would be required to obtain a license from such third party. Licensing such intellectual property may not be available or may not be available on commercially reasonable terms, which could have a material adverse effect on our business and financial condition.

***We may be subject to legal proceedings in the ordinary course of our business that could result in significant harm to our business, financial condition and operating results.***

We could be subject to legal proceedings and claims from time to time in the ordinary course of our business, including actions arising from tort, contract or other claims. See “Legal Proceedings” elsewhere in this filing for more information. Litigation is expensive, time consuming, and could divert management’s attention away from running our business. The outcome of litigation or other proceedings is subject to significant uncertainty, and it is possible that an adverse resolution of one or more such proceedings could result in reputational harm and/or significant monetary damages, injunctive relief or settlement costs that could adversely affect our results of operations or financial condition as well as our ability to conduct our business as it is presently being conducted. Insurance might not cover such claims, might not provide sufficient payments to cover all the costs to resolve one or more such claims and might not be available on terms acceptable to us. In addition, regardless of merit or outcome, claims brought against us that are uninsured or underinsured could result in unanticipated costs, which could harm our business, financial condition and operating results and reduce the trading price of our stock.

For example, we have become aware that we were involved in a transaction in which an investor of the Company may have resold approximately 175,000 shares of our common stock pursuant to a registration statement that was not declared effective by the Securities and Exchange Commission (SEC). As a result, it is possible that the SEC brings an action against us, or we may ultimately be responsible for an action for rescission by purchasers of the securities that were resold. If the SEC were to bring such an enforcement action against us, or if purchasers were to bring such an action for rescission, it may have a material adverse effect on our financial position.

***Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of any products that we may develop.***

We face an inherent risk of product liability exposure related to the use of ContraPest and any of our other products. If we cannot successfully defend ourselves against claims from our product users, we could incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in the following:

- decreased demand for any product that we may develop;
- termination of field studies or other research and development efforts;
- injury to our reputation and significant negative media attention;
- significant costs to defend the related litigation;
- substantial monetary awards to plaintiffs;
- loss of revenue;
- diversion of management and scientific resources from our business operations; and
- the inability to commercialize our product candidates.

We may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. Large judgments have been awarded in class action lawsuits based on products that had unanticipated side effects, including, without limitation, any potential adverse effects of our products on humans or other species. A successful product liability claim or series of claims brought against us, particularly if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

**Risks Related to our Reporting and Cybersecurity**

***We have not fully assessed our internal control over financial reporting. If we experience material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our Common Stock.***

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

This Annual Report on Form 10-K for the year ended December 31, 2021 does not include an attestation report of our registered public accounting firm due to a transition period established by rules of the SEC for smaller reporting companies. As a result, we have not yet fully assessed our internal control over financial reporting and are unable to assure that the measures we have taken to date, together with any measures we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weaknesses in our internal control over financial reporting, or to avoid potential future material weaknesses.

If we are unable to develop and maintain an effective system of internal control over financial reporting, successfully remediate any existing or future material weaknesses in our internal control over financial reporting, or identify any additional material weaknesses, the accuracy and timing of our financial reporting may be adversely affected, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports and Nasdaq listing requirements, investors may lose confidence in our financial reporting, and our stock price may decline as a result.

***Privacy breaches and other cyber security risks related to our business could negatively affect our reputation, credibility and business.***

We are making sales through our new e-Commerce tool, which depends on information technology systems and networks. We are also responsible for storing data relating to our customers and employees and rely on third party vendors for the storage, processing and transmission of personal and Company information. Consumers, lawmakers and consumer advocates alike are increasingly concerned over the security of personal information transmitted over the Internet, consumer identity theft and privacy. We do not control our third-party service providers and cannot guarantee that they have implemented reasonable security measures to protect our employees' and customers' identity and privacy, or that no electronic or physical computer break-ins or security breaches will occur in the future. Our systems and technology are vulnerable from time-to-time to damage, disruption or interruption from, among other things, physical damage, natural disasters, inadequate system capacity, system issues, security breaches, "hackers," email blocking lists, computer viruses, power outages and other failures or disruptions outside of our control. A significant breach of customer, employee or Company data could damage our reputation and our relationship with customers, and could result in lost sales, sizable fines, significant breach-notification costs and lawsuits, as well as adversely affect our results of operations. We may also incur additional costs in the future related to the implementation of additional security measures to protect against new or enhanced data security and privacy threats, or to comply with state, federal and international laws that may be enacted to address those threats.

**Risks Related to our Capital Stock, Funding and Trading in our Stock**

***We have incurred significant operating losses every quarter since our inception and anticipate that we will continue to incur significant operating losses in the future.***

Investment in product development is highly speculative because it entails substantial upfront capital expenditures and significant risk that any potential product candidate will fail to become commercially viable or gain regulatory approval. To date, we have financed our operations primarily through the sale of equity securities and debt financings as well as research grants. We have not generated sufficient revenue from product sales to date to achieve profitability. We continue to incur significant sales, marketing, research, development, and other expenses related to our ongoing operations. As a result, we are not profitable and have incurred losses in every reporting period since our inception. For the years ended December 31, 2021 and 2020, we reported net losses of \$8.3 million and \$8.4 million, respectively. As of December 31, 2021, we had an accumulated deficit since inception of \$112.5 million.

Since inception, we have dedicated a majority of our resources to the discovery and development and marketing of our proprietary product candidates. We expect to continue to incur significant expenses and operating losses for the foreseeable future. The size of our losses will depend, in part, on the rate of future expenditures and our ability to generate revenues. In particular, we expect to incur substantial and increased expenses as we perform the following:

- attempt to achieve market acceptance for our products;
- continue to establish an infrastructure for the sales, marketing and distribution of ContraPest and any other product candidates for which we may receive regulatory approval;
- scale up manufacturing processes and quantities for the commercialization of ContraPest and any other product candidates for which we receive regulatory approval;
- continue the research and development of ContraPest and our other product candidates, including engaging in any necessary field studies;
- seek regulatory approvals for ContraPest in various jurisdictions and for our other product candidates;
- expand our research and development activities and advance the discovery and development programs for other product candidates;
- maintain, expand and protect our intellectual property portfolio; and
- add operational, financial and management information systems and personnel, including personnel to support our clinical development and commercialization efforts and operations as a public company.

We may encounter unforeseen expenses, difficulties, complications, delays, and other unknown factors that may adversely affect our financial condition. Our prior losses and expected future losses have had, and will continue to have, an adverse effect on our financial condition. If ContraPest or any other product candidate does not gain or maintain sufficient regulatory approval, or if approved, fails to achieve market acceptance, we may never become profitable. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our failure to become and remain profitable would decrease the value of our company and could impair our ability to raise capital, expand our business, diversify our product offerings or continue our operations. A decline in the value of our company could cause you to lose all or part of your investment.

***If we are unable to continue as a going concern, our securities will have little or no value.***

We have incurred operating losses since our inception, and we expect to continue to incur significant expenses and operating losses for the foreseeable future. Our financial statements as of December 31, 2021 and 2020 have been prepared under the assumption that we will continue as a going concern. Our independent registered public accounting firm included in its opinion for the years ended December 31, 2021 and 2020 an explanatory paragraph referring to our net loss from operations and net capital deficiency and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. If we encounter continued issues or delays in the commercialization of ContraPest or greater than anticipated expenses, our prior losses and expected future losses could have an adverse effect on our financial condition and negatively impact our ability to fund continued operations, obtain additional financing in the future and continue as a going concern. There are no assurances that such financing, if necessary, will be available to us at all or will be available in sufficient amounts or on reasonable terms. Our financial statements do not include any adjustments that may result from the outcome of this uncertainty. If we are unable to generate additional funds in the future through financings, sales of our products, licensing fees, royalty payments or from other sources or transactions, we will exhaust our resources and will be unable to continue operations. If we cannot continue as a going concern, our stockholders would likely lose most or all of their investment in us.

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

Until such time, if ever, as we can generate sufficient product revenues, we expect to finance our cash needs primarily through the sale of equity securities and debt financings, and possibly through credit facilities and government and foundation grants. We may also seek to raise capital through third party collaborations, strategic alliances and similar arrangements. We currently do not have any committed external source of funds.

Raising funds in the future may present additional challenges and future financing may not be available in sufficient amounts or on terms acceptable to us, if at all. The terms of any financing arrangements we enter into may adversely affect the holdings or the rights of our stockholders and the issuance of additional securities by us, or the possibility of such issuance, may cause the market price of our shares to decline. For example, during 2020, we completed equity financings that resulted in the issuance of shares of Common Stock and warrants to purchase Common Stock, resulting in substantial dilution to the existing stockholders. Similarly, in the first quarter of 2021, we again issued shares of Common Stock and warrants to purchase Common Stock, resulting in additional substantial dilution to the existing stockholders. We generally have raised capital as the opportunity arises.

Certain of our agreements with investors and our outstanding warrants contain provisions that impose limitations on our ability to participate in certain variable rate transactions, including at-the-market transactions, which may limit our opportunities to obtain financing in sufficient amounts or on acceptable terms. The sale of additional equity or convertible debt securities would dilute all of our stockholders, and if such sales occur at a deemed issuance price that is lower than the current exercise price of our outstanding warrants sold to investors in November 2017, the exercise price for those warrants would adjust downward to the deemed issuance price pursuant to price adjustment protection contained within those warrants. Our various warrants contain other terms that may affect our fundraising.

The incurrence of indebtedness through credit facilities would result in increased fixed payment obligations and, potentially, the imposition of restrictive covenants. Those covenants may include limitations on our ability to incur additional debt, making capital expenditures or declaring dividends, and may impose limitations on our ability to acquire, sell, or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business.



If we raise additional funds through collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us. If we are unable to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected.

If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts, or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

***Our share price may be volatile, which could subject us to securities class action litigation and your investment in our securities could decline in value.***

Our stock could be subject to wide fluctuation in response to many risk factors listed in this section, and others beyond our control, including the following:

- market acceptance and commercialization of our products;
- our being able to timely demonstrate achievement of milestones, including those related to revenue generation, cost control, cost effective source supply, and regulatory approvals;
- our ability to remain listed on Nasdaq;
- results and timing of our submissions with the regulatory authorities;
- failure or discontinuation of any of our development programs;
- regulatory developments or enforcements in the United States and non-U.S. countries with respect to our products or our competitors' products;
- failure to achieve pricing acceptable to the market;
- regulatory actions with respect to our products or our competitors' products;
- actual or anticipated fluctuations in our financial condition and operating results or our continuing to sustain operating losses;
- competition from existing products or new products that may emerge;
- announcements by us or our competitors of significant acquisitions, strategic arrangements, joint ventures, collaborations or capital commitments;
- issuance of new or updated research or reports by securities analysts;
- announcement or expectation of additional financing efforts, particularly if our cash available for operations significantly decreases or if the financing efforts result in a price adjustment to certain outstanding warrants;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- disputes or other developments related to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- entry by us into any material litigation or other proceedings;
- sales of our Common Stock by us, our insiders, or our other stockholders;
- exercise of outstanding warrants;
- market conditions for equity securities; and
- general economic and market conditions unrelated to our performance.

Furthermore, the capital markets can experience extreme price and volume fluctuations that may affect the market prices of equity securities of many companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions such as recessions, interest rate changes, or international currency fluctuations, may negatively impact the market price of shares of our Common Stock. In addition, such fluctuations could subject us to securities class action litigation, which could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business. You may not realize any return on your investment in us and may lose some or all of your investment.

***Future sales, or the possibility of future sales, of a substantial number of our common shares could adversely affect the price of the shares and dilute stockholders.***

Future sales of a substantial number of shares of our Common Stock, or the perception that such sales will occur, could cause a decline in the market price of our Common Stock. This is particularly true if we sell our stock at a discount. As of March 29, 2022, we had 121,714 shares of our Common Stock subject to outstanding warrants that contain anti-dilution adjustments that provide for an adjustment to the exercise price for certain dilutive issuances of securities. If we offer or issue additional securities at a deemed price lower than the current exercise price of these outstanding warrants, these warrants will adjust pursuant to the price adjustment protection contained within these warrants. For example, our January 2020 registered direct offering resulted in an additional downward adjustment of the exercise price of these warrants from \$19.00 per share to \$7.126 per share and our inducement offering in October 2020 resulted in an additional downward adjustment of the exercise price of these warrants from \$7.126 per share to \$1.3659 per share. Any future issuance of Common Stock or securities convertible or exercisable into our Common Stock could cause a further downward adjustment of the exercise price of these warrants to the deemed issuance price if the issuance price is less than the exercise price of the warrants at the time of the new issuance.

Also, in the future, we may issue additional shares of our Common Stock or other equity or debt securities convertible into Common Stock in connection with a financing, acquisition, litigation settlement, employee arrangements, or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and could cause our common share price to decline.

***An active market in the shares may not continue to develop in which investors can resell our Common Stock.***

We cannot predict the extent to which an active market for our Common Stock will continue to develop or be sustained, or how the development of such a market might affect the market price for our Common Stock. Market conditions in effect at the time you acquire our stock may not be indicative of the price at which our Common Stock will trade in the future. Investors may not be able to sell their Common Stock at or above the price they acquired it.

***If securities or industry analysts, or other sources of information, do not publish research, or publish inaccurate or unfavorable research or other information about our business, our stock price and trading volume could decline.***

The trading market for our Common Stock may depend on the research, reports and other information that securities or industry analysts, or other third-party sources of information, publish about us or our business. We do not have any control over these analysts or other third-party sources of information. From time to time inaccurate or unfavorable research or other information about our business, financial condition, results of operations and stock ownership may be published. We cannot assure that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our share price could decline. If one or more of these analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline. If incorrect or misleading information is disseminated publicly by third parties about us, our stock price could decline.

***We may not be able to comply with all applicable listing requirements or standards of The Nasdaq Capital Market and Nasdaq could delist our Common Stock.***

Our Common Stock is listed on The Nasdaq Capital Market. In order to maintain that listing, we must satisfy minimum financial and other continued listing requirements and standards. On March 2, 2022, we received a letter from the listing qualifications staff (the "Staff") of Nasdaq providing notification that the bid price for our common stock had closed below \$1.00 per share for the previous 30 consecutive business days and our common stock no longer meets the minimum bid price requirement for continued listing under Nasdaq Listing Rule 5550(a)(2). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have an initial period of 180 calendar days, or until August 29, 2022, to regain compliance. To regain compliance, the closing bid price of our common stock must be \$1.00 per share or more for a minimum of 10 consecutive business days at any time before August 29, 2022.

In the event that we are unable to regain compliance with Rule 5550(a)(2) by August 29, 2022, we may be eligible for an additional 180 calendar day compliance period. To qualify, we would need to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for the Nasdaq Capital Market, with the exception of the minimum bid price requirement, and would need to provide written notice of our intention to cure the deficiency during the second compliance period, by effecting a reverse stock split, if necessary. Further, the liquidity of the shares of our Common Stock may be affected adversely by a reverse stock split given the reduced number of shares that are outstanding following a reverse stock split. In addition, a reverse stock split could increase the number of stockholders who own odd lots (less than 100 shares) of our Common Stock, creating the potential for such stockholders to experience an increase in the cost of selling their shares and greater difficulty effecting such sales.

In the event that we remain non-compliant with Rule 5550(a)(2), our Common Stock could be delisted from The Nasdaq Capital Market, which could have a material adverse effect on our financial condition and which could cause the value of our Common Stock to decline. If our Common Stock is not eligible for listing or quotation on another market or exchange, trading of our Common Stock could be conducted in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our Common Stock, and there would likely be a reduction in our coverage by security analysts and the news media, which could cause the price of our Common Stock to decline further. In addition, it may be difficult for us to raise additional capital if we are not listed on a national securities exchange.

***The reverse stock split may decrease the liquidity of the shares of our Common Stock.***

On February 20, 2020, we implemented a 1-for-20 reverse stock split of our common stock to regain compliance with the minimum bid price requirement of Nasdaq. The liquidity of the shares of our Common Stock may be affected adversely by the reverse stock split given the reduced number of shares that are outstanding following the reverse stock split. In addition, the reverse stock split increased the number of stockholders who own odd lots (less than 100 shares) of our Common Stock, creating the potential for such stockholders to experience an increase in the cost of selling their shares and greater difficulty effecting such sales.

***Our corporate documents, Delaware law and certain warrants contain provisions that could discourage, delay or prevent a change in control of our company.***

Provisions in our certificate of incorporation and our bylaws may discourage, delay or prevent a merger or acquisition involving us that our stockholders may consider favorable. For example, our certificate of incorporation currently provides for a staggered board of directors, whereby directors serve for three-year terms, with approximately one-third of the directors coming up for reelection each year. Having a staggered board will make it more difficult for a third party to obtain control of our board of directors through a proxy contest, which may be a necessary step in an acquisition of us that is not favored by our board of directors. Additionally, most of our warrants provide a Black Scholes value-based payment to the warrant holders in connection with certain transactions that may discourage, delay or prevent a merger or acquisition.

We are also subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law. Under these provisions, if anyone becomes an “interested stockholder,” we may not enter into a “business combination” with that person for three years without special approval, which could discourage a third party from making a takeover offer and could delay or prevent a change of control. For purposes of Section 203, “interested stockholder” means, generally, someone owning 15% or more of our outstanding voting stock or an affiliate of ours that owned 15% or more of our outstanding voting stock during the past three years, subject to certain exceptions as described in Section 203.

***Item 1B. Unresolved Staff Comments.***

Not applicable.

***Item 2. Properties.***

As of December 31, 2021, our corporate headquarters is located in Phoenix, Arizona, where we lease and occupy approximately 5,529 square feet of office space pursuant to a lease that commenced on December 1, 2019 and expires on November 30, 2024. Also, as of December 31, 2021, our manufacturing facility occupied a separate facility in Phoenix, Arizona, where we lease and occupy approximately 5,105 square feet of space. The lease for our manufacturing facility commenced on August 1, 2020 and expires on November 30, 2024. We believe that our existing facilities are adequate and meet our current needs for business, manufacturing and research.

***Item 3. Legal Proceedings.***

Information regarding our legal proceedings is discussed in Note 13 to our financial statements, which is incorporated herein by reference.

***Item 4. Mine Safety Disclosures.***

Not applicable.

## PART II

### **Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

#### **Market Information**

Our common stock is traded on the Nasdaq Capital Market under the symbol "SNES." Our common stock was initially listed for trading on the Nasdaq Capital Market on December 8, 2016.

#### **Holders**

As of March 29, 2022, there were approximately 696 holders of record of our common stock. Because many shares of our common stock are held by brokers and other institutions on behalf of stockholders, we are unable to determine the total number of beneficial owners represented by these holders of record.

#### **Dividends**

We have never declared or paid any cash dividends on our common stock. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. We do not intend to pay cash dividends on our common stock for the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, contractual restrictions, business prospects and other factors our board of directors may deem relevant.

#### **Recent Sales of Unregistered Securities**

None.

#### **Purchases of Equity Securities by the Company**

We withhold shares of common stock in connection with the vesting of restricted stock units to satisfy required tax withholding obligations when they occur. There were no purchases of our equity securities during the 12 months ended December 31, 2021.

### **Item 6. Reserved.**

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

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our financial statements and the notes thereto included elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, beliefs and expectations that involve risks and uncertainties. Our actual results and the timing of events could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Annual Report on Form 10-K, particularly in the sections of this report titled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements."*

### **Overview**

Since our inception, we have sustained significant operating losses in the course of our research and development activities and commercialization efforts and expect such losses to continue for the near future. We have generated limited revenue to date from product sales, research grants and licensing fees received under a former license. We have primarily funded our operations to date through the sale of equity securities, including convertible preferred stock, common stock and warrants to purchase common stock; and debt financing, consisting primarily of convertible notes.

As of December 31, 2021, we had received net proceeds of \$84.3 million from our sales of common stock, preferred stock and issuance of convertible and other promissory notes, an aggregate of \$1.7 million from research grants and licensing fees and an aggregate of \$1.5 million in product sales. At December 31, 2021, we had an accumulated deficit of \$112.5 million and cash and cash equivalents of \$9.3 million.

On April 15, 2020, we also received cash proceeds of \$645,700 from the Paycheck Protection Program (or "PPP") of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). We used the proceeds from the PPP Loan to retain employees, maintain payroll and make lease, interest and utility payments. On June 18, 2021, the Company received notification from BMO Harris Bank National Association as the lender in a promissory note pursuant to the CARES Act, that such loan was forgiven in full under the terms of the program.

We have incurred significant operating losses every year since our inception. Our net losses were \$8.3 million and \$8.4 million for the years ended December 31, 2021 and 2020, respectively. We expect to continue to incur significant expenses and generate operating losses for at least the next 12 months.

We will need additional funding to continue to fund our operations, achieve profitability and become cash flow positive, we will continue to seek additional financing. If such equity or debt financing is not available at adequate levels or on acceptable terms, we may need to delay, limit or terminate commercialization and development efforts or discontinue operations.

While it is difficult to measure the effect and impact of the COVID-19 pandemic on revenue for the years ended December 31, 2021 and December 31, 2020, the travel and other restrictions that started in March 2020 resulted in a significant slowdown in our proof-of-concept field studies and sales efforts. While we were able to resume field studies in some important projects by mid-year 2020 and initially believed that we would re-start all our most significant field studies as we obtained limited waivers of certain travel bans, we still have delays on certain projects that might remain on hold until certain businesses and government entities return to more normal operations. Continued delays or new restrictions on travel or operations as a result of new outbreaks and variants could impact our results in future quarters. Initially, we believed that pest control would continue through the COVID-19 pandemic as a necessity and we were and have been able to maintain our manufacturing with cautionary, best practices put in place. However, we have concerns about distributor, pest control operator and individual consumer spending as restrictive measures related to the COVID-19 pandemic continue. Extended stay at home orders across the world, whether imposed by governments or individual businesses, have impeded our ability to communicate with current and prospective customers, potentially reducing sales until the orders are lifted. In addition, federal, state and municipal budgets continue to be severely strained as a result of the COVID-19 pandemic. This may delay or impede their ability to make near term purchases of our products. While we have stocked certain long lead time inventory raw material ingredients, any prolonged impact on the suppliers we rely on for the purchase of these items by the COVID-19 pandemic could impact future manufacturing operations.

We have historically utilized, and intend to continue to utilize, various forms of stock-based awards in order to hire, retain and motivate talented employees, consultants and directors and encourage them to devote their best efforts to our business and financial success. In addition, we believe that our ability to grant stock-based awards is a valuable and necessary compensation tool that aligns the long-term financial interests of our employees, consultants and directors with the financial interests of our stockholders. As a result, a significant portion of our operating expenses includes stock-based compensation expense. Stock-based compensation expense has been, and will continue to be for the foreseeable future, a significant recurring expense in our business and an important part of our compensation strategy. Specifically, our stock-based compensation expense for the year ended December 31, 2021 and December 31, 2020 was \$0.8 million and \$0.6 million, respectively, which represented 8.3% and 8.1%, respectively, of our total operating expenses for those periods.

## **Components of our Results of Operations**

### ***Grant Revenue***

Grant revenue is comprised entirely of grant funding provided by the City of Phoenix, Arizona for jobs created and new employee training in the City of Phoenix, Arizona during the years ended December 31, 2021 and December 31, 2020.

### ***Sales***

Sales are comprised primarily of sales, net of discounts and promotions, of ContraPest and related components, to our distributors and customers, as well as consulting and implementation services provided in conjunction with ContraPest deployments.

### ***Cost of Sales***

Cost of sales consist primarily of cost of products sold, including scrap and reserves for obsolescence. We continue to focus on improving our cost structure, with the goals of shifting resources to commercialization, significantly reducing our year-over-year burn rate and achieving a 50% or greater gross margin. Steps have included relocating to more cost-efficient space, organizational restructuring, improving our manufacturing and supply processes and reducing staffing.

### ***Operating Expenses***

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

Research and development expenses consist primarily of costs incurred in connection with the research and development of ContraPest and our other product candidates, which costs include:

- employee related expenses, including salaries, related benefits, travel and stock-based compensation expense for employees engaged in research and development functions, including that portion of manufacturing not included in cost of goods sold;
- expenses incurred in connection with the development of our product candidates including related regulatory and production expenses; and
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance and supplies.

We expense research and development costs as incurred.

We continue to investigate other applications of our core technology to other product candidates and modifications to our existing products to expand usability, which includes laboratory tests and academic collaborations. We also continue to develop our supply chain, particularly identifying and improving our sourcing of triptolide, a key active ingredient for our product candidates. At this time, we cannot reasonably estimate the costs for further development of ContraPest or the cost associated with the development of any of our other product candidates.

#### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses consist primarily of salaries and related costs, including stock-based compensation, for personnel in executive, finance, sales, marketing and administrative functions. Selling, general and administrative expenses also include direct and allocated facility-related costs as well as professional fees for legal, consulting, accounting and audit services.

We plan to continue to utilize various forms of stock-based compensation awards to attract and retain qualified employees. As a result, we anticipate that stock-based compensation expense will continue to represent a significant portion of our selling, general and administrative expenses for the foreseeable future.

### *Interest Income*

Interest income consists primarily of interest income earned on cash and cash equivalents.

### *Interest Expense*

Interest expense consists primarily of interest accrued on our finance lease and note commitments.

### *Other Income (Expense), Net*

Other income (expense), net, consists primarily of any recognized gains or losses related to the sale of fixed assets. In the year ended December 31, 2021, other income also included the reversal of a payroll benefits accrual from 2019 that was reversed as the liability period had expired.

### *Income Taxes*

Deferred tax assets and liabilities are determined based on differences between the financial statement and tax basis of assets and liabilities, as well as a consideration of net operating loss and credit carry forwards, using enacted tax rates in effect for the period in which the differences are expected to impact taxable income. A valuation allowance is established, when necessary, to reduce deferred tax assets to the amount that is more likely than not to be realized. The Company's effective tax rate for the years ended December 31, 2021 and December 31, 2020 has been affected by the valuation allowance on the Company's deferred tax assets.

The Company has not recorded any U.S. federal or state income tax benefits for our net operating losses incurred since inception or for our research and development tax credits generated to date, due to the uncertainty regarding our ability to realize a benefit from these tax attributes in the future. Based on tax return activity through December 31, 2021, the Company has federal and state net operating loss carryforwards of approximately \$77.2 million and \$63.7 million, respectively, not considering any potential Internal Revenue Code of 1986 ("IRC") Section 382 annual limitation discussed below. The federal loss carryforwards begin to expire in 2029, unless previously utilized. The state loss carryforwards expire in 2041, unless previously utilized. Included in the \$77.2 million of federal loss carryforwards are approximately \$32.7 million of net operating losses that do not expire due to the tax law changes promulgated in conjunction with the Tax Cuts and Jobs Act of 2017.

Additionally, the utilization of the net operating loss carryforwards is subject to an annual limitation under Section 382 and 383 of the Internal Revenue Code of 1986, and similar state tax provisions due to ownership change limitations that have occurred previously or that could occur in the future. These ownership changes limit the amount of net operating loss carryforwards and other deferred tax assets that can be utilized to offset future taxable income and tax, respectively. In general, an ownership change, as defined by Section 382 and 383, results from transactions increasing ownership of certain stockholders or public groups in the stock of the corporation by more than 50 percent points over a three-year period. The Company has not conducted an analysis of an ownership change under section 382. To the extent that a study is completed and an ownership change is deemed to occur, the Company's net operating losses could be limited

During the quarter ended June 30, 2021, the Company received notification that a loan to the Company under the Paycheck Protection Program (the "PPP") in the amount of approximately \$646 thousand was forgiven in full pursuant to the PPP program under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). Section 1106(i) of the CARES Act specifically requires taxpayers to exclude canceled indebtedness from PPP loans from gross income, and accordingly, the debt forgiveness amount is nontaxable to the Company. Subsequent to the passage of the CARES Act, the IRS issued Notice 2020-32, which precludes a deduction for an expense that would otherwise be deductible if the payment results in the forgiveness of a loan, thereby preventing entities from claiming a double tax benefit on the qualifying expenses for PPP loans. On December 27, 2020, the Consolidated Appropriations Act ("CAA") was signed into law, which reverses existing IRS guidance provided in Notice 2020-32 by allowing taxpayers to fully deduct any business expenses, regardless of whether the expense was paid for using forgiven PPP loan proceeds. None of the other provisions of the CARES Act or CAA had a material impact to the Company's tax accounts.

## Comparison of the Years December 31, 2021 to 2020

The following table summarizes our results of operations for the years ended December 31, 2021 and 2020:

### SENESTECH, INC. STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS (In thousands, except shares and per share data)

	For the Years Ended December 31,	
	2021	2020
<b>Revenue:</b>		
Grant revenue	\$ 24	\$ 24
Sales	576	258
Total revenue	<u>600</u>	<u>282</u>
Cost of sales	356	281
Gross profit	<u>244</u>	<u>1</u>
<b>Operating expenses:</b>		
Research and development	1,954	1,494
Selling, general and administrative	7,224	6,440
Total operating expenses	<u>9,178</u>	<u>7,934</u>
Net operating loss	<u>(8,934)</u>	<u>(7,933)</u>
<b>Other income (expense):</b>		
Interest income	4	3
Interest expense	(11)	(28)
Payroll Protection Program loan forgiveness	673	-
Other income	-	21
Total other income	<u>666</u>	<u>(4)</u>
Net loss and comprehensive loss	<u>(8,268)</u>	<u>(7,937)</u>
Deemed dividend-warrant price protection-revaluation adjustment	-	436
Net loss attributable to common shareholders	<u>\$ (8,268)</u>	<u>\$ (8,373)</u>
Weighted average common shares outstanding - basic and fully diluted	<u>11,191,814</u>	<u>3,006,475</u>
Net loss per common share - basic and fully diluted	<u>\$ (0.74)</u>	<u>\$ (2.78)</u>

#### **Grant Revenue**

Grant revenue for the years ended December 31, 2021 and December 31, 2020 was \$24,000 and was granted for jobs created and related new employee training in the City of Phoenix, Arizona during the 12 months ended December 31, 2021 and December 31, 2020.

#### **Sales**

Sales, shown net of sales discounts and promotions, were \$576,000 for the year ended December 31, 2021, compared to \$258,000 for year ended December 31, 2020. Sales increased by \$318,000 in 2021 due, in part, to the continued focus of our internet sales initiatives, augmenting our existing pull through sales strategy, where demand from the consumer market encourages, or pulls, resellers and pest management professionals to offer our products, as well as enhanced strategic partnerships and collaborations with key distributors and PMPs. While these initiatives continue to progress, we believe the benefits of these initiatives continue to be impacted by reduced spending by customers due to the COVID-19 pandemic.



### Cost of Sales

Cost of sales was \$356,000, or 61.8% of sales, exclusive of grant revenue for the year ended December 31, 2021, compared to \$281,000, or 108.9% of sales, exclusive of grant revenue for the year ended December 31, 2020. The increase in cost of sales of \$75,000 in 2021 is primarily due to higher sales volume offset by lower reserves for obsolete product delivery system supplies of \$119,000 and higher scrap expense in 2020. Without the reserve for delivery system supplies, cost of sales for the year ended December 31, 2020 would have been \$162,000, or 62.8% of sales.

### Gross Profit

Gross profit for the year ended December 31, 2021 was \$244,000, or 42.4% of sales, compared to a gross profit of \$1,000, or less than 1% of sales, for the year ended December 31, 2020. The increase in gross profit was primarily due to increased sales and the impact of a reserve for obsolete product delivery system supplies of \$119,000 recorded in the year ended December 31, 2020. Gross profit for the year ended December 31, 2020 would have been \$120,000, or 42.6% of sales, without this reserve.

### Research and Development Expenses

	Years Ended December 31,		Increase (Decrease)
	2021	2020	
	(in thousands)		
Direct research and development expenses:			
Personnel related (including stock-based compensation)	\$ 847	\$ 604	\$ 243
Professional fees	371	209	162
Facility related	99	167	(68)
Other	637	514	123
Total research and development expenses	<u>\$ 1,954</u>	<u>\$ 1,494</u>	<u>\$ 460</u>

Research and development expenses were \$2.0 million for the year ended December 31, 2021, compared to \$1.5 million for the year ended December 31, 2020. The \$460,000 increase in research and development expenses was primarily due to an increase in manufacturing personnel-related costs of \$243,000, an increase in professional fees of \$162,000, a decrease in facility related expenses of \$68,000 and an increase in other research and development expenses of \$123,000.

The increase in manufacturing personnel-related costs relative to the same period of 2020, which was impacted by the COVID-19 pandemic, in addition to increases in manufacturing and regulatory headcount to meet current and future demand.

The increase in professional fees expenses of \$162,000 in the year ended December 31, 2021 compared to the same period in 2020 was primarily due to increased regulatory legal expenses and expenses related to field and regulatory compliance studies.

Facility-related expenses decreased \$68,000 primarily due to the expiration of a facility lease of 7,632 square feet of manufacturing space in Flagstaff, Arizona at December 31, 2020 as discussed in Note 13 - Commitments and Contingencies to our financial statements included elsewhere in this Annual Report on Form 10-K.

The year over year increase in other research and development expenses of \$123,000 was primarily due to increased expenses related to field and regulatory compliance studies and increased shipping expenses due to higher sales volume during the period.

## Selling, General and Administrative Expenses

	Years Ended December 31,		Increase
	2021	2020	(Decrease)
	(in thousands)		
Direct selling, general and administrative expenses:			
Personnel related (including stock-based compensation)	\$ 3,940	\$ 3,516	\$ 424
Professional fees	1,179	1,318	(139)
Facility-related	156	173	(17)
Other	1,949	1,433	516
Total selling, general and administrative expenses	<u>\$ 7,224</u>	<u>\$ 6,440</u>	<u>\$ 784</u>

Selling, general and administrative expenses were \$7.2 million for the year ended December 31, 2021, compared to \$6.4 million for the year ended December 31, 2020. The increase of \$784,000 in selling, general and administrative expenses was primarily due to an increase of \$424,000 in net salary costs, including stock compensation expenses and an increase in other selling, general and administrative expenses of \$516,000, offset by a \$139,000 reduction in professional fees and a reduction in facility related costs of \$17,000.

Net salaries and wages for the year ended December 31, 2021 were \$424,000 higher than the same period in 2020, primarily due to recognition of incentive compensation expense for employees of \$362,000 and increased stock compensation due to the issuance of certain common stock option awards of \$125,000 offset by net headcount reductions in selling and marketing positions due to hiring delays.

The reduction in professional fees was primarily due to reduced legal expenses related to a litigation settlement incurred in the year ended December 31, 2020 that were not incurred in the same period of 2021, partially offset by an increase in professional services expenses relating to legal patent registration filings in the year ended December 31, 2021.

The increase in other selling, general and administrative expenses of \$516,000 from \$1.4 million for the year ended December 31, 2020 to \$1.9 million for the year ended December 31, 2021 was primarily due to an increase in marketing expenses of \$386,000 as a result of costs associated with rebranding activities to highlight our commercial focus and continued on-line marketing program expansion, an increase in travel expenses of \$84,000 as a direct result of eased COVID-19 travel restrictions in 2021 that were put in place at the end of March 2020, and an increase in director and officer and other insurance premiums of \$75,000, offset by reduced depreciation expense due to certain assets becoming fully depreciated after December 31, 2020.

The decrease in facilities related expenses of \$17,000 to \$156,000 for the year ended December 31, 2021 from \$173,000 for the year ended December 31, 2020 is a direct result of the expiration of a facility lease of 7,632 square feet of manufacturing space in Flagstaff, Arizona at December 31, 2020.

### Interest Income/Expense, Net

We recorded \$7,000 of interest expense, net for the year ended December 31, 2021, as opposed to interest expense, net of \$25,000 for the year ended December 31, 2020. The decrease in interest expense, net of \$18,000 was a result of reduced interest expense as a result of finance leases and promissory notes that expired during the year ended December 31, 2021 and increased interest income for the year ended December 31, 2021 as a result of higher investments in cash invested in money market accounts.

### Paycheck Protection Program Loan Forgiveness

PPP loan forgiveness income for the year ended December 31, 2021 represents the forgiveness of a promissory note pursuant to the PPP under the CARES Act that we secured under this program

### Other Income (Expense), Net

We recorded \$21,000 of other income (expense), net for each of the years ended December 31, 2021 and December 31, 2020. Other income (expense), net for the year ended December 31, 2021 primarily represented a payroll benefits accrual from 2019 that was reversed as the liability period had expired. Other income (expense), net for the year ended December 31, 2020 primarily represented income recognized for gains on sale of certain fixed assets during the year.

## Liquidity and Capital Resources

Since our inception, we have sustained significant operating losses in the course of our research and development activities and commercialization efforts and expect such losses to continue for the near future. We have generated limited revenue to date from product sales, research grants and licensing fees received under a former license. We have primarily funded our operations to date through the sale of equity securities, including convertible preferred stock, common stock and warrants to purchase common stock; and debt financing, consisting primarily of convertible notes.

Through December 31, 2021, we had received net proceeds of \$84.3 million from our sales of common stock, preferred stock and issuance of convertible and other promissory notes, an aggregate of \$1.7 million from research grants and licensing fees and an aggregate of \$1.5 million in product sales. At December 31, 2021, we had an accumulated deficit of \$112.5 million and cash and cash equivalents of \$9.3 million.

As discussed in Note 8 - Borrowings of our Notes to Financial Statements included elsewhere in this Annual Report on Form 10-K, on April 15, 2020, we received cash proceeds of \$645,700 from the PPP of the CARES Act. We used the proceeds from the PPP loan to retain employees, maintain payroll and make lease, interest and utility payments. This loan was fully forgiven under terms of the PPP on June 14, 2021.

Our ultimate success depends upon the outcome of a combination of factors, including the following: (i) successful commercialization of ContraPest and maintaining and obtaining regulatory approval of our products and product candidates; (ii) market acceptance, commercial viability and profitability of ContraPest and other products; (iii) the ability to market our products and establish an effective sales force and marketing infrastructure to generate significant revenue; (iv) the success of our research and development; (v) the ability to retain and attract key personnel to develop, operate and grow our business; and (vi) our ability to meet our working capital needs.

Based upon our current operating plan, we expect that cash and cash equivalents at December 31, 2021, in combination with anticipated revenue and any additional sales of our equity securities, will be sufficient to fund our current operations for at least the next 12 months. We have evaluated and will continue to evaluate our operating expenses and will concentrate our resources toward the successful commercialization of ContraPest in the United States. However, if anticipated revenue targets and margin targets are not achieved or expenses are more than we have budgeted, we may need to raise additional financing before that time. If we need more financing, including within the next 12 months, and we are unable to raise the necessary capital through the sale of our securities, we may be required to take other measures that could impair our ability to be successful and operate as a going concern. In any event, we may require additional capital in order to fund our operating losses and research and development activities before we become profitable and may opportunistically raise capital. We may never achieve profitability or generate positive cash flows, and unless and until we do, we will continue to need to raise capital through equity or debt financing. If such equity or debt financing is not available at adequate levels or on acceptable terms, we may need to delay, limit or terminate commercialization and development efforts or discontinue operations.

### *Additional Funding Requirements*

We expect our expenses to continue or increase in connection with our ongoing activities, particularly as we focus on marketing and sales of ContraPest. Further, the COVID-19 pandemic will likely continue to delay the completion of field studies and achievement of sales, which will further increase our need for financing. In addition, we will continue to incur costs associated with operating as a public company.

In particular, we expect to incur substantial and increased expenses as we:

- work to maximize market acceptance for, and generate sales of, our products, including by conducting field demonstrations at potential lead customers;
- explore strategic partnerships to enable us to penetrate additional target markets and geographical locations;
- manage the infrastructure for sales, marketing and distribution of ContraPest and any other product candidates for which we may receive regulatory approval;
- seek additional regulatory approvals for ContraPest, including to more fully expand the market and use for ContraPest and, if we believe there is commercial viability, for our other product candidates;
- further develop our manufacturing processes to contain costs while being able to scale to meet future demand of ContraPest and any other product candidates for which we receive regulatory approval;
- continue product development of ContraPest and advance our research and development activities and, as our operating budget permits, advance the research and development programs for other product candidates;
- maintain and protect our intellectual property portfolio; and
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts and operations as a public company.

We believe we will need additional financing to fund these continuing and additional expenses.

## Cash Flows

The following table summarizes our sources and uses of cash for each of the years presented:

	Year Ended December 31,	
	2021	2020
Cash used in operating activities	\$ (7,779)	\$ (7,108)
Cash used in investing activities	(99)	(67)
Cash provided by financing activities	13,561	8,882
Net increase (decrease) in cash and cash equivalents	\$ 5,683	\$ 1,707

### Operating Activities.

During the year ended December 31, 2021, operating activities used \$7.8 million of cash, primarily resulting from our net loss of \$8.3 million, offset by changes in our operating assets and liabilities of \$0.1 million and non-cash charges of \$0.4 million. Our net loss was primarily attributed to research and development activities and our selling, general and administrative expenses, as we generated limited product sales and grant revenue during the year. Net cash generated by changes in our operating assets and liabilities for the year ended December 31, 2021 consisted primarily of a \$215,000 increase in accrued expenses and accounts payable and a decrease in other assets of \$12,000, offset by increases in net inventories of \$56,000, prepaid expenses of \$52,000 and a net increase in accounts receivable-trade of \$52,000.

During the year ended December 31, 2020, operating activities used \$7.1 million of cash, primarily resulting from our net loss of \$7.9 million and changes in our operating assets and liabilities of \$0.1 million offset by non-cash charges of \$0.9 million. Our net loss was primarily attributed to research and development activities and our selling, general and administrative expenses, as we generated limited product sales and no research grant and licensing revenue during the year. Net cash used by changes in our operating assets and liabilities for the year ended December 31, 2020 consisted primarily of a decrease in accrued expenses and accounts payable of \$524,000 offset by a decrease in prepaid expenses of \$79,000, a decrease in inventories of \$235,000 and a net increase in accounts receivable and other assets of \$127,000.

### Investing Activities

During the year ended December 31, 2021, we used \$99,000 of cash in investing activities, which consisted of \$100,000 for the purchases of property and equipment, offset by \$1,000 of cash received on the sales of property and equipment.

During the year ended December 31, 2020, we used \$67,000 of cash in investing activities, which consisted of \$114,000 for the purchases of property and equipment, offset by \$47,000 of cash received on the sales of property and equipment.

### Financing Activities

During the year ended December 31, 2021, net cash provided by financing activities was \$13.6 million as a result of \$12.4 million in net proceeds from the issuance of common stock and \$1.3 million in proceeds from warrant exercises, partially offset by \$135,000 of repayments related to notes payable and finance lease obligations.

During the year ended December 31, 2020, net cash provided by financing activities was \$8.9 million as a result of \$5.7 million in net proceeds from the issuance of common stock, \$2.6 million in proceeds from warrant exercises and \$646,000 from the issuance of notes payable, partially offset by \$110,000 of repayments related to notes payable, finance lease obligations and payment of employee withholding taxes related to share-based awards.

## Critical Accounting Policies and Significant Judgments and Estimates

Our financial statements are prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. The preparation of our financial statements and related disclosures requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and the disclosure of contingent assets and liabilities in our financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in Note 2 — Summary of Significant Accounting Policies to our financial statements included elsewhere in this Annual Report on Form 10-K, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our financial statements.

## **Revenue Recognition**

Effective January 1, 2018, we adopted Accounting Standards Codification (“ASC”) 606 — *Revenue from Contracts with Customers* (“ASC 606”). Under ASC 606, we recognize revenue from the commercial sales of products, licensing agreements and contracts to perform pilot studies by applying the following steps: (1) identify the contract with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to each performance obligation in the contract; and (5) recognize revenue when each performance obligation is satisfied. For the comparative periods, revenue has not been adjusted and continues to be reported under ASC 605 — *Revenue Recognition* (“ASC 605”). Under ASC 605, revenue is recognized when the following criteria are met: (1) persuasive evidence of an arrangement exists; (2) the performance of service has been rendered to a customer or delivery has occurred; (3) the amount of the fee to be paid by a customer is fixed and determinable; and (4) the collectability of the fee is reasonably assured. The performance obligations identified by us under ASC 606 are straightforward and similar to the unit of account and performance obligation determination under ASC Topic 605, *Revenue Recognition*.

We recognize revenue when product is shipped at a fixed selling price on payment terms of 30 to 120 days from invoicing. We recognize other revenue earned from pilot studies, consulting and implementation services upon the performance of specific services under the respective service contract.

We derive revenue primarily from commercial sales of products, net of discounts and promotions, as well as consulting and implementation services provided in conjunction with our product deployments.

## **Stock-Based Compensation**

We recognize compensation costs related to stock options granted to employees based on the estimated fair value of the awards on the date of grant, net of estimated forfeitures, in accordance with ASC Topic 718 — *Stock Compensation*. We estimate the grant date fair value of the awards, and the resulting stock-based compensation expense, using the Black-Scholes option-pricing model. The grant date fair value of stock-based awards is expensed on a straight-line basis over the vesting period of the respective award.

We recorded stock-based compensation expense of approximately \$765,000 and \$645,000 for the years ended December 31, 2021 and 2020, respectively. We expect to continue to grant stock options and other equity-based awards, such as restricted stock units, in the future and to continue to recognize stock-based compensation expense in future periods.

The Black-Scholes option-pricing model requires the use of highly subjective and complex assumptions, which determine the fair value of stock-based awards. If we had made different assumptions, our stock-based compensation expense, net loss and loss per share of common stock could have been significantly different. Our assumptions are as follows:

- *Expected term.* The expected term represents the period that the stock-based awards are expected to be outstanding. Our historical share option exercise experience does not provide a reasonable basis upon which to estimate an expected term because of a lack of sufficient data. Therefore, we estimate the expected term by using the simplified method, which calculates the expected term as the average of the time-to-vesting and the contractual life of the options.
- *Expected volatility.* Expected volatility is derived from the average historical volatilities of publicly traded companies within our industry that we consider to be comparable to our business over a period approximately equal to the expected term. We intend to continue to consistently apply this process using the same or similar public companies unless circumstances change such that the identified companies are no longer similar to us, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.
- *Risk-free interest rate.* The risk-free interest rate is based on the U.S. Treasury yield in effect at the time of grant for zero coupon U.S. Treasury notes with maturities approximately equal to the expected term.
- *Expected dividend.* The expected dividend is assumed to be zero as we have never paid dividends and have no current plans to pay any dividends on our common stock.
- *Expected forfeitures.* We use historical data to estimate pre-vesting option forfeitures and record stock-based compensation expense only for those awards that are expected to vest. To the extent actual forfeitures differ from the estimates, the difference will be recorded as a cumulative adjustment in the period that the estimates are revised.

*Significant Factors, Assumptions and Methodologies Used in Determining Fair Value of Our Common Stock*

As noted above, we are required to estimate the fair value of the common stock underlying our stock-based awards when performing the fair value calculations using the Black-Scholes option-pricing model.

The assumptions underlying these valuations represent management's best estimates, which involve inherent uncertainties and the application of management's judgment. If we had made different assumptions than those used, the amount of our stock-based compensation expense, net income and net income per share amounts could have been significantly different. The fair value per share of our common stock for purposes of determining stock-based compensation expense is the closing price of our common stock as reported on the applicable grant date. The compensation cost that has been included in the statements of operations and comprehensive loss for all stock-based compensation arrangements is as follows:

	<b>Years Ended</b>	
	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
	<b>(In thousands)</b>	
Selling, general and administrative expenses	\$ 762	\$ 636
Research and development expense	3	9
Total stock-based compensation expense	<u>\$ 765</u>	<u>\$ 645</u>

The intrinsic value of stock options outstanding as of December 31, 2021 is \$0.

***Off-Balance Sheet Arrangements***

None.

***Item 7A. Quantitative and Qualitative Disclosures about Market Risk.***

Not applicable.

*Item 8. Financial Statements and Supplementary Data.*

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

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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

### Opinion on the Financial Statements

We have audited the accompanying balance sheets of SenesTech, Inc. (the Company) as of December 31, 2021 and 2020, and the related statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2021, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

### Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company suffered a net loss from operations and has a net capital deficiency, which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

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

### Critical Audit Matters

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 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 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.

As discussed in Note 1 to the financial statements, the Company had a going concern due to a continual net loss, stockholders' deficiency and cash used in operations.

Auditing management's evaluation of a going concern can be a significant judgment given the fact that the Company uses management estimates on future revenues and expenses which are not able to be substantiated.

To evaluate the appropriateness of the going concern, we examined and evaluate the financial information that was the initial cause along with management's plans to mitigate the going concern and management's disclosure on going concern.

/s/ M&K CPAS, PLLC

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We have served as the Company's auditor since 2017.

Houston, TX  
March 29, 2022



**SENESTECH, INC.**  
**BALANCE SHEETS**  
(In thousands, except shares and per share data)

	<u>December 31,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
<b>ASSETS</b>		
Current assets:		
Cash	\$ 9,326	\$ 3,643
Accounts receivable trade, net	77	25
Prepaid expenses	230	178
Inventory	1,001	945
Deposits	<u>22</u>	<u>28</u>
Total current assets	10,656	4,819
Right to use asset-operating leases	511	665
Property and equipment, net	<u>334</u>	<u>538</u>
Total assets	<u>\$ 11,501</u>	<u>\$ 6,022</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Short-term debt	\$ 32	\$ 98
Accounts payable	333	404
Accrued expenses	<u>578</u>	<u>292</u>
Total current liabilities	943	794
Long-term debt, net	-	673
Operating lease liability	<u>523</u>	<u>671</u>
Total liabilities	<u>1,466</u>	<u>2,138</u>
Commitments and contingencies (See note 13)	<u>-</u>	<u>-</u>
Stockholders' equity:		
Common stock, \$0.001 par value, 100,000,000 shares authorized, 12,207,283 and 5,099,512 shares issued and outstanding at December 31, 2021 and December 31, 2020, respectively	12	5
Additional paid-in capital	122,531	108,119
Accumulated deficit	<u>(112,508)</u>	<u>(104,240)</u>
Total stockholders' equity	<u>10,035</u>	<u>3,884</u>
Total liabilities and stockholders' equity	<u>\$ 11,501</u>	<u>\$ 6,022</u>

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

**SENESTECH, INC.**  
**STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(In thousands, except shares and per share data)

	For the Years Ended December 31,	
	2021	2020
<b>Revenue:</b>		
Grant revenue	\$ 24	\$ 24
Sales	576	258
Total revenue	600	282
Cost of sales	356	281
Gross profit	244	1
<b>Operating expenses:</b>		
Research and development	1,954	1,494
Selling, general and administrative	7,224	6,440
Total operating expenses	9,178	7,934
Net operating loss	(8,934)	(7,933)
<b>Other income (expense):</b>		
Interest income	4	3
Interest expense	(11)	(28)
Payroll Protection Program loan forgiveness	673	-
Other income	-	21
Total other income	666	(4)
Net loss and comprehensive loss	(8,268)	(7,937)
Deemed dividend-warrant price protection-revaluation adjustment	-	436
Net loss attributable to common shareholders	\$ (8,268)	\$ (8,373)
Weighted average common shares outstanding - basic and fully diluted	11,191,814	3,006,475
Net loss per common share - basic and fully diluted	\$ (0.74)	\$ (2.78)

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

**SENESTECH, INC.**  
**STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
(In thousands, except shares and per share data)

For The Years Ended December 31, 2020 and 2021

	<u>Common Stock</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity (Deficit)</u>
	<u>Shares</u>	<u>Amount</u>			
Balance, December 31, 2019	1,414,671	\$ 1	\$ 98,433	\$ (95,867)	\$ 2,567
Stock based compensation	-	-	645	-	645
Issuance of common stock, sold for cash, net	1,928,180	2	5,739	-	5,741
Issuance of common stock upon exercise of warrants, net	1,700,680	2	2,628	-	2,630
Issuance of common stock upon cashless exercise of warrants	51,414	-	238	-	238
Issuance costs of common stock for services	4,543	-	-	-	-
Issuance of common stock for fractional shares-20-1 reverse split	24	-	-	-	-
Warrant antidilution price protection adjustment	-	-	436	-	436
Net loss for the year ended December 31, 2020	-	-	-	(8,373)	(8,373)
Balance, December 31, 2020	5,099,512	\$ 5	\$ 108,119	\$ (104,240)	\$ 3,884
Stock based compensation	-	-	765	-	765
Issuance costs of common stock for service	20,951	-	-	-	-
Issuance of common stock, sold for cash, net	6,163,854	6	12,415	-	12,421
Issuance of common stock upon exercise of warrants	922,966	1	1,249	-	1,250
Shares forfeited for payment of employee withholding taxes related to share based awards	-	-	(17)	-	(17)
Net loss for the year ended December 31, 2021	-	-	-	(8,268)	(8,268)
Balance, December 31, 2021	12,207,283	\$ 12	\$ 122,531	\$ (112,508)	\$ 10,035

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

**SENESTECH, INC.**  
**STATEMENTS OF CASH FLOWS**  
(In thousands)

	<b>For the Years</b>	
	<b>Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (8,268)	\$ (7,937)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	303	288
Stock-based compensation	765	645
Paycheck Protection Program loan forgiveness	(646)	-
Gain on sale of equipment	-	(21)
(Increase) decrease in current assets:		
Accounts receivable - trade	(52)	1
Accounts receivable - other	-	123
Other assets	12	11
Prepaid expenses	(52)	79
Inventory	(56)	235
Deposits		(8)
Increase (decrease) in current liabilities:		
Accounts payable	(71)	139
Accrued expenses	286	(663)
Net cash used in operating activities	<u>(7,779)</u>	<u>(7,108)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Cash received on sale of property and equipment	1	47
Purchase of property and equipment	(100)	(114)
Net cash provided by (used in) investing activities	<u>(99)</u>	<u>(67)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from the issuance of common stock, net	12,421	5,741
Proceeds from the issuance of notes payable	-	646
Repayments of notes payable	(39)	(73)
Repayments of finance lease obligations	(54)	(62)
Proceeds from the exercise of warrants	1,250	2,630
Payment of employee withholding taxes related to share based awards	(17)	-
Net cash provided by financing activities	<u>13,561</u>	<u>8,882</u>
<b>NET CHANGE IN CASH</b>	<b>5,683</b>	<b>1,707</b>
<b>CASH AT BEGINNING OF PERIOD</b>	<b>3,643</b>	<b>1,936</b>
<b>CASH AT END OF PERIOD</b>	<b><u>\$ 9,326</u></b>	<b><u>\$ 3,643</u></b>
<b>SUPPLEMENTAL INFORMATION:</b>		
Interest paid	<u>\$ 11</u>	<u>\$ 28</u>
Income taxes paid	<u>\$ -</u>	<u>\$ -</u>
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Forgiveness of accrual in warrant exercise	\$ -	\$ 238
Deemed dividend	\$ -	\$ 436

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

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**

**1. Organization and Description of Business**

SenesTech, Inc. (referred to in this report as “SenesTech,” the “Company,” “we” or “us”) was formed in July 2004 and incorporated in the state of Nevada. The Company subsequently reincorporated in the state of Delaware in November 2015. Our corporate headquarters is in Phoenix, Arizona. We have developed and are commercializing a global, proprietary technology for managing animal pest populations, initially rat populations, through fertility control.

Although there are myriad tools available to control rat populations, most rely on some form of lethal method to achieve effectiveness. Each of these solutions is inherently limited by rat species’ resilience and survival mechanisms as well as their extraordinary rate of reproduction. ContraPest<sup>®</sup>, our initial product, is unique in the pest control industry in attacking the reproductive systems of both male and female rats, which our field data shows will result in a sustained reduction of the rat population.

Rats have plagued humanity throughout history. They pose significant threats to the health and food security of many communities. In addition, rodents cause significant product loss and damage through consumption and contamination. Rats also cause significant damage to critical infrastructure by burrowing beneath foundations and gnawing on electrical wiring, insulation, fire proofing systems, electronics and equipment.

The most prevalent solution to rat infestations is the use of increasingly powerful rodenticides. Although these solutions provide short term results, there are growing concerns about secondary exposure and bioaccumulation of rodenticides in the environment, as well as concerns about rodenticides that have no antidotes. The pest management industry and Pest Management Professionals (“PMPs”) are being asked for new solutions that are both effective and less toxic. Our goal is to provide customers with not only a solution to combat their most difficult rat problems, but also offer a non-lethal option to serve customers that are looking to decrease or remove the amount of rodenticide used in their pest control programs.

ContraPest is a liquid bait containing the active ingredients 4-vinylcyclohexene diepoxide (“VCD”) and triptolide. ContraPest limits reproduction of male and female rats beginning with the first breeding cycle following consumption. ContraPest is being marketed for use in controlling Norway and roof rat populations.

SenesTech began the registration process with the United States Environmental Protection Agency (the “EPA”) for ContraPest on August 23, 2015. On August 2, 2016, the EPA granted an unconditional registration for ContraPest as a Restricted Use Product (“RUP”), due to the need for applicator expertise for deployment. On October 18, 2018, the EPA approved the removal of the RUP designation. We believe ContraPest is the first and only non-lethal, fertility control product approved by the EPA for the management of rodent populations.

In addition to the EPA registration of ContraPest in the United States, we must obtain registration from the various state regulatory agencies prior to selling in each state. To date, we have received registration for ContraPest in all 50 states and the District of Columbia, 48 of which have approved the removal of the Restricted Use designation.

In addition to product registration, the EPA also approves all labeling (the container label, instructional inserts, and the Safety Data Sheet (SDS)) of ContraPest. Generally, states accept the EPA approved label as is. ContraPest’s labeling was submitted to states at initial registration and is resubmitted during state scheduled reregistration or for any significant labeling change requiring EPA approval.

We expect to continue to pursue regulatory approvals and amendments to the existing U.S. registration for ContraPest to broaden the marketability and use of ContraPest, and if ContraPest begins to generate sufficient revenue, regulatory approvals for additional jurisdictions beyond the United States. In certain cases, our EPA and state registrations require completion of additional testing and certifications even though we have received approval for the product or its labelling. We continue to seek to comply with these requirements.

The Company also continues to research and develop enhancements to ContraPest that align with our target verticals and other potential fertility control options for additional species.

**Reverse Stock Split**

On February 4, 2020, we amended our amended and restated certificate of incorporation to effect a 1-for-20 reverse split of our issued and outstanding shares of our common stock. The accompanying condensed financial statements and notes thereto give retrospective effect to the reverse stock split for all periods presented. All issued and outstanding common stock, options and warrants exercisable for common stock, restricted stock units, preferred stock conversions to common stock and per share amounts contained in our condensed financial statements have been retrospectively adjusted.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**

**1. Organization and Description of Business – (continued)**

**Going Concern**

Although our audited financial statements for the years ended December 31, 2021 and December 31, 2020 were prepared under the assumption that we would continue our operations as a going concern, the report of our independent registered public accounting firm that accompanies our financial statements for the years ended December 31, 2021 and December 31, 2020 contains a going concern qualification in which such firm expressed substantial doubt about our ability to continue as a going concern, based on the financial statements at that time. Specifically, as noted above, we have incurred operating losses since our inception, and we expect to continue to incur significant expenses and operating losses for the foreseeable future. These prior losses and expected future losses have had, and will continue to have, an adverse effect on our financial condition. If we encounter continued issues or delays in the commercialization of ContraPest, our prior losses and expected future losses could have an adverse effect on our financial condition and negatively impact our ability to fund continued operations, obtain additional financing in the future and continue as a going concern. There are no assurances that such financing, if necessary, will be available to us at all or will be available in sufficient amounts or on reasonable terms. Our financial statements do not include any adjustments that may result from the outcome of this uncertainty. If we are unable to generate additional funds in the future through additional financings, sales of our products, licensing fees, royalty payments or from other sources or transactions, we will exhaust our resources and will be unable to continue operations.

**Need for Additional Capital**

Since our inception, we have sustained significant operating losses in the course of our research and development and commercialization activities and expect such losses to continue for the near future. We have generated limited revenue to date from product sales, research grants and licensing fees received under our former license agreement with Neogen. We have primarily funded our operations to date through the sale of equity securities, including convertible preferred stock, common stock and warrants to purchase common stock. See Note 9 Common Stock Warrants and Common Stock Warrant Liability for a description of our public equity sales.

We have also raised capital through debt financing, consisting primarily of convertible notes and government loan programs, and, to a lesser extent, payments received in connection with product sales, research grants and licensing fees.

Through December 31, 2021, we had received net proceeds of \$84.3 million from our sales of common stock, preferred stock and warrant exercises and issuance of convertible and other promissory notes, an aggregate of \$1.7 million from licensing fees and an aggregate of \$1.5 million in net product sales. At December 31, 2021, we had an accumulated deficit of \$112.5 million and cash and cash equivalents of \$9.3 million.

As discussed in Note 8 - Borrowings on April 15, 2020, we received cash proceeds of \$645,700 from the Paycheck Protection Program (“PPP”) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). We used the proceeds from the PPP loan to retain employees, maintain payroll and make lease, interest and utility payments. This loan was fully forgiven, under terms of the PPP, on June 14, 2021.

Our ultimate success depends upon the outcome of a combination of factors, including the following: (i) successful commercialization of ContraPest and maintaining and obtaining regulatory approval of our products and product candidates; (ii) market acceptance, commercial viability and profitability of ContraPest and other products; (iii) the ability to market our products and establish an effective sales force and marketing infrastructure to generate significant revenue; (iv) the success of our research and development; (v) the ability to retain and attract key personnel to develop, operate and grow our business; and (vi) our ability to meet our working capital needs.

Based upon our current operating plan, we expect that cash and cash equivalents at December 31, 2021, in combination with anticipated revenue and any additional sales of our equity securities, will be sufficient to fund our current operations for at least the next 12 months. We have evaluated and will continue to evaluate our operating expenses and will concentrate our resources toward the successful commercialization of ContraPest in the United States. However, if anticipated revenue targets and margin targets are not achieved or expenses are more than we have budgeted, we may need to raise additional financing before that time. If we need more financing, including within the next 12 months, and we are unable to raise necessary capital through the sale of our securities, we may be required to take other measures that could impair our ability to be successful and operate as a going concern. In any event, we may require additional capital in order to fund our operating losses and research and development activities before we become profitable and may opportunistically raise capital. We may never achieve profitability or generate positive cash flows, and unless and until we do, we will continue to need to raise capital through equity or debt financing. If such equity or debt financing is not available at adequate levels or on acceptable terms, we may need to delay, limit or terminate commercialization and development efforts or discontinue operations.

**Major Customer**

We did not have any customers that accounted for 10% or more of sales for the year ended December 31, 2021. We did have one major customer that accounted for approximately \$44, or 15% of sales, for the year ended December 31, 2020. We expect to maintain the relationships with these customers.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**

**2. Summary of Significant Accounting Policies**

**Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts and classification of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. The significant estimates in our financial statements include the valuation of preferred stock, if issued, common stock and related warrants, and other stock-based awards. Actual results could differ from such estimates.

**Reclassifications**

Certain prior year amounts have been reclassified to conform to the current year presentation. These reclassifications had no impact on net earnings, financial position or cash flows.

**Cash and Cash Equivalents**

We consider money market fund investments to be cash equivalents. We had cash equivalents in the form of money market fund investment of \$8,800 and \$1,500 at December 31, 2021 and December 31, 2020, respectively, included in cash as reported.

**Accounts Receivable-Trade**

Accounts receivable-trade consist primarily of receivables from customers. We provide an allowance for doubtful trade receivables equal to the estimated uncollectible amounts. That estimate is based on historical collection experience, current economic and market conditions and a review of the current status of each customer's trade accounts receivable. We did not have any allowance for doubtful trade receivables at December 31, 2021 or at December 31, 2020.

**Inventories**

Inventories are stated at the lower of cost or market value, using the first-in, first-out convention. Inventories consist of raw materials, work in progress and finished goods. Raw materials are stocked to reduce the risk of impact on manufacturing for potential supply interruptions due to the COVID-19 pandemic or long lead times on certain ingredients.

Reserves for obsolete inventory consist of reserves primarily related to obsolete product containers and delivery systems.

Components of inventory are:

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Raw materials	\$ 937	\$ 950
Work in progress	5	24
Finished goods	88	94
Total inventory	1,030	1,068
Less:		
Reserve for obsolete	(29)	(123)
Total net inventory	\$ 1,001	\$ 945

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**

**2. Summary of Significant Accounting Policies – (continued)**

**Prepaid Expenses**

Prepaid expenses consist primarily of payments made for director and officer insurance, marketing services, rent, legal and inventory purchase deposits and seminar/trade show fees to be expensed in the current year.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Equipment held under finance leases are stated at the present value of minimum lease payments less accumulated amortization.

Depreciation on property and equipment is computed using the straight-line method over the estimated useful lives of the respective assets. The cost of leasehold improvements is amortized over the life of the improvement or the term of the lease, whichever is shorter. Equipment held under finance leases are amortized over the shorter of the lease term or estimated useful life of the asset. The Company incurs maintenance costs on its major equipment. Repair and maintenance costs are expensed as incurred.

**Impairment of Long-Lived Assets**

Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require long-lived assets or asset groups to be tested for possible impairment, the Company compares the undiscounted cash flows expected to be generated from the use of the asset or asset group to its carrying amount. If the carrying amount of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment charge is recognized to the extent that the carrying amount exceeds its fair value. Fair value is determined through various valuation techniques, such as discounted cash flow models and the use of third-party independent appraisals. We have not recorded an impairment of long-lived assets since our inception.

**Revenue Recognition**

Effective January 1, 2018, we adopted Accounting Standards Codification (“ASC”) 606 — *Revenue from Contracts with Customers* (“ASC 606”). Under ASC 606, we recognize revenue from the commercial sales of products, licensing agreements and contracts to perform pilot studies by applying the following steps: (1) identify the contract with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to each performance obligation in the contract; and (5) recognize revenue when each performance obligation is satisfied.

We recognize revenue when product is shipped at a fixed selling price on payment terms of 30 to 120 days from invoicing. We recognize other revenue earned from pilot studies, consulting and implementation services upon the performance of specific services under the respective service contract.

We derive revenue primarily from commercial sales of products, net of discounts and promotions, as well as consulting and implementation services provided in conjunction with our product deployments.

**Research and Development**

Research and development costs are expensed as incurred. Research and development expenses primarily consist of salaries and benefits for research and development employees, stock-based compensation, consulting fees, lab supplies, costs incurred related to conducting scientific trials and field studies, regulatory compliance costs, as well as manufacturing costs associated with process improvement and other research. Research and development expenses include an allocation of facilities related costs, including depreciation of equipment.

**Stock-based Compensation**

Stock-based awards, consisting of stock options and restricted stock units expected to be settled in shares of our common stock, are recorded as equity awards. The grant date fair value of these awards is measured using the Black-Scholes option pricing model for stock options and grant date market value for restricted stock units. We expense the grant date fair value of our stock-based awards on a straight-line basis over their respective vesting periods.



**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**

**2. Summary of Significant Accounting Policies – (continued)**

The stock-based compensation expense recorded for the 12 months ended December 31, 2021 and 2020, is as follows:

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Research and development	\$ 3	\$ 9
General and administrative	762	636
Total stock-based compensation expense	<u>\$ 765</u>	<u>\$ 645</u>

See Note 11 – Stock-Based Compensation for additional discussion on stock-based compensation.

**Income Taxes**

We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and tax bases of assets and liabilities and net operating loss carryforwards using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the period that includes the enactment date.

We record net deferred tax assets to the extent we believe these assets will more likely than not be realized. These deferred tax assets are subject to periodic assessments as to recoverability and if it is determined that it is more likely than not that the benefits will not be realized, valuation allowances are recorded which would increase the provision for income taxes. In making such determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent financial operations. We currently maintain a full valuation allowance against its deferred tax assets.

We apply a more-likely-than-not recognition threshold for all tax uncertainties. Only those benefits that have a greater than fifty percent likelihood of being sustained upon examination by the taxing authorities are recognized. Based on our evaluation, we have concluded there are no significant uncertain tax positions requiring recognition in our financial statements.

We recognize interest and/or penalties related to uncertain tax positions in income tax expense. There are no uncertain tax positions as of December 31, 2021 or December 31, 2020 and as such, no interest or penalties were recorded in income tax expense.

**Comprehensive Loss**

Net loss and comprehensive loss were the same for all periods presented; therefore, a separate statement of comprehensive loss is not included in the accompanying financial statements.

**Loss Per Share Attributable to Common Stockholders**

Basic loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted loss per share attributable to common stockholders is computed by dividing the loss attributable to common stockholders by the weighted average number of common shares and potentially dilutive securities outstanding for the period determined using the treasury stock and if-converted methods. For purposes of the computation of diluted loss per share attributable to common stockholders, common stock purchase warrants, restricted stock units and common stock options are considered to be potentially dilutive securities but have been excluded from the calculation of diluted loss per share attributable to common stockholders because their effect would be anti-dilutive given the net loss reported for the years ended December 31, 2021 and 2020. Therefore, basic and diluted loss per share attributable to common stockholders was the same for all periods presented.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**2. Summary of Significant Accounting Policies – (continued)**

The following table sets forth the outstanding potentially dilutive securities that have been excluded in the calculation of diluted loss per share attributable to common stockholders (in common stock equivalent shares):

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Common stock purchase warrants	4,531,447	2,582,697
Restricted stock unit	667	32,072
Common stock options	1,087,820	496,471
Total	5,619,934	3,111,240

**Accounting Standards Issued but Not Yet Adopted**

There have been no new accounting pronouncements not yet effective or adopted in the current year that we believe have a significant impact, or potential significant impact, to our condensed consolidated financial statements.

**3. Fair Value Measurements**

We issued common stock warrants to purchase shares of common stock in June of 2015 (see Note 9 - Common Stock Warrants and Common Stock Warrant Liability) that expired in June of 2020. These warrants contained a cash settlement provision that resulted in a common stock warrant liability that was revalued at the end of each reporting period.

We valued these warrant derivatives at fair value. The accounting guidance for fair value, among other things, establishes a consistent framework for measuring fair value and expands disclosure for each major asset and liability category measured at fair value on either a recurring or nonrecurring basis. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The framework for measuring fair value consists of a three-level valuation hierarchy that prioritizes the inputs to valuation techniques used to measure fair value based upon whether such inputs are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions made by the reporting entity. The three-level hierarchy for the inputs to valuation techniques is briefly summarized as follows:

- Level 1*— Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;
- Level 2*— Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and
- Level 3*— Unobservable inputs that are significant to the measurement of the fair value of the assets or liabilities that are supported by little or no market data.

An asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Assets and liabilities measured at fair value are based on one or more of the following three valuation techniques:

- A. Market approach: Prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
- B. Cost approach: Amount that would be required to replace the service capacity of an asset (replacement cost).
- C. Income approach: Techniques to convert future amounts to a single present amount based upon market expectations, including present value techniques, option-pricing and excess earnings models.

Our common stock warrant liabilities were classified as Level 3 because there was limited activity or less transparency around the inputs to valuation.

**Financial Instruments Not Carried at Fair Value**

The carrying amounts of our financial instruments, including accounts payable and accrued liabilities, approximate fair value due to their short maturities. The estimated fair value of the long-term debt, not recorded at fair value, are recorded at cost or amortized cost, which was deemed to estimate fair value.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**4. Credit Risk**

We are potentially subject to concentrations of credit risk in our accounts receivable. Credit risk with respect to receivables is limited due to the number of companies comprising our customer base. However, we did identify a potentially uncollectable account at December 31, 2019 and maintained a reserve for this receivable balance of \$123. At December 31, 2020, the account was deemed uncollectable and offset against the reserve. At December 31, 2021, we did have two customers that accounted for 33% of total receivables. We deemed these accounts fully collectable. We did not have any potentially uncollectable accounts at December 31, 2021 and therefore, did not record a reserve for uncollectable accounts at December 31, 2021. We do not require collateral or other securities to support its accounts receivable.

**5. Prepaid expenses**

Prepaid expenses consisted of the following:

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Director, officer and other insurance	\$ 109	\$ 18
Marketing programs and conferences	66	106
Patents	41	-
Legal retainer	-	25
Professional service retainer	-	8
Rent	-	18
Engineering, software licenses and other	14	3
<b>Total prepaid expenses</b>	<b>\$ 230</b>	<b>\$ 178</b>

**6. Property and Equipment**

Property and equipment, net consisted of the following:

	<b>Useful Life</b>	<b>December 31,</b>	
		<b>2021</b>	<b>2020</b>
Research and development equipment	5 years	\$ 1,425	\$ 1,397
Office and computer equipment	3 years	762	733
Autos	5 years	54	54
Furniture and fixtures	7 years	41	41
Leasehold improvements	*	112	283
Construction in progress		45	115
		<u>2,439</u>	<u>2,623</u>
Less accumulated depreciation and amortization		2,105	2,085
<b>Total property and equipment</b>		<b>\$ 334</b>	<b>\$ 538</b>

\* Shorter of lease term or estimated useful life

(1) For the years ended December 31, 2021 and December 31, 2020, we received net proceeds of \$1 and \$47 in the sale of research and development equipment and office and computer equipment, respectively, resulting in gains on the sale of these assets of \$0 and \$21 for the years ended December 31, 2021 and December 31, 2020, respectively.

Depreciation and amortization expense was approximately \$303 and \$288 for the years ended December 31, 2021 and 2020, respectively.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**7. Accrued Expenses**

Accrued expenses consisted of the following:

	December 31,	
	2021	2020
Compensation, severance and related benefits	\$ 524	\$ 218
Legal services	17	-
Product warranty	18	-
Personal property and franchise tax	5	57
Other	14	17
<b>Total accrued expenses</b>	<b>\$ 578</b>	<b>\$ 292</b>

**8. Borrowings**

A summary of our borrowings, including finance lease obligations, was as follows:

	At December 31,	
	2021	2020
Short-term debt:		
Current portion of long-term debt	\$ 32	\$ 98
Total short-term debt	\$ 32	\$ 98
Long-term debt:		
Finance lease obligations	\$ -	\$ 79
Other unsecured promissory notes	-	692
Total	-	771
Less: current portion of long-term debt	32	98
Total long-term debt	\$ -	\$ 673

*Finance Lease Obligations*

Finance lease obligations at December 31, 2021 was for manufacturing equipment leased through ENGS Commercial Finance Co. This finance lease expires on April 18, 2022 and carries an interest rate of 11.4%.

*Other Promissory Notes*

Also included in the table above is a note payable to Fidelity Capital for the financing of a computing fixed asset. This note expires on July 1, 2022 and carries interest rate of 13.3%.

On June 18, 2021, we received notification from BMO Harris Bank National Association as the lender in a promissory note pursuant to the PPP under the CARES Act, that a loan to us under this program in the amount of \$645,700 was forgiven in full under the terms of the program. The forgiveness of this note and related interest was recorded as other income on the Statements of Operations and Comprehensive Loss for the year ended December 31, 2021.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**9. Common Stock Warrants and Common Stock Warrant Liability**

The table below summarizes common stock warrant activity for the years ended December 31, 2021 and December 31, 2020, by warrant type.<sup>1</sup>

Issue Date	Warrant Type	Term Date	Exercise Price	Balance December 31, 2019	Issued	Exercised	Expired	Balance December 31, 2020	Issued	Exercised	Expired	Balance December 31, 2021
2016 and prior	Various	Various-2020/2021	Various	17,059	-	(9,375)	(7,684)	-	-	-	-	-
November 21, 2017	Common Stock Offering Warrants	November 21, 2022	\$ 1.3659 <sup>(1)</sup>	143,501	-	-	-	143,501	-	(21,787)	-	121,714
November 21, 2017	Dealer Manager Warrants	November 21, 2022	\$ 30.00	47,250	-	(47,250)	-	-	-	-	-	-
June 20, 2018	Warrant Reissue	December 20, 2023	\$ 36.40	56,696	-	-	-	56,696	-	-	-	56,696
August 13, 2018	Rights Offering Warrants	July 25, 2023	\$ 23.00	202,943	-	-	-	202,943	-	(499)	-	202,444
August 13, 2018	Dealer Manager Warrants	August 13, 2023	\$ 34.50	13,393	-	-	-	13,393	-	-	-	13,393
July 16, 2019	Dealer Manager Warrants	July 11, 2024	\$ 33.75	8,334	-	-	-	8,334	-	-	-	8,334
January 28, 2020	Registered Direct Offering	July 28, 2025	\$ 9.00	-	177,500	-	-	177,500	-	-	-	177,500
January 28, 2020	Dealer Manager Warrants	July 28, 2025	\$ 10.00	-	13,315	-	-	13,315	-	-	-	13,315
March 6, 2020	Registered Direct Offering	September 8, 2025	\$ 2.88	-	176,372	(176,372)	-	-	-	-	-	-
March 6, 2020	Dealer Manager Warrants	March 4, 2025	\$ 3.76	-	13,228	-	-	13,228	-	-	-	13,228
April 21, 2020	Dealer Manager Warrants	April 21, 2025	\$ 3.97	-	118,073	-	-	118,073	-	-	-	118,073
April 24, 2020	Registered Direct Offering	April 24, 2025	\$ 3.05	-	1,574,308	(1,524,308)	-	50,000	-	-	-	50,000
October 26, 2020	Private Warrant Inducement	April 27, 2026	\$ 1.73	-	1,700,680	-	-	1,700,680	-	(700,680)	-	1,000,000
October 26, 2020	Dealer Manager Warrants	April 27, 2026	\$ 2.16	-	85,034	-	-	85,034	-	-	-	85,034
February 2, 2021	Private Placement Agreement	August 2, 2026	\$ 2.216	-	-	-	-	-	2,194,427	-	-	2,194,427
February 2, 2021	Dealer Manager Warrants	August 2, 2026	\$ 2.848	-	-	-	-	-	329,164	-	-	329,164
March 23, 2021	Dealer Manager Warrants	March 23, 2026	\$ 2.50	-	-	-	-	-	148,125	-	-	148,125
				<u>489,176</u>				<u>2,582,697</u>				<u>4,531,447</u>

(1) The initial exercise price of these warrants was \$30.00 per share. Pursuant to antidilution price adjustment protection contained within these warrants, the initial exercise price of these warrants was adjusted downward to \$29.40 on July 24, 2018, the record date of the Right's Offering and downward to \$19.00 per share on August 13, 2018. These warrants were further adjusted downward from \$19.00 to \$7.13 and to \$2.1122 on January 28, 2020 and March 4, 2020, respectively, in connection with separate Registered Direct Offerings. These warrants were further adjusted downward from \$2.1122 to \$1.3659 on October 26, 2020 in connection with a Registered Direct Offering. These warrants are subject to further adjustment pursuant to antidilution price adjustment protection.

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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

As of December 31, 2021, we had 4,531,447 shares of common stock issuable upon exercise of outstanding common stock warrants, at a weighted-average exercise price of \$4.00 per share.

On November 21, 2017, we issued a total of 232,875 detachable common stock warrants issued with the second public offering of 293,000 shares of our common stock at \$20.00 per share. The common stock warrant is exercisable until five years from the date of grant. Our common stock and detachable warrants exist independently as separate securities. As such, we estimated the fair value of the common stock warrants, exercisable at \$30.00 per share, to be \$661 using a lattice model based on the following significant inputs: common stock price of \$20.00; comparable company volatility of 73.8%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 1.87. The initial exercise price of these warrants was \$30.00 per share, which adjusted downward to \$29.40 on July 24, 2018, the record date of the Right's Offering, and downward to \$19.00 per share on August 13, 2018, the date of the Rights Offering, pursuant to antidilution price adjustment protection contained within these warrants. The exercise price of the warrants was adjusted downward to \$7.13 on January 28, 2020 in connection with a private placement of common stock. Per guidance of ASC 260, we recorded a deemed dividend of \$285 on the 143,501 unexercised warrants that contained this antidilution price adjustment protection provision and was calculated as the difference between the fair value of the warrants immediately prior to downward exercise price adjustment and immediately after the adjustment using a Black Scholes model based on the following significant inputs: On January 28, 2020, common stock price of \$7.90; comparable company volatility of 73.8%; remaining term 2.82 years; dividend yield of 0% and risk-free interest rate of 1.45%.

The exercise price of the warrants was adjusted downward to \$2.1122 on March 4, 2020 in connection with a private placement of common stock. Per guidance of ASC 260, we recorded a deemed dividend of \$129 on the 143,501 unexercised warrants that contained this antidilution price adjustment protection provision and was calculated as the difference between the fair value of the warrants immediately prior to downward exercise price adjustment and immediately after the adjustment using a Black Scholes model based on the following significant inputs: On March 4, 2020, common stock price of \$2.88; comparable company volatility of 74.5%; remaining term 2.71 years; dividend yield of 0% and risk-free interest rate of 0.68%.

The exercise price of the warrants was adjusted downward to \$1.3659 on October 26, 2020 in connection with an inducement offering of common stock. Per guidance of ASC 260, we recorded a deemed dividend of \$22 on the 143,501 unexercised warrants that contained this antidilution price adjustment protection provision and was calculated as the difference between the fair value of the warrants immediately prior to downward exercise price adjustment and immediately after the adjustment using a Black Scholes model based on the following significant inputs: On October 26, 2020, common stock price of \$1.47; comparable company volatility of 96.5%; remaining term 2.08 years; dividend yield of 0% and risk-free interest rate of 0.18%.

On June 20, 2018, we entered into an agreement with a holder of 56,696 of the November 2017 warrants to exercise its original warrant representing 56,696 shares of common stock for cash at the \$30.00 exercise price for gross proceeds of \$1.7 million, and we issued to holder a new warrant to purchase 56,696 shares of common stock at an exercise price of \$36.40 per share. The new warrant did not contain the antidilution price adjustment protection that was contained within the exercised warrants. In June 2018, we recorded stock compensation expense of \$1,700 representing the fair value of the of 56,696 inducement warrants issued. We estimated the fair value of the common stock warrants, exercisable at \$36.40 per share, to be \$1,700 using a Black Scholes model based on the following significant inputs: common stock price of \$42.20; comparable company volatility of 72.6%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 2.8%. Also, in June 2018, an additional 17,088 of the November 8, 2017 warrants that were in the money at the time of exercise, were exercised for gross proceeds of \$513.

On August 13, 2018, in connection with a Rights Offering of 267,853 shares of our common stock, we issued 267,853 warrants to purchase shares of our common stock at an exercise price of \$23.00 per share. We estimated the fair value of the common stock warrants, exercisable at \$23.00 per share, to be \$3,600 using a Monte Carlo model based on the following significant inputs: common stock price of \$18.80; comparable company volatility of 159.0%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 2.77%.

In connection with the closing of the Rights Offering, we issued a warrant to purchase 13,393 shares of common stock to Maxim Partners LLC, an affiliate of the dealer-manager of the Rights Offering. We estimated the fair value of the common stock warrants, exercisable at \$34.50 per share, to be \$169 using a Monte Carlo model based on the following significant inputs: common stock price of \$18.80; comparable company volatility of 159.0%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 2.77%.

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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

*Common Stock Warrant Issued to Underwriter of Common Stock Offering*

In July 2019, we issued to H.C. Wainwright & Co., as placement agent, a warrant to purchase 8,334 shares of common stock at an exercise price of \$33.75 per share as consideration for providing services in connection with a common stock offering in July 2019. The warrant was fully vested and exercisable on the date of issuance. The common stock warrant is exercisable until five years from the date of grant. We estimated the fair value of the common stock warrants, exercisable at \$33.75 per share, to be \$127 using a lattice model based on the following significant inputs: common stock price of \$26.80; comparable company volatility of 133.3%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 2.07%.

*Common Stock Warrants Issued in January and March 2020 Private Placements*

In January and March 2020, in separate private placements concurrent with registered direct offerings (collectively, the “2020 Registered Direct Offerings”) of shares of our common stock, we also issued warrants to purchase an aggregate of up to 353,872 shares of common stock to certain institutional and accredited investors that participated in the 2020 Registered Direct Offerings (the “2020 Warrants”). The warrants were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. Terms used but not otherwise defined herein will have the meanings given them in the warrants, attached as Exhibit 4.1 to our Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on January 28, 2020 and our Current Report on Form 8-K filed with the SEC on March 6, 2020.

The warrants issued in January 2020 to purchase 177,500 shares of common stock have an exercise price of \$9.00 per share, are exercisable after July 28, 2020 and will expire July 28, 2025. We estimated the fair value of the common stock warrants, exercisable at \$9.00 per share, to be \$813 using a Black Scholes model based on the following significant inputs: common stock price of \$7.90; comparable company volatility of 73.8%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 1.53%.

The warrants issued in March 2020 to purchase 176,372 shares of common stock have an exercise price of \$2.88 per share, are immediately exercisable and will expire September 8, 2025. We estimated the fair value of the common stock warrants, exercisable at \$2.88 per share, to be \$242 using a Black Scholes model based on the following significant inputs: common stock price of \$2.35; comparable company volatility of 74.8%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.39%.

For so long as the 2020 Warrants remain outstanding, the exercise price and number of shares of common stock issuable upon exercise of the warrants are subject to adjustment as follows: (a) upon payment of a stock dividend or other distribution on a class or series of shares common stock, not including shares issued under this warrant; (b) upon subdivision (by stock split, stock dividend, recapitalization, or otherwise) or combination (by reverse stock split or otherwise) of shares of common stock; or (c) upon the issuance of any shares of capital stock by reclassification of shares of the common stock.

In the event that we declare or make any dividend or other distribution of our assets to holders of our common stock, each 2020 Warrant holder will be entitled to participate in such distribution to the same extent that such holder would have participated therein if the holder had held the number of shares of common stock acquirable upon exercise of the 2020 Warrant.

In the event of a Fundamental Transaction, as described in the 2020 Warrants and generally including the sale, transfer or other disposition of all or substantially all of our properties or assets; our consolidation or merger with or into another person or reorganization; a recapitalization, reorganization or reclassification in which our common stock is converted into other securities, cash or property; or any acquisition of our outstanding common stock that results in any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, then the holders of the 2020 Warrants will be entitled to receive upon exercise of such warrants the kind and amount of securities, cash, assets or other property that the holders would have received had they exercised the 2020 Warrants immediately prior to such Fundamental Transaction. Subject to certain limitations, in the event of a Fundamental Transaction the 2020 Warrant holder may at its option require us or any Successor Entity to purchase such warrant from the holder by paying to the holder an amount of cash equal to the Black Scholes Value of the remaining unexercised portion of the 2020 Warrant on the date of the consummation of the Fundamental Transaction.

Any time that we grant, issue, or sell any securities pro rata to all of the record holders of our common stock (the “2020 Purchase Right”), each holder of 2020 Warrants will be entitled to acquire the aggregate amount of securities that the holder could have acquired if the holder had held the number of shares of common stock acquirable upon exercise of the applicable 2020 Warrant. However, to the extent that an exercise of a 2020 Purchase Right would exceed the Beneficial Ownership Limitation (defined below), then to such extent the 2020 Purchase Right will be held in abeyance until such time, if ever, that complete exercise of the 2020 Purchase Right would not exceed the Beneficial Ownership Limitation.

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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

After the Initial Exercisability Date, the 2020 Warrants will be exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise. If, at the time a holder exercises the 2020 Warrant (but not sooner than six months following the date of such warrant), a registration statement registering the issuance of the shares of common stock underlying the 2020 Warrants under the Securities Act is not then effective or available, nor is any current prospectus thereto available, and an exemption from registration under the Securities Act is not available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the number of shares of common stock determined according to a formula set forth in the 2020 Warrant.

*Limitations on Exercise.* A holder (together with its affiliates) may not exercise any portion of the 2020 Warrants to the extent that the holder would own more than 4.99% of the outstanding common stock after exercise (the “Beneficial Ownership Limitation”), except that upon at least 61 days’ prior notice from the holder to us, the holder may increase the Beneficial Ownership Limitation up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the 2020 Warrants. No fractional shares of common stock will be issued in connection with the exercise of a 2020 Warrant. In lieu of fractional shares, we will either pay the holder an amount in cash equal to the fractional amount multiplied by the exercise price or round up to the next whole share.

Except as otherwise provided in the 2020 Warrants or by virtue of such holder’s ownership of shares of our common stock, the holders of the 2020 Warrants do not have the rights or privileges of holders of our common stock, including any voting rights, unless and until they exercise such warrants.

***Common Stock Warrants Issued in April 2020 Public Offering***

On April 24, 2020, in connection with a previously announced public offering of 145,586 Class A Units and 1,428,722 Class B Units, we issued warrants to purchase 1,574,308 shares of common stock to the participants in the public offering and have an exercise price of \$3.05 per share (the “April 2020 Warrants”). These warrants are immediately exercisable and will expire April 24, 2025.

The Common Stock, Pre-Funded Warrants and Warrants sold in this Public Offering were offered and sold pursuant to a registration statement on Form S-1 (File No. 333-236302) initially filed with the SEC on February 7, 2020, as amended (“Registration Statement”), which was declared effective by the SEC on February 14, 2020. The Post-Effective Amendment No. 2 to the Registration Statement was declared effective by the SEC on April 21, 2020.

We estimated the fair value of the common stock warrants, exercisable at \$3.05 per share, to be \$2,402 using a Black Scholes model based on the following significant inputs: common stock price of \$2.40; comparable company volatility of 87.9%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

***Common Stock Warrants Issued to Placement Agent in 2020 Registered Direct Offerings and Private Placement***

In connection with the separate private placements concurrent with registered direct offerings of shares of our common stock in January and March 2020, we issued to H.C. Wainwright & Co., LLC, as placement agent, a warrant to purchase 13,228 shares of common stock and a warrant to purchase 13,313 shares of common stock. The warrants were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. These warrants have substantially similar terms as the 2020 Warrants described above, except that the placement agent warrant issued in January 2020 has an exercise price of \$10.00 per share, and the placement agent warrant issued in March 2020 has an exercise price of \$3.7563 per share.

We estimated the fair value of the common stock warrants issued in January, with an exercise price of \$10.00 per share, to be \$58 using a Black Scholes model based on the following significant inputs: common stock price of \$7.90; comparable company volatility of 73.8%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 1.53%.



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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

We estimated the fair value of the common stock warrants issued in March, with an exercise price of \$3.7563 per share, to be \$17 using a Black Scholes model based on the following significant inputs: common stock price of \$2.35; comparable company volatility of 74.8%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.39%.

In connection with the public offering of 145,586 Class A Units and 1,428,722 Class B Units on April 24, 2020, we issued to H.C. Wainwright & Co., LLC, as placement agent, warrants to purchase 118,073 shares of common stock. The warrants were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. These warrants have substantially similar terms as the April 2020 Warrants described above, except that the placement agent warrant issued has an exercise price of \$3.97 per share.

We estimated the fair value of the common stock warrants issued in April, with an exercise price of \$3.97 per share, to be \$167 using a Black Scholes model based on the following significant inputs: common stock price of \$2.40; comparable company volatility of 87.9%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

***Common Stock Warrants Issued in October 2020 Private Warrant Inducement***

In October 2020, in connection with an inducement agreement with an existing accredited investor to exercise 1,700,680 outstanding warrants to purchase an equal number of shares of our common stock, we issued new unregistered warrants to purchase up to an aggregate of 1,700,680 shares of common stock at an exercise price of \$1.725 per share. The warrants issued were immediately exercisable with an exercise period of five and one-half years from the date of issuance. The Original Warrants were issued on March 6, 2020 and on April 24, 2020. Pursuant to the Letter Agreement, the per share exercise price of the Original Warrants were reduced from \$2.88 and \$3.05, respectively, to \$1.725. We estimated the fair value of the common stock warrants, exercisable at \$1.725 per share, to be \$1,806 using a Black Scholes model based on the following significant inputs: common stock price of \$1.47; comparable company volatility of 96.5%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

***Common Stock Warrants Issued to Placement Agent in October 2020 Inducement Offering***

In connection with the private warrant inducement in October 2020 of 1,700,680 shares of our common warrants, we issued to H.C. Wainwright & Co., LLC, as placement agent, warrants to purchase 85,034 shares of common stock. These warrants have substantially similar terms as the 2020 Warrants described above, except that the placement agent warrant issued in October 2020 has an exercise price of \$2.156 per share.

We estimated the fair value of these common stock warrants, with an exercise price of \$2.156 per share, to be \$86 using a Black Scholes model based on the following significant inputs: common stock price of \$1.47; comparable company volatility of 96.5%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

***Common Stock Warrants Issued in February 2021 Private Placement Agreement***

In February 2021, in connection with a private placement agreement with certain institutional and accredited investors, we issued common stock warrants to purchase up to an aggregate of 2,194,427 shares of common stock at an exercise price of \$2.216 per share. The warrants were exercisable immediately and have an exercise period of five and one-half years from the date of issuance. The warrant holder may not exercise any portion of such holder's warrants to the extent that the holder, together with its affiliates, would beneficially own more than 4.99% (or, at the election of the holder, 9.99%) of our outstanding shares of common stock immediately after exercise, except that upon at least 61 days' prior notice from the holder to us, the holder may increase the beneficial ownership limitation to up to 9.99% of the number of shares of common stock outstanding immediately after giving effect to the exercise. We estimated the fair value of the common stock warrants, exercisable at \$2.216 per share, to be \$3,052 using a Black Scholes model based on the following significant inputs: common stock price of \$1.93; comparable company volatility of 95.6%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

***Common Stock Warrants Issued to Placement Agent in February 2021 Private Placement Agreement***

In connection with the private placement in February 2021, we issued to H.C. Wainwright & Co., LLC, as placement agent, warrants to purchase up to 329,164 shares of common stock with an exercise price of \$2.8481 per share. The warrants are exercisable immediately and have an exercise period of five and one-half years from the date of issuance. We estimated the fair value of these common stock warrants, with an exercise price of \$2.8481 per share, to be \$435 using a Black Scholes model based on the following significant inputs: common stock price of \$1.93; comparable company volatility of 95.6%; remaining term 5.5 years; dividend yield of 0% and risk-free interest rate of 0.18%.

***Common Stock Warrants Issued to Placement Agent in March 2021 Registered Direct Offering***

On March 23, 2021, we consummated a registered direct offering with certain institutional investors and issued an aggregate of 1,975,000 shares of our common stock, par value \$0.001 per share at a purchase price of \$2.00 per share for gross proceeds to us of approximately \$3.95 million, before deducting fees payable to the placement agent and other estimated offering expenses payable by us. The 1,975,000 shares of common stock sold in the offering were offered and sold pursuant to a prospectus, dated August 24, 2018, and a prospectus supplement, dated March 22, 2021, in connection with a takedown from our shelf registration statement on Form S-3 (File No. 333-225712).

In connection with the registered direct offering in March 2021, we issued to H.C. Wainwright & Co., LLC, as the placement agent, warrants to purchase up to 148,125 shares of common stock. The placement agent warrants will be exercisable commencing six months following the date of issuance, expire five years following the date of sale and have an exercise price per share of \$2.50 per share. The placement agent warrants, and the shares of common stock issuable upon exercise thereof, will be issued in reliance on the exemption from registration provided in Section 4(a)(2) under the Securities Act of 1933, as amended, and Regulation D promulgated thereunder. We estimated the fair value of these common stock warrants, with an exercise price of \$2.50 per share, to be \$181 using a Black Scholes model based on the following significant inputs: common stock price of \$1.76; comparable company volatility of 100.8%; remaining term 5 years; dividend yield of 0% and risk-free interest rate of 0.31%.

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**9. Common Stock Warrants and Common Stock Warrant Liability – (continued)**

***Deemed Dividend Adjustment-Warrant Modified Terms Revaluation***

On March 3, 2020, we issued an aggregate of 51,414 common shares in a cashless exercise of 56,625 warrants issued in December 2016 and November 2017. Consideration for the exercise of these warrants was the full settlement of an outstanding litigation reserve of \$238.

On October 26, 2020, in connection with the private warrant inducement with an existing accredited investor to exercise 1,700,680 outstanding warrants (“Original Warrants”), we agreed to modify the terms of the original warrants that were originally issued on March 6, 2020 and on April 24, 2020. Pursuant to the agreement, the per share exercise price of the original warrants were reduced from \$2.88 and \$3.05, respectively, to \$1.725.

Per recent proposed guidance of ASC 260, we determined that this was an exchange of the existing 1,700,680 warrants that were affected and the difference between the fair value of the warrants immediately prior to modification of terms and immediately after the adjustment was a cost of raising capital and was recorded as a reduction of equity. The difference between the fair value of the warrants immediately prior to modification of terms and immediately after the adjustment was calculated as \$237, using a Black Scholes model based on the following significant inputs: On October 26, 2020: common stock price of \$1.47; comparable company volatility of 96.5%; remaining term 4.5-4.8 years; dividend yield of 0% and risk-free interest rate of 0.18.

**10. Stockholders’ Deficit**

**Capital Stock**

We organized under the laws of the state of Nevada on July 27, 2004 and subsequently reincorporated under the laws of the state of Delaware on November 10, 2015. In connection with the reincorporation, as approved by the stockholders, we changed our authorized capital stock to consist of (i) 100 million shares of common stock, \$0.001 par value, and (ii) 2 million shares of preferred stock, \$0.001 par value, designated as Series A convertible preferred stock. In December 2015, we amended our Certificate of Incorporation to change our authorized capital stock to provide for 15 million authorized shares of preferred stock of which 7,515,000 was designated as Series B convertible preferred stock, par value \$.001 per share.

Prior to November 10, 2015, our authorized capital stock consisted of 100 million shares of common stock, \$.001 par value, and 10 million shares of preferred stock, \$.001 par value.

**Common Stock**

We had 12,207,283 and 5,099,512 shares of common stock issued and outstanding as of December 31, 2021 and December 31, 2020, respectively.

During the year ended December 31, 2021, we issued 7,107,771 shares of common stock as follows:

- an aggregate of 4,188,854 shares in connection with a private placement offering and exercise of pre-funded warrants issued in connection with the offering, generating net proceeds to us in February 2021 of approximately \$8,898, as further described below;
- an aggregate of 1,975,000 shares in connection with a registered direct offering generating net proceeds to us in March 2021 of approximately \$3,523, as further described below;
- an aggregate of 922,966 shares in connection with the exercise of common stock warrants in March, June, July and October, 2021, generating net proceeds to us of approximately \$1,250, as further described below; and
- an aggregate of 20,951 shares for service as a result of the vesting of restricted stock units.

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**10. Stockholders' Deficit – (continued)**

**Public Offerings and Registered Direct Offerings**

On February 2, 2021, we consummated a private placement with certain institutional and accredited investors and issued an aggregate of 3,968,854 shares of our common stock, par value \$0.001 per share at a purchase price of \$2.2785 per share, pre-funded warrants to purchase up to an aggregate of 420,000 shares of common stock at a purchase price of \$2.2775 per pre-funded warrant and associated warrants to purchase up to an aggregate of 2,194,427 shares of common stock, for gross proceeds of approximately \$10.0 million, prior to deducting placement agent fees and offering expenses. At March 29, 2021, all 420,000 pre-funded shares had been distributed. In connection with the offering, we issued the placement agent warrants to purchase up to 329,164 shares of common stock with an exercise price of \$2.8481 per share.

On March 23, 2021, we consummated a registered direct offering with certain institutional investors and issued an aggregate of 1,975,000 shares of our common stock, par value \$0.001 per share at a purchase price of \$2.00 per share for gross proceeds to us of approximately \$3.95 million, pursuant to a prospectus, dated August 24, 2018, and a prospectus supplement, dated March 22, 2021, in connection with a takedown from our shelf registration statement on Form S-3 (File No. 333-225712).

In connection with the offering, we issued the placement agent warrants to purchase up to 148,125 shares of common stock at an exercise price per share of \$2.50 per share.

On March 19, 2021, June 22, 2021, July 15, 2021 and October 7, 2021, we issued an aggregate of 700, 680, 499, 5,616 and 16,171 shares of common stock for the exercise of certain warrants, respectively. The net proceeds to us for these exercises was \$1,250.

**11. Stock-Based Compensation**

On June 12, 2018, our stockholders approved the 2018 Equity Incentive Plan (the "2018 Plan") to replace our 2015 Equity Incentive Plan (the "2015 Plan"). On July 8, 2020, our stockholders approved an amendment to the 2018 Plan to increase the number of shares of common stock available for issuance under the 2018 Plan by 800,000 shares from 50,000 to 850,000. In addition, up to 122,279 shares of our common stock previously reserved for issuance under the 2015 Plan are available for issuance under the 2018 Plan to the extent such shares were available for issuance under the 2015 Plan as of June 12, 2018 or thereafter cease to be subject to awards outstanding under the 2015 Plan, such as by expiration, cancellation, or forfeiture of such awards.

On June 24, 2021, our stockholders approved an amendment to the 2018 Plan to increase the number of shares of common stock available for issuance under the 2018 Plan by 3,000,000 shares.

Stock options are generally issued with a per share exercise price equal to no less than fair market value of our common stock at the date of grant. Options granted under the 2018 Plan generally vest immediately, or ratably over a two- to 36-month period coinciding with their respective service periods. Options under the 2018 Plan generally have a term of five years. Certain stock option awards provide for accelerated vesting upon a change in control.

As of December 31, 2021, we had 2,838,100 shares of common stock available for issuance under the 2018 Plan.

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**11. Stock-based Compensation – (continued)**

*Stock Options*

We measure the fair value of stock options with service-based vesting criteria to employees, directors and consultants on the date of grant using the Black-Scholes option pricing model. The Black-Scholes valuation model requires us to make certain estimates and assumptions, including assumptions related to the expected price volatility of our stock, the period during which the options will be outstanding, the rate of return on risk-free investments, and the expected dividend yield for our stock.

The weighted-average assumptions used in the Black-Scholes option-pricing model used to calculate the fair value of options granted during the year ended December 31, 2021 were as follows:

	<b>Employee</b>
Expected volatility	95.8%
Expected dividend yield	-
Expected term (in years)	3.01
Risk-free interest rate	0.46%

The weighted average grant date fair value of options granted during the year ended December 31, 2021 was \$0.97 per share, as per the table below.

The weighted-average assumptions used in the Black-Scholes option-pricing model used to calculate the fair value of options granted during the year ended December 31, 2020, were as follows:

	<b>Employee</b>
Expected volatility	92.1%
Expected dividend yield	-
Expected term (in years)	3.5
Risk-free interest rate	0.17%

Due to our limited operating history and lack of company-specific historical or implied volatility, the expected volatility assumption was determined based on historical volatilities from traded options of biotech companies of comparable size and stability, whose share prices are publicly available. The expected term of options granted to employees is calculated based on the mid-point between the vesting date and the end of the contractual term according to the simplified method as described in SEC Staff Accounting Bulletin 110 because we do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term due to the limited period of time our awards have been outstanding. For non-employee options, the expected term of options granted is the contractual term of the options. The risk-free interest rate is determined by reference to the implied yields of U.S. Treasury securities with a remaining term equal to the expected term assumed at the time of grant. The expected dividend assumption is based on our history and expectation of dividend payouts. We have not paid and do not intend to pay dividends.

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**11. Stock-based Compensation – (continued)**

The table summarizes the stock option activity for the periods indicated as follows:

	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (1)
Outstanding at December 31, 2019	136,489	\$ 27.85	3.9	\$ -
Granted	370,397	\$ 1.37	4.9	\$ -
Exercised	-	\$ -	-	\$ -
Forfeited	(10,415)	\$ -	-	\$ -
Expired	-	\$ -	-	\$ -
Outstanding at December 31, 2020	496,471	\$ 8.63	3.9	\$ -
Granted	598,649	\$ 0.97	4.6	\$ -
Exercised	-	\$ -	-	\$ -
Forfeited	(3,300)	\$ -	-	\$ -
Expired	(4,000)	\$ -	-	\$ -
Outstanding at December 31, 2021	1,087,820	\$ 4.08	3.9	\$ -
Exercisable at December 31, 2021	649,153	\$ 5.38	1.8	\$ -

(1) The aggregate intrinsic value on the table was calculated based on the difference between the estimated fair value of our stock and the exercise price of the underlying option. The estimated stock values used in the calculation was \$0.98 and \$1.73 per share for each of the years ended December 31, 2021 and 2020, respectively.

The weighted average grant date fair value of options granted to employees for the year ended December 31, 2021 was \$0.97 per share.

At December 31, 2021, the total compensation cost related to non-vested options not yet recognized was \$581, which will be recognized over a weighted average period of 27 months, assuming the grantees complete their service period required for vesting.

*Restricted Stock Units*

The following table summarizes restricted stock unit activity for the years ended December 31, 2021 and 2020:

	Number of Units	Weighted Average Grant Date Fair Value Per Unit
Outstanding as of December 31, 2019	5,877	\$ 30.28
Granted	30,738(1)	\$ 1.97
Vested	(4,543)	\$ 1.42
Forfeited	-	\$ -
Outstanding as of December 31, 2020	32,072	\$ 4.13
Granted	-	\$ -
Vested	(31,405)	\$ 4.22
Forfeited	-	\$ -
Outstanding as of December 31, 2021	667	\$ 1.80

(1) 30,738 restricted stock units were granted on July 23, 2020 with a weighted average grant date fair value of \$1.97.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**11. Stock-based Compensation – (continued)**

The stock-based compensation expense was recorded as follows:

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Research and development	\$ 3	\$ 9
General and administrative	762	636
<b>Total stock-based compensation expense</b>	<b>\$ 765</b>	<b>\$ 645</b>

The allocation between research and development and general and administrative expense was based on the department and services performed by the employee or non-employee.

**12. Income Taxes**

The components of the pretax loss from operations for the years ended December 31, 2021 and 2020 are as follows (in thousands):

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
U.S. Domestic	\$ (8,268)	\$ (8,373)
Foreign	-	-
<b>Pretax loss from operations</b>	<b>\$ (8,268)</b>	<b>\$ (8,373)</b>

The provision for income taxes from continuing operations for the years ended December 31, 2021 and 2020 are as follows:

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Current</b>	<b>\$</b>	<b>\$</b>
Federal	-	-
State	-	-
Foreign	-	-
<b>Total current</b>	<b>-</b>	<b>-</b>
<b>Deferred</b>		
Federal	-	-
State	-	-
Foreign	-	-
<b>Total deferred</b>	<b>-</b>	<b>-</b>
<b>Total income tax expense (benefit)</b>	<b>\$ -</b>	<b>\$ -</b>

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**12. Income Taxes – (continued)**

*Tax Rate Reconciliation*

A reconciliation of income taxes to the amount computed by applying the statutory federal income tax rate to the net loss is summarized as follows :

	<b>Years Ended</b>	
	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Income tax benefit at statutory rates	\$ (1,736)	\$ (1,758)
State income tax, net of federal benefit	(329)	(309)
Permanent items	-	1
Stock-based compensation	118	84
PPP loan forgiveness	(137)	-
Change in rate	-	-
Stock compensation DTA adjustment	-	-
Change in valuation allowance	1,976	1,982
RTP and other	109	-
Income tax expense (benefit)	<u>\$ -</u>	<u>\$ -</u>

Significant components of our deferred tax assets as of December 31, 2021 and 2020 are shown below.

A valuation allowance has been recognized to offset the net deferred tax assets as realization of such deferred tax assets have not met the more likely than not threshold.

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Deferred tax assets:</b>		
ASC 842 leases	\$ 130	\$ 167
Federal and state net operating loss carryovers	19,448	17,548
Stock-Based Compensation	333	289
Compensation accruals and other	139	84
Depreciation	-	17
<b>Total deferred tax assets</b>	<u>20,050</u>	<u>18,105</u>
Valuation allowance for deferred tax assets	(19,916)	(17,940)
<b>Deferred tax assets, net of valuation allowance</b>	<u>134</u>	<u>165</u>
<b>Deferred tax liabilities:</b>		
Depreciation	(7)	-
ASC 842 assets	(127)	(165)
<b>Total deferred tax liabilities</b>	<u>(134)</u>	<u>(165)</u>
	<u>\$ -</u>	<u>\$ -</u>

At December 31, 2021, we had federal and state net operating loss carryforwards of approximately \$77.2 million and \$63.7 million, respectively, not considering the IRC Section 382 annual limitation discussed below. The federal loss carryforwards begin to expire in 2029, unless previously utilized. In addition, we had approximately \$32.7 million of the total \$77.2 million of net operating losses that do not expire, as these losses were generated after the law change introduced as part of the Tax Cuts and Jobs Act. The state net operating losses expire if not utilized by 2041.



**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**12. Income Taxes – (continued)**

Additionally, the utilization of the net operating loss carryforwards could be subject to an annual limitation under Section 382 and 383 of the Internal Revenue Code of 1986, and similar state tax provisions due to ownership change limitations that have occurred previously or that could occur in the future. These ownership changes limit the amount of net operating loss carryforwards and other deferred tax assets that can be utilized to offset future taxable income and tax, respectively. In general, an ownership change, as defined by Section 382 and 383, results from transactions increasing ownership of certain stockholders or public groups in the stock of the corporation by more than 50 percentage points over a three-year period. We have not conducted an analysis of an ownership change under section 382. To the extent that a study is completed and an ownership change is deemed to occur, our net operating losses could be limited.

The following table summarizes the activity related to our gross unrecognized tax benefits at the beginning and end of the years ended December 31, 2021 and 2020 (in thousands):

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Gross unrecognized tax benefits at the beginning of the year	\$ -	\$ -
Increases related to current year positions	-	-
Increases related to prior year positions	-	-
Decreases related to prior year positions	-	-
Expiration of unrecognized tax benefits	-	-
Gross unrecognized tax benefits at the end of the year	\$ -	\$ -

None of the unrecognized tax benefits would affect our annual effective tax rate.

We do not expect a significant change in unrecognized tax benefits over the next 12 months.

We file income tax returns in the United States and Arizona with general statutes of limitations of three and four years, respectively. Due to net operating losses incurred, our tax returns from inception to date are subject to examination by taxing authorities. Our policy is to recognize interest expense and penalties related to income tax matters as a component of income tax expense. As of December 31, 2021, we had no interest or penalties accrued for uncertain tax positions.

**13. Commitments and Contingencies**

*Legal Proceedings*

In July 2020, Kennan E. Kaedar, our former corporate general counsel (the “Plaintiff”), commenced an action against us in the Superior Court of the State of California, for the County of San Diego. The complaint alleges, among other things, that we breached the Plaintiff’s employment contract with us, as well as the implied covenant of good faith and fair dealing, by refusing to issue him the balance of stock options he claims we owe him. In September 2021, the Plaintiff also named the following individuals as defendants: Loretta Mayer, Cheryl Dyer, Thomas C. Chesterman, Kim Wolin, Grover Wickersham, Marc Dumont, Bob Ramsey, Matthew Szot, Julia Williams, and Bill Baker. The Plaintiff alleges that such individuals agreed to knowingly and wrongfully withhold the stock options owed to him and are knowingly in receipt of stolen property. The Plaintiff seeks compensatory damages in excess of \$500,000, treble damages and reasonable attorneys’ fees. We do not believe the claims described above have merit and intend to aggressively defend against these accusations. We do not believe that this litigation is likely to have a material effect on our operations.

In addition to the matter described above, we may be subject to other legal proceedings and claims arising from contracts or other matters from time to time in the ordinary course of business. Management is not aware of any other pending or threatened litigation where the ultimate disposition or resolution could have a material adverse effect on our financial position, results of operations or liquidity.

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**13. Commitments and Contingencies – (continued)**

*Lease Commitments*

We are obligated under finance leases for certain research and computer equipment that expire on various dates through July 2023. At December 31, 2021, the gross amount of office and computer equipment, and research equipment and the related accumulated amortization recorded under the finance leases was \$478 and \$442, respectively.

In February 2012, we entered into an operating lease for our then corporate headquarters in Flagstaff, Arizona. The lease was originally due to expire in January 2015. In December 2013, we amended our lease to expand into the remaining area in the building and extended the term to December 31, 2019. In February 2014, we further amended the lease to expand into an adjacent building. The lease required escalating rental payments over the lease term. Minimum rental payments under the operating lease were recognized on a straight-line basis over the term of the lease and accordingly, we recorded the difference between the cash rent payments and the recognition of rent expense as a deferred rent liability. The lease was guaranteed by the former President of our Company. In December 2019, we extended the current lease for only our manufacturing facilities are located in Flagstaff, Arizona, occupying a total of 7,632 square feet of space. The lease for our manufacturing facilities expired in December 2020.

On November 16, 2016, we leased an additional 1,954 square feet of research and development space, also in Flagstaff, Arizona. This lease expired on November 15, 2018 but was extended for an additional 24 months, through November 2020. A subsequent amendment to the lease allows for us to cancel the lease at any time through the lease term with 30 days notice. We provided a 30-day cancellation notice effective February 2020.

On December 1, 2019, we entered into a lease for our corporate headquarters in Phoenix, Arizona where we lease and occupy approximately 5,529 square feet of office space. This lease expires in November 2024.

On August 1, 2020, we entered into a lease for our manufacturing and research facility in Phoenix, Arizona where we occupy approximately 5,105 square feet of manufacturing and warehouse space. This lease expires on November 30, 2024.

We believe that our existing facilities are adequate and meet our current needs for business, manufacturing and research.

Rent expense was \$222 and \$286 for the years ended December 31, 2021 and 2020, respectively. The future minimum lease payments under non-cancellable operating lease and future minimum finance lease payments as of December 31, 2021 are follows:

<b>Years Ending December 31,</b>	<b><u>Finance Leases</u></b>	<b><u>Operating Lease</u></b>
2022	\$ 28	\$ 194
2023	-	198
2024	-	186
Total minimum lease payments	<u>\$ 28</u>	<u>\$ 578</u>

**SENESTECH, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
(In thousands, except share and per share data)

**13. Commitments and Contingencies – (continued)**

	<u>Finance Leases</u>
Less: amounts representing interest (11.43%)	\$ (1)
Present value of minimum lease payments	27
Less: current installments under finance lease obligations	<u>(27)</u>
Total long-term portion	<u>\$ -</u>

**14. Related Party Transactions**

Related party transactions are conducted in the normal course of business and, unless otherwise noted, are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties. In connection with consulting agreements in place, during each of the years ended December 31, 2021 and December 30, 2020, \$50,400 of cash payments were made to the Kito Impact Foundation of which Dr. Bechtel, the Chair of our board, serves as chief executive officer.

**15. Subsequent Events**

**COVID-19**

The travel and other restrictions that began in March 2020 in response to the COVID-19 global pandemic have resulted in a significant slowdown in our field studies and sales efforts. We were able to resume some projects during 2020 and into 2021, however, we still have delays on certain projects that might remain on hold until certain government restrictions are lifted. These delays have impacted our results of operations and could impact our results in future quarters. In addition, stay at home orders and other social distancing initiatives continue to limit our ability to communicate with current and potential commercial customers. Further, new stay at home orders and other social distancing initiatives may be reimplemented at any time. The COVID-19 pandemic is also placing a significant budgetary burden on federal, state and local governments, which may impede or delay their ability to purchase our products.

**Nasdaq**

On March 2, 2022, we received a letter from the listing qualifications staff (the “Staff”) of The Nasdaq Stock Market (“Nasdaq”) providing notification that the bid price for our common stock had closed below \$1.00 per share for the previous 30 consecutive business days and our common stock no longer meets the minimum bid price requirement for continued listing under Nasdaq Listing Rule 5550(a)(2). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have an initial period of 180 calendar days, or until August 29, 2022, to regain compliance. To regain compliance, the closing bid price of our common stock must be \$1.00 per share or more for a minimum of 10 consecutive business days at any time before August 29, 2022.

If we do not regain compliance with Rule 5550(a)(2) by August 29, 2022, we may be eligible for an additional 180 calendar day compliance period. To qualify, we would need to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for the Nasdaq Capital Market, with the exception of the minimum bid price requirement, and would need to provide written notice of our intention to cure the deficiency during the second compliance period, by effecting a reverse stock split, if necessary. However, if it appears to the Staff that we will not be able to cure the deficiency, or if we are otherwise not eligible, Nasdaq would notify us that our securities would be subject to delisting. In the event of such notification, we may appeal the Staff’s determination to delist our securities, but there can be no assurance the Staff would grant our request for continued listing.

The Nasdaq notification has no immediate effect on the listing of our common stock on the Nasdaq Capital Market. We intend to actively monitor the bid price of our common stock and our minimum market value of listed securities and will consider options available to us to achieve compliance with the Nasdaq listing rules. There can be no assurance that we will be able to regain compliance with the minimum bid price requirement or will otherwise be in compliance with the other listing standards for the Nasdaq Capital Market.

**Settlement of Restricted Stock Units**

On March 1, 2022, the Company issued 5,000 shares of common stock in the settlement of restricted stock units that were issued and vested during the period.

**Other Subsequent Events**

We have evaluated subsequent events from the balance sheet date through March 29, 2022, the date at which the financial statements were issued, and determined that there were no other items that require adjustment to or disclosure in the financial statements.

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

None.

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

***Evaluation of Disclosure Controls and Procedures***

We maintain disclosure controls and procedures that are designed to ensure that the information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934 (“Exchange Act”) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

In connection with the preparation of this Annual Report on Form 10-K, our management carried out an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, as of December 31, 2021, of the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) and 15d-15(e) under the Exchange Act. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2021.

***Management’s 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) or 15d-15(f) under the Exchange Act of 1934. 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 U.S. GAAP. All internal control systems, no matter how well designed, have inherent limitations. Even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Management is committed to continue monitoring our internal controls over financial reporting and will modify or implement additional controls and procedures that may be required to ensure the ongoing integrity of our consolidated financial statements.

With the participation of our Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of internal control over financial reporting as of December 31, 2021. In making this assessment, the Company used the framework established in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, (COSO). Based on this assessment, management has concluded that internal control over financial reporting was effective as of December 31, 2021 based on those criteria.

*This annual report does not include an attestation report of the company’s registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for smaller reporting companies.*

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

There was no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2021, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information.**

Not Applicable.

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

### PART III

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

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2022 Annual Meeting of Stockholders.

**Item 11. Executive Compensation.**

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2022 Annual Meeting of Stockholders.

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

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2022 Annual Meeting of Stockholders.

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

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2022 Annual Meeting of Stockholders.

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

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2022 Annual Meeting of Stockholders.

**PART IV**

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

**(a) Financial Statements and Schedules**

1. Consolidated Financial Statements are listed in the Index to Consolidated Financial Statements on page F-1 of this report.
2. All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission have been omitted because of the absence of the conditions under which they are required or because the information required is shown in the financial statements or notes above.

**(b) Exhibits**

**SENESTECH, INC.  
INDEX TO EXHIBITS**

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation, as amended by the Certificate of Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K, filed with the SEC on March 17, 2020 (File no. 001-37941))</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws (incorporated by reference to Exhibit 3.5 to the Registrant's Registration Statement on Form S-1, filed with the SEC on September 21, 2016 (File no. 333-213736))</u></a>
4.1	<a href="#"><u>Description of Securities (incorporated by reference to Exhibit 4.1 to the Registrant's Annual Report on Form 10-K/A, filed with the SEC on April 21, 2020 (File no. 001-37941))</u></a>
4.2	<a href="#"><u>Form of the Registrant's Common Stock certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Amendment No. 1 to Registration Statement on Form S-1, filed with the SEC on October 7, 2016 (File no. 333-213736))</u></a>
4.3+	<a href="#"><u>Form of Restricted Stock Unit Agreement (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on December 21, 2016 (File no. 001-37941))</u></a>
4.4	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Amendment No. 1 to Registration Statement on Form S-1, filed with the SEC on November 16, 2017 (File no. 333-221433))</u></a>
4.5	<a href="#"><u>Form of Underwriter's Warrant, as amended (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on November 21, 2017 (File no. 001-37941))</u></a>
4.6	<a href="#"><u>Form of Restricted Stock Unit Notice and Agreement (incorporated by reference to Exhibit 4.6 to the Registrant's Annual Report on Form 10-K, filed with the SEC on March 17, 2020 (File no. 001-37941))</u></a>
4.7	<a href="#"><u>Form of New Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on June 20, 2018 (File no. 001-37941))</u></a>
4.8	<a href="#"><u>Form of Warrant issued to investors in Rights Offering (incorporated by reference to Exhibit 4.1 to the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on August 14, 2018 (File no. 001-37941))</u></a>
4.9	<a href="#"><u>Form of Warrant issued to dealer-manager in Rights Offering (incorporated by reference to Exhibit 4.2 to the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on August 14, 2018 (File no. 001-37941))</u></a>
4.10	<a href="#"><u>Warrant Agency Agreement, dated August 13, 2018, between the Registrant and Transfer Online, Inc. (incorporated by reference to Exhibit 4.3 to the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on August 14, 2018 (File no. 001-37941))</u></a>
4.11	<a href="#"><u>Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on July 17, 2019 (File no. 001-37941))</u></a>
4.12	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on January 28, 2020 (File no. 001-37941))</u></a>
4.13	<a href="#"><u>Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K, filed with the SEC on January 28, 2020 (File no. 001-37941))</u></a>
4.14	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on March 6, 2020 (File no. 001-37941))</u></a>
4.15	<a href="#"><u>Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K, filed with the SEC on March 6, 2020 (File no. 001-37941))</u></a>
4.16	<a href="#"><u>Form of New Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on October 27, 2020 (File no. 001-37941))</u></a>
4.17	<a href="#"><u>Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on October 27, 2020 (File no. 001-37941))</u></a>
4.18	<a href="#"><u>Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on February 2, 2021 (File no. 001-37941))</u></a>
4.19	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K, filed with the SEC on February 2, 2021 (File no. 001-37941))</u></a>
4.20	<a href="#"><u>Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.3 to the Registrant's Current Report on Form 8-K, filed with the SEC on February 2, 2021 (File no. 001-37941))</u></a>
10.3+	<a href="#"><u>SenesTech, Inc. 2018 Equity Incentive Plan, as amended, and forms of agreement thereunder (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on August 13, 2020 (File no. 001-37941))</u></a>
10.4+	<a href="#"><u>Form of Indemnification Agreement (incorporated by reference to Exhibit 10.6 to the Registrant's Registration Statement on Form S-1, filed with the SEC on September 21, 2016 (File no. 333-213736))</u></a>

10.7+	<a href="#">Employment Letter Agreement by and between the Registrant and Kenneth Siegel dated May 16, 2019 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on May 20, 2019 (File no. 001-37941))</a>
10.8+	<a href="#">Employment Offer Letter by and between the Registrant and Thomas Chesterman dated November 20, 2015 (incorporated by reference to Exhibit 10.9 to the Registrant's Registration Statement on Form S-1, filed with the SEC on September 21, 2016 (File no. 333-213736))</a>
10.9+	<a href="#">Employment Letter Agreement by and between the Registrant and Kim Wolin dated January 28, 2020 (incorporated by reference to Exhibit 10.7 to the Registrant's Registration Statement on Form S-1, filed with the SEC on February 13, 2020 (File no. 333-236302))</a>
10.10+	<a href="#">Employment Letter Agreement by and between the Registrant and Steven Krause, dated January 12, 2020 (incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K/A, filed with the SEC on April 21, 2020 (File no. 001-37941))</a>
10.11	<a href="#">Promissory Note, dated April 15, 2020, by and between the Company and BMO Harris Bank National Association (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on April 21, 2020 (File no. 001-37941))</a>
10.14*	<a href="#">Lease by and between the Registrant and Pinnacle Campus Office-Retail, LLC, dated as of November 18, 2019</a>
10.15	<a href="#">Standard Industrial/Commercial Multi-Tenant Lease, between the Company and Duke Go PP, LLC, dated as of June 22, 2020 (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q, filed with the SEC on August 13, 2020 (File no. 001-37941))</a>
10.16	<a href="#">Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on July 17, 2019 (File no. 001-37941))</a>
10.17	<a href="#">Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on January 28, 2020 (File no. 001-37941))</a>
10.18	<a href="#">Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on March 6, 2020 (File no. 001-37941))</a>
10.19	<a href="#">Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on April 24, 2020 (File no. 001-37941))</a>
10.20	<a href="#">Form of Letter Agreement, dated as of October 23, 2020, between the Company and the purchaser thereto (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on October 27, 2020 (File no. 001-37941))</a>
10.21	<a href="#">Form of Securities Purchase Agreement, dated as of January 27, 2021 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on February 2, 2021 (File no. 001-37941))</a>
10.22	<a href="#">Form of Registration Rights Agreement, dated as of January 27, 2021 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, filed with the SEC on February 2, 2021 (File no. 001-37941))</a>
21.1*	<a href="#">List of Subsidiaries of the Registrant</a>
23.1*	<a href="#">Consent of M&amp;K CPAS, PLLC, independent registered public accounting firm</a>
31.1*	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934</a>
31.2*	<a href="#">Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934</a>
32.1*	<a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2*	<a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\* Filed herewith.

+ Indicates a management contract or compensatory plan.

### (c) Financial Statement Schedules

None

### Item 16. Form 10-K Summary.

Not applicable.





**OFFICE LEASE**

by and between

Pinnacle Campus Office-Retail, LLC,  
a South Carolina limited liability company,

**“Landlord”**

and

SenesTech, Inc.

**“Tenant”**

November 18, 2019

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EXHIBIT "A"  
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LEGAL DESCRIPTION OF THE PROPERTY 1  
 UNCOVERED, UNRESERVED PARKING LICENSE 1  
 COVERED, RESERVED PARKING LICENSE 1

**OFFICE LEASE**

**1. BASIC PROVISIONS**

- 1.1 **Date:** November 6, 2019
- 1.2 **Landlord:** Pinnacle Campus Office-Retail, LLC, a South Carolina limited liability company
- 1.3 **Landlord's Address:** c/o Ric Fisher  
34 Ensis Road  
Hilton Head, SC 29928  
Telephone: (843) 301-5686  
Facsimile: (843) 342-5657
- With a copy of any notice to:
- Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85253  
Attention: Arik Michelson  
Facsimile: (480) 429-5001
- 1.4 **Tenant:** SenesTech, Inc., a Delaware Corporation
- 1.5 **Tenant's Address:** 23460 N. 19<sup>th</sup> Avenue, Suite 110  
Phoenix, AZ 85027
- With a copy of any notice to:
- 1.6 **Property/Project:** The parcel of real estate located in Phoenix, Maricopa County, Arizona, legally described on Exhibit "A" attached hereto and incorporated herein by this reference, together with the office building now or hereafter situated thereon, the landscaping, parking facilities and all other improvements and appurtenances thereto.

- 1.7 **Building:** That certain office building known as Centerpointe at Deer Valley containing approximately 33,365 rentable square feet located at the NWC corner of Pinnacle Peak Road and 19<sup>th</sup> Avenue, Phoenix, Maricopa County, Arizona 85027, and situated on the Property.
- 1.8 **Leased Premises:** Approximately 5,529 rentable square feet of office space located on the first floor of the Building and commonly known as Suite 110.
- 1.9 **Permitted Use:** General office use.
- 1.10 **Lease Term:** Sixty (60) months.
- 1.11 **Scheduled Commencement Date and Expiration Date:** December 1, 2019 until November 30, 2024
- 1.12 **Annual Basic Rent: \$\$\$**

Month	Annual Basic Rent	Monthly Installment	Rate Per Rentable Square Foot
1- 12	132,696	11,058	24.00
13-24	135,460	11,288	24.50
25-36	138,225	11,518	25.00
37-48	140,989	11,749	25.50
49-60	143,754	11,979	26.00

- 1.13 **Security Deposit:** \$11,979
- 1.14 **First Month's Rent:** \$11,058
- 1.15 **Building Hours:** 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturday, excluding recognized federal, state or local holidays. Notwithstanding any provision of this Lease to the contrary, Tenant may have access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year through a card-access system.

- 1.16 **Parking Spaces:** Five (5) covered, reserved parking spaces at no charge. Uncovered, unreserved parking spaces shall be at no charge and in the amount of 5.5/1,000 rentable square feet of the Leased Premises.
- 1.17 **Additional Parking Charge:** Any additional covered, reserved spaces at the current rate of thirty-five Dollars (\$35.00) per month (as may be adjusted by Landlord as set forth herein) per each covered, reserved parking space.
- 1.18 **Brokers:** Robert Harding of Keyser Company, representing Tenant, and Adam Tolson of Lee & Associates, representing Landlord
- 1.19 **Exhibits:** A =Legal Description of the Property  
B = Option to Extend  
  
D-1 =Uncovered, Unreserved Parking License  
D-2 =Covered, Reserved Parking License  
F = Building Rules and Regulations

## 2. LEASED PREMISES; NO ADJUSTMENTS

2.1 **Leased Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases and accepts from Landlord, the Leased Premises, upon the terms and conditions set forth in this Lease and any modifications, supplements or addenda hereto (the "**Lease**"), including the Basic Provisions of Article 1 which are incorporated herein by this reference, together with the nonexclusive right to use, in common with Landlord and others, the Building Common Areas (defined below). For the purposes of this Lease, the term "**Building Common Areas**" means common hallways, corridors, walkways and footpaths, foyers and lobbies, bathrooms and janitorial closets, electrical and telephone closets, landscaped areas and such other areas within or adjacent to the Building which are subject to or are designed or intended for the common enjoyment, use and/or benefits of Landlord and the tenants of the Building.

2.2 **Adjustments.** The Annual Basic Rent at the Commencement Date (as hereinafter defined) is based on the Leased Premises containing the rentable square footage set forth in Article 1.8 above, which square footage has been precisely determined by Landlord and Tenant prior to the Commencement Date pursuant to ANSI/BOMA Z65.1 revised June 7, 1996. No adjustments to Annual Basic Rent or any other charge shall be made if the actual size of the Leased Premises is greater or smaller than that set forth in Article 1.8 above. For the purposes of this Lease, Landlord and Tenant acknowledge and agree that the rentable square footage of the Leased Premises is 5,529 square feet.

### 3. SECURITY DEPOSIT

Tenant shall pay to Landlord, upon the execution of this Lease, the Security Deposit set forth in Article 1.13 above as security for the performance by Tenant of its obligations under this Lease, which amount shall be returned to Tenant after the expiration or earlier termination of this Lease, provided that Tenant shall have fully performed all of its obligations contained in this Lease. The Security Deposit, at the election of Landlord, may be retained by Landlord as and for its full damages or may be applied in reduction of any loss and/or damage sustained by Landlord by reason of the occurrence of any breach, nonperformance or default beyond applicable cure periods by Tenant under this Lease without the waiver of any other right or remedy available to Landlord at law, in equity or under the terms of this Lease. If any portion of the Security Deposit is so used or applied, Tenant shall, within thirty (30) days after written notice and receipt of invoices for the expenses incurred in relation to the loss and/or damage sustained from Landlord, deposit with Landlord immediately available funds in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a breach of this Lease. Tenant acknowledges and agrees that in the event Tenant shall file a voluntary petition pursuant to the Bankruptcy Code or any successor thereto, or if an involuntary petition is filed against Tenant pursuant to the Bankruptcy Code or any successor thereto and not dismissed within sixty (60) days, then Landlord may apply the Security Deposit towards those obligations of Tenant to Landlord which accrued prior to the filing of such petition. Tenant acknowledges further that the Security Deposit may be commingled with Landlord's other funds. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer the Security Deposit to Landlord's successor in interest, whereupon Landlord shall be released from liability by Tenant for the return of such deposit or the accounting therefore.

### 4. RENT; RENT TAX; ADDITIONAL RENT

**4.1 Payment of Rent.** Tenant shall pay to Landlord the Annual Basic Rent set forth in Article 1.12 above, subject to adjustment as provided herein. The Annual Basic Rent shall be paid in equal monthly installments, on or before the first day of each and every calendar month during the Lease Term, in advance, without notice or demand and, except as expressly set forth in this Lease, without abatement, deduction or set-off. If the Commencement Date is other than the first day of a calendar month, the payment for such partial month shall be prorated and shall be payable on the Commencement Date. The Annual Basic Rent for the first full calendar month of the Lease Term shall be paid upon the execution of this Lease. All payments requiring proration shall be prorated on the basis of a thirty (30) day month. In addition, all payments to be made under this Lease shall be paid in lawful money of the United States of America to Landlord or its agent at the address set forth in Article 1.3 above, or to such other person or at such other place as Landlord may from time to time designate in writing. Tenant shall not be obligated to pay any share of Landlord's costs of operating and maintaining the Building and Project.

**4.2 Rent Tax.** In addition to the Annual Basic Rent, Tenant shall pay to Landlord, together with the monthly installments of Annual Basic Rent, an amount equal to any governmental sales, rental, occupancy, excise, use or transactional privilege taxes assessed on Annual Basic Rent. Such taxes shall not, however, include any franchise, gift, estate, inheritance, conveyance, transfer or net income tax assessed against Landlord.

**4.3 Additional Rent.** All amounts payable to Landlord hereunder and not included in the Annual Basic Rent may be referred to herein as "**Additional Rent**".

## 5. CONDITION, REPAIRS AND ALTERATIONS

5.1 **Condition.** The Leased Premises are leased to Tenant in their "AS IS, WHERE IS" condition, without any representations or warranties, either express or implied. Landlord represents and warrants to Tenant that for a period of one (1) year from and after the date of delivery of possession of the Leased Premises to Tenant, all work performed by Landlord in the Leased Premises shall be substantially free from defects in materials and workmanship. Landlord's liability under the foregoing warranty shall be limited to the repair and/or replacement, as the case may be, of defective materials and workmanship and, in no event, shall Landlord be liable for special or consequential damages. Landlord shall have no obligation with respect to the foregoing warranty unless Tenant gives Landlord written notice of defective materials or workmanship prior to the date which is one (1) year after delivery of possession of the Leased Premises to Tenant.

5.2 **Alterations and Improvements.** Tenant may place partitions and fixtures and may make improvements and other alterations to the interior of the Leased Premises at Tenant's expense, provided, however, that prior to commencing any such work, Tenant shall first obtain the written consent of Landlord (not to be unreasonably withheld, conditioned or delayed) to the proposed work, including the plans, specifications, the proposed architect and/or contractor(s) for such alterations and/or improvements and the materials used in connection with such alterations. Notwithstanding the foregoing, Tenant shall be permitted to make alterations without Landlord's prior consent, but upon at least five (5) days prior notice to Landlord, to the extent that such alterations do not (i) materially adversely affect the Building systems, exterior appearance of the Building, or Building structure, (ii) materially adversely affect the value of the Leased Premises or Building, (iii) require a building or construction permit, or (iv) cost more than One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) for a particular job of work or in any 12-month period (the "**Cosmetic Alterations**"). At least fifteen (15) days prior to the commencement of any construction in the Leased Premises (other than Cosmetic Alterations), Tenant shall deliver to Landlord copies of the plans and specifications for the contemplated work and shall identify the contractor(s) selected by Tenant to perform such work. If the proposed work affects the Building's structure or systems, Landlord may require that the work be done by Landlord's own employees, its construction contractors, or under Landlord's direction, but at the expense of Tenant, and Landlord may, as a condition to consenting to such work, require that Tenant provide security adequate in Landlord's judgment so that the improvements or other alterations to the Leased Premises will be completed in a good, workmanlike and lien free manner. Landlord may also require that any work done to the interior of the Leased Premises, other than Cosmetic Alterations, be subject to the supervision of Landlord or its designee, and Tenant shall pay to Landlord, upon completion of such work, a supervision fee in an amount equal to five percent (5%) of the cost of such work. All such improvements or alterations must conform to and be in substantial accordance in quality and appearance with the quality and appearance of the improvements in the remainder of the Building. All such improvements shall be the property of Landlord. In the event Landlord consents to the use by Tenant of its own architect and/or contractor for the installation of any such alterations or improvements, prior to the commencement of such work, Tenant shall provide Landlord with evidence that Tenant's contractor has procured worker's compensation, liability and property damage insurance (naming Landlord as an additional insured) in a form and in an amount approved by Landlord, and evidence that Tenant's architect and/or contractor has procured the necessary permits, certificates and approvals from the appropriate governmental authorities. Tenant acknowledges and agrees that any review by Landlord of Tenant's plans and specifications and/or right of approval exercised by Landlord with respect to Tenant's architect and/or contractor is for Landlord's benefit only and Landlord shall not, by virtue of such review or right of approval, be deemed to make any representation, warranty or acknowledgment to Tenant or to any other person or entity as to the adequacy of Tenant's plans and specifications or as to the ability, capability or reputation of Tenant's architect and/or contractor.



**5.3 Tenant's Obligations.** Tenant shall, at Tenant's sole cost and expense, maintain the Leased Premises in a clean, neat and sanitary condition and shall keep the Leased Premises and every part thereof in good condition and repair except where the same is required to be done by Landlord. Tenant hereby waives all rights to make repairs at the expense of Landlord as provided by any law, statute or ordinance now or hereafter in effect except as otherwise expressly provided in this Lease. All of Tenant's alterations and/or improvements are the property of the Landlord, and Tenant shall, upon the expiration or earlier termination of the Lease Term, surrender the Leased Premises, including Tenant's alterations and/or improvements, to Landlord, janitorial clean and in the same condition as when received, ordinary wear and tear excepted. Except as set forth in Article 5.4 below, Landlord has no obligation to construct, remodel, improve, repair, decorate or paint the Leased Premises or any improvement thereon or part thereof. Tenant shall pay for the cost of all repairs to the Leased Premises not required to be made by Landlord and shall be responsible for any redecorating, remodeling, alteration and painting during the Lease Term as Tenant deems necessary. Tenant shall pay for any repairs to the Leased Premises, the Building and/or the Project made necessary by any negligence or carelessness of Tenant, its employees or invitees.

**5.4 Landlord's Obligations.** Landlord shall (a) make all necessary repairs to the exterior walls, exterior doors, windows and corridors of the Building, (b) keep the Building and the Building Common Areas in a clean, neat and attractive condition, and (c) keep the Building equipment such as elevators, plumbing, heating, air conditioning and similar Building equipment in good repair, but Landlord shall not be liable or responsible for breakdowns or interruptions in service when reasonable efforts are made to restore such service. If Tenant requires a repair pursuant to this Article 5.4 (except in the event of an emergency), Tenant shall submit its request in writing to Landlord or Landlord's property manager. Landlord shall have no obligation to make any repair not requested in writing (except in the event of an emergency).

**5.5 Removal of Alterations.** Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Leased Premises all movable trade fixtures and other movable personal property, and shall promptly repair any damage to the Leased Premises caused by such removal, the Building and/or the Project caused by such removal. All such removal and repair shall be entirely at Tenant's sole cost and expense. At any time prior to the scheduled expiration of the Lease Term or within fifteen (15) days after any termination of this Lease, Landlord may require that Tenant remove from the Leased Premises any alterations, additions, or improvements that were made but not approved by the Landlord to the extent such approval is required hereunder. In such event, Tenant shall, in accordance with the provisions of Article 5.2 above, complete such removal (including the repair of any damage caused thereby) entirely at its own expense and within fifteen (15) days after such notice from Landlord. In addition, Landlord may require Tenant to remove upon the expiration of the Lease Term any alterations approved by Landlord pursuant to Article 5.2 above provided Landlord notifies Tenant at the time of its approval whether Tenant will be required to remove such alterations. All repairs required of Tenant pursuant to the provisions of this Article 5.5 shall be performed in a manner satisfactory to Landlord, and shall include, but not be limited to, repairing plumbing, electrical wiring and holes in walls, restoring damaged floor and/or ceiling tiles, repairing any other cosmetic damage, and cleaning the Leased Premises. Reasonable wear and tear excepted.

**5.6 No Abatement.** Except as provided herein, Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations under this Lease, including without limitation, Tenant's obligation to pay Annual Basic Rent and Additional Rent, be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted to make pursuant to the terms of this Lease or by any other tenant's Lease or are required by law to be made in and to any portion of the Leased Premises, the Building or the Project. Landlord shall make reasonable effort to complete repairs or changes with minimal disruption to the Tenant's operation by performing them after hours or on weekends, where possible. If the Leased Premises are rendered untenable for five (5) days or more as a result of Landlord's acts, then Landlord shall abate rent or find similar space within the building for the Tenant to conduct business and pay all of Tenant's relocation costs in connection therewith.

## 6. SERVICES

6.1 **Climate Control.** Landlord shall provide reasonable climate control to the Leased Premises during the Building Hours as is suitable, in Landlord's reasonable judgment, for the comfortable use and occupation of the Leased Premises, excluding, however, air conditioning or heating for electronic data processing or other equipment requiring climate control in excess of building standard.

6.2 **Janitorial Services.** Landlord shall make janitorial and cleaning services available to the Leased Premises at least five (5) evenings per week, except recognized federal, state or local holidays. Tenant shall pay to Landlord, within thirty (30) days after receipt of Landlord's bill, the reasonable costs incurred by Landlord for extra cleaning in the Leased Premises required because of (a) misuse or neglect on the part of Tenant, its employees or invitees, (b) use of portions of the Leased Premises for special purposes requiring greater or more difficult cleaning work than office areas, (c) non-building standard materials or finishes installed by Tenant or at its request, and (d) removal from the Leased Premises of refuse and rubbish of Tenant in excess of that ordinarily accumulated in general office occupancy or at times other than Landlord's standard cleaning times.

6.3 **Electricity.** Landlord shall, furnish reasonable amounts of electric current as required for normal and usual lighting purposes and for office machines and equipment such as personal computers, typewriters, adding machines, copying machines, calculators and similar machines and equipment normally utilized in general office use. Tenant's use of electric energy in the Leased Premises shall not at any time exceed the capacity of any of the risers, piping, electrical conductors and other equipment in or serving the Leased Premises. In order to insure that such capacity is not exceeded and to avert any possible adverse effect on the Building's electric system, Tenant shall not, without Landlord's prior written consent in each instance, connect appliances, machines using current in excess of 120 volts or heavy-duty equipment other than ordinary office equipment to the Building's electric system or make any alterations or additions to the Building's electric system. Should Landlord grant such consent, all additional risers, piping and electrical conductors and other equipment therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant within thirty (30) days after receipt of Landlord's bill. As a condition to granting such consent, Landlord may require Tenant to pay the cost of additional electric energy that is made available to Tenant based upon the estimated additional capacity of such additional risers, piping and electrical conductors or other equipment.

6.4 **Water.** Landlord shall furnish cold and heated water for lavatory purposes to the Building Common Areas.

6.5 **Heat Generating Equipment.** Whenever heat generating machines or equipment used in the Leased Premises affect the temperature otherwise maintained by the climate control system, Landlord shall have the right following written notice to Tenant to install supplementary air-conditioning units in the Leased Premises and the cost thereof, including the cost of installation, operation and maintenance shall be paid by Tenant to Landlord within thirty (30) days after receipt by Tenant of Landlord's statement.

6.6 **Separate Meters.** Landlord may install separate meters for the Leased Premises to register the usage of all or any one of the utilities serving the Leased Premises and in such event, Tenant shall pay for the cost of utility usage as metered (a) during other than Building Hours, or (b) which is in excess of that usage customary for general office use. In addition, Landlord shall have the right to require that Tenant reduce its consumption of utilities furnished to the Leased Premises to a level not exceeding normal consumption for general office use as determined by landlord in its reasonable business judgment.

6.7 **Additional Services.** Tenant shall pay to Landlord, monthly as billed, as Additional Rent, Landlord's charge for services furnished by Landlord to Tenant in excess of that agreed to be furnished by Landlord pursuant to this Article 6, including, but not limited to (a) any utility services utilized by Tenant during other than Building Hours or for computers, data processing equipment or other electrical equipment in excess of the amounts of electric current used for general office use in buildings comparable to the Building, and (b) climate control in excess of that agreed to be furnished by Landlord pursuant to Article 6.1 above or provided at times other than Building Hours. After-hours charges for HVAC shall be reasonably determined by Landlord and billed to Tenant at Landlord's actual cost.

6.8 **Interruptions in Service.**

(a) Except as expressly set forth in this Lease, no damages, compensation, claims, costs, losses, liabilities or expenses (including attorneys' fees) shall be payable by Landlord and this Lease and the obligation of Tenant to perform all of its covenants and agreements set forth in this Lease shall in no way be affected, impaired, reduced or excused in the event that there shall be an interruption, curtailment or suspension of Project and/or Building HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel) or other systems serving the Leased Premises or any other services required by Landlord under this Lease (an "**Interruption of Service**"), by reason of: (i) any damage or destruction which is the subject of Article 8; (ii) any condemnation which is the subject of Article 27; (iii) an accident; (iv) an emergency, (v) shortages of labor or materials, or (vi) an event of Force Majeure including, but not limited to: (1) a lack of access to the Project or the Leased Premises (which shall include, but not be limited to, a lack of access to the Project or the Leased Premises when it or they are structurally sound, but inaccessible due to evacuation of the surrounding area or damage to any nearby structures or public areas; (2) any cause outside of the Building; (3) reduced air quality or other contaminants within the Project that would adversely affect the Project or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Project or the Leased Premises); (4) disruption of mail or deliveries to the Project or the Leased Premises resulting from damage or destruction which is the subject of Article 8; (5) disruption of telephone and telecommunication services to the Project or the Leased Premises resulting from damage or destruction which is the subject of Article 8; or (6) blockages of any windows, doors or walkways to the Project or the Leased Premises resulting from damage or destruction which is the subject of Article 8.

(b) Landlord reserves the right, without any liability to Tenant, except as otherwise expressly set forth in this Lease, and without being in breach of any covenant of this Lease, to affect an Interruption of Service, as may be required by this Lease or by applicable governmental restrictions, or as Landlord in good faith deems advisable, whenever and for so long as may be necessary to make repairs, alterations, upgrades, changes or for any other reason, to the Project or Building HVAC, utility, sanitary, elevator, water, telecommunications, security or other Project or Building systems serving the Leased Premises or any other services required of Landlord under this Lease. In each instance, Landlord shall exercise reasonable diligence to eliminate the cause of the Interruption of Service if resulting from conditions within the Project and to conclude the Interruption of Service. Landlord shall give Tenant written notice, when practical, of the commencement and anticipated duration of any such Interruption of Service.

(c) The occurrence of an Interruption of Service pursuant to this Article 6.8 shall not (i) constitute an actual or constructive eviction of Tenant in whole or in part; (ii) entitle Tenant to any abatement or diminution of Annual Basic Rent, Additional Rent or other charges payable under this Lease (except as otherwise expressly set forth in this Lease); (iii) relieve or release Tenant from any of its obligations under this Lease; or (iv) entitle Tenant to terminate this Lease; provided, if the Leased Premises are rendered untenable for five (5) days or more as a result of an Interruption of Service, then Landlord shall abate Annual Basic Rent for the period of the Interruption of Service.

## 6.9 Selection of Electric Service Provider.

(a) All times during the Lease Term Landlord shall have the right to select the utility company or companies that shall provide electric services to the Leased Premises and, subject to all applicable laws and governmental regulations, Landlord shall have the right at any time and from time to time during the Lease Term to either (a) contract for services from electric service provider(s) other than the provider with which Landlord has a contract as of the date of this Lease (the “**Current Provider**”), or (b) continue to contract for services from the Current Provider.

(b) Tenant shall reasonably cooperate with Landlord and any electric service provider with which Landlord has contracted at all times and, as reasonably necessary, shall allow Landlord or such electric service provider reasonable access to any electric lines, feeders, risers, wiring and any other machinery within the Leased Premises.

(c) Landlord shall not be liable in damages or otherwise for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the electric services provided to the Leased Premises. No such change, failure, interference, disruption or defect shall entitle Tenant to terminate this Lease or to abate the payments Tenant is required to make under this Lease, except as expressly set forth in this Lease.

**6.10 Telephone Lines.** Tenant shall arrange for telephone service directly with one or more of the public, quasi public or private telephone companies providing telephone service to the Building and shall be solely responsible for all costs, expenses and charges relating to such telephone service. If Landlord acquires ownership of the telephone lines or systems within the Building, Landlord shall permit Tenant to connect to such lines and/or system on such terms and conditions as Landlord may prescribe. Landlord shall not be liable in damages or otherwise for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the telephone services provided to the Leased Premises. No such change, failure, interference, disruption or defect shall entitle Tenant to terminate this Lease or to abate the payments Tenant is required to make under this Lease, except as expressly set forth in this Lease.

**6.11 Service Rooms.** All electrical, telephone and other utility rooms located within the Building shall be locked at all times. If Tenant requires access to any such utility room, Tenant shall make an appointment with Landlord or Landlord’s property manager.

## 7. LIABILITY AND PROPERTY INSURANCE

**7.1 Liability Insurance.** Tenant shall, during the Lease Term, keep in full force and effect, a policy or policies of commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, Three Million and No/100 Dollars (\$3,000,000.00), annual aggregate, insuring against any and all liability of the insured with respect to the Leased Premises, arising out of the maintenance, use or occupancy thereof, including Premises operations, products and completed operations and owned, hired and non-owned automobiles, utilizing ISO Policy Form CG 0001, or its equivalent. If Landlord shall so request, Tenant shall increase the amount of such liability insurance to the amount then customary for premises and uses similar to the Leased Premises and Tenant’s use thereof. The liability policy or policies shall contain an endorsement (ISO Form CG 20-26) naming Landlord, its partners, members or shareholders (as applicable), Landlord’s lender and management agent and any persons, firms or corporations designated by Landlord as additional insureds, and shall provide that the insurance carrier shall have the duty to defend and/or settle any legal proceeding filed against Landlord seeking damages based upon personal injury, bodily injury or property damage liability even if any of the allegations of such legal proceedings are groundless, false or fraudulent. In addition, Tenant’s liability insurance policies shall be endorsed as needed to provide cross liability coverage for Tenant, Landlord and any lender of Landlord, to provide for severability of interests and so as to specifically delete the contractual liability exclusion for personal injury. Lastly, the policies required pursuant to the provisions of this Article 7.1 shall not have a deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00).

**7.2 Property Insurance.** Tenant shall, during the Lease Term, keep in full force and effect, a policy or policies of insurance with **“Special Form Coverage,”** including coverage for vandalism or malicious mischief and sprinkler leakage, insuring Tenant’s stock in trade, furniture, personal property, fixtures, equipment and other items in the Leased Premises, with coverage in an amount equal to one hundred percent (100%) of full replacement cost, without depreciation, thereof. Landlord shall be named as a “loss payee as its interests may appear” under Tenant’s policies of property insurance. In addition, the policies required pursuant to the provisions of this Article 7.2 shall not have a deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

**7.3 Worker’s Compensation and Employer Liability Insurance.** Tenant shall, during the Lease Term, keep in full force and effect, a policy or policies of worker’s compensation insurance with an insurance carrier and in amounts approved by the Industrial Commission of the State of Arizona and a policy of employer’s liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00), each accident; One Million and No/100 Dollars (\$1,000,000.00), disease policy limit; and One Million and No/100 Dollars (\$1,000,000.00), disease each employee. All such policies shall contain waivers of subrogation in favor of Landlord.

**7.4 Business Income and Extra Expense Coverage.** Tenant shall, during the Lease Term, keep in full force and effect, a policy or policies of business income/business interruption insurance and extra expense coverage (collectively, **“Business Income Insurance”**) with coverage that will reimburse Tenant for all direct and indirect loss of income and changes and costs incurred arising out of all named perils insured against by Tenant’s policies of property insurance, including prevention of, or denial of use of or access to, all or part of the Leased Premises or Building as a result of those named perils. The Business Income Insurance coverage must provide coverage for no less than twelve (12) months of the loss of income, charges and costs contemplated under this Lease.

**7.5 Insurance Requirements.** Each insurance policy and certificate thereof obtained by Tenant pursuant to this Lease shall contain a clause that the insurer will provide Landlord, its members, partners and any persons, firms or corporations designated by Landlord with at least thirty (30) days prior written notice of any material change, non-renewal or cancellation of the policy, or at least ten (10) days prior notice in the event of cancellation for failure to pay. Each such insurance policy shall be with an insurance company authorized to do business in the State of Arizona and rated not less than A VIII in the then most current edition of **“Best’s Key Rating Guide”**. Certified copies of all insurance policies evidencing the coverage under each such policy, as well as a certified copy of the required additional insured endorsement(s) (ISO Form CG 20-26 or its equivalent) shall be delivered to Landlord prior to commencement of the Lease Term. Each such policy shall provide that any loss payable thereunder shall be payable notwithstanding (a) any act, omission or neglect by Tenant, or (b) any occupation or use of the Leased Premises or any portion thereof by Tenant or by any subtenant of Tenant for purposes more hazardous than permitted by the terms of such policy or policies, or (c) any foreclosure or other action or proceeding taken by any mortgagee or trustee pursuant to any provision of any mortgage or deed of trust covering the Leased Premises, the Building or the Project, or (d) any change in title or ownership of the Property. All insurance policies required pursuant to this Article 7 shall be written as primary policies, and shall provide that any insurance which Landlord or Landlord’s lender may carry is strictly excess, secondary and non-contributing with any insurance carried by Tenant. Tenant shall procure and maintain all policies entirely at its own expense and shall, at least twenty (20) days prior to the expiration of such policies, furnish Landlord with certified copies of replacement policies or renewal certificates for existing policies. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies maintained by Landlord or the insurance policies required pursuant to this Article 7 or the coverage thereunder. If Tenant or any subtenant of Tenant does or permits to be done anything which shall increase the cost of any insurance policies maintained by Landlord, then Tenant shall reimburse Landlord for any additional premiums attributable to any act or omission or operation of Tenant or any subtenant of Tenant causing such increase in the cost of insurance. Any such amount shall be payable as Additional Rent within thirty (30) days after receipt by Tenant of a bill from Landlord. All policies of insurance (other than the policy of property insurance described in Article 7.2) shall name both Landlord and Tenant (and/or such other party or parties as Landlord may require) as insureds and shall be endorsed to indicate that the coverage provided shall not be invalid due to any act or omission on the part of Landlord. In addition, the policy of property insurance described in Article 7.2 shall name Landlord (and Landlord’s Lender, if Landlord shall so require) as a co-loss payee. The insurance requirements contained in this Article 7 are independent of Tenant’s waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Tenant’s waiver, indemnification or other obligations or to in any way limit Tenant’s obligations under this Lease.

**7.6 Co-Insurance.** If on account of the failure of Tenant to comply with the provisions of this Article 7, Landlord is deemed a co-insurer by its insurance carrier, then any loss or damage which Landlord shall sustain by reason thereof shall be borne by Tenant, and shall be paid by Tenant within thirty (30) days after receipt of a bill therefor.

**7.7 Adequacy of Insurance.** Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

**7.8 Landlord's Insurance.**

(a) Landlord, shall, at all times from and after the Commencement Date, at its sole cost and expense, maintain in effect commercial general liability insurance covering (a) any occurrence in the Project (other than within premises leased to tenants), (b) any act or omission by Landlord, or its agent, servants, contractors or employees, anywhere in the Project, and (c) the contractual liability of Landlord to Tenant pursuant to the indemnification provisions of Article 14 below, which coverage shall not be less than Two Million and No/100 Dollars (\$2,000,000.00), combined single limit, per occurrence.

(b) Landlord shall, at all times from and after the Commencement Date, at its sole cost and expense, maintain in effect a policy or policies of "**Causes of Loss-Special Form**" insurance insuring the Building with coverage in an amount not less than one hundred percent (100%) of the replacement cost thereof (exclusive of the cost of excavations, foundations and footings) from time to time during the Lease Term, together with such endorsements and/or additional coverage as Landlord may determine or as may be required by Landlord's lender. Landlord reserves the right to maintain a reasonable deductible in connection with such insurance.

(c) Landlord's obligation to carry the insurance required in this Article 7.8 may be brought within the coverage of any so called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance. Landlord shall have the right to self-insure for the liability and casualty insurance required by Article 7.8(a) and (b), provided that Landlord shall have a net worth, calculated in accordance with the generally accepted accounting principles, consistently applied, of at least One Hundred Million and No/100 Dollars (\$100,000,000.00). In the event that Landlord elects to self-insure in accordance with the provisions of this Article 7.8(c), Landlord shall give Tenant written notice of such election, accompanied by appropriate evidence demonstrating that Landlord is entitled to self-insure in accordance with the provisions of this Article 7.8(c).

## 8. RECONSTRUCTION

**8.1 Insured Damage.** In the event the Leased Premises are damaged during the Lease Term by fire or other perils covered by Landlord's insurance, Landlord shall:

(a) Subject to Force Majeure, within a period of ninety (90) days after the date of damage, and provided there is not then in existence of an Event of Default, commence repair, reconstruction and restoration of the Leased Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect.

(b) In the event of a partial or total destruction of either the Leased Premises, the Building or the Project during the last two (2) years of the Lease Term, Landlord shall have the option to terminate this Lease upon giving written notice to Tenant within sixty (60) days after such destruction. In the event of a partial or total destruction of the Leased Premises during the last year of the Lease Term, Tenant shall have the option to terminate this Lease upon giving written notice to Landlord within sixty (60) days after such destruction. For purposes of this Article 8, "partial destruction" shall be deemed destruction to an extent of at least thirty-three and one-third percent (33.33%) of the then full replacement cost of the Leased Premises, the Building or the Project as of the date of destruction.

(c) In the event that Superior Mortgagee shall require that insurance proceeds be applied against the principal balance due on the Superior Mortgage (defined below), then Landlord may, at Landlord's option and upon sixty (60) days written notice to Tenant, elect to terminate this Lease.

**8.2 Uninsured Damage.** In the event the Leased Premises, the Building or the Project shall be damaged as a result of any casualty not covered by Landlord's insurance, to any extent whatsoever, Landlord may, subject to Force Majeure, within ninety (90) days following the date of the casualty, commence repair, reconstruction or restoration of the Leased Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or within such ninety (90) day period elect not to so repair, reconstruct or restore the Leased Premises, the Building or the Project, as the case may be, in which event this Lease shall cease and terminate. In either event, Landlord shall give Tenant written notice of Landlord's intention within such ninety (90) day period.

**8.3 Reconstruction.** In the event of any reconstruction of the Leased Premises, the Building or the Project pursuant to this Article 8, such reconstruction shall be in conformity with all city, county, state and federal ordinances, rules and regulations then in existence, as the same may be interpreted and enforced. Notwithstanding that all reconstruction work shall be performed by Landlord's contractor unless Landlord shall otherwise agree in writing, Landlord's obligation to reconstruct the Leased Premises shall be only to the comparable condition of the Leased Premises immediately prior to the Commencement Date. Landlord's obligation to repair and reconstruct the Leased Premises shall be limited to the amount of net proceeds of insurance received by Landlord, subject to reduction pursuant to Article 8.1(c) above. Tenant, at Tenant's sole cost and expense, shall be responsible for the repair and restoration of all items of the Tenant's improvements and/or alterations installed pursuant to Article 5.2 and the replacement of Tenant's stock in trade, trade fixtures, furniture, furnishings and equipment. Tenant shall commence the installation of fixtures, equipment and merchandise promptly upon delivery to Tenant of possession of the Leased Premises and shall diligently prosecute such installation to completion.

**8.4 Termination.** Upon any termination of this Lease under any of the provisions of this Article 8, Landlord and Tenant each shall be released without further obligations to the other coincident with the surrender of possession of the Leased Premises to Landlord, except for items which have previously accrued and remain unpaid. In the event of termination, all proceeds from Tenant's property insurance coverage covering Tenant's improvements and/or alterations installed pursuant to Article 5.2, but excluding proceeds for trade fixtures, merchandise, signs and other removable personal property, shall be disbursed and paid to Landlord.

**8.5 Abatement.** In the event of repair, reconstruction and restoration of the Leased Premises as a result of damage or destruction, Annual Basic Rent and Additional Rent shall be abated proportionately with the degree to which Tenant's use of the Leased Premises is impaired commencing from the date of destruction and continuing during the period of such repair, reconstruction or restoration. Tenant shall continue the operation of Tenant's business at the Leased Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management. Except as set forth in this Article 8.5, Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Leased Premises, or the building of which the Leased Premises are a part, Tenant's personal property or for any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

**8.6 Conflict.** Landlord and Tenant acknowledge and agree that the provisions of this Article 8 are the result of arms' length negotiations between Landlord and Tenant and that in the event of any conflict between the provisions of this Article 8 and any statutory or common law rights of termination which may arise by reason of any partial or total destruction of the Leased Premises, including the provisions of A.R.S. § 33-343, the provisions of this Article 8 shall prevail.

## 9. WAIVER OF SUBROGATION

Landlord and Tenant each hereby waives their respective rights and the subrogation rights of their respective insurers against Tenant or Landlord, as applicable, and any other tenants of space in the Building, the Property or the Project, as well as their respective members, officers, employees, agents, authorized representatives and invitees, with respect to any claims including, but not limited to, claims for injury to any persons, and/or damage to the Leased Premises and/or any fixtures, equipment, personal property, furniture, improvements and/or alterations in or to the Leased Premises, which are caused by or result from (a) risks or damages required to be insured against under this Lease under a policy of property insurance, or (b) risks and damages which are insured against by property insurance policies maintained by Landlord or Tenant, as applicable from time to time. Each of Tenant and Landlord shall obtain for the other party from its respective insurers under each policy required by this Lease a waiver of all rights of subrogation which such insurers of Tenant or Landlord, as applicable, might otherwise have against Landlord or Tenant, as applicable.



## 10. LANDLORD'S RIGHT TO PERFORM TENANT OBLIGATIONS

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Annual Basic Rent or Additional Rent. If Tenant shall fail to pay any sum of money, other than Annual Basic Rent, required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after notice thereof by Landlord, Landlord may (but shall not be obligated to do so) without waiving or releasing Tenant from any of Tenant's obligations, make any such payment or perform any such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the greater of (a) ten percent (10%) per annum or (b) the rate of interest per annum publicly announced, quoted or published, from time to time, by Wells Fargo Bank, NA, (or its successor in interest) as its "prime rate" plus two (2) percentage points, from the date of such payment by Landlord until reimbursement in full by Tenant (the "**Default Rate**"), shall be payable to Landlord as Additional Rent with the next monthly installment of Annual Basic Rent; provided, however, in no event shall the Default Rate exceed the maximum rate (if any) permitted by applicable law.

## 11. DEFAULT AND REMEDIES

11.1 **Event of Default.** The occurrence of any one or more of the following events will constitute an "**Event of Default**" on the part of Tenant.

(a) Failure to pay any installment of Annual Basic Rent, any Additional Rent or any other sum required to be paid by Tenant under this Lease, when due, which failure is not cured within fifteen (15) days after written notice thereof by Landlord to Tenant;

(b) Failure to perform any of the other covenants or conditions which Tenant is required to observe and perform (except failure in the payment of Annual Basic Rent, Additional Rent or any other monetary obligation contained in this Lease) and such failure shall continue for thirty (30) days (or such shorter period of time as may reasonably be specified by Landlord in the event of an emergency) after written notice thereof by Landlord to Tenant, provided that if such default is other than the payment of money and cannot be cured within such thirty (30) day period, then an Event of Default shall not have occurred if Tenant, within such thirty (30) day period, commences curing of such failure and diligently in good faith prosecutes the same to completion and furnishes evidence thereof to Landlord within ninety (90) days thereafter;

(c) If any warranty, representation or statement made by Tenant to Landlord in connection with this Lease is or was materially false or misleading when made or furnished;

(d) The levy of a writ of attachment or execution or other judicial seizure of substantially all of Tenant's assets or its interest in this Lease, such attachment, execution or other seizure remaining undismissed or discharged for a period of sixty (60) days after the levy thereof;

(e) The filing of any petition by or against Tenant to declare Tenant a bankrupt or to delay, reduce or modify Tenant's debts or obligations, which petition is not discharged within sixty (60) days after the date of filing;

(f) The filing of any petition or other action taken to reorganize or modify Tenant's capital structure, which petition is not discharged within sixty (60) days after the date of filing;

(g) If Tenant shall be declared insolvent according to law;

(h) A general assignment by Tenant for the benefit of creditors;

(i) The appointment of a receiver or trustee for Tenant or all or any of their respective property, which appointment is not discharged within sixty (60) days after the date of filing;

(j) The filing by Tenant of a voluntary petition pursuant to the Bankruptcy Code or any successor thereto or the filing of an involuntary petition against Tenant pursuant to the Bankruptcy Code or any successor legislation, which petition is not discharged within forty-five (45) days after the date of filing; or

(k) The occurrence of an Event of Default under the other provisions of this Lease.

**11.2 Remedies.** Upon the occurrence of an Event of Default under this Lease by Tenant that is not remedied with the applicable cure periods, Landlord may, without prejudice to any other rights and remedies available to a landlord at law, in equity or by statute, exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive. (a) Terminate this Lease and re-enter and take possession of the Leased Premises, in which event, Landlord is authorized to make such repairs, redecorating, refurbishments or improvements to the Leased Premises as may be necessary in the reasonable opinion of Landlord acting in good faith for the purposes of reletting the Leased Premises and the costs and expenses incurred in respect of such repairs, redecorating and refurbishments and the expenses of such reletting (including brokerage commissions) shall be paid by Tenant to Landlord within fifteen (15) days after receipt of Landlord's statement; or (b) Without terminating this Lease, re-enter and take possession of the Leased Premises; or (c) Without such re-entry, recover possession of the Leased Premises in the manner prescribed by any statute relating to summary process, and any demand for Annual Basic Rent, re-entry for condition broken, and any and all notices to quit, or other formalities of any nature to which Tenant may be entitled, are hereby specifically waived to the extent permitted by law; or (d) Without terminating this Lease, Landlord may relet the Leased Premises as Landlord may see fit without thereby voiding or terminating this Lease, and for the purposes of such reletting, Landlord is authorized to make such repairs, redecorating, refurbishments or improvements to the Leased Premises as may be necessary in the reasonable opinion of Landlord acting in good faith for the purpose of such reletting, and if a sufficient sum is not realized from such reletting (after payment of all costs and expenses of such repairs, redecorating and refurbishments and expenses of such reletting (including brokerage commissions) and the collection of rent accruing therefrom) each month to equal the Annual Basic Rent and Additional Rent payable hereunder, then Tenant shall pay such deficiency each month within fifteen (15) days after receipt of Landlord's statement; provided, however, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant with respect to any such reletting; or (e) Landlord may declare immediately due and payable all the remaining installments of Annual Basic Rent and Additional Rent, and such amount, less the fair rental value of the Leased Premises for the remainder of the Lease Term shall be paid by Tenant within fifteen (15) days after receipt of Landlord's statement. Landlord shall not by re-entry or any other act, be deemed to have terminated this Lease, or the liability of Tenant for the total Annual Basic Rent and Additional Rent reserved hereunder or for any installment thereof then due or thereafter accruing, or for damages, unless Landlord notifies Tenant in writing that Landlord has so elected to terminate this Lease. After the occurrence of an Event of Default, the acceptance of Annual Basic Rent or Additional Rent, or the failure to re-enter by Landlord shall not be deemed to be a waiver of Landlord's right to thereafter terminate this Lease and exercise any other rights and remedies available to it, and Landlord may re-enter and take possession of the Leased Premises as if no Annual Basic Rent or Additional Rent had been accepted after the occurrence of an Event of Default. Upon an Event of Default, Tenant shall also pay to Landlord all costs and expenses incurred by Landlord, including court costs and reasonable attorneys' fees, in retaking or otherwise obtaining possession of the Leased Premises, removing and storing all equipment, fixtures and personal property on the Leased Premises and otherwise enforcing any of Landlord's rights, remedies or recourses arising as a result of an Event of Default.

**11.3 Additional Remedies.** All of the remedies given to Landlord in this Lease in the event Tenant commits an Event of Default are in addition to all other rights or remedies available to a landlord at law, in equity or by statute. All rights, options and remedies available to Landlord shall be construed and held to be cumulative, and no one of them shall be exclusive of the other. Upon the occurrence of an Event of Default, all rights, privileges and contingencies which may be exercised by Tenant under the Lease, including, without limitation, options to renew, extend and expand, as well as relocation rights, contraction rights and any other rights which may be exercised by Tenant during the Lease Term, shall be void and of no further force and effect.

**11.4 Interest on Past Due Amounts.** In addition to the late charge described in Article 12 below, if any installment of Annual Basic Rent or Additional Rent is not paid promptly when due, it shall bear interest at the Default Rate; provided, however, this provision shall not relieve Tenant from any default in the making of any payment at the time and in the manner required by this Lease; and provided, further, in no event shall the Default Rate exceed the maximum rate (if any) permitted by applicable law.

**11.5 Landlord Default.** In the event Landlord should neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed, and such failure continues for thirty (30) days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to commence the curing of such default within such thirty (30) day period and proceed diligently thereafter but not to exceed an additional sixty (60) days), then Landlord shall be responsible to Tenant for any actual damages sustained by Tenant as a result of Landlord's breach, but not special or consequential damages. Should Tenant give written notice to Landlord to correct any default, Tenant shall give similar notice to the holder of any mortgages or deeds of trust against the Building or the lessor of any ground lease (provided that the names and addresses of such holders or lessors have been provided to Tenant), and prior to any cancellation of this Lease, the holder of such mortgage or deed of trust and/or the lessor under such ground lease shall be given a reasonable period of time to correct or remedy such default. If and when such holder of such mortgage or deed of trust and/or the lessor under any such ground lease has made performance on behalf of Landlord, the default of Landlord shall be deemed cured. Tenant shall have no right to terminate this Lease, except as expressly provided elsewhere in this Lease.

## 12. LATE PAYMENTS

Tenant hereby acknowledges that the late payment by Tenant to Landlord of any monthly installment of Annual Basic Rent, any Additional Rent or any other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include but are not limited to processing, administrative and accounting costs. Accordingly, if any monthly installment of Annual Basic Rent, any Additional Rent or any other sum due from Tenant shall not be received by Landlord within fifteen (15) days after the date when due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount or Two Hundred and No/100 Dollars (\$200.00), whichever is greater. Tenant acknowledges that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payments by Tenant. Neither assessment nor acceptance of a late charge by Landlord shall constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord. Nothing contained in this Article 12 shall be deemed to condone, authorize, sanction or grant to Tenant an option for the late payment of Annual Basic Rent, Additional Rent or any other sum due hereunder.

## 13. SURRENDER

**13.1 Surrender.** Tenant shall, upon the expiration or earlier termination of this Lease, peaceably surrender the Leased Premises, including any Tenant Improvements, in a janitorial clean condition and otherwise in as good condition as when Tenant took possession, except for (i) reasonable wear and tear subsequent to the last repair, replacement, restoration, alteration or renewal; (ii) loss by fire or other casualty, and (iii) loss by condemnation. If Tenant shall abandon, vacate or surrender the Leased Premises, or be dispossessed by process of law or otherwise, any personal property and fixtures belonging to Tenant and left in the Leased Premises shall be deemed abandoned and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. Landlord may, however, if it so elects, remove all or any part of such personal property from the Leased Premises and the costs incurred by Landlord in connection with such removal, including reasonable storage costs and the cost of repairing any damage to the Leased Premises, the Building and/or the Project caused by such removal shall be paid by Tenant within fifteen (15) days after receipt of Landlord's statement. Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord all keys to the Leased Premises and shall inform Landlord of the combination of any vaults, locks and safes left on the Leased Premises. The obligations of Tenant under this Article 13.1 shall survive the expiration or earlier termination of this Lease. Tenant shall indemnify Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Leased Premises, including, without limitation, any claims made by any succeeding Tenant founded on such delay. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Leased Premises for the express purpose of arranging a meeting with Landlord for a joint inspection of the Leased Premises. In the event of Tenant's failure to give such notice or to participate in such joint inspection, Landlord's inspection at or after Tenant's vacation of the Leased Premises shall be conclusively deemed correct for purposes of determining Tenant's liability for repairs and restoration hereunder.

## 14. INDEMNIFICATION AND EXCULPATION

**14.1 Indemnification.** To the fullest extent permitted by law, Tenant will, at Tenant's sole cost and expense, Indemnify Landlord Parties against all Claims arising from (i) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Leased Premises; (ii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Property; (iii) the use or occupancy, or manner of use or occupancy, or conduct or management of the Leased Premises or of any business therein; (iv) subject to the waiver of subrogation provisions of this Lease, any act, error, omission or negligence of any of the Tenant Parties in, on or about the Leased Premises or the Property; (v) the conduct of Tenant's business; (vi) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant Parties in, at or about the Leased Premises or Property, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease including Hazardous Materials Laws (defined below); (vii) any breach or default by Tenant in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Tenant under this Lease, or any misrepresentation made by Tenant of Tenant's obligations in connection with this Lease (viii) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant Party in the Leased Premises including, but not limited to, any claims by another tenant resulting from a delay by Landlord in delivering possession of the Leased Premises to such tenant; (ix) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant; (x) commissions or other compensation or charges claimed by any real estate broker or agent, other than the Brokers specified in the Basic Provisions, with respect to this Lease by, through or, under Tenant or, (xi) any matter enumerated in Article 14.2 below, except in each case to the extent arising from the negligence or willful misconduct of Landlord Parties. Except for the negligence or willful misconduct of any Tenant Party, or a breach of this Lease by any Tenant Party, Landlord hereby Indemnifies Tenant Parties against any and all Claims which either (i) arise from or in connection with Personal Injury, Bodily Injury and/or Property Damage resulting from any negligence or willful misconduct of any Landlord Party in connection with the Building Common Areas; or (ii) result from any default, breach, violation or non-performance of this Lease by Landlord.

**14.2 Waivers.** Except to the extent arising from the negligence or willful misconduct of Landlord Parties and except as otherwise set forth in this Lease, to the fullest extent permitted by law, Tenant, on behalf of all Tenant Parties, Waives all Claims against Landlord Parties arising from the following: (i) any Personal Injury, Bodily Injury, or Property Damage occurring in or at the Leased Premises; (ii) any loss of or damage to property of a Tenant Party located in the Leased Premises or other part of the Property by theft or otherwise; (iii) any Personal Injury, Bodily Injury, or Property Damage to any Tenant Party caused by other tenants of the Property, parties not occupying space in the Property, occupants of property adjacent to the Property, or the public or by the construction of any private, public, or quasi-public work occurring either in the Leased Premises or elsewhere in the Property; (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (v) business interruption or loss of use of the Leased Premises suffered by Tenant; (vi) any latent defect in construction of the Building; (vii) damages or injuries or interference with Tenant's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Landlord of any right or the performance by Landlord of Landlord's maintenance or other obligations under this Lease, or (viii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Property.

**14.3 Definitions.** For purposes of this Article 14: (i) the term "**Tenant Parties**" means Tenant, and Tenant's officers, members, partners, agents, employees, sublessees, licensees, invitees and independent contractors, and all persons and entities claiming through any of these persons or entities; (ii) the term "**Landlord Parties**" means Landlord and the partners, venturers, trustees and ancillary trustees of Landlord and the respective officers, directors, shareholders, members, parents, subsidiaries and any other affiliated entities, personal representatives, executors, heirs, assigns, licensees, invitees, beneficiaries, agents, servants, employees and independent contractors of these persons or entities; (iii) the term "**Indemnify**" means indemnify, defend (with counsel reasonably acceptable to Landlord) and hold free and harmless for, from and against; (iv) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (v) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (vi) the terms "**Bodily Injury**", "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

**14.4 Obligations Independent of Insurance.** The indemnification provided in Article 14 may not be construed or interpreted as in any way restricting, limiting or modifying Tenant's insurance or other obligations under this Lease, and the provisions of Article 14.1 are independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease.

14.5 **Survival.** The provisions of this Article 14 will survive the expiration or earlier termination of this Lease until all Claims against Landlord Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

14.6 **Duty to Defend.** Tenant's duty to defend Landlord Parties is separate and independent of Tenant's duty to Indemnify Landlord Parties. Tenant's duty to defend includes Claims for which Landlord Parties may be liable without fault or may be strictly liable. Tenant's duty to defend applies regardless of whether issues of negligence, liability, fault, default or other obligation on the part of Tenant Parties have been determined. Tenant's duty to defend applies immediately, regardless of whether Landlord Parties have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any Claims. It is the express intention of Landlord and Tenant that Landlord Parties will be entitled to obtain summary adjudication regarding Tenant's duty to defend Landlord Parties at any stage of any Claim within the scope of this Article 14.

#### 15. ENTRY BY LANDLORD

Landlord reserves and shall have the right to enter the Leased Premises, to inspect the same with at least forty-eight (48) hours of notice (except in an emergency), to supply janitorial service and other services to be provided by Landlord to Tenant hereunder, to submit the Leased Premises to prospective purchasers or tenants within the last six (6) months of the Lease Term or Extension Term, to post notices of non-responsibility, and to alter, improve or repair the Leased Premises and any portion of the Building of which the Leased Premises are a part, without abatement of Annual Basic Rent or Additional Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that access into the Leased Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Leased Premises or any loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all the doors in, upon or about the Leased Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all reasonable means which Landlord may deem proper to open such doors in an emergency in order to obtain entry to the Leased Premises, and any entry to the Leased Premises obtained by Landlord by any such means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Leased Premises or an eviction of Tenant from all or any portion of the Leased Premises. Nothing in this Article 15 shall be construed as obligating Landlord to perform any repairs, alterations or maintenance except as otherwise expressly required elsewhere in this Lease.

#### 16. INTENTIONALLY OMITTED

#### 17. ASSIGNMENT AND SUBLETTING

17.1 **Consent of Landlord Required.** Tenant shall not transfer or assign this Lease or any right or interest hereunder, or sublet the Leased Premises or any part thereof, without first obtaining Landlord's prior written consent, which consent Landlord may not unreasonably withhold, condition or delay. No transfer or assignment (whether voluntary or involuntary, by operation of law or otherwise) or subletting shall be valid or effective without such prior written consent. Should Tenant attempt to make or allow to be made any such transfer, assignment or subletting, except as aforesaid, or should any of Tenant's rights under this Lease be sold or otherwise transferred by or under court order or legal process or otherwise, then, and in any of the foregoing events Landlord may, at its option, treat such act as an Event of Default by Tenant. Should Landlord consent to a transfer, assignment or subletting, such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Article 17, and such restrictions or prohibitions shall apply to each successive transfer, assignment or subletting hereunder, if any.

**17.2 Permitted Transfers.** Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's right, without further approval from Landlord but only after written notice to Landlord to sublease the Leased Premises or assign its interest in this Lease (i) to a corporation that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Tenant; (ii) in the event of the merger or consolidation of Tenant with another corporation; or (iii) in the event of a sale or transfer of all or substantially all of the stock of Tenant or substantially all of Tenant's assets (collectively, the "**Permitted Transfers**"), provided that immediately following the events enumerated in clauses (i) through (iii) above, the net worth of Tenant, calculated in accordance with generally accepted accounting principles, consistently applied, and the credit standing of Tenant is not less than the net worth, calculated in accordance with generally accepted accounting principles, consistently applied, and credit standing of Tenant as of the Date of this Lease. No Permitted Transfer shall relieve Tenant of its liability under this Lease and Tenant shall remain liable to Landlord for the payment of all Annual Basic Rent and Additional Rent and under performance of all covenants and conditions of this Lease applicable to Tenant. The provisions of Articles 17.4 and 17.5 shall not be applicable to a Permitted Transfer.

**17.3 Delivery of Information.** If Tenant wishes at any time to assign this Lease or sublet the Leased Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord. (a) the name of the proposed subtenant or assignee; (b) the nature of the proposed subtenant's or assignee's business to be carried on in the Leased Premises; (c) the terms and the provisions of the proposed sublease or assignment, including a copy of the proposed instrument of assignment and/or sublease; (d) three (3) years audited financial statements with respect to the proposed subtenant or assignee, including balance sheets and income statements (if, however, audited financial statements are not available, Tenant shall submit unaudited financial statements accompanied by tax returns for the years in question) and such other financial information as Landlord may reasonably request concerning the proposed subtenant or assignee; and (e) a non-refundable processing fee in the amount of Five Hundred and No/100 Dollars (\$500.00). Tenant's failure to comply with the provisions of this Article 17.3 shall entitle Landlord to withhold its consent to the proposed assignment or subletting.

**17.4 Recapture.** If Tenant proposes to assign its interest in this Lease, Landlord may, at its option, upon written notice (the "**Assignment Recapture Notice**"), to Tenant within fifteen (15) days after Landlord's receipt of the information specified in Article 17.3 above, elect to recapture all or any portion of the Leased Premises, and within sixty (60) days after notice of such election has been given to Tenant, this Lease shall terminate unless Tenant shall, within ten (10) days after delivery of the Assignment Recapture Notice to Tenant, deliver to Landlord written notice withdrawing its notification delivered pursuant to Article 17.3. If Tenant proposes to sublet all or any portion of the Leased Premises, Landlord may, at Landlord's option, upon notice to Tenant (the "**Sublease Recapture Notice**") within fifteen (15) days after Landlord's receipt of Tenant's notification delivered pursuant to Article 17.3, elect to recapture such portion of the Leased Premises as Tenant proposes to sublet, and within sixty (60) days after notice of such election has been given to Tenant, this Lease shall terminate as to the portion of the Leased Premises recaptured, unless within ten (10) days after delivery to Tenant of the Sublease Recapture Notice, Tenant delivers to Landlord written notice withdrawing its notification delivered pursuant to Article 17.3. If all or a portion of the Leased Premises is recaptured by Landlord pursuant to this Article 17.4, Tenant shall promptly execute and deliver to Landlord a termination agreement setting forth the termination date with respect to the Leased Premises or the recaptured portion thereof, and prorating the Annual Basic Rent, Additional Rent and other charges payable hereunder to such date. In the event Landlord exercises its right to recapture the Leased Premises or a portion thereof in accordance with the provisions of this Article 17.4, Landlord may, in its sole discretion, enter into a lease with the proposed assignee or sublessee without incurring any liability to Tenant on account thereof. If Landlord does not elect to recapture as set forth above, Tenant may thereafter enter into a valid assignment or sublease with respect to the Leased Premises, provided that Landlord consents thereto pursuant to this Article 17, and provided further, that (a) such assignment or sublease is consummated within ninety (90) days after Landlord has given its consent, (b) Tenant pays all amounts then owed to Landlord under this Lease, (c) there is not in existence an Event of Default as of the effective date of the assignment or sublease, (d) there have been no material changes with respect to the financial condition of the proposed subtenant or assignee or the business such party intends to conduct in the Leased Premises, and (e) a fully executed original of such assignment or sublease providing for an express assumption by the assignee or subtenant of all of the terms, covenants and conditions of this Lease is promptly delivered to Landlord.

**17.5 No Release from Liability.** Landlord may collect Annual Basic Rent and Additional Rent from the assignee, subtenant, occupant or other transferee, and apply the amount so collected, first to the monthly installments of Annual Basic Rent, then to any Additional Rent and other sums due and payable to Landlord, and the balance, if any, to Landlord, but no such assignment, subletting, occupancy, transfer or collection shall be deemed a waiver of Landlord's rights under this Article 17, or the acceptance of the proposed assignee, subtenant, occupant or transferee. Notwithstanding any assignment, sublease or other transfer (with or without the consent of Landlord), Tenant shall remain primarily liable under this Lease and shall not be released from performance of any of the terms, covenants and conditions of this Lease.

**17.6 Landlord's Expenses.** If Landlord consents to an assignment, sublease or other transfer by Tenant of all or any portion of Tenant's interest under this Lease, Tenant shall pay or cause to be paid to Landlord, any legal, accounting and other out of pocket expenses incurred by Landlord to the extent such expenses, fees and costs exceed the processing fee delivered by Tenant to Landlord pursuant to Article 17.3(e) above.

**17.7 Assumption Agreement.** If Landlord consents to an assignment, sublease or other transfer by Tenant of all or any portion of Tenant's interest under this Lease, Tenant shall execute and deliver to Landlord, and cause the transferee to execute and deliver to Landlord, an instrument in the form and substance acceptable to Landlord in which (a) the transferee adopts this Lease and assumes and agrees to perform, jointly and severally with Tenant, all of the obligations of Tenant hereunder, (b) Tenant acknowledges that it remains primarily liable for the payment of Annual Basic Rent, Additional Rent and other obligations under this Lease, (c) Tenant subordinates to Landlord's statutory lien, contract lien and security interest, any liens, security interests or other rights which Tenant may claim with respect to any property of transferee and (d) the transferee agrees to use and occupy the Leased Premises solely for the purpose specified in Article 18 and otherwise in strict accordance with this Lease.

**17.8 Withholding Consent.** Without limiting the grounds for withholding consent which may be reasonable, it shall be reasonable for Landlord to withhold consent (a) if the proposed assignee or subtenant is a tenant in default of such tenant's lease (or the termination by such assignee or subtenant of such lease in order to sublease from Tenant will be a default under the same) in a building in the Phoenix, Arizona metropolitan area owned by Landlord or by an affiliate of Landlord or any of Landlord's constituent partners or principals; or (b) if the proposed assignee or subtenant is a governmental or quasi-governmental entity, agency, department or any subdivision thereof; or (c) if the use by the proposed assignee or subtenant would violate the terms of this Lease, or any restrictive use covenant or exclusive rights granted by Landlord; or (d) if the nature of the proposed assignee or subtenant or its business would not be consistent with the operation of a first class, institutional grade office building; or (e) if the proposed assignee or subtenant does not intend to occupy the Leased Premises for its own use, or (f) if the proposed assignee or subtenant is an existing tenant of the Project, or is a prospective tenant of the Project with whom Landlord or its broker have discussed leasing space in the last six (6) months and Landlord has space comparable to the Leased Premises available in the Building; or (g) if the use contemplated by the proposed assignee or subtenant would overburden, in Landlord's reasonable business judgment, the Parking Accommodations of the Project; or (h) if Tenant or an affiliate of Tenant is in breach or default of this Lease or any other agreement between Landlord and Tenant relating to the Project.

## 18. USE OF LEASED PREMISES AND RUBBISH REMOVAL

**18.1 Use.** The Leased Premises are leased to Tenant solely for the Permitted Use set forth in Article 1.9 above and for no other purpose whatsoever. Tenant shall not use or occupy or permit the Leased Premises to be used or occupied, nor shall Tenant do or permit anything to be done in or about the Leased Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any casualty or other insurance on the Building, the Project or any of their respective contents, or make void or voidable or cause a cancellation of any insurance policy covering the Building, the Project or any part thereof or any of their respective contents. Tenant shall not do or permit anything to be done in or about the Leased Premises, the Building and/or the Project which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or the Project or injure them. Tenant shall not use or allow the Leased Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Leased Premises, the Building and/or the Project. In addition, Tenant shall not commit or suffer to be committed any waste in or upon the Leased Premises, the Building and/or the Project. Tenant shall not use the Leased Premises, the Building and/or the Project or permit anything to be done in or about the Leased Premises, the Building and/or the Project which will in any way conflict with any matters of record, or any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, and shall, at its sole cost and expense, promptly comply with all matters of record and all laws, statutes, ordinances and governmental rules, regulations and requirements now in force or which may hereafter be in force and with the requirements of any Board of Fire Underwriters or other similar body now or hereafter constituted, foreseen or unforeseen, ordinary as well as extraordinary, relating to or affecting the condition, use or occupancy of the Project, excluding structural changes not relating to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any matters of record, or any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact between Landlord and Tenant. In addition, Tenant shall not place a load upon any floor of the Leased Premises which exceeds the load per square foot, which the floor was designed to carry, nor shall Tenant install business machines or other mechanical equipment in the Leased Premises which cause noise or vibration that may be transmitted to the structure of the Building.

**18.2 Rubbish Removal.** Tenant shall keep the Leased Premises clean, both inside and outside, subject, however, to Landlord's obligation as set forth in Article 6.2 above. Tenant shall not burn any materials or rubbish of any description upon the Leased Premises. Tenant shall keep all accumulated rubbish in covered containers. In the event Tenant fails to keep the Leased Premises in the proper condition, Landlord may cause the same to be done for Tenant and Tenant shall pay the expenses incurred by Landlord on demand, together with interest at the Default Rate, as Additional Rent. Tenant shall, at its sole cost and expense, comply with all present and future laws, orders and regulations of all state, county, federal, municipal governments, departments, commissions and boards regarding the collection, sorting, separation, and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by law. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Landlord. Such separate receptacles may, at Landlord's option, be removed from the Leased Premises in accordance with a collection schedule prescribed by law. Landlord reserves the right to refuse to collect or accept from Tenant any waste products, garbage, refuse or trash that is not separated and sorted as required by law, and to require Tenant to arrange for such collection at Tenant's sole cost and expense using a contractor satisfactory to Landlord. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Article 18.2, and, at Tenant's sole cost and expense, Tenant shall indemnify, defend and hold Landlord and Landlord's agents and employees harmless (including legal fees and expenses) from and against, and shall be responsible for, all actions, claims, liabilities and suits arising from such noncompliance, utilizing counsel reasonably satisfactory to Landlord.



## 19. SUBORDINATION AND ATTORNMENT

19.1 **Subordination.** This Lease and all rights of Tenant hereunder shall be, at the option of Landlord, subordinate to (a) all matters of record, (b) all ground leases, overriding leases and underlying leases (collectively referred to as the **"leases"**) of the Building or the Project now or hereafter existing, (c) all mortgages and deeds of trust (collectively referred to as the **"mortgages"**) which may now or hereafter encumber or affect the Building or the Project, and (d) all renewals, modifications, amendments, replacements and extensions of leases and mortgages and to spreaders and consolidations of the mortgages, whether or not leases or mortgages shall also cover other lands, buildings or leases, subject to the delivery to Tenant of a commercially reasonable form of subordination, non-disturbance and attornment agreement from such Superior Lessor (as defined below) or Superior Mortgagee (as defined below), as the case may be. Any lease to which this Lease is subject and subordinate is called a **"Superior Lease"** and the lessor under a Superior Lease or its assigns or successors in interest is called a **"Superior Lessor"**. Any mortgage to which this Lease is subject and subordinate is called a **"Superior Mortgage"** and the holder of a Superior Mortgage is called a **"Superior Mortgagee"**. If Landlord, a Superior Lessor or a Superior Mortgagee requires that such instruments be executed by Tenant, Tenant's failure to do so within thirty (30) days after request therefor shall be deemed an Event of Default under this Lease. Tenant waives any right to terminate this Lease because of any foreclosure proceedings. Tenant hereby irrevocably constitutes and appoints Landlord (and any successor Landlord) as Tenant's attorney-in-fact, with full power of substitution coupled with an interest, to execute and deliver to any Superior Lessor or Superior Mortgagee any documents required to be executed by Tenant for and on behalf of Tenant if Tenant shall have failed to do so within thirty (30) days after request therefore.

19.2 **Attornment.** If any Superior Lessor or Superior Mortgagee (or any purchaser at a foreclosure sale) succeeds to the rights of Landlord under this Lease, whether through possession or foreclosure action, or the delivery of a new lease or deed (a **"Successor Landlord"**), Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment, provided, however, that such Superior Lessor or Superior Mortgagee (or any purchaser at a foreclosure sale) shall assume the obligations of the Landlord under this Lease, arising from and after the date of transfer.

## 20. ESTOPPEL CERTIFICATE

Tenant shall, whenever requested by Landlord within thirty (30) days after written request by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect, (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) the dates to which Annual Basic Rent, Additional Rent and other charges are paid in advance, if any; (c) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults if any are claimed; (d) that Tenant has paid Landlord the Security Deposit, (e) the Commencement Date and the scheduled expiration date of the Lease Term, (f) the rights (if any) of Tenant to extend or renew this Lease or to expand the Leased Premises and (g) the amount of Annual Basic Rent, Additional Rent and other charges currently payable under this Lease. In addition, such statement shall provide such other information and facts Landlord may reasonably require. Any such statement may be relied upon by any prospective or existing purchaser, ground lessee or mortgagee of all or any portion of the Property, as well as by any other assignee of Landlord's interest in this Lease. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord (ii) that there are no uncured defaults in Landlord's performance hereunder; (iii) that Tenant has paid to Landlord the Security Deposit; (iv) that not more than one month's installment of Annual Basic Rent or Additional Rent has been paid in advance; (v) that the Commencement Date and the scheduled expiration date of the Lease Term are as stated therein, (vii) that the Annual Basic Rent, Additional Rent and other charges are as set forth therein and (viii) that the other information and facts set forth therein are true and correct. Landlord shall, whenever requested by Tenant within thirty (30) days after written request by Tenant, execute, acknowledge and deliver to Tenant a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect, (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) the dates to which Annual Basic Rent, Additional Rent and other charges are paid in advance, if any; (c) that there are not, to Landlord's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults if any are claimed; (d) the Commencement Date and the scheduled expiration date of the Lease Term, and (e) the amount of Annual Basic Rent, Additional Rent and other charges currently payable under this Lease.

## 21. SIGNS

Landlord shall retain absolute control over the exterior appearance of the Building and the exterior appearance of the Leased Premises as viewed from the public halls. Tenant shall not install, or permit to be installed, any drapes, shutters, signs, lettering, advertising, or any items that will in any way, in the sole opinion of Landlord, adversely alter the exterior appearance of the Building or the exterior appearance of the Leased Premises as viewed from the public halls or the exterior of the Building. Landlord will initially provide to Tenant, at Landlord's cost and expense: (i) one building standard tenant identification sign adjacent to the entry door of the Leased Premises and; (ii) one standard building directory listing. Tenant, at Tenant's cost and expense, may install a sign panel (location to be determined by Landlord in its sole and absolute discretion) on the Building's monument sign. The foregoing signs will conform to Landlord's sign criteria.

## 22. PARKING

**22.1 Parking Accommodations.** Landlord shall provide, operate and maintain parking accommodations (the "**Parking Accommodations**"), together with necessary access, having a capacity adequate in Landlord's opinion to accommodate the requirements of the Building. No storage of vehicles or parking for more than twenty-four (24) hours shall be allowed without Landlord's prior written consent. Tenant acknowledges and agrees that Landlord shall not be liable for damage, loss or theft of property or injury to persons in, upon or about the Parking Accommodations from any cause whatsoever. Landlord shall have the right to establish, and from time to time change, alter and amend, and to enforce against all users of the Parking Accommodations, such reasonable requirements and restrictions as Landlord deems necessary and advisable for the proper operation and maintenance of the Parking Accommodations, including, without limitation, designation of particular areas for reserved, visitor and/or employee parking, and establishment of a reasonable rental charge for the use of the Parking Accommodations by tenants of the Building, the Project and/or the general public, as a part of the Rules and Regulations of the Building referenced in Article 29 below.

**22.2 Parking Spaces.** Tenant is hereby allocated the number of uncovered, unreserved parking spaces and covered, reserved parking spaces designated in Article 1.16 and Article 1.17 above, entitling Tenant and its designees to park in uncovered, unreserved parking spaces and covered, reserved parking spaces, as applicable, located in the Parking Accommodations as designated by Landlord from time to time for use by Tenant, its employees and licensees, and for which Tenant shall pay the monthly charges set forth in Articles 1.16 and 1.17 above. Landlord and Tenant shall execute, prior to the Commencement Date an Uncovered, Unreserved Parking License in the form attached to this Lease as Exhibit "C-1" and a Covered, Reserved Parking License in the form attached to this Lease as Exhibit "C- 2". Unreserved parking spaces shall be available to Tenant, its employees and licensees on a "first come, first serve" basis. From time to time, but not more frequently than once each calendar year, Landlord reserves the right to reasonably increase the parking charges set forth in Article 1.17. Tenant and its employees shall not be entitled to park in visitor parking spaces so designated by Landlord, or in any other parking spaces other than those designated by Landlord for use by Tenant.

### **23. LIENS**

Tenant shall keep the Leased Premises free and clear of all mechanic's and materialmen's liens. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanics', materialmen's or other lien, charge or order for the payment of money shall be filed or recorded against the Leased Premises, the Project or the Building, or against any other property of Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant shall, at its own expense, cause the same to be canceled or discharged of record within thirty (30) days after Tenant shall have received written notice of the filing thereof, or Tenant may, within such thirty (30) day period, furnish to Landlord, a bond pursuant to A.R.S. §33-1004 (or any successor statute) and reasonably satisfactory to Landlord and all Superior Lessors and Superior Mortgagees against the lien, charge or order, in which case Tenant shall have the right to contest, in good faith, the validity or amount thereof.

### **24. HOLDING OVER**

It is agreed that the date of termination of this Lease and the right of Landlord to recover immediate possession of the Leased Premises thereupon is an important and material matter affecting the parties hereto and the rights of third parties, all of which have been specifically considered by Landlord and Tenant. In the event of any continued occupancy or holding over of the Leased Premises without the express written consent of Landlord beyond the expiration or earlier termination of this Lease or of Tenants right to occupy the Leased Premises, whether in whole or in part, or by leaving property on the Leased Premises or otherwise, this Lease shall be deemed a monthly tenancy and Tenant shall pay one hundred fifty percent (150%) of the Annual Basic Rent then in effect, in advance at the beginning of the hold-over month(s), plus any Additional Rent or other charges or payments contemplated in this Lease, and any other costs, expenses, damages, liabilities and attorneys' fees incurred by Landlord on account of Tenant's holding over.

### **25. ATTORNEYS' FEES**

Tenant shall pay to Landlord all amounts for costs (including reasonable attorneys' fees) incurred by Landlord in connection with any breach or default by Tenant under this Lease or incurred in order to enforce or interpret the terms or provisions of this Lease. Landlord shall pay to Tenant all amounts (including reasonable attorneys' fees) incurred by Tenant in connection with any uncured breach or default by Landlord under this Lease. Such amounts shall be payable within fifteen (15) days after receipt by the applicable party of a statement therefor. In addition, if any action shall be instituted by either of the parties hereto for the enforcement or interpretation of any of their respective rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in such action and any appeal therefrom, including reasonable attorneys' fees to be fixed by the court. Further, should Landlord be made a party to any litigation between Tenant and any third party, then Tenant shall pay all costs and attorneys' fees incurred by or imposed upon Landlord in connection with such litigation.

## 26. RESERVED RIGHTS OF LANDLORD

Landlord reserves the following rights, exercisable without liability to Tenant for damage or injury to property, persons or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim:

(a) To name the Building and the Project and to change the name or street address of the Building or the Project;

(b) To install and maintain all signs on the exterior and interior of the Building and the Project;

(c) To designate all sources furnishing sign painting and lettering;

(d) To have pass keys to the Leased Premises and all doors therein, excluding Tenant's vaults and safes;

(e) On reasonable prior notice to Tenant, to exhibit the Leased Premises to any prospective tenant (during the last six (6) months of the Lease Term), purchaser, mortgagee, or assignee of any mortgage on the Building or the Project and to others having interest therein at any time during the Lease Term;

(f) To take any and all measures, including entering the Leased Premises for the purposes of making inspections, repairs, alterations, additions and improvements to the Leased Premises or to the Building (including, for the purposes of checking, calibrating, adjusting and balancing controls and other parts of the Building systems) as may be necessary or desirable for the operation, improvement, safety, protection or preservation of the Leased Premises or the Building, or in order to comply with all laws, orders and requirements of governmental or other authorities, or as may otherwise be permitted or required by this Lease; provided, however, that Landlord shall provide forty-eight (48) hours of notice (except in an emergency) and shall endeavor (except in an emergency) to minimize interference with Tenant's business in the Leased Premises;

(g) To install, use and maintain in and through the Leased Premises, pipes, conduits, wires, ducts and other facilities serving the Building; provided, however, that Landlord shall endeavor (except in an emergency) to minimize interference with Tenant's business in the Leased Premises;

(h) To relocate various facilities within the Building and on the Project if Landlord shall determine such relocation to be in the best interest of the development of the Building and/or the Project, provided, that such relocation shall not be located in or materially restrict access to the Leased Premises;

(i) To change the nature, extent, arrangement, use and location of the Building Common Areas; provided access to the Leased Premises and Tenant's parking rights under the Lease are not adversely affected;

(j) To make alterations or additions to and to build additional stories on the Building and to build additional buildings or improvements on the Project that shall not materially restrict access to the Leased Premises; and

(k) To install vending machines of all kinds in the Leased Premises and the Building, and to receive all of the revenue derived therefrom, provided, however, that no vending machines shall be installed by Landlord in the Leased Premises unless Tenant so requests.

Landlord further reserves the exclusive right to the roof of the Building. No easement for light, air, or view is included in the leasing of the Leased Premises to Tenant. Accordingly, any diminution or shutting off of light, air or view by any structure which may be erected on the Project or other properties in the vicinity of the Building shall in no way affect this Lease or impose any liability upon Landlord.

## 27. EMINENT DOMAIN

**27.1 Taking.** If the whole of the Building is lawfully and permanently taken by condemnation or any other manner for any public or quasi-public purpose, or by deed in lieu thereof, this Lease shall terminate as of the date of vesting of title in such condemning authority and the Annual Basic Rent and Additional Rent shall be pro rated to such date. If any part of the Building or Project is so taken, or if the whole of the Building is taken, but not permanently, then this Lease shall be unaffected thereby, except that (a) Landlord may terminate this Lease by notice to Tenant within ninety (90) days after the date of vesting of title in the condemning authority, and (b) if twenty percent (20%) or more of the Leased Premises shall be permanently taken and the remaining portion of the Leased Premises shall not be reasonably sufficient for Tenant to continue operation of its business, Tenant may terminate this Lease by notice to Landlord within ninety (90) days after the date of vesting of title in such condemning authority. This Lease shall terminate on the thirtieth (30th) day after receipt by Landlord of such notice, by which date Tenant shall vacate and surrender the Leased Premises to Landlord. The Annual Basic Rent and Additional Rent shall be pro rated to the earlier of the termination of this Lease or such date as Tenant is required to vacate the Leased Premises by reason of the taking. If this Lease is not terminated as a result of a partial taking of the Leased Premises, the Annual Basic Rent and Additional Rent shall be equitably adjusted according to the extent to which Tenant's ability to use and access the Leased Premises is impacted.

**27.2 Award.** In the event of a taking of all or any part of the Building or the Project, all of the proceeds or the award, judgment, settlement or damages payable by the condemning authority shall be and remain the sole and exclusive property of Landlord, and Tenant hereby assigns all of its right, title and interest in and to any such award, judgment, settlement or damages to Landlord. Tenant shall, however, have the right, to the extent that the same shall not reduce or prejudice amounts available to Landlord, to claim from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for relocation benefits, moving expenses, and damage to Tenant's personal property and trade fixtures.

## 28. NOTICES

Any notice or communication given under the terms of this Lease shall be in writing and shall be delivered in person, sent by any public or private express delivery service or deposited with the United States Postal Service or a successor agency, certified or registered mail, return receipt requested, postage pre-paid, addressed as set forth in the Basic Provisions, or at such other address as a party may from time to time designate by notice hereunder. Notice shall be effective upon delivery. The inability to deliver a notice because of a changed address of which no notice was given or a rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by Landlord may be given by the legal counsel and/or the authorized agent of Landlord.

## 29. RULES AND REGULATIONS

Tenant shall abide by all rules and regulations (the **“Rules and Regulations”**) of the Building and the Project imposed by Landlord, as attached to this Lease as Exhibit “D” or as may hereafter be issued by Landlord. Such Rules and Regulations are imposed to enhance the cleanliness, appearance, maintenance, order and use of the Leased Premises, the Building and the Property, and the proper enjoyment of the Building and the Project by all tenants and their clients, customers and employees. The Rules and Regulations may be changed from time to time upon fifteen (15) days’ notice to Tenant. Breach of the Rules and Regulations by Tenant shall constitute an Event of Default if such breach is not fully cured within fifteen (15) days after written notice to Tenant by Landlord. Landlord shall not be responsible to Tenant for nonperformance by any other tenant, occupant or invitee of the Building or the Project of any Rules or Regulations. Landlord shall use commercially reasonable efforts to uniformly and without discrimination enforce such rules and regulations against all tenants of the Building and all other users of the Building Common Areas.

## 30. ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Annual Basic Rent and Additional Rent (jointly called **“Rent”** in this Article 30), shall be deemed to be other than on account of the earliest stipulated Rent due and not yet paid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or to pursue any other remedy in this Lease. No receipt of money by Landlord from Tenant after the termination of this Lease, after the service of any notice relating to the termination of this Lease, after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Lease Term or affect any such notice, demand, suit or judgment.

## 31. HAZARDOUS MATERIALS

**31.1 Hazardous Materials Laws.** **“Hazardous Materials Laws”** means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so- called **“common-law”**) relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Leased Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act (**“RCRA”**), 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

**31.2 Hazardous Materials.** **“Hazardous Materials”** means any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any Hazardous Materials Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Law; or (iv) gives rise to any liability, responsibility or duty on the part of Tenant or Landlord with respect to any third person under any Hazardous Materials Law.

**31.3 Use.** Tenant shall not allow any Hazardous Material to be used, generated, released, stored or disposed of on, under or about, or transported from, the Leased Premises, the Building or the Project, unless: (i) such use is specifically disclosed to and approved by Landlord in writing prior to such use; and (ii) such use is conducted in compliance with the provisions of this Article 31. Landlord may approve such use subject to reasonable conditions to protect the Leased Premises, the Building or the Project, and Landlord's interests. Landlord may withhold approval if Landlord determines that such proposed use involves a material risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or that Tenant has not provided reasonable assurances of its ability to remedy such a violation and fulfill its obligations under this Article 31. Notwithstanding the provisions of this Article 31 to the contrary, Tenant shall be permitted to use and store Hazardous Materials in small quantities normally associated with business office activities, provided that such small quantities of Hazardous Materials are used and stored in compliance with all applicable Hazardous Materials Laws.

**31.4 Compliance With Laws.** Tenant shall strictly comply with, and shall maintain the Leased Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Tenant's operations on the Leased Premises under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. Tenant shall perform any monitoring, investigation, clean-up, removal and other remedial work (collectively, "**Remedial Work**") required as a result of any release or discharge of Hazardous Materials affecting the Leased Premises, the Building or the Project as a result of the actions of Tenant or any assignee or sublessee of Tenant or their respective agents, contractors, employees, licensees, or invitees, or any violation of Hazardous Materials Laws by Tenant or any assignee or sublessee of Tenant or their respective agents, contractors, employees, licensees, or invitees. Landlord shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Landlord's interests.

**31.5 Compliance With Insurance Requirements.** Tenant shall comply with the requirements of Landlord's and Tenant's respective insurers regarding Hazardous Materials and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Materials.

**31.6 Notice; Reporting.** Tenant shall notify Landlord, in writing, within five (5) days after any of the following: (a) a release or discharge of any Hazardous Material, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (b) Tenant's receipt of any written order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws; or (c) Tenant's receipt of any written warning, notice of inspection, notice of violation or alleged violation, or Tenant's receipt of notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Hazardous Materials Laws.

**31.7 Representation by Landlord.** Landlord represents and warrants to Tenant to its actual knowledge without special inquiry that as of the date of this Lease, there are no Hazardous Materials present in the Leased Premises or the Building in violation of Hazardous Materials Laws.

## 32. MISCELLANEOUS

**32.1 Entire Agreement, Amendments.** This Lease and any Exhibits and Riders attached hereto and forming a part hereof, set forth all of the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises and there are no covenants, promises, agreements, representations, warranties, conditions or understandings either oral or written between them other than as contained in this Lease. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change or addition to this Lease shall be binding unless it is in writing and signed by both Landlord and Tenant.

**32.2 Time of the Essence.** Time is of the essence of each and every term, covenant and condition of this Lease.

**32.3 Binding Effect.** The covenants and conditions of this Lease shall, subject to the restrictions on assignment and subletting, apply to and bind the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

**32.4 Recordation.** Neither this Lease nor any memorandum hereof shall be recorded by Tenant. At the sole option of Landlord, Tenant and Landlord shall execute, and Landlord may record, a short form memorandum of this Lease in form and substance satisfactory to Landlord.

**32.5 Governing Law.** This Lease and all the terms and conditions thereof shall be governed by and construed in accordance with the laws of the State of Arizona.

**32.6 Defined Terms and Paragraph Headings.** The words “**Landlord**” and “**Tenant**” as used in this Lease shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. If there is more than one Tenant, the obligations in this Lease imposed upon Tenant shall be joint and several. The paragraph headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

**32.7 Representations and Warranties of Tenant.** Tenant represents and warrants to Landlord as follows:

(a) Tenant has been duly organized, is validly existing, and is in good standing under the laws of its state of organization and is qualified to transact business in Arizona. All necessary action on the part of Tenant has been taken to authorize the execution, delivery and performance of this Lease and of the other documents, instruments and agreements, if any, provided for herein. The persons who have executed this Lease on behalf of Tenant are duly authorized to do so;

(b) This Lease constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject, however, to bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally, general principles of equity, whether enforceability is considered in a proceeding in equity or at law, and to the qualification that certain waivers, procedures, remedies and other provisions of this Lease may be unenforceable under or limited by applicable law, however, none of the foregoing shall prevent the practical realization to Landlord of the benefits intended by this Lease;

(c) To the best of its knowledge, there are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened in writing against or involving Tenant before any court, arbitrator or administrative or governmental body which might reasonably result in any material adverse change in the contemplated business, condition or operations of Tenant;

(d) To the best of its knowledge, Tenant is not, and the execution, delivery and performance of this Lease and the documents, instruments and agreements, if any, provided for herein will not result in any breach of or default under any other document, instrument or agreement to which Tenant is a party or by which Tenant is subject or bound;

(e) To the best of its knowledge, Tenant has obtained all required licenses and permits, both governmental and private, to use and operate the Leased Premises in the manner intended by this Lease.



32.8 **No Waiver.** The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

32.9 **Severability.** If any clause or provision of this Lease is or becomes illegal or unenforceable because of any present or future law or regulation of any governmental body or entity effective during the Lease Term, the intention of the parties is that the remaining provisions of this Lease shall not be affected thereby.

32.10 **Exhibits.** If any provision contained in an Exhibit, Rider or Addenda to this Lease is inconsistent with any other provision of this Lease, the provision contained in this Lease shall supersede the provisions contained in such Exhibit, Rider or Addenda, unless otherwise provided.

32.11 **Fair Meaning.** The language of this Lease shall be construed to its normal and usual meaning and not strictly for or against either Landlord or Tenant. Landlord and Tenant acknowledge and agree that each party has reviewed and revised this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Lease, or any Exhibits, Riders or amendments hereto. Submission of this Lease by Landlord to Tenant for review, examination, and/or negotiation shall not be deemed to be a reservation of the Leased Premises. Landlord shall not be bound by this Lease until this Lease has been executed by both Landlord and by Tenant. Until this Lease has been executed by both Landlord and Tenant, Landlord reserves the right to exhibit and lease the Leased Premises to other prospective tenants.

32.12 **No Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not work as a merger and shall, at Landlord's option, either terminate any or all existing subleases or subtenancies, or operate as an assignment to Landlord of any or all of such subleases or subtenancies.

32.13 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inclement weather (including rain) inability to obtain labor or materials or reasonable substitutes therefor, failure or disruption of utilities or critical electronic systems, governmental restrictions, regulations or controls (including delays in issuing required permits and approvals), judicial orders, acts of the public enemy (including terrorist acts), hostile government actions, civil commotion, fire or other casualty and other causes beyond the reasonable control of Tenant or Landlord shall excuse the performance of the applicable party hereunder for the period of any such prevention, delay, or stoppage, except the obligations imposed with regard to Annual Basic Rent, Additional Rent and other charges to be paid by Tenant pursuant to this Lease.

32.14 **Government Energy or Utility Controls.** In the event of the imposition of federal, state or local governmental controls, rules, regulations or restrictions on the use or consumption of energy or other utilities during the Lease Term, both Landlord and Tenant shall be bound thereby. In the event of a reasonable difference in interpretation of any governmental control, rule, regulation or restriction between Landlord and Tenant, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance, including the right of entry into the Leased Premises to effect compliance.

32.15 **Shoring.** If any excavation or construction is made adjacent to, upon or within the Building, or any part thereof, Tenant shall afford to any and all persons causing or authorized to cause such excavation or construction license to enter onto the Leased Premises for the purpose of doing such work as such persons shall deem necessary to preserve the Building or any portion thereof from injury or damage and to support the same by proper foundations, braces and supports without any claim for damages, indemnity or abatement of Annual Basic Rent or Additional Rent or for a constructive or actual eviction of Tenant.

**32.16 Transfer of Landlord's Interest.** The term "Landlord" as used in this Lease, insofar as the covenants or agreements on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners of Landlord's interest in this Lease at the time in question. Upon any transfer or transfers of such interest, the Landlord herein named (and in the case of any subsequent transfer, the then transferor) shall thereafter be relieved of all liability for the performance of any covenants or agreements on the part of the Landlord contained in this Lease.

**32.17 Limitation on Landlord's Liability.** If Landlord becomes obligated to pay Tenant any judgment arising out of any failure by the Landlord to perform or observe any of the terms, covenants, conditions or provisions to be performed or observed by Landlord under this Lease, Tenant shall be limited in the satisfaction of such judgment solely to Landlord's interest in the Building and the Property or any proceeds arising from the sale thereof and no other property or assets of Landlord or the individual partners, directors, officers or shareholders of Landlord or its constituent partners shall be subject to levy, execution or other enforcement procedure whatsoever for the satisfaction of any such money judgment.

**32.18 Brokerage Fees.** Tenant warrants and represents that it has not dealt with any realtor, broker or agent in connection with this Lease except the Broker identified in Article 1.18 above. Tenant shall indemnify, defend and hold Landlord harmless from and against, and shall be responsible for, any cost, expense or liability (including the cost of suit and reasonable attorneys' fees) for any compensation, commission or charges claimed by any other realtor, broker or agent in connection with this Lease or by reason of any act of Tenant.

**32.19 Continuing Obligations.** All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease, including, without limitation, all payment obligations with respect to Annual Basic Rent, Additional Rent and all obligations concerning the condition of the Leased Premises.

**32.20 Quiet Possession.** So long as there is not in existence an Event of Default, Tenant may quietly have, hold and enjoy the Leased Premises during the Lease Term, subject, however, to the matters referred to in Article 19. The provisions of this Article 32.20 shall not extend to any disturbance, act or condition brought about by any tenant in the Building or the Project.

**32.21 Tenant Financial Information.** Landlord shall have the right to reasonably approve Tenant's financial statements that shall be provided to Landlord prior to the execution of this Lease. Tenant shall provide to Landlord, as a condition of Landlord's execution and acceptance of this Lease, financial statements, which shall include a balance sheet, income statement, statement of changes in equity, statement of consolidated cash flows, and such other financial information as Landlord may reasonably request for at least the most recent two (2) completed fiscal years.

[SIGNATURES ON FOLLOWING PAGE]

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

**LANDLORD:**

**Pinnacle Campus Office-Retail, LLC,**  
a South Carolina limited liability company

By: Chew Fisher Capital Investments, LLC, a South  
Carolina limited liability company, its Manager

By: /s/ Richard A. Fisher  
Richard A. Fisher, Sr., Manager

Date: Nov 18th 2019

**TENANT:**

**SenesTech, Inc.,** a Delaware corporation

By: /s/ T. C. Chesterman  
T. C. Chesterman, EVP and CFO

Date: November 18, 2019

If Tenant is a CORPORATION, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice- president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease.

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**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

Lot 5 according to the plat for Centerpointe at Deer Valley, recorded in Book 930, Page 45 and as Doc. No. 20070703115, Official Records of Maricopa County, Arizona.

Exhibit A

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## EXHIBIT "B"

### OPTION TO EXTEND

Tenant is granted the option ("Extension Option") to extend the initial Lease Term for an additional term of five (5) years ("Extension Term") provided all of the Extension Conditions are met. If Tenant exercises the Extension Option, then during the Extension Term all of the terms and conditions set forth in this Lease as applicable to the Leased Premises during the initial Lease Term shall apply during the Extension Term, except that (i) Tenant shall have no further right to renew this Lease, and (ii) Annual Basic Rent shall be the Fair Market Fixed Rent (as hereinafter defined). Landlord shall provide a determination of the Fair Market Fixed Rent within thirty (30) days after receipt of Tenant's Extension Notice. Within thirty (30) days after Tenant's receipt of Landlord's notice of the Fair Market Fixed Rent, Tenant shall notify Landlord in writing (x) that Landlord's determination of the Fair Market Fixed Rent is acceptable, or (y) that Landlord's determination is not acceptable. If Tenant fails to respond to Landlord's notice within such thirty (30) day period, or if Tenant notifies Landlord in writing that Tenant accepts Landlord's determination of the Fair Market Fixed Rent, then the Fair Market Fixed Rent for the purposes of determining the Annual Basic Rent payable during the Extension Term shall be as determined by Landlord. However, if Tenant advises Landlord in writing during such thirty (30) day period that such Fair Market Fixed Rent is not acceptable, then within twenty (20) days of Tenant's written notice, each of Tenant and Landlord shall select one real estate broker, which brokers shall jointly select a third broker (the "Third Broker"), each with at least ten (10) years' experience in commercial real estate leasing in Phoenix, Arizona, and which is neutral with respect to the parties. Landlord's broker, Tenant's broker and the Third Broker shall each, within fifteen (15) days of the appointment of the Third Broker, submit their respective determinations as to the Fair Market Fixed Rent. The average of the two closest such determinations shall be deemed to be the Fair Market Fixed Rent and shall be binding upon the parties. Landlord and Tenant shall each bear their own costs associated with their respective determinations of the Fair Market Fixed Rent and shall equally share the cost of the Third Broker. Promptly following the determination of the Fair Market Fixed Rent and prior to the commencement of the Extension Term, Landlord shall, at its sole cost and expense, install new carpet in the Leased Premises and re-paint the interior of the Leased Premises, which new carpet and paint shall be reasonably satisfactory to Tenant.

**"Extension Conditions"** shall mean, as a condition to Tenant exercising the Extension Option: (a) Tenant gives Landlord written notice no less than nine (9) months prior to the commencement of the Extension Term and no more than twelve (12) months prior to the commencement of the Extension Term (**"Tenant's Extension Notice"**) that Tenant is exercising the Extension Option and (b) at the date the Extension Option is exercised, and at the commencement of the Extension Term, no Event of Default has occurred and is continuing.

**EXHIBIT "C-1"**

**UNCOVERED, UNRESERVED PARKING LICENSE**

THIS UNCOVERED, UNRESERVED PARKING LICENSE (this "**License**") is made as of the 18th 6th day of November, 2019, by **Pinnacle Campus Office-Retail, LLC**, a South Carolina limited liability company ("**Licensor**"), and **SenesTech, Inc.**, a Delaware corporation ("**Licensee**").

1. **License.** Licensor hereby grants Licensee a license to use five and one-half (1.5) unreserved uncovered parking spaces (the "**Spaces**") for every 1,000 rentable square feet of the Leased Premises in the parking accommodations (the "**Parking Accommodations**") of the project (the "**Project**") located at the NWC corner of Pinnacle Peak Road and 19<sup>th</sup> Avenue, Phoenix, Arizona, as cross-hatched on the site plan attached to this License as Exhibit "A", for the same as the term of the Lease referred to in Paragraph 2 below. Each Space shall be used solely for the parking of one vehicle (which shall mean an automobile, motorcycle or light "sport-utility" truck, but shall expressly exclude heavy "delivery" or other trucks) therein by Licensee in accordance with the terms of this License. In no event is the overnight parking of vehicles permitted.

2. **The Lease.** Anything herein to the contrary notwithstanding, this License shall terminate concurrently with the date of termination of the Lease (the "**Lease**") between Licensor, as Landlord, and Licensee, as Tenant, for space in the Project of even date herewith, whether such termination occurs at the end of the scheduled Lease Term or prior thereto. A breach of this License by Licensee shall be deemed a breach of the Lease by Licensee and after notice given in accordance with the terms of the Lease and the failure of Tenant to cure within such time periods as may be provided in the Lease, Licensor shall have all remedies under the Lease at law or in equity, including the right to terminate this License. In the event the term of the Lease is extended, the term of this License shall also be extended to correspond with the Lease Term.

3. **Designation of Automobile.** Only vehicles designated by Licensee to Licensor may be parked in each Space, provided, however, that Licensee may change its automobile designations at any time upon written notice to Licensor or for temporary use upon notification given to the garage attendant, if any. No more than one (1) automobile per Space licensed shall be parked under Licensee's rights at any one time.

4. **No Additional Services.** This License is for self-service storage parking only and does not include the rights to any additional services, which services may be made available by Licensor from time to time at an additional charge.

5. **Indemnity.** Licensor and its agents and employees shall not be liable for loss or damage to any vehicle parked by Licensee or pursuant to this License and/or to the contents thereof caused by fire, theft, vandalism, collision, explosion, freezing, earthquake, storms, natural disasters, strikes, riots or by any other causes, unless solely caused by the gross negligence or willful misconduct of Licensor. Licensee waives, releases, discharges, indemnifies, defends and holds harmless Licensor, its agents and employees for, from and against all claims, demands, liabilities, causes of action, judgments, costs or expenses (including reasonable attorneys' fees and costs) with respect to any such vehicle or its contents from any cause whatsoever, unless caused solely by the gross negligence or willful misconduct of Licensor.

6. **Relationship of Parties.** The relationship between Licensor and Licensee constitutes a license to use the Parking Accommodations subject to the terms and conditions of this License only and neither such relationship nor the storage or parking of any automobile hereunder shall constitute a bailment nor create the relationship of bailor and bailee.

7. **Notices.** All notices hereunder shall be given in accordance with the terms of the Lease.

8. **Subordination and Attornment.** This License shall be subject and subordinate to any mortgage, deed of trust or ground lease now or hereafter placed on the Project, or any portion thereof, and to replacements, renewals and extensions thereof, and Licensee, upon request by Licensor, shall execute instruments (in form satisfactory to Licensor) acknowledging such subordination.

9. **No Waste.** Licensee covenants not to cause any waste or damage or disfigurement or injury to the Project.

10. **Closure of Accommodations.** Licensor shall have the right to temporarily close any portion of the Parking Accommodations and deny access thereto in connection with any repairs or in an emergency, as it may require, without liability, cost or abatement of fee.

11. **Rules.** Licensee shall perform, observe and comply with such rules of the Project as may be reasonably adopted by Licensor in respect of the use and operation of said Parking Accommodations.

12. **Regulations.** Licensee shall, when using the Parking Accommodations, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between designated lines. Licensor reserves the right to tow away, or otherwise impound, at the expense of the owner or operator, any vehicle which is improperly parked or parked in a no parking zone. No storage or overnight parking shall be allowed in the Parking Accommodations without Landlord's prior written consent.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

**LICENSOR:**

**Pinnacle Campus Office-Retail, LLC,**  
a South Carolina limited liability company

By: Chew Fisher Capital Investments, LLC, a South  
Carolina limited liability company, its Manager

By: /s/ Richard A. Fisher  
Richard A. Fisher, Sr., Manager

Date: Nov 18th 2019

**LICENSEE:**

**SenesTech, Inc.,** a Delaware corporation

By: /s/ T. C. Chesterman  
T. C. Chesterman, EVP and CFO

Date: November 18, 2019



**Exhibit "A"**  
**to**  
**Uncovered Unreserved Parking License**

Exhibit C-1-4

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**EXHIBIT "C-2"**

**COVERED, RESERVED PARKING LICENSE**

THIS COVERED, RESERVED PARKING LICENSE (this "**License**") is made as of the 6th day of November, 2019, by **Pinnacle Campus Office-Retail, LLC**, a South Carolina limited liability company ("**Licensor**"), and **SenesTech, Inc.**, a Delaware corporation ("**Licensee**").

1. **License.** Licensor hereby grants Licensee a license to use five (5) covered, reserved parking spaces (the "**Spaces**") in the parking accommodations (the "**Parking Accommodations**") of the project (the "**Project**") located at the NWC corner of Pinnacle Peak Road and 19<sup>th</sup> Avenue, Phoenix, Arizona, as cross-hatched on the site plan attached to this License as Exhibit "A", for the same as the term of the Lease referred to in Paragraph 2 below. In addition, Tenant may elect, upon written notice to Landlord, to use additional Spaces in the Parking Accommodations, subject to payment to Landlord of the parking charge set forth in the Lease for the additional Spaces. Each Space shall be used solely for the parking of one vehicle (which shall mean an automobile, motorcycle or light "sport-utility" truck, but shall expressly exclude heavy "delivery" or other trucks) therein by Licensee in accordance with the terms of this License. In no event is the overnight parking of vehicles permitted.

2. **The Lease.** Anything herein to the contrary notwithstanding, this License shall terminate concurrently with the date of termination of the Lease (the "**Lease**") between Licensor, as Landlord, and Licensee, as Tenant, for space in the Project of even date herewith, whether such termination occurs at the end of the scheduled Lease Term or prior thereto. A breach of this License by Licensee shall be deemed a breach of the Lease by Licensee and after notice given in accordance with the terms of the Lease and the failure of Tenant to cure within such time periods as may be provided in the Lease, Licensor shall have all remedies under the Lease at law or in equity, including the right to terminate this License. In the event the term of the Lease is extended, the term of this License shall also be extended to correspond with the Lease Term.

3. **Designation of Automobile.** Only vehicles designated by Licensee to Licensor may be parked in each Space, provided, however, that Licensee may change its automobile designations at any time upon written notice to Licensor or for temporary use upon notification given to the garage attendant, if any. No more than one (1) automobile per Space licensed shall be parked under Licensee's rights at any one time.

4. **No Additional Services.** This License is for self-service storage parking only and does not include the rights to any additional services, which services may be made available by Licensor from time to time at an additional charge.

5. **Indemnity.** Licensor and its agents and employees shall not be liable for loss or damage to any vehicle parked by Licensee or pursuant to this License and/or to the contents thereof caused by fire, theft, vandalism, collision, explosion, freezing, earthquake, storms, natural disasters, strikes, riots or by any other causes, unless solely caused by the gross negligence or willful misconduct of Licensor. Licensee waives, releases, discharges, indemnifies, defends and holds harmless Licensor, its agents and employees for, from and against all claims, demands, liabilities, causes of action, judgments, costs or expenses (including reasonable attorneys' fees and costs) with respect to any such vehicle or its contents from any cause whatsoever, unless caused solely by the gross negligence or willful misconduct of Licensor.

6. **Relationship of Parties.** The relationship between Licensor and Licensee constitutes a license to use the Parking Accommodations subject to the terms and conditions of this License only and neither such relationship nor the storage or parking of any automobile hereunder shall constitute a bailment nor create the relationship of bailor and bailee.

7. **Notices.** All notices hereunder shall be given in accordance with the terms of the Lease.

8. **Subordination and Attornment.** This License shall be subject and subordinate to any mortgage, deed of trust or ground lease now or hereafter placed on the Project, or any portion thereof, and to replacements, renewals and extensions thereof, and Licensee, upon request by Licensor, shall execute instruments (in form satisfactory to Licensor) acknowledging such subordination.

9. **No Waste.** Licensee covenants not to cause any waste or damage or disfigurement or injury to the Project.

10. **Closure of Accommodations.** Licensor shall have the right to temporarily close any portion of the Parking Accommodations and deny access thereto in connection with any repairs or in an emergency, as it may require, without liability, cost or abatement of fee.

11. **Rules.** Licensee shall perform, observe and comply with such rules of the Project as may be reasonably adopted by Licensor in respect of the use and operation of said Parking Accommodations.

12. **Regulations.** Licensee shall, when using the Parking Accommodations, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between designated lines. Licensor reserves the right to tow away, or otherwise impound, at the expense of the owner or operator, any vehicle which is improperly parked or parked in a no parking zone. No storage or overnight parking shall be allowed in the Parking Accommodations without Landlord's prior written consent.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

**LICENSOR:**

**Pinnacle Campus Office-Retail, LLC,**  
a South Carolina limited liability company

By: Chew Fisher Capital Investments, LLC, a South  
Carolina limited liability company, its Manager

T. C. Chesterman, EVP and CFO

By: /s/ Richard A. Fisher  
Richard A. Fisher, Sr., Manager

Date: Nov 18th 2019

**LICENSEE:**

**SenesTech, Inc.,** a Delaware corporation

By: /s/ T. C. Chesterman  
T. C. Chesterman, EVP and CFO

Date: November 18, 2019

**Exhibit "A"**  
**to**  
**Covered Reserved Parking License**

Exhibit C-2-4

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## **EXHIBIT "D"**

### **RULES AND REGULATIONS**

1. Unless otherwise specifically defined herein, all capitalized terms in these Rules and Regulations shall have the meaning set forth in the Lease to which these Rules and Regulations are attached.
2. The sidewalks, driveways, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building and the Project shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises demised to any tenant or occupant.
3. No awnings or other projection shall be attached to the outside walls or windows of the Building. Other than building standard window coverings, no curtains, blinds, shades, or screens shall be attached to or hung in, or used in connection with, any window or door of the premises demised to any tenant or occupant, without the prior written consent of Landlord. All electrical fixtures hung in any premises demised to any tenant or occupant must be of a type, quality, design, color, size and general appearance approved by Landlord.
4. No tenant shall place objects against glass partitions, doors or windows which would be in sight from the Building corridors or from the exterior of the Building and such tenant will promptly remove any such objects when requested to do so by Landlord.
5. The windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed, nor shall any bottles, parcels, or other articles be placed on any window sills.
6. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building or the other buildings in the Project, nor placed in the halls, corridors, walkways, landscaped areas, vestibules or other public parts of the Building or the Project.
7. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. No tenant shall bring or keep, or permit to be brought or kept, any flammable, combustible, explosive or hazardous fluid, material, chemical or substance in or about the premises demised to such tenant or the Project.
8. No tenant or occupant shall mark, paint, drill into, or in any way deface any part of the Project, the Building or the premises demised to such tenant or occupant. No boring, cutting or strings of wires shall be permitted, except with the prior consent of Landlord, and as Landlord may direct. No tenant or occupant shall install any resilient tile or similar floor covering in the premises demised to such tenant or occupant except in a manner approved by Landlord.
9. Any carpeting cemented down by a tenant shall be installed with a releasable adhesive. In the event of a violation of the foregoing by a tenant, Landlord may charge the expense incurred in such removal to such tenant.
10. No bicycles or vehicles shall be brought into or kept in or about the premises demised to any tenant. No cooking shall be done or permitted in the Building by any tenant without the written approval of Landlord. No tenant shall cause or permit any unusual or objectionable odors to emanate from the premises demised to such tenant.

11. No space in the Building or the Project shall be used for manufacturing, for the storage of merchandise held for sale, or for the sale of merchandise, goods or property of any kind at auction.

12. No tenant shall make, or permit to be made, any unseemly or disturbing noises or vibrations or disturb or interfere with other tenants or occupants of the Building, the Project or neighboring buildings or premises whether by the use of any musical instrument, radio, television set broadcasting equipment or other audio device, unmusical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors.

13. No additional locks or bolts of any kind shall be placed upon any of the doors, nor shall any changes be made in locks or the mechanism thereof. Each tenant must, upon the termination of its tenancy, return to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant.

14. All removals from the Building, or the carrying in or out of the Building or from the premises demised to any tenant, of any safes, freight, furniture or bulky matter of any description must take place at such time and in such manner as Landlord or its agents may determine, from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of the Rules and Regulations or the provisions of such tenant's lease.

15. No tenant or occupant shall engage or pay any employees in the Building or the Project, except those actually working for such tenant or occupant in the Building or the Project, nor advertise for day laborers giving an address at the Building or the Project.

16. No tenant or occupant shall purchase lighting maintenance, cleaning towels or other like service, from any company or person not approved in writing by Landlord.

17. Landlord shall have the right to prohibit any advertising by any tenant or occupant which, in Landlord's opinion, tends to impair the reputation of the Building or the Project or its desirability as a building for offices, and upon notice from Landlord, such tenant or occupant shall refrain from or discontinue such advertising.

18. Each tenant, before closing and leaving the premises demised to such tenant at any time, shall see that all entrance doors are locked and all electrical equipment and lighting fixtures are turned off. Corridor doors, when not in use, shall be kept closed.

19. Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Landlord's agents, contractors and employees while performing janitorial or other cleaning services and making repairs or alterations in said premises.

20. No premises shall be used, or permitted to be used for lodging or sleeping, or for any immoral or illegal purposes.

21. The requirements of tenants will be attended to only upon application at the management office of Landlord. Building employees shall not be required to perform, and shall not be requested by any tenant or occupant to perform, and work outside of their regular duties, unless under specific instructions from the office of Landlord.

22. Canvassing, soliciting and peddling in the Building or the Project are prohibited and each tenant and occupant shall cooperate in seeking their prevention.

23. There shall not be used in the Building, either by any tenant or occupant or by their agents or contractors, in the delivery or receipt of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as Landlord may require.

24. If the premises demised to any tenant become infested with vermin, such tenant, at its sole cost and expense, shall cause its premises to be exterminated, from time to time, to the satisfaction of Landlord, and shall employ such exterminators therefor as shall be approved in writing by Landlord.

25. No premises shall be used, or permitted to be used, at any time, as a store for the sale or display of goods, wares or merchandise of any kind, or as a restaurant, shop, booth, bootblack or other stand, or for the conduct of any business or occupation which predominantly involves direct patronage of the general public in the premises demised to such tenant, or for manufacturing or for other similar purposes.

26. No tenant shall clean any window of the Building from the outside.

27. No tenant shall move, or permit to be moved, into or out of the Building or the premises demised to such tenant, any heavy or bulky matter, without the specific approval of Landlord. If any such matter requires special handling, only a qualified person shall be employed to perform such special handling. No tenant shall place or permit to be placed, on any part of the floor or floors of the premises demised to such tenant, a load exceeding the floor load per square foot which such floor was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of safes and other heavy objects, which must be placed so as to distribute the weight.

28. With respect to work being performed by a tenant in its premises with the approval of Landlord, the tenant shall refer all contractors, contractors' representatives and installation technicians to Landlord for its supervision, approval and control prior to the performance of any work or services. This provision shall apply to all work performed in the Building and the Project including installation of telephones, telegraph equipment, electrical devices and attachments, and installations of every nature affecting floors, walls, woodwork, trim, ceilings, equipment and any other physical portion of the Building and the Project.

29. Landlord shall not be responsible for lost or stolen personal property, equipment, money, or jewelry from the premises of tenants or public rooms whether or not such loss occurs when the Building or the premises are locked against entry.

30. Landlord may permit entrance to the premises of tenants by use of pass keys controlled by Landlord employees, contractors, or service personnel directly supervised by Landlord and employees of the United States Postal Service.

31. Each tenant and all of tenant's representatives, shall observe and comply with the directional and parking signs on the property surrounding the Building, and Landlord shall not be responsible for any damage to any vehicle towed because of non-compliance with parking regulations.

32. No tenant shall install any radio, telephone, television, microwave or satellite antenna, loudspeaker, music system or other device on the roof or exterior walls of the Building or on common walls with adjacent tenants or in the Building Common Areas.



33. Each tenant shall store all trash and garbage within its premises. No material shall be placed in the trash boxes or receptacles in the Building or the Project unless such material may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

34. No tenant shall employ any persons other than the janitor of Landlord for the purpose of cleaning its premises without the prior written consent of Landlord.

35. Each tenant shall give prompt notice to landlord of any accidents to or defects in plumbing, electrical or heating apparatus so that same may be attended to properly.

36. No tenant shall bring onto the Project or into the Building any pollutants, contaminants, inflammable, gasolines, kerosene or hazardous substances (as now or later defined under State or Federal law).

37. Landlord reserves the right to reasonably limit access to and from the Building between the hours of 7:00 P.M. and 7:00 A.M. on business days, 12:00 P.M. to 8:00 A.M. on Saturdays, and at all hours on Sundays and holidays; provided, such limited access shall not interfere with Tenant's right to access the Leased Premises twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.

38. All tenants and tenants' servants, employees, agents, visitors, invitees and licensees shall observe faithfully and comply strictly with the foregoing Rules and Regulations and such other and further appropriate Rules and Regulations as Landlord or Landlord's agent from time to time adopt.

39. Landlord shall furnish each tenant, at Landlord's expense, with two (2) keys to unlock the entry level doors and two (2) keys to unlock each corridor door entry to each tenant's premises and, at such tenant's expense, with such additional keys as such tenant may request. No tenant shall install or permit to be installed any additional lock on any door into or inside of the premises demised to that tenant or make or permit to be made any duplicate of keys to the entry level doors or the doors to such premises. Landlord shall be entitled at all times to possession of a duplicate of all keys to all doors into or inside of the premises demised to tenants of the Building. All keys shall remain the property of Landlord. Upon the expiration of the Lease Term, each tenant shall surrender all such keys to Landlord and shall deliver to Landlord the combination to all locks on all safes, cabinets and vaults which will remain in the premises demised to that tenant. Landlord may charge Tenant a reasonable fee (currently established at Twenty and No/100 Dollars (\$20.00)) for any lost key or any key not returned by Tenant to Landlord as and when required. Landlord shall be entitled to install, operate and maintain security systems in or about the Property which monitor, by computer, close circuit television or otherwise, persons entering or leaving the Property, the Building and/or the premises demised to any tenant. For the purposes of this rule the term "keys" shall mean traditional metallic keys, plastic or other key cards and other lock opening devices.

40. Each person using the Parking Accommodations or other areas designated by Landlord where parking will be permitted shall comply with all Rules and Regulations adopted by Landlord with respect to the Parking Accommodations or other areas, including any employee or visitor parking restrictions, and any sticker or other identification system established by Landlord. Landlord may refuse to permit any person who violates any parking rule or regulation to park in the Parking Accommodations or other areas, and may remove any vehicle which is parked in the Parking Accommodations or other areas in violation of the parking Rules and Regulations. The Rules and Regulations applicable to the Parking Accommodations and the outside parking areas are as follows:

- (a) The maximum speed limit within the Parking Accommodations shall be 5 miles per hour.
- (b) All directional signs and arrows must be strictly observed.
- (c) All vehicles must be parked entirely within painted stall lines.
- (d) No intermediate or full-size car may be parked in any parking space reserved for a compact car; no bicycle, motorcycle or other two or three wheeled vehicle, and no truck, van or other oversized vehicle, may be parked in any area not specifically designated for use thereby.
- (e) No vehicle may be parked (i) in an area not striped for parking, (ii) in a space which has been reserved for visitors or for another person or firm, (iii) in an aisle or on a ramp, (iv) where a "no parking" sign is posted or which has otherwise designated as a no parking area, (v) in a cross hatched area, (vi) in an area bearing a "handicapped parking only" or similar designation unless the vehicle bears an appropriate handicapped designation, (vii) in an area bearing a "loading zone" or similar designation unless the vehicle is then engaged in a loading or unloading function and (viii) in an area with a posted height limitation if the vehicle exceeds the limitation.
- (f) Parking passes, stickers or other identification devices that may be supplied by Landlord shall remain the property of Landlord and shall not be transferable. A replacement charge determined by Landlord will be payable by each tenant for loss of any magnetic parking card or parking pass or sticker.
- (g) Parking attendants shall not be authorized to make or allow any exceptions to these Rules and Regulations.
- (h) Each operator shall be required to park and lock his or her own vehicle, shall use the Parking Accommodations at his or her own risk and shall bear full responsibility for all damage to or loss of his or her vehicle, and for all injury to persons and damage to property caused by his or her operation of the vehicle.
- (i) Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is inappropriately parked or parked in violation of these Rules and Regulations.

41. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of the Building Rules and Regulations when it is deemed necessary, desirable or proper, in Landlord's judgment for its best interest or of the best interests of the tenants of the Project.

42. Landlord has designated the Building a "non-smoking". Accordingly, smoking of tobacco or any other weed plant is prohibited in the Building Common Areas, including the Building Lobby, public corridors, lavatories, elevators and other public areas. Further, smoking of tobacco or any other weed plant is prohibited within the Leased Premises.

Tenant hereby acknowledges receipt of the Building Rules and Regulations.

**TENANT:**

**SenesTech, Inc.**, a Delaware corporation

By: /s/ T. C. Chesterman  
T. C. Chesterman, EVP and CFO

Date: November 18, 2019

**SUBSIDIARIES OF THE REGISTRANT**

The following is a list of subsidiaries of the registrant as of December 31, 2021.

Name	Jurisdiction of incorporation or organization

NONE

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements (Form S-3 No. 333-261227, Form S-3 No. 333-252665, Form S-3 No. 333-226842, Form S-1 No. 333-251173, Form S-1 No. 333-237563, Form S-1 No. 333-236359, Form S-1 No. 333-236302, Form S-1 No. 333-225713, Form S-1 No. 333-221433, Form S-8 No. 333-258851, Form S-8 No. 333-246258, Form S-8 No. 333-225710 and Form S-8 No. 333-215026) of our report dated March 29, 2022, relating to the consolidated financial statements of SenesTech, Inc., for the years ended December 31, 2021 and 2020, which appear in this Annual Report on Form 10-K of SenesTech, Inc. for the year ended December 31, 2021.

/s/ M&K CPAS, PLLC

[www.mkacpas.com](http://www.mkacpas.com)

Houston, Texas

March 29, 2022

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
RULE 13(a)-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

I, Kenneth Siegel, certify that:

1. I have reviewed this Annual Report on Form 10-K of SenesTech, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 29, 2022

/s/ Kenneth Siegel

Kenneth Siegel  
Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
RULE 13(a)-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

- I, Thomas C. Chesterman, certify that:
1. I have reviewed this Annual Report on Form 10-K of SenesTech, Inc.;
  2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
  3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
  4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
  5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 29, 2022

/s/ Thomas C. Chesterman

\_\_\_\_\_  
Thomas C. Chesterman

Chief Financial Officer and Treasurer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Kenneth Siegel, Chief Executive Officer of SenesTech, Inc., certify that:

1. To my knowledge, this report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. To my knowledge, the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of SenesTech, Inc.

Dated: March 29, 2022

/s/ Kenneth Siegel

Kenneth Siegel

Chief Executive Officer

This certification accompanies the Annual Report on Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of SenesTech, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.



**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Thomas C. Chesterman, Chief Financial Officer and Treasurer of SenesTech, Inc., certify that:

1. To my knowledge, this report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. To my knowledge, the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of SenesTech, Inc.

Dated: March 29, 2022

/s/ Thomas C. Chesterman

Thomas C. Chesterman  
Chief Financial Officer and Treasurer

This certification accompanies the Annual Report on Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of SenesTech, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.